20845 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

Appellate Case No. 2012-213524

RECEIVED
NOV 19 2013
SC Court of Appeals

First South Bank,

Respondent,

v.

South Causeway, LLC,

Appellant,

RECORD ON APPEAL
VOLUME I

Joel W. Collins, Jr.
Christian Stegmaier
James L. Floyd, III
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, SC 29211

Attorney for Respondent

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Columbia, SC 29211

Attorney for Appellant

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP2201233

First South Bank	South Causeway Llc
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.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ 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:

Motion to Dismiss Jury Trial/Tyler – Denied/Order within 7 days

Motion for Summary Judgment/Tyler – Denied/Order within 7 days

FILED
GEORGETOWN COUNTY, S.C.
2011 NOV 17 PM 3:05
AMY Y. WHITE
CLERK OF COURT

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

2129
Judge Code

11/17/2011
Date

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

For Clerk of Court Office Use Only

This judgment was entered on November 17, 2011, and a copy mailed first class or placed in the appropriate attorney's box on November 17, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Donald W. Tyler Tyler Cassell Jackson Peace&Silver,LLP P.O. Box 11656 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daniel W. Stacy Jr. Oxner & Stacy, PA 90 Wall Street Unit B Pawleys Island, SC 29585
Audra M Byrd Turner Padget Graham & Laney Pa P O Box 2116 Myrtle Beach, SC 29578

ATTORNEY(S) FOR THE DEFENDANT(S)

Lucinda LiSane, Deputy

Alma Y. White - Clerk of Court

Court Reporter: Dixie Eubank

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	2010-CP-22-01233
	)	
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
	)	
SOUTH CAUSEWAY, LLC,	)	
	)	
Defendant.	)	
	)	

FILED
GEORGETOWN COUNTY, S.C.
2011 DEC -1 AM 10:41
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court upon the Motion of Plaintiff First South Bank ("First South") seeking an Order granting summary judgment in its favor as to its Complaint. A hearing on the Motion was held before the Court on Thursday, November 17, 2011 at the Georgetown County Courthouse in Georgetown, South Carolina. Present at the hearing on behalf of First South were Attorneys Donald W. Tyler and Donald W. Tyler, Jr. The defendant, South Causeway, LLC ("South Causeway"), was represented at the hearing by Attorney Audra M. Byrd. After reviewing the file in this matter, including the Motion for Summary Judgment, the Memorandum of Law in Support of Motion, the Affidavit of Peggy Wheeler-Cribb and excerpts of the deposition of Don S. Thomas, and after hearing arguments of counsel, the Motion for Summary Judgment is hereby DENIED for the reasons set forth below.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This is a commercial foreclosure action filed by First South relating to a mortgage it holds on property owned by South Causeway. The Summons and Complaint were filed with the Court on August 5, 2010. On September 3, 2010, South Causeway filed its Answer to the Complaint. Thereafter, on October 4, 2010, South Causeway filed an Amended Answer and Counterclaims. In its Amended Answer, South Causeway asserts numerous affirmative defenses

and generally challenges the validity and enforceability of the loan documents at issue in this case. The Amended Answer and Counterclaims filed by South Causeway alleges various instances of misconduct on the part of First South's banking officers relating to the initial loan, a subsequent amendment of the loan agreement, as well as alleged interference with South Causeway's attempts to market and sell the property. Similarly, the counterclaims asserted by South Causeway relate to the alleged conduct of individual banking officers in purportedly forcing South Causeway to sign a second loan agreement, allegations that First South misrepresented its intentions in entering the loan agreements, and First South's alleged interference with South Causeway's attempts to sell the property. The defenses asserted by South Causeway include the following: unclean hands, estoppel, laches, waiver, failure to mitigate, lack of damages, *in pari delicto*, condonation, acquiescence, ratification, barred by the terms of the agreement, lack of consideration, fraud in the inducement, unconscionability, and duress.

On May 27, 2011, First South served the present Motion for Summary Judgment. In response and opposition to the Motion for Summary Judgment, on August 1, 2011, South Causeway submitted an affidavit from its sole member, Peggy Wheeler-Cribb, and excerpts from the deposition of Don S. Thomas taken in this matter. At the beginning of the hearing on November 17, 2011, counsel for First South presented the Court and opposing counsel with a Memorandum of Law in Support of the Motion.

CONCLUSIONS OF LAW AND ANALYSIS

Legal Standard

A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. The function of summary judgment is to expedite the disposition of cases that do not require the assistance of a finder of fact. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Simmons v. Tuomey Reg. Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000) (citing Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988)). To survive a motion for summary judgment, the non-moving party must only present the Court with a mere scintilla of evidence establishing a disputed, genuine issue of material fact for the jury's consideration. Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330-331, 673 S.E.2d 801, 802-803 (2009).

"Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist on which reasonable minds cannot differ." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). "In addition, it must be shown that further inquiry into the facts is not needed to clarify the applicable law." PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., Inc., 297 S.C. 176, 179, 375 S.E.2d 331, 332 (Ct. App. 1988) (citing Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986)).

I. FIRST SOUTH HAS FAILED TO ESTABLISH THAT IT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

To prevail on a claim for foreclosure of a mortgage, the foreclosing party must establish the existence of the debt, ownership of the mortgage, and the mortgager's default on the debt. U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 375 n. 9, 684 S.E.2d 199, 205 n. 9 (Ct. App. 2009). "Once the debt and default have been established, the mortgagor has the burden of

establishing a defense to foreclosure such as lack of consideration, payment or accord and satisfaction." Id. (citing Bandy v. Bandy, 187 S.C. 410, 413, 197 S.E.2d 396, 397 (1938)).

In this case, disputed and material issues of fact exist with regard to the validity and enforceability of the debt claimed by First South. South Causeway asserts numerous affirmative defenses and counterclaims, which if proven, would refute the existence of the debt. Additionally, South Causeway has presented, at a minimum, a scintilla of evidence to establish these defenses and claims. As a result, this Court finds that further inquiry into the facts is necessary and appropriate to clarify the applicable law. Therefore, First South has not established its claim for foreclosure as a matter of law, and the Motion for Summary Judgment must be denied.

II. THERE ARE MATERIAL ISSUES OF FACT IN DISPUTE THAT SHOULD BE DETERMINED BY THE TRIER OF FACT.

In its Amended Answer filed in this matter, South Causeway raises various affirmative defenses including, among others: unclean hands, estoppel, duress, and fraud in the inducement. In support of its defenses and in opposition to the Motion for Summary Judgment, South Causeway submitted an affidavit from its sole member, Peggy Wheeler-Cribb, and excerpts from the deposition of Don S. Thomas taken during discovery in this case. The affidavit and deposition transcript create a genuine dispute of material fact as to the defenses of South Causeway and therefore, the ability of First South to foreclose on the mortgage which is the subject of this action.

"[A]n issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of an action." PPG Indus. at 179, 375 S.E.2d at 332. The facts, as presented in the affidavit of Peggy Wheeler-Cribb, are sufficient to establish a factual issue for the jury's determination as to whether South Causeway executed the loan documents

while under duress. "Whether duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex and capacity of the party influenced." Gainey v. Gainey, 382 S.C. 414, 428-429, 675 S.E.2d 792, 799 (Ct. App. 2009).

Moreover, the affidavit of Peggy Wheeler-Cribb and the deposition transcript of Don S. Thomas create genuine issues of material fact as to whether First South acted inequitably so as to constitute one or more defenses to the present foreclosure action. Similarly, South Causeway has presented evidence that, if proven, could support a jury finding that First South fraudulently induced South Causeway to execute the loan documents at issue in this case. This evidence and all reasonable inferences must be taken as true for purposes of the current Motion for Summary Judgment. See Simmons at 39, 533 S.E.2d at 316.

Based on the foregoing, there exist disputed issues of material fact which preclude summary judgment in this case.

CONCLUSION

After a careful review of the pleadings, the Motion for Summary Judgment, the supporting Memorandum of Law, the affidavit of Peggy Wheeler-Cribb and the deposition testimony of Don S. Thomas, as well as the applicable case law, the Court concludes it has properly considered the Motion for Summary Judgment filed by First South Bank. The Court finds that the plaintiff has failed to establish that it is entitled to judgment as a matter of law, and there are genuine and disputed issues of material fact for consideration by the trier of fact. In addition, the Court finds that further inquiry into the facts is necessary and appropriate to clarify the applicable law in this matter. Therefore, the Motion for Summary Judgment must be denied.

It is therefore,

ORDERED that Plaintiff's Motion for Summary Judgment is hereby denied.

THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

11/29/, 2011

Georgetown, South Carolina

The South Carolina Court of Appeals

First South Bank, Appellant,

v.

South Causeway, LLC, Respondent.

The Honorable Steven H. John
Georgetown County
Trial Court Case No. 2010-CP-22-01233

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It now appears that the Appellant wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for Georgetown County.

V. Claire Allen, Deputy Clerk
For the Court

Columbia, South Carolina
Original to: The Honorable Alma Y. White
cc: Donald W. Tyler, Jr., Esquire
Donald W. Tyler, Esquire
Audra M. Byrd, Esquire
R. Wayne Byrd, Esquire

FILED
2/21/12 LAF

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-22-1233
First South Bank, Plaintiff, vs. South Causeway, LLC, Defendant,	**JUDGMENT OF FORECLOSURE AND ORDER FOR SALE**

FILED
2012 NOV -1 AM 9:15
CLERK OF COURT

This matter was heard by the Court during the jury term beginning on September 17, 2012. Plaintiff First South Bank ("First South") brought this lawsuit seeking foreclosure of commercial property. Defendant South Causeway, LLC ("South Causeway"), answered the foreclosure lawsuit asserting various defenses and counterclaims. Pursuant to prior order of the Court, South Causeway's counterclaims were heard by a jury. First South's foreclosure action, which is equitable in nature, was to be determined by the Court, with the Court being bound by any findings of fact made by the jury. Johnson v. S.C. Nat. Bank, 292 S.C. 51, 354 S.E.2d 895 (1987). The foreclosure action and counterclaims were presented in one trial. First South presented its case in chief to the court in support of its foreclosure action by offering into evidence through its custodian of records the relevant loan documents, demand letter, and payoff statement.

By verdict rendered on September 25, 2012, the jury found for First South on all three of South Causeway's counterclaims submitted to the jury: (1) breach of contract, (2) violation of the South Carolina Unfair Trade Practices Act, and (3) tortious interference with a contract. Thereafter, as to the First South's foreclosure action, taking into account the jury's findings and considering the testimony and evidence presented, also on September 25, 2012, the undersigned

rendered verdict in favor of First South on First South's foreclosure action, based on the following findings and conclusions of law:

FINDINGS OF FACT:

1. The Lis Pendens was filed on August 4, 2010, and the Amended Lis Pendens was filed on August 5, 2010.

2. For value received, South Causeway made, executed and delivered to First South a Universal Note and Security Agreement ("Note") dated June 25, 2008, promising thereby to pay to the order of First South up to the sum of $6,500,000.00, upon the terms and conditions set forth therein.

3. To secure payment of the Note, South Causeway made, executed and delivered to First South a Mortgage dated June 25, 2008, ("Mortgage") covering real property in Georgetown County. The Mortgage was filed on June 25, 2008, and is of record in the office of the Register of Deeds for Georgetown County in Mortgage Book 990 at Page 247.

4. South Causeway and First South entered into an Agreement (the "Agreement") effective as of April 10, 2009, which, among other things, modified the maturity date of the Note to July 5, 2010.

5. As modified by the terms of the Agreement, the Note matured on July 5, 2010, and payment due on the Note was not made as provided for therein.

6. Based on the terms of the Note and Mortgage, First South is entitled to recover its collection costs, including attorneys' fees and costs.

7. South Causeway asserted various defenses to the foreclosure in its Amended Answer to Complaint and Counterclaims.

#2

a. With regard to defenses one through fourteen, South Causeway failed to prosecute and/or submit sufficient evidence to establish any of the defenses, and therefore, the undersigned finds in favor of First South for each such defense (as to those defenses actually addressed during the trial, the undersigned refers to the record for further explanation); and

b. With regard to defenses fifteen through twenty-one which were also alleged as counterclaims by South Causeway, during the jury trial, the undersigned directed verdict as to the sixteenth defense (Breach of Contract Accompanied by Fraudulent Act), eighteenth defense (Breach of Fiduciary Duty), nineteenth defense (Fraud, Constructive Fraud, and Misrepresentation), and the twenty-first defense (Tortious Interference with Prospective Contract), with the grounds for such directed verdict being stated on the record. As to the fifteenth defense (Breach of Contract), seventeenth defense (Violation of South Carolina Unfair Trade Practices Act), and twentieth defense (Tortious Interference with Contract), the jury returned a verdict in favor of First South for all three defenses/counterclaims.

8. The amount due and owing on the Note, with interest at the rate provided in the Note and other costs and expenses secured by the Mortgage, is as follows:

a.	Principal due as of September 25, 2012	$4,774,112.73
b.	Interest through June 11, 2012	$378,357.74
c.	Interest from June 12, 2012 through September 25, 2012 at per diem rate of $563.61	$59,742.66
d.	Late Charges	$999.99
e.	Appraisal Fee	$750.00
f.	Advanced Real Property Taxes	$120,424.45
f.	Copies from Horry County Clerk of Court	$127.75
	Debt secured by Note and Mortgage, including interest through September 25, 2012	$5,334,515.32

#3 TM

The amount due (shown above) together with First South's collection costs, including attorneys' fees and costs, to be determined by the Court shall accrue interest at the maximum post judgment rate and together with such interest shall constitute the debt due to First South.

9. First South is seeking foreclosure of the Mortgage against South Causeway, and its right to a deficiency judgment against South Causeway is expressly demanded.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

First South should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. South Causeway and all persons whosoever claiming under it be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

2. As of September 25, 2012, there is due to the First South on the Note and Mortgage the sum of $5,334,515.32, plus its collection costs, including attorneys' fees and costs to be determined by the Court, plus interest thereafter at the post judgment rate representing the debt due to First South.

3. The amount due in the preceding paragraph shall accrue interest from the date of judgment at the maximum statutory rate per annum and together with such interest shall constitute the total debt due to First South.

#4

4. The amount due shall be subject to increase to permit First South to recover additional costs, commissions and expenses. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

5. South Causeway shall, on or before the date of sale of the property hereinafter described, pay to First South or First South's attorney the amount of South Causeway's debt as aforesaid, together with the costs and disbursements of this action.

6. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Georgetown County Clerk of Court at public auction, at the Georgetown County Courthouse, 333 Cleland Street, 2nd Floor Master in Equity Courtroom, Georgetown, County and State aforesaid (or such other place as specified in the Notice of Sale), on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

A. FOR CASH: The Georgetown County Clerk of Court will require, at the time of the bid, a deposit of five (5%) percent on the amount of the bid in cash or equivalent (unless First South is the successful bidder) same to be applied on the purchase price if compliance is made; but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to South Causeway's debt owed to First South.

B. Interest on the bid shall be paid through the day of compliance at the rate of 7.25%, which is the present maximum post judgment interest rate.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

#5

D. First South shall pay for any statutory commission on the sale from the proceeds of sale, and purchaser to pay for deed preparation, costs of recording the deed and deed stamps.

7. A personal or deficiency judgment being demanded, the bidding will remain open after the date of sale for thirty (30) days.

8. That the Georgetown County Clerk of Court will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the premises sold. If, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after date of sale, then the Georgetown County Clerk of Court may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the Georgetown County Clerk of Court will apply the proceeds of sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.
NEXT: To the payment to First South or First South's attorney, of the amount of South Causeway's debt owed to First South and interest (including attorney fees) or so much thereof as the purchase money will pay on the same.
NEXT: Any surplus will be held pending further Order of this Court.

10. That First South shall have judgment of foreclosure. That First South shall have judgment against South Causeway for the full amount found to be due First South on the Note and Mortgage, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent Order for Deficiency Judgment. First South may waive any of its rights prior to sale, including its right to

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a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. First South's waiver shall be made in writing.

11. If First South is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness owed to First South in full, First South may pay to the Georgetown County Clerk of Court only the amount of the costs and expenses, crediting the balance of the bid on the indebtedness owed to First South.

12. Should the First South, First South's attorney or agent fail to appear on sales day, the property shall not be sold, but shall be re-advertised and sold at some convenient sales day thereafter when the First South, First South's attorney or agent is present.

13. In the event the successful bidder is other than South Causeway, upon the presentation of a Writ of Assistance, the Sheriff of Georgetown County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

14. That the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Clerk of Court or Register of Deeds in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Clerk of Court for Georgetown County, who executes such deed as grantor.

15. The undersigned, shall direct the Clerk of Court/Register of Deeds to release of record the mortgage lien being foreclosed, after the Order Confirming Sale and Disbursements has been executed and filed, which mortgage lien is described as follows:

> That certain Mortgage given by South Causeway to First South dated June 25, 2008 and recorded in the Office of the Clerk of Court/Register of Deeds for Georgetown County on June 25, 2008 in Book 990 at Page 247.

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16. The undersigned will retain jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to, the issuance of a Supplemental Order to evidence additional debt incurred if the sale of the property is delayed by the filing of a bankruptcy petition, transfer of service of the Note and Mortgage by First South, or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCP, and hearing any issues involving appraisal proceedings under §29-3-680 et seq of the South Carolina Code of Laws (1976) as amended.

17. Mortgaged property to be sold by Georgetown County Clerk of Court:

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acres and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 acres at the Southeastern intersection of U.S. Highway 17 and the South Causeway to Pawleys Island, Surveyed for Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made apart and parcel hereof by reference thereto.

ALSO:
All right title and interest in and to the easement reserved in Indenture Deed from Ruth Oliver Bell, et al. to C.B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989 in Deed Book 332 at Page 125.

ALSO:
All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4) County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A.H. Parsons, et al; to the Northwest a distance

#8

of 50 feet by U.S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by deed dated June 25, 2008, recorded in the Office of the Register of Deeds for Georgetown County on June 25, 2008 in Record Book 990 at Page 242.

18. This is a foreclosure of commercial property and therefore, exempt from (1) the Home Affordable Modification Program ("HMP") program pursuant to Administrative Order of the South Caroline Supreme Court dated May 22, 2009, and (2) the right to foreclosure intervention pursuant to Administrative Order of the Supreme Court of South Carolina dated May 2, 2011.

AND IT IS SO ORDERED.

Thomas A. Russo, Presiding Judge

Oct. 12, 2012
Florence, South Carolina

Attorneys for Plaintiff First South Bank:
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Tyler, Cassell, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689

AND

#4 TMC

Joel W. Collins, Jr.
James L. Floyd, III (Lee)
Collins & Lacy, P.C.
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NO.: 2010-CP-22-1233

First South Bank,
PLAINTIFF,

South Causeway, LLC,
DEFENDANT,

Submitted by:	Attorney for: ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant
TYLER, CASSELL, JACKSON PEACE & SILVER, LLC Donald W. Tyler, Jr. 1331 Elmwood Avenue, Suite 300 (29201) Post Office Box 11656 Columbia, South Carolina 29211	

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV -2 PM 3:05
ALMA Y. WHITE
CLERK OF COURT

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/hearing before the court. The issues have been tried or heard and decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____.

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 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 PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First South Bank	South Causeway, LLC	THE PROPERTY WHICH IS THE SUBJECT OF THIS ACTION BE SOLD AT PUBLIC SALE PURSUANT TO THE JUDGMENT OF FORECLOSURE AND ORDER FOR SALE. JUDGMENT IN THE SUM OF $5,694,334.89

If applicable, describe the property, including tax map information and address, referenced in the order:
Parcel Numbers: 04-0164-030-00-00 (0 Ocean Highway; 5.0 acres 2 Towers Township 7 & Lot on US 17 SLD 564-2 f/k/a 2 Towers Township 7 – SLD 494-1) ; 04-0164-033-00-00 (9156 Ocean Highway, 1.7 Acres Mainland) ; 04-0169-001-03-00 (0 Ocean Hwy, 11.66 acres, Parcel A Intersection US Hwy 17 & South Causeway SLD 494-1, 564-2; SLD 726-7B); 04-0169-001-04-00 (Smalls Loop, 0.91 acres, PT r/w Smalls Loop SLD 494-1, 564-2)

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.

2141 November 2nd 2012.
Thomas A. Russo, Presiding Judge

SCRCP Form 4C (12/2011)

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FORM 4

For Clerk of Court Office Use Only

This judgment was entered on the 2nd day of November, 2012, and a copy mailed first class or placed in the appropriate attorney's box on this 2nd day of November, 2012 to attorneys of record or to parties (when appearing *pro se*) as follows:

TYLER, CASSELL, JACKSON PEACE & SILVER, LLC Donald W. Tyler, Jr. 1331 Elmwood Avenue, Suite 300 (29201) Post Office Box 11656 Columbia, South Carolina 29211 AND Joel W. Collins, Esquire James L. Floyd, III, Esquire COLLINS AND LACY, P.C. Post Office Box 12487 Columbia, SC 29211 **ATTORNEY(S) FOR THE PLAINTIFF(S)**	Audra M. Byrd, Esquire Mark Goddard, Esquire Turner, Padget, Graham and Laney, P.A. 2411 Oak Street, Suite 301 PO Box 2116 Myrtle Beach, SC 29578 **ATTORNEY(S) FOR THE DEFENDANT(S)**

Lucinda LiSane, Deputy
CLERK OF COURT

Court Reporter: None

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
FIRST SOUTH BANK,	)	CIVIL ACTION NUMBER: 2010-CP-22-01233
	)	
Plaintiff,	)	
	)	**SUPPLEMENTAL JUDGEMENT OF FORECLOSURE**
vs.	)	
	)	
SOUTH CAUSEWAY, LLC,	)	
	)	
Defendant.	)	

FILED
GEORGETOWN COUNTY, S.C.
2012 NOV 1 PM 3:05
ALMA H. WHITE
CLERK OF COURT

This matter came before me on motion of the First South Bank ("First South") for an award of attorneys' fees and costs. Pursuant to the Order of the Honorable Larry B. Hyman, Jr., dated August 27, 2012, and filed on September 20, 2012, First South was allowed to present evidence as to the amount of its attorneys' fees and costs to the Trial Court post-trial. At the conclusion of the jury trial of this matter, which was heard during the September 17 Term of Court, I ruled that First South was entitled to recover its attorneys' fees and costs in an amount to be determined by the court. First South submitted the Affidavit of Donald W. Tyler, Jr., and the Affidavit of James L. Floyd, III, in support of its request for attorneys' fees and costs. Defendant South Causeway, LLC ("South Causeway"), filed a Return in Opposition to Motion for Attorneys' Fees and Costs (the "Return"). In the Return, South Causeway challenged the reasonableness and appropriateness of certain costs and fees totaling $52,661.45. While First South did not concede that the $52,661.45 was unreasonable or inappropriate, First South nonetheless consented to the reduction in the award of attorneys' fee and costs by the $52,661.45.

Accordingly, based on the evidence presented, the Judgment of Foreclosure and Order for Sale ("Judgment") is hereby supplemented to include the attorneys' fees and costs as set forth in the following supplemental findings of fact and conclusions of law.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Pursuant to the terms of the Universal Note and Security Agreement ("Note") and Mortgage, First South is entitled to recover its litigation costs, including attorneys' fees and costs, from South Causeway, including its costs and attorneys' fees to bring the foreclosure action and to defend the counterclaims because the counterclaims were intertwined with the foreclosure action and challenged the validity and enforceability of the Note and Mortgage. Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 483-84, 458 S.E.2d 431, 438-39 (Ct. App. 1995).

2. First South has incurred the actual sum of $175,722.15 in attorneys' fees with Tyler, Cassell, Jackson, Peace and Silver, LLC, for the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of Donald W. Tyler, Jr., Esquire and Exhibits filed herein.

3. First South has incurred the actual sum of $17,991.32 in costs and expenses advanced by Tyler, Cassell, Jackson, Peace and Silver, LLC in association with the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of Donald W. Tyler, Jr., Esquire and Exhibits filed herein.

4. First South has also incurred the actual sum of $33,230.43 in costs and expenses that First South paid directly in association with the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of W. C. Lyerly, III, attached to the Affidavit of Donald W. Tyler, Jr., Esquire.

5. First South has incurred the actual sum of $179,566.52 in attorneys' fees with Collins & Lacy, P.C., for the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of James L. Floyd, III, Esquire and Exhibits filed herein.

6. First South has incurred the actual sum of $5,970.60 in costs and expenses advanced by Collins & Lacy, P.C. in association with the prosecution of the foreclosure action and defense of South Causeway's counterclaims, as reflected in the Affidavit of James L. Floyd, III, Esquire and Exhibits filed herein.

7. First South's attorneys' fees and costs presented in Paragraphs 2 – 6 total $412,481.02. Therefore, subtracting the $52,661.45 as challenged by South Causeway in its Return (to which First South has consented) the total attorneys' fees and costs sought by First South is $359,819.57.

8. The attorney fees requested are fair and reasonable under the six (6) applicable factors under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989):

(a) This litigation involved a complex commercial dispute, which included the defense of numerous counterclaims and affirmative defenses containing allegations of breach of contract, fraudulent misconduct, and unfair trade practices by First South;

(b) The time actually devoted to the matter was necessary to complete extended discovery, numerous motions and depositions, and presenting the case at a trial by jury, which lasted six (6) days;

(c) The professional standing of the attorneys at Tyler, Cassell, Jackson, Peace and Silver, LLC, and Collins & Lacy, P.C., are excellent and they regularly represent clients in matters similar to the issues presented in this case;

(d) The contingency of compensation factor is inapplicable since this was not a contingency case;

(e) The rates of the attorneys involved in this matter are consistent with those customarily charged in the Counties of Columbia and Georgetown for similar legal services; and

(f) The beneficial results that First South received in prevailing on its action to foreclose on a Note exceeding $5 million in value and prevailing in the defense of the counterclaims, which sought to invalidate the Note and/or to recover $8 million in claimed actual damages.

9. The Court also notes that the amount of attorneys' fees and costs were exacerbated, at least in part, as a result of the inaccuracies included in the affidavit of Peggy Wheeler-Cribb which South Causeway presented to the Court in opposition to First South's prior motion for Summary Judgment.

10. The amount due and owing on the Note, with interest at the rate provided in the Note and other costs and expenses secured by the Mortgage, as shown in Paragraph 8 of the Judgment is hereby amended as follows:

a.	Principal due as of September 25, 2012	$4,774,112.73
b.	Interest through June 11, 2012	$378,357.74
c.	Interest from June 12, 2012 through September 25, 2012 at per diem rate of $563.61	$59,742.66
d.	Late Charges	$999.99
e.	Appraisal Fee	$750.00
f.	Advanced Real Property Taxes	$120,424.45
f.	Copies from Horry County Clerk of Court	$127.75
g.	Attorney Fees & Costs	$359,819.57
	Debt secured by Note and Mortgage, including interest through September 25, 2012	$5,694,334.89

The amount due (shown above) shall accrue interest at the maximum post judgment rate and together with such interest shall constitute the debt due to First South.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

All Findings of Fact and Conclusions of Law set forth in the Judgment shall remain in full effect, with the exception of the following:

1. The attorney fees requested are fair and reasonable under the six (6) applicable factors to be considered under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989):

(a) This litigation involved a complex commercial dispute, which included the defense of numerous counterclaims and affirmative defenses containing allegations of breach of contract, fraudulent misconduct, and unfair trade practices by First South;

(b) The time actually devoted to the matter was necessary to complete extended discovery, numerous motions and depositions, and presenting the case at a trial by jury, which lasted six (6) days;

(c) The professional standing of the attorneys at Tyler, Cassell, Jackson, Peace and Silver, LLC and Collins & Lacy, P.C., are excellent and they regularly represent clients in matters similar to the issues presented in this case;

(d) The contingency of compensation factor is inapplicable since this was not a contingency case;

(e) The rates of the attorneys involved in this matter are consistent with those customarily charged in the Counties of Columbia and Georgetown for similar legal services; and

(f) The beneficial results that First South received in prevailing on its action to foreclose on a Note exceeding $5 million in value and prevailing in the defense of the counterclaims, which sought to invalidate the Note and/or to recover $8 million in claimed actual damages.

2. Paragraph 8 of the Findings of Fact of the Judgment is hereby supplemented as shown in Paragraph 10 above.

3. Paragraph 2 of the Conclusions of Law of the Judgment, is hereby supplemented to state as follows: there is due to the First South on the Note and Mortgage the sum of $5,694,334.89, plus interest at the post judgment rate representing the debt due ~~to First South~~.

AND IT IS SO ORDERED.

The Honorable Thomas A. Russo, Presiding Judge

November 2nd, 2012
Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NUMBER:
FIRST SOUTH BANK,	)	2010-CP-22-01233
	)	
Plaintiff,	)	
	)	**ORDER DENYING DEFENDANT'S**
vs.	)	**POST- TRIAL MOTIONS**
	)	
SOUTH CAUSEWAY, LLC,	)	
	)	
Defendant.	)	

This matter came before me on post-trial motions of the Defendant South Causeway, LLC ("South Causeway") for judgment notwithstanding the verdict ("JNOV") on South Causeway's counterclaims, or; in the alternative for a new trial, and for an amendment of the judgment on Plaintiff First South Bank's ("First South") foreclosure claim. First South filed an Opposition to South Causeway's motion. Based on the arguments presented in the briefs, as further explained below, South Causeway's post-trial motions are denied.

I. South Causeway's Motion for JNOV.

South Causeway moved for JNOV on the three counterclaims that the jury unanimously decided in favor of First South: breach of contract, tortious interference with contract, and violation of the South Carolina Unfair Trade Practices Act. In considering a motion for JNOV, the Court views the evidence in the light most favorable to First South and draw all reasonable inferences in its favor. Strange v. S.C. Dep't of Highways & Public Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). A motion for JNOV will be denied if "either the evidence yields more than one inference or its inference is in doubt." Id.

A. Breach of Contract.

1. Funding Interest Reserve.

The Commitment Letter provides for the deposit of an additional $550,000 of proceeds into the interest reserve account "upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan Closing." Pl.'s Trial Ex. 1, p. 2, ¶ F. South Causeway has asserted that the foregoing provision is ambiguous as to the funding date, that the jury had to construe this ambiguity against First South, and if construed against First South Bank then the jury could have only concluded that First South breached the loan agreement. This argument ignores the other language encompassed within the parties' agreements and the evidence of the parties' intent introduced at trial. When viewed as a whole, the evidence clearly permitted a reasonable interpretation of the entire agreement between the parties which supports the jury's unanimous verdict.

The Loan Agreement provides that it governs over any provision of the Commitment Letter. Pl.'s Trial Ex. 2, p. 18, §9.10. The Loan Agreement divides the funding between an initial advance at closing and subsequent advances that will only take place upon the completion of certain events. See id. at p. 3, §4.1; p. 6, §4.2, & pp. 7-8, §4.4. Part of the initial advance included funding $300,000.00 into the interest reserve account, which took place at closing and is undisputed. Id. at p. 7, §4.4. The $550,000 referenced in the Commitment Letter was not part of the initial advance and was not part of the Loan Agreement. As a subsequent advance, this additional funding was not required by the Loan Agreement. Even if required, any such advance was subject to the conditions precedent applicable to other subsequent advances. "Advances subsequent to the Initial Advance shall be made from time to time as construction of the Improvements progresses, but not more frequently than once each month, in a sum equal to (a)

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the total expenditures incurred by the Borrower and approved by the Bank for fees and costs incurred in connection with the Loan, funding the Interest Reserve Account . . . through the end of the period covered by the Request for Advance . . . subject, in each case, however, to the further provisions of this Article IV." Id. p.8, §4.4. Section 4.2 of the Loan Agreement (contained within Article IV), sets forth a list of conditions precedent that must be satisfied prior to "each subsequent advance." Id. p. 6, §4.2. The evidence supported the finding that South Causeway did not meet the conditions precedent and abandoned developing the property. The evidence supported that South Causeway abandoned its initial plan to develop the property. Def.'s Trial Ex. 13. Therefore, the evidence supports finding First South never had a duty to make any subsequent advance of the $550,000 into the interest reserve account.

Witnesses also testified to the interpretation and intent of the $550,000 funding referenced in the Loan Commitment. Consistent with the terms of the Loan Agreement, testimony provided that the advancement of $550,000 into the interest reserve account was contingent on South Causeway achieving certain milestones associated with construction upon the property. As South Causeway never met those milestones and informed First South it was abandoning its plan to develop the property, the evidence supports the jury's finding that First South had no duty to deposit an additional $550,000 into the interest reserve account.

The Release contained in the April 10, 2009 Agreement between the parties further supports the jury's unanimous verdict that First South did not breach the contract. This release is additional grounds to deny South Causeway's motion for JNOV. First South's alleged failure to fund the interest reserve account with an additional $550,000 would have occurred prior to April 10, 2009. The Agreement entered into on April 10, 2009, broadly released First South from any

claim that arose prior to April 10, 2009. Pl.'s Trial Ex. 11, pp. 2-3, ¶3. The release bars South Causeway's claim for breach of contract on this basis.

2. "Termination" of the Loan.

South Causeway also seeks JNOV on its breach of contract claim on the ground that First South "terminated" the loan "by reducing the amount of available principal." Witnesses, such as Wayne Lovelace, testified that the loan was not terminated. There was evidence showing that South Causeway abandoned its construction plans. Def.'s Trial Ex. 13 ("About two weeks ago we decided with the economy as it we would like to sell it . . . ." "If you want or need to do away with the construction part of the loan that is fine . . . .") Once South Causeway abandoned its plan to develop the property, First South was under no obligation to make any "subsequent advances." The Loan Agreement provides that South Causeway's abandonment of construction with the intent not to resume for a period of 5 consecutive days was an event of default and terminated any further funding obligation of First South. Pl.'s Trial Ex. 2, p. 13 §7.1 & p. 15, §§7.1(13) & 7.2. The Release also bars the breach of contract claim on this basis as any purported termination of the loan took place before April 10, 2009.

3. Breach of Implied Covenant of Good Faith and Fair Dealing.

South Causeway also seeks JNOV on the jury's unanimous finding that First South did not breach the implied covenant of good faith and fair dealing. South Causeway bases its motion on First South's disclosure of information to Vintage Estates Realty, LLC ("the auction company) and Lincoln Harris, a Charlotte based development company. With regard to the disclosure to the auction company, there was testimony that the information should have been disclosed to the auction company. With regard to the disclosure to Lincoln Harris, testimony was offered that First South had the right to sell the loan and would need to disclose the

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information it provided to Lincoln Harris in order to exercise that right. Therefore, evidence supports the finding that First South did not breach the covenant of good faith and fair dealing.

Further, to prevail on its breach of contract claim South Causeway had to prove by a preponderance of the evidence that it sustained some damage due to the alleged breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). The possibility of damages alone is not enough. The evidence at trial supported a finding that South Causeway did not sustain any damages due to First South's disclosure to either the auction company or to Lincoln Harris. This alone is sufficient to uphold the jury's unanimous verdict in favor of First South and deny South Causeway's Motion for JNOV.

B. Tortious Interference with Contract.

To prevail on its claim for tortious interference with contract South Causeway had to prove, among other elements, that there was an intentional procurement of a breach, absence of justification, and resulting damages. DeBerry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981). Testimony of the representative of the auction company supported finding that the auction company did not breach its contract with South Causeway (in fact, no evidence was presented that the auction company breached the contract). The evidence at trial also supported finding that First South was justified in disclosing the information, as the auction company needed the information in order to effectively conduct the auction. Further, evidence was presented that South Causeway was not damaged, as no one entered any bid at the auction at any price. Viewing the evidence in a light most favorable to First South, South Causeway is not entitled to JNOV on this claim.

C. Unfair Trade Practices Act.

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South Causeway has also moved for JNOV on the jury's unanimous verdict that First South did not violate the South Carolina Unfair Trade Practices Act ("UTPA") when First South disclosed information to the auction company and to Lincoln Harris. The testimony supported a finding that the auction company needed the information provided by First South to effectively conduct the auction. Therefore, the evidence supports a finding that the disclosure was not an unfair or deceptive act and supports the jury's unanimous verdict. As noted above, there was evidence that South Causeway did not sustain any damage due to the disclosure of any information, and therefore, South Causeway could not prevail on its UTPA claim. See Fields v. Yarborough Ford, Inc., 307 S.C. 207 210 S.E.2d 166 (1992) (holding a plaintiff could not prevail on a UTPA claim where there was no evidence of damages due to a violation of the UTPA).

As to the disclosure to Lincoln Harris, the evidence at trial supported the jury's unanimous verdict in favor of First South on the UTPA claim. Testimony established that banks sell troubled loans during the normal course of business. To sell loans, banks must disclose information of the type that First South disclosed to Lincoln Harris. The evidence also established that this case involved a transaction that presented a unique set of circumstances, negating the potential for repetition or the potential impact on the public interest. The evidence, including the testimony of South Causeway's expert, supported finding that the disclosure to Lincoln Harris did not cause any actual damages to South Causeway. Instead, the testimony supported finding any loss in value of the property was caused by the downturn of the economy during this time period. The jury was free to reject South Causeway's claim of damages of $8 million (the difference between Lincoln Harris's first offer and their last offer) as total speculation or not caused by any act of First South. Each of these grounds is sufficient to support the jury's unanimous verdict in favor of First South.

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II. New Trial.

South Causeway also moved for a new trial on each of the claims discussed above based on the "thirteenth juror doctrine." A new trial is only appropriate when the judge "finds the evidence does not justify the verdict." Lane v. Gilbert Constr. Co., LTD., 383 S.C. 590, 681 S.E.2d 879 (2009). A decision under the thirteenth juror doctrine is premised on a trial judge's "duty of seeing that justice is done" and requires the trial judge to be "*convinced* that a new trial is *necessitated* on the basis of the facts in the case." Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) (emphasis added). Here the evidence supports the jury's findings and justice was done, and therefore, this Court declines the invitation to overturn the verdict under the thirteenth juror doctrine.

As discussed above, the evidence supports the jury's unanimous verdict in favor of First South on each of the causes of action. South Causeway's reliance on the testimony of Ms. Peggy Wheeler-Cribb in support of its Motion for a New Trial does not warrant invading the province of the jury as the finder of fact on these claims. There was conflicting testimony and evidence on the issues presented. The jury was free to find that Ms. Wheeler-Cribb was not credible and to not accept all or part of her testimony. Resolving disputes over the conflicting versions of the facts and the correct inferences to draw from those facts falls squarely within the jury's role as finder of fact. Therefore, the verdict is justified and this Court denies South Causeway's Motion for a new trial on any of South Causeway's claims.

South Causeway also requests this Court to reconsider its rulings directing verdicts in favor of First South on the counterclaims for fraud, breach of fiduciary duty, and breach of contract accompanied by fraudulent action. This request is again denied for the reasons previously provided on the record.

III. Amendment of Judgment on First South's Foreclosure Claim.

South Causeway also requests that the Court reconsider its decision on First South's foreclosure claim, pursuant to Rule 59, SCRCP. South Causeway disputes the following findings by this Court: (a) South Causeway was not under duress, and (b) First South established the debt owed on the loan. This Motion is denied.

A. Duress.

South Causeway asserts that it was under duress when it signed the original loan documents and when it signed the April 10, 2009 Agreement. South Carolina law requires evidence establishing "'a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition.'" Phillips v. Baker, 284 S.C. 134, 136, 325 S.E.2d 533 (1985) (quoting Cherry v. Shelby Mut. Plate Glass & Cas. Co., 191 S.C. 177, 4 S.E.2d 123 (1939)). This Court found no duress.

South Causeway bases its request that this Court alter its judgment on the testimony of Ms. Wheeler-Cribb, which was contradicted and uncorroborated at trial, and its claim that she "is an elderly woman." However, sitting as the finder of fact, this Court give little or no weight to Ms. Wheeler-Cribb's testimony. Her testimony was discredited and totally uncorroborated. South Causeway's claim of duress was unfounded. Ms. Wheeler-Cribb previously signed an affidavit, which was submitted to the Court to avoid summary judgment, which set forth the alleged duress. Aff. of Peggy Wheeler-Cribb, Pl.'s Trial Ex. 20. In paragraph 16 of her affidavit, Ms. Wheeler-Cribb addressed the original loan closing:

> 16. During the closing on June 25, 2008, my son and I discovered that Lovelace had not corrected the Note, and that in order to close, my son had to agree to mortgage his individual

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> property as security for the loan. At that point, we felt that we had no other choice since the First Palmetto loan was coming due, and Lovelace assured us that First South Bank would see the development through its conclusion. Reluctantly, we agreed to close.

At trial, Ms. Cribb was confronted with correspondence, parts of which she authored, which established that First South clearly explained to her well before the closing that it would require Lot 4, owned by her son, to be additional collateral. It became clear that her affidavit was not true. See Pl.'s Trial Ex. 24.

Presumably because Ms. Wheeler-Cribb's statement in her affidavit was shown to be false, she now claims that "she felt she was forced by Wayne Lovelace to move forward with the closing of the loan despite her request to postpone the closing." This claim ignores the fact she was represented by counsel and had no obligation to move forward with the closing. There was no evidence that South Causeway would have lost any deposit, as none existed. Ms. Wheeler-Cribb's loan with First Palmetto Bank was not due for another two months. Ms. Wheeler-Cribb and South Causeway's counsel executed letters confirming the closing was performed properly. See Pl.'s Trial Ex. 9 at p. 3 ¶7 & Ex. 10. This alone is sufficient to support this Court's finding that there was no duress and to deny South Causeway's Motion to Amend the Judgment on this ground.

Paragraphs 21 and 22 of Ms. Cribb's Affidavit relate to the April 10, 2009 Agreement:

> 21. Lovelace agreed to release the lot owned by my son, but to do so, we had to pay First South Bank $300,000. In addition, Kennedy Funding required a $50,000 non-refundable deposit.
>
> 22. At closing, after the $50,000 had been paid, *we discovered* that in addition to the $300,000 payment, First South Bank was taking back a year from the South Causeway, LLC Promissory Note and demanding an acceleration of the maturity date. The

> Bank demanded a new maturity date of July 5, 2010. I was taken completely off-guard, and if I refused to close on the loan, I would be forced to forfeit the $50,000 deposit. Additionally, if I did not close, the lot would remain subject to First South Bank's mortgage, preventing us from closing with Kennedy Funding. Faced with no other option, I executed the closing document; I would have never voluntarily signed the purported loan agreement, but felt I had no reasonable alternative.

(emphasis added). Emails offered at trial made it clear that First South informed Ms. Wheeler-Cribb long before the April 10 closing that the maturity date would be shortened and that Ms. Wheeler-Cribb chose the proposal that resulted in the shortened maturity date. Pl.'s Trial Exs. 18, 19, & 27. Therefore, to the extent that South Causeway's duress argument is based on Ms. Cribb's testimony, South Causeway failed to establish a basis to support duress and the Court's will not amend its judgment on duress.

South Causeway's assertion that Ms. Wheeler-Cribb's elderly age contributed to the purported duress is also insufficient to justify amending this Court's judgment. The evidence showed that Ms. Wheeler-Cribb served on a bank board and that that South Causeway was represented by counsel at both closings. Cox & Floyd Grading, Inc., v. Kajima Constr. Servs., Inc., 356 S.C. 512, 589 S.E.2d 789 (Ct. App. 2003)(finding a party represented by an attorney in the execution of documents was bound by terms therein); Hyman v. Ford Motor Co., 142 F. Supp. 2d 735 (D.S.C. 2001)(finding that a duress argument is substantially undermined where a party was represented by counsel). Duress is not implied merely from a hard bargain which required that a release be given in adverse business conditions. Id. The party claiming duress must also establish the lack of a reasonable alternative to signing the contract and those circumstances were caused by the opposing party. Id. at 746. As this Court noted at trial, South Causeway had every right to not sign the loan agreement or the subsequent agreement.

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Therefore, this Court denies South Causeway's motion to amend the judgment as the evidence at trial does not support the affirmative defense of duress.

B. Damages.

In First South's case-in-chief, its custodian of records took the stand and testified to the contents of the loan documents and those documents were entered into evidence. These documents included a June 11, 2012 payoff statement. Pl.'s Trial Ex. 13. Counsel for South Causeway cross-examined the custodian of records regarding how the numbers in the payoff statement were derived. The custodian of records testified the figures were the product of First South's computer system. South Causeway did not object to the payoff statement and has not otherwise offered evidence that the numbers reflected on the payoff statement were incorrect. Instead, South Causeway is asking the Court to amend its Judgment that First South established its damages based on its argument that First South did not offer testimony as to how the computer system operated and how the system precisely calculated the interest and principal amounts.

The business records rules were put in place because business records are trustworthy and "it was utter[ly] impossible . . . that any man could keep in his memory, even with the aid of memoranda, the minute, varied and complicated transactions of even an ordinary mercantile or other trading concern, hence the necessity of substituting the book entries for the memory of the witness." Thyer v. Deen, 20 S.C.L. (2 Hill) 677, 678 (1835). The payoff statement is presumed trustworthy as a business record and it was admitted into evidence without objection from South Causeway. By allowing the payoff statement to be admitted into evidence without objection, South Causeway waived any right to later question the fact First South failed to offer technical testimony regarding the underlying computer methodology that was used to determine the payoff

#11 THL

figures. This Court found the payoff statement credible based on the evidence at trial and that conclusion will not be amended.

At best, South Causeway's challenge is to the ultimate amount reached, not to whether there was sufficient evidence of the payoff amount to support First South's foreclosure action. This argument goes to the weight of the evidence, and South Causeway offered no evidence or testimony showing the computer system was untrustworthy or that the amounts reflected on the payoff were incorrect. The bank's president, Mr. W.C. "Chip" Lyerly, III, testified to the calculation of the daily per diem and the fact that referenced interest rates had not changed since the loan matured for payment. Therefore, South Causeway's motion to amend the judgment as to its finding that First South established its damages is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that South Causeway's post-trial motions are all denied.

AND IT IS SO ORDERED.

The Honorable Thomas A. Russo, Presiding Judge

Nov. 2nd, 2012
Florence, South Carolina

#12 TH

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)

First South Bank,)
Plaintiff(s))
) CIVIL ACTION COVERSHEET
vs.)
) 2010-CP-22-01233
South Causeway, LLC,)
Defendant(s).)

Submitted By: Donald W. Tyler, Esquire
Address: Tyler Cassell Jackson, Peace, & Silver, LLP
1331 Elmwood Drive, Suite 300
Columbia, South Carolina 29201

SC Bar #: 5664
Telephone #: (803) 252-7689
Fax #: (803) 733-2712
E-mail: dtyler@tcjps.com

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

DOCKETING INFORMATION *(Check all that apply)*

If Action is Judgment/Settlement do not complete

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

FILED
CLERK OF COURT
10 AUG -5 PM 2:55

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☒ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** **August 3, 2010**

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	C/A NO.: 2010-CP-22- 01233
First South Bank, Plaintiff, vs. South Causeway, LLC, Defendant,	**SUMMONS** (Non-Jury) (Foreclosure) (Deficiency Demanded)

2010 AUG -5 PM 2:57
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED:

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

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 1331 Elmwood Avenue, Suite 300, Post Office Box 11656, Columbia, South Carolina 29211, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

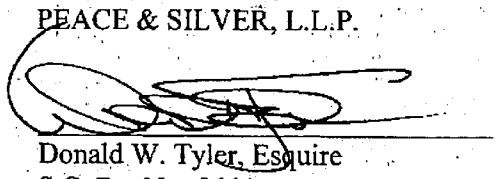
TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

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

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling

payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage and the Complaint attached hereto.

TYLER, CASSELL, JACKSON
PEACE & SILVER, L.L.P.



Donald W. Tyler, Esquire
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1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 3, 2010

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	C/A NO.: 2010-CP-22- 01233
First South Bank, Plaintiff, vs. South Causeway, LLC, Defendant,	**COMPLAINT** (Non-Jury) (Foreclosure) (Deficiency Demanded)

2010 AUG -5 PM 2:57
CLERK OF COURT

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

The Plaintiff above named, complaining of the Defendant above named, alleges as follows:

1. The Plaintiff is a South Carolina Chartered Bank.

2. Upon information and belief, Defendant South Causeway, LLC ("Defendant South Causeway") is a limited liability company organized and existing in the State of South Carolina.

3. Upon information and belief, the personal property which is the subject of this action is located in the County of Georgetown, State of South Carolina, and accordingly, this Court has jurisdiction over this cause.

4. Heretofore, on June 25, 2008, Defendant South Causeway made, executed and delivered to First South Bank a Universal Note and Security Agreement in the original principal sum of $6,500,000.00 which was subsequently amended and modified by Agreement dated April 9, 2009 (collectively the "Note"), copies of which are attached hereto as Exhibit "A" and incorporated herein by reference.

5. In order to secure said Note, Defendant South Causeway did on June 25, 2008 did make, execute and deliver to First South Bank, their successors and assigns, a certain Mortgage (hereinafter "Mortgage"), a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference, covering the premises located in the County of Georgetown, State of South Carolina and described as follows:

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acres and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 acres at the Southeastern intersection of U.S. Highway 17 and the South Causeway to Pawleys Island, Surveyed for Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made apart and parcel hereof by reference thereto.

ALSO: All right title and interest in and to the easement reserved in Indenture Deed from Ruth Oliver Bell, et al. to C.B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989 in Deed Book 332 at Page 125.

ALSO:
All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4) County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A.H. Parsons, et al; to the Northwest a distance of 50 feet by U.S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by deed dated June 25, 2008, recorded in the Office of the Register of Deeds for Georgetown County on June 25, 2008 in Record Book 990 at Page 242.

6. Plaintiff is informed and believes that the Mortgage constitutes a valid first mortgage lien upon the property described in hereinabove.

7. On June 25, 2008 the said Mortgage was recorded in the Office of the ROD for Georgetown County in Mortgage Book 990 at Page 247.

8. In order to further secure the said Note, on June 28, 2008, Defendant South Causeway, did make execute and deliver to Plaintiff a Commercial Security Agreement granting Plaintiff a security interest in certain personal property described therein ("Security Agreement"), a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

9. On or about June 25, 2008, a Uniform Commercial Code Financing Statement in favor of Plaintiff against Defendant South Causeway ("UCC") was filed in the Office of the ROD for Georgetown County in Book 990 at Page 260 and further filed in the Office of the South Carolina Secretary of State bearing file no. 080915-0943479, copies of which is attached hereto as Exhibit "D" an incorporated herein by reference.

10. Plaintiff is informed and believes that the Security Agreement and UCC constitute a valid first priority lien upon the personal property described therein.

11. The Note was due and payable in full on July 5, 2010, but despite demand therefor, payment has not been made and the entire balance of said principal and interest are due and payable at once; there is now due and owing and unpaid upon the said Note, Mortgage, Security Agreement and UCC the principal sum of $4,774,112.73, plus accrued interest through August 4, 2010, in the sum of $33,816.63, late charges in the amount of $999.99, for a total balance of $4,808.929.35, together with pre-judgment interest at a per diem of $563.61, with a reasonable sum as attorney's fees and costs of this action.

12. Plaintiff provided all applicable notices of default.

13. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

14. Pursuant to the Administrative Order of the Honorable Jean Hoefer Toal, Chief Justice of the S.C. Supreme Court, dated May 22, 2009, Plaintiff has completed the Verification and Affidavit Regarding HMP Modification which is attached hereto and incorporated herein by reference. Based upon the Verification and Affidavit Regarding HMP Modification, Plaintiff alleges the Note and Mortgage are not subject to modification under the HMP.

15. Plaintiff's right to an immediate personal judgment for the full amount found to be due and owing under the Note, Mortgage, Security Agreement and UCC (to be reduced by the subsequent foreclosure sale) pursuant to South Carolina Code §§29-3-650 and 29-3-660 is expressly demanded against Defendant South Causeway, LLC.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

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

2. That the said Plaintiff's Mortgage and UCC be declared a valid first lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff, together with reasonable attorney's fees, and for the costs of this action.

3. That Plaintiff shall have immediate personal judgment against Defendant South Causeway, LLC for the full amount found to be due Plaintiff on the Note and Mortgage, which judgment shall be reduced by the net proceeds of sale pursuant to S.C. Code Ann §29-3-650, as amended, as determined by this Court in a subsequent order for deficiency. Plaintiff may waive its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure. Plaintiff's waiver shall be made in writing.

4. That the mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

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

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

5. For an Order directing and empowering the Sheriff of Georgetown County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

6. For such other and further relief as this Court may deem just and proper.

TYLER, CASSELL, JACKSON
PEACE & SILVER, L.L.P.

Donald W. Tyler, Esquire
S.C. Bar No. 5664
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
August 4, 2010

F:\Data-DWT\First South (1862)\South Causeway, LLC (23836)\Complaint doc

2010 CP 22 012

EXHIBIT A

SOUTH CAUSEWAY, LLC 334 MYRTLE AVENUE PAWLEYS ISLAND, SC 29585 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	FIRST SOUTH BANK - COLUMBIA 1333 MAIN STREET COLUMBIA, SC 29201 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	Loan Number 8134802 Date 06-25-2008 Maturity Date 07-05-2011 Loan Amount $ 6,500,000.00 Renewal Of

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 Dollars $ 6,500,000.00

☐ **Single Advance:** I will receive all of this principal sum on _____. 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 06-25-2008 I will receive the amount of $ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are TERMS AND CONDITIONS OF COMMITMENT LETTER DATED MAY 30, 2008 AND OF LOAN AGREEMENT BETWEEN BORROWER AND LENDER OF EVEN DATE HEREWITH, ARE INCORPRATED HEREIN AND MADE A PART HEREOF

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum principal sum 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 (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from 06-25-2008 at the rate of 6.000 % per year until 06-26-2008.

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

☒ **Index Rate:** The future rate will be 1.000 PERCENT ABOVE the following index rate: THE HIGHEST PRIME RATE PUBLISHED IN MONEY SECTION OF THE WALL STREET JOURNAL

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

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY DAY BEGINNING 06-26-2008. A change in the interest rate will take effect ON THE SAME DAY.

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

☐ _____

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

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

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

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF $10.00

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: ORIGINATIONS FEE: $65,000.00, FLOOD CERT: $30.00, FOR REPORT: $95.00

PAYMENTS: I agree to pay this note as follows:

MONTHLY PAYMENTS OF ACCRUED INTEREST CALCULATED ON THE AMOUNT OF CREDIT OUTSTANDING BEGINNING ON 08-05-2008 AND PRINCIPAL DUE ON 07-05-2011. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE. THE FINAL PAYMENT MAY ALSO CHANGE.

PURPOSE: The purpose of this loan is ACQUITION AND DEVELOPEMENT FINANCING OF 19.22 +/- ACRES FOR INFRASTRUCTURE TO BE DEVELOPED FOR COMMERCIAL SHOPPING

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to these rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____.

ADDITIONAL TERMS:

TERMS AND CONDITIONS OF COMMITMENT LETTER DATED MAY 30, 2008 AND OF LOAN AGREEMENT BETWEEN BORROWER AND LENDER OF EVEN DATE HEREWITH, ARE INCORPRATED HEREIN AND MADE A PART HEREOF

SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and additions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.

☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.

☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

PREM ON THE 18.22+/- ACRE TRACT LOCATED AT THE CORNER OF OCEAN HIGHWAY & SOUTH CAUSEWAY, GEORGETOWN COUNTY, PAWLEYS ISLAND, SC 29585 AND THE PROPOSED IMPROVEMENTS TO BE CONSTRUCTED THEREON, THE PROPERTY ALSO INCLUDES THE PERSONALTY DESCRIBED ON SCHEDULE "A" HERETO, AND A PREM ON LOT #4, 334 MYRTLE AVENUE, PAWLEYS ISLAND, SC 29585 AS SHOWN ON A PLAT BY THE FARNHAM GROUP, DATED JULY 6, 2006 AS FURTHER DESCRIBED IN A MORTGAGE TO BE EXECUTED AT CLOSING.

Earthworks

If applicable, enter real estate description and record owner information: _____

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purposes.

Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan, I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debts: if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right at reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

SEE ATTACHED HYPOTHECATION AGREEMENT

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PVC

SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.

☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.

☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FREM, ON THE 18.22+/- ACRE TRACT LOCATED AT THE CORNER OF OCEAN HIGHWAY & SOUTH CAUSEWAY, GEORGETOWN COUNTY, PAWLEYS ISLAND, SC 29585 AND THE PROPOSED IMPROVEMENTS TO BE CONSTRUCTED THEREON, THE PROPERTY ALSO INCLUDES THE PERSONALTY DESCRIBED ON SCHEDULE "A" HERETO, AND A FREM ON LOT #4, 334 MYRTLE AVENUE, PAWLEYS ISLAND, SC 29585 AS SHOWN ON A PLAT BY THE EARTHWORKS GROUP, DATED JULY 9, 2008 AS FURTHER DESCRIBED IN A MORTGAGES TO BE EXECUTED AT CLOSING.

If applicable, enter real estate description and record owner information: _____

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.

Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

SEE ATTACHED HYPOTHECATION AGREEMENT

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If this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "DI" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

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

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

(1) any deposit account balance I have with you;

(2) any money owed to me on an item presented to you or in your possession for collection or exchange; and

(3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).

(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.

(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.

(4) You may refuse to make advances to me or allow purchases on credit by me.

(5) You may use any remedy you have under state or federal law.

(6) You may make use of any remedy given to you in any agreement securing this note.

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

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

(1) demand payment of amounts due (presentment);

(2) obtain official certification of nonpayment (protest); or

(3) give notice that amounts due have not been paid (notice of dishonor).

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

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a preseizure hearing prior to seizure of any personal property which may secure this transaction.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

SOUTH CAUSEWAY, LLC

Peggy Wheeler-Cobb

PEGGY WHEELER-COBB, MEMBER

SIGNATURE FOR LENDER: WAYNE LOVELACE, SR. VICE PRESIDENT

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SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "**Debtor**") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "**Land**") and the improvements thereto (collectively, without limitation, the "**Infrastructure**") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;

(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;

(All of the foregoing personal property described in (a) and (b) above are referred to as the "**Tangible Personalty**". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "**Premises**".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;

(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

EXHIBIT A
TO MORTGAGE

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBF Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June 25, 2008, recorded in the office of the Register of Deeds for Georgetown County on June 25, 2008, in Record Book 990 at Page 242.

AGREEMENT

This Agreement (this "Agreement") made and entered into as of the 10th day of April, 2009 (the "Effective Date"), by First South Bank ("Bank") on the one hand, and South Causeway, LLC ("Borrower"), Peggy Wheeler-Cribb and Will Darwin Wheeler (individually each a "Guarantor" and collectively "Guarantors") on the other hand.

PRELIMINARY STATEMENT

HERETOFORE on or about June 25, 2008, Bank made a loan (the "Loan") unto Borrower, a South Carolina limited liability company, in the original principal amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars pursuant to a Loan Agreement (the "Loan Agreement") dated June 25, 2008 and entered between Bank and Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement unless the context hereof requires otherwise. Bank has advanced, and there is currently outstanding, Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths ($4,769,725.23) Dollars (the "Outstanding Balance") in principal upon the Loan. The obligation of Borrower to repay the Loan are evidenced by the Note executed by the Borrower. Timely payment and performance of the Note is guaranteed by a Guaranty executed by each Guarantor and dated June 25, 2008. Payment and performance of Borrower's obligations with respect to the Loan are secured in part by a first mortgage lien evidenced by the Borrower Mortgage given by the Guarantor Will Darwin Wheeler and encumbering and comprising a first mortgage lien upon certain unimproved real property (the "Guarantor Parcel") having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006. The Borrower Mortgage was recorded in the ROD Office for Georgetown County, South Carolina on June 25, 2008, in Book 990at Page 265.

Borrower has failed to pay timely 2008 Georgetown County, South Carolina, property taxes (the "2008 Taxes") which were due January 15, 2009, upon the Project Property (encumbered by the Borrower Mortgage), and such 2008 Taxes are currently past due and owing.

Borrower and Guarantors have requested that Bank satisfy and cancel the Guarantor Mortgage and accordingly release the Guarantor Parcel from the Collateral such that Bank will no longer have a lien thereupon. Bank is agreeable to so doing upon the following express conditions and provided that Borrower and Guarantors: (i) release Bank from any, every and all claims which Borrower and each Guarantor might have or consider against Bank, (ii) simultaneously with the satisfaction and release by Bank of the Guarantor Mortgage deliver to Bank the sum of Three Hundred Thousand and No/100ths ($300,000.00) Dollars which funds shall be disbursed by Bank to pay (a) all costs incurred by Bank, including Bank's attorneys' fees (including, without limitation, Bank's attorneys' fees not heretofore paid), in connection with the Loan and with respect to this Agreement and the preparation hereof (collectively, without limitation, "Bank's Costs"), and (b) the 2008 Taxes (which includes all penalties and interest charged by the taxing authority with respect

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both at law and in equity, which against the said Released Parties and any of them, Borrower and each Guarantor ever had, now has or which Borrower, each Guarantor, or its, his or her respective personal representatives, heirs, successors and assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour and minute of the execution of these presents, including, without limitation, with respect to the Loan, and any matter or thing whatever arising out of the same, either known or unknown at this time, apparent or not apparent, and both present and future.

4. Bank, Borrower and Guarantors agree that as of the date hereof the Outstanding Balance of the Loan is Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths ($4,769,725.23) Dollars. Borrower and each Guarantor further acknowledges and agrees that Bank shall not be obligated to make, and neither Borrower nor either Guarantor shall have any right to demand, request or otherwise require or seek to have Bank to make any further Advance upon the Loan, nor shall Bank be otherwise obligated or required in any fashion to loan or make available for borrowing any funds of the Loan in addition to the Outstanding Balance.

5. Bank has simultaneously with the entering hereof, delivered, in trust, unto the Borrower's and Guarantors' attorney, Robert Gwin, Esquire (the "Escrow Agent"), the Guarantor Mortgage, duly satisfied and cancelled (the "Satisfied Mortgage"). Escrow Agent shall release the Satisfied Mortgage from escrow for recording in the Georgetown County, South Carolina, ROD Office, upon, but only upon, receipt by Escrow Agent of the sum of Three Hundred Thousand and No/100ths ($300,000.00) Dollars, all of which funds shall promptly be delivered by federal funds wire transfer or such other commercially reasonable method as Bank shall select, by Escrow Agent unto Bank, and disbursed by Bank to (i) pay the 2008 taxes, (ii) pay Bank's Costs, and (iii) deposit the balance in the Interest Reserve Account to be disbursed by Bank to pay interest payments due upon the Note as and when due, to pay the 2009 Taxes when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described or permitted in the Loan Agreement and the Security Documents; any funds thereafter remaining in the Interest Reserve Account, if any, shall be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan, in full. With respect to the foregoing disbursements from the Interest Reserve Account, Borrower and Guarantors acknowledge and agree that Bank has made no representation or warranty whatsoever that the funds on deposit in the Interest Reserve Account are or will be sufficient to pay the items described above as and when due, and that nothing contained herein or in any of the Loan Documents relieves or reduces, or is intended to relieve or reduce, the absolute and unfettered obligation of Borrower and of each Guarantor to timely pay all indebtedness and other obligations (including, without limitation, 2009 taxes and all interest payments due upon the Note) as provided and required by the Loan Documents and each of them.

6. Bank and Borrower do hereby amend and modify the Note and each of the other Loan Documents as applicable, such that the term of the Note shall be reduced and all indebtedness under and with respect to the Note and Borrower's other obligations with respect to the Loan shall be due

 Initial: _____ _____

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and payable in full July 5, 2010.

7. TIME IS OF THE ESSENCE in the performance of each, every and all of the terms, provisions and conditions hereof.

8. Borrower and each Guarantor by execution hereof does hereby represent and warrant that other than the failure to pay timely pay 2008 Taxes, Borrower and Guarantors are and will remain throughout completion of the performance of the transactions contemplated by this Agreement in full and complete compliance with all the terms, conditions, provisions and requirements of the Loan Agreement, the Note, the Guaranties and the other Loan Documents, and that other than failure to timely pay 2008 Taxes no default, event of default or Event of Default, or event or circumstance which but for the passage of time, the giving of notice, or both, would constitute a default, event of default or Event of Default, with respect to the Note, each of the Loan Documents and the Guaranty, exists.

9. All notices and communications provided for hereunder shall be in writing, delivered by hand or sent by first-class or certified mail, postage prepaid to the addresses of the parties hereto set forth in the respective Loan Documents. Bank, Borrower or either Guarantor may change address for notice purposes by notice to the other parties in the manner provided herein. All notices, demands, consents or other communications hereunder shall be deemed effective when delivered personally or by delivery service, or 3 days after mailing when sent by registered or certified mail, first class postage prepaid, addressed to each party to receive such notice at the address for such party as set forth above, or at such other address as such party may specify in a notice previously given to the other parties in the manner herein.

10. The Note and each other Loan Document as, but only to the extent, modified and amended hereby, is hereby approved, ratified, confirmed and affirmed by the Borrower and each respective Guarantor. Each Guarantor does further hereby acknowledge, agree and affirm that his and her respective Guaranty applies to, and guaranties timely payment and performance by Borrower of, all obligations of Borrower with respect to the Loan, and each of the Note and of the Security Documents, respectively.

11. The terms of this Agreement may be varied only by written agreement signed by the Bank, the Borrower and each of the Guarantors.

12. If any clause or provision of this Agreement is found to be invalid or is incapable of being enforced by any rule of law or public policy, all other clauses and provisions shall nevertheless shall remain in full force and effect.

13. This Agreement is binding upon the parties hereto and their respective heirs, successors, assigns and personal representatives.

Remainder of this page intentionally left blank.

 Initial: _____ _____

FWL

14. This Agreement may be executed in one or more counterparts, all of which shall collectively comprise one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement UNDER SEAL as of the Effective Date.

WITNESSES:

SOUTH CAUSEWAY, LLC

By: _____ (SEAL)
Its: Member

_____ (SEAL)
Peggy Wheeler-Cribb

_____ (SEAL)
Will Darwin Wheeler

FIRST SOUTH BANK

By: _____
Its: Senior Vice President

Initial: _____ _____

FWL

Instrument 2008000011833 Book Page 247

EXHIBIT B

This document was prepared by (name, address, phone).
FIRST SOUTH BANK - COLUMBIA
1333 MAIN STREET
COLUMBIA, SC 29201
(803) 343-3435

Parcels A & C case + 1.68 acres TD 4

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

990e247

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 06-25-2008 and the parties and their addresses are as follows:

MORTGAGOR: SOUTH CAUSEWAY, LLC
334 MYRTLE AVENUE
PAWLEYS ISLAND, SC 29585

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

LENDER: FIRST SOUTH BANK COLUMBIA
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA
1333 MAIN STREET
COLUMBIA, SC 29201

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 EXHIBIT A**********

The property is located in GEORGETOWN (County) at 19.22+/- ACRES AT OCEAN HIGHWAY & SOUTH CAUSEWAY (Address), PAWLEYS ISLAND (City), South Carolina 29585 (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 $ 6,500,000.00. 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)*.

      NOTE DATED 6 25 2008 IN THE AMOUNT OF $6,500,000.00

   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

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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

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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.

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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").

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_____ _____

☐ **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 SOUTH CAUSEWAY, LLC

6/25/08 (Seal)
(Signature) PEGGY WHEELER-CRIBB, MEMBER (Date)

_____ (Seal)
(Signature) (Date)

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.

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Instrument 200800011833 Book Page 90 254

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Georgetown } 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 25TH day

of JUNE, 2008

Notary Public for South Carolina

My commission expires: 8/31/09

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PWC

EXHIBIT A
TO MORTGAGE

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June 25, 2008, recorded in the office of the Register of Deeds for Georgetown County on June 25, 2008, in Record Book 990 at Page 242.

Instrument 200800011833 Book 990 Page 256

73737 Hinds

200800011833
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
06-25-2008 At 03:45 pm.
MORTGAGE 16.00
STATE TAX .00
COUNTY TAX .00
Book 990 Page 247 - 256

Wanda J. Prevatte

99

EXHIBIT
Initial
C

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
SOUTH CAUSEWAY, LLC 334 MYRTLE AVENUE PAWLEYS ISLAND, SC 29585	FIRST SOUTH BANK - COLUMBIA 1333 MAIN STREET COLUMBIA, SC 29201

Type: ☐ individual ☐ partnership ☐ corporation ☒ LIMITED LIABILITY COMPANY
State of organization/registration (if applicable) SC
☐ If checked, refer to addendum for additional Debtors and signatures.

COMMERCIAL SECURITY AGREEMENT

The date of this Commercial Security Agreement (Agreement) is 08-28-2008

SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ _____ (Borrower) owes to Secured Party:

☒ Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):
FSB BLA #8134502 DATED 8-28-2008 IN THE AMOUNT OF $8,500,000.00 IN THE NAME OF SOUTH CAUSEWAY, LLC

☐ All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.

☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.

☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.

☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following (if required, provide real estate description):

FRONT ON THE 19.22+/- ACRE TRACT LOCATED AT THE CORNER OF OCEAN HIGHWAY & SOUTH CAUSEWAY, GEORGETOWN COUNTY, PAWLEYS ISLAND, SC 29585 AND THE PROPOSED IMPROVEMENTS TO BE CONSTRUCTED THEREON AS FURTHER DESCRIBED IN A MORTGAGE TO BE EXECUTED AT CLOSING.
THE PROPERTY ALSO INCLUDES THE PERSONALTY DESCRIBED ON SCHEDULE "A" HERETO.

USE OF PROPERTY. The Property will be used for ☐ personal ☒ business ☐ agricultural ☐ _____ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.

DEBTOR	SECURED PARTY
SOUTH CAUSEWAY, LLC	FIRST SOUTH BANK - COLUMBIA
PEGGY WHEELER SMITH MEMBER	WAYNE LOVELACE SR. VICE PRESIDENT

GENERAL PROVISIONS. Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

APPLICABLE LAW. This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION. Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

WARRANTIES AND REPRESENTATIONS. Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

(1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
(2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
(3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
(4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY. Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds 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 explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST. Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE. Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM. Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement.

If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property.

Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST. If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loans also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT. Debtor will be in default if:

(1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
(2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
(3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
(4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION. Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a prejudgment hearing prior to seizure of the Property.

REMEDIES. After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

(1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
(2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
(3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
(4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER. Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS. Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

EXHIBIT A
TO MORTGAGE

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June 25, 2008, recorded in the office of the Register of Deeds for Georgetown County on June 25, 2008, in Record Book 990 at Page 242.

SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "**Debtor**") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "**Land**") and the improvements thereto (collectively, without limitation, the "**Infrastructure**") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;

(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;

(All of the foregoing personal property described in (a) and (b) above are referred to as the "**Tangible Personalty**". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "**Premises**".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;

(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

[redacted]

Instrument 200800011825 Book Page 20 260

EXHIBIT
D

9900 260

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
F. Wayne Lovelace (803) 343-3435

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Donald W. Tyler, Esquire
Tyler, Cassell, Jackson, Peace & Silver, L.L.P.
Post Office Box 11656
Columbia, S.C. 29211-1656

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: SOUTH CAUSEWAY, LLC					
OR 1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
1c. MAILING ADDRESS: 334 Myrtle Avenue		CITY: Pawleys Island	STATE: SC	POSTAL CODE: 29585	COUNTRY: USA
1d. TAX ID#: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION: limited liability co	1f. JURISDICTION OF ORGANIZATION: S.C.	1g. ORGANIZATIONAL ID #, if any	☒ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR 2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any	☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: FIRST SOUTH BANK					
OR 3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME		SUFFIX
3c. MAILING ADDRESS: 1333 Main Street, Suite 100		CITY: Columbia	STATE: SC	POSTAL CODE: 29201	COUNTRY: USA

4. This FINANCING STATEMENT covers the following collateral:

For description of collateral see Schedule A attached.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☒ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98) INFO-PRO (800-655-2021)

Instrument 200800011835 Bk Page 90 261

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME: SOUTH CAUSEWAY, LLC

OR

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME,SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11d. TAX ID #: SSN OR EIN | ADDL INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any ☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

See Exhibit A attached.

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction - effective 30 years

☐ Filed in connection with a Public-Finance Transaction - effective 30 years

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98) INFO-PRO (800-966-2021)

South Causeway schedule A

SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "Debtor") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "Land") and the improvements thereto (collectively, without limitation, the "Infrastructure") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;
(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;
(All of the foregoing personal property described in (a) and (b) above are referred to as the "Tangible Personalty". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "Premises".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;
(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

EXHIBIT A
TO UCC FINANCING STATEMENT

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

Instrument	Book	Page
200800011835	990	264

73737 Hinds

200800011835
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
06-25-2008 At 03:45 pm.
UCC MTG 12.00
STATE TAX .00
COUNTY TAX .00
Book 990 Page 260 - 264

Wanda J. Prevatte

75

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
F. Wayne Lovelace (803) 343-3435

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Donald W. Tyler, Esquire
Tyler, Cassell, Jackson, Peace & Silver, L.L.P.
Post Office Box 11656
Columbia, S.C. 29211-1656

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: SOUTH CAUSEWAY, LLC				
OR 1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
1c. MAILING ADDRESS: 334 Myrtle Avenue	CITY: Pawleys Island	STATE: SC	POSTAL CODE: 29585	COUNTRY: USA
1d. TAX ID#: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION: limited liability co	1f. JURISDICTION OF ORGANIZATION: S.C.	1g. ORGANIZATIONAL ID #, if any ☒ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR / 2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any ☐ NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: FIRST SOUTH BANK				
OR 3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME		SUFFIX
3c. MAILING ADDRESS: 1333 Main Street, Suite 100	CITY: Columbia	STATE: SC	POSTAL CODE: 29201	COUNTRY: USA

4. This FINANCING STATEMENT covers the following collateral:

For description of collateral see Schedule A attached.

080915-0943479 UCC-1 FINANCING STATEMENT
Lapse Date: 09/15/2013 09:43:47 Filing Fee: 10 ORIG

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☒ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98) INFO-PRO (800-655-2021)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

SOUTH CAUSEWAY, LLC

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME,SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
				☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

See Exhibit A attached.

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction - effective 30 years

☐ Filed in connection with a Public-Finance Transaction - effective 30 years

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98) INFO-PRO (800-655-2021)

SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "**Debtor**") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "**Land**") and the improvements thereto (collectively, without limitation, the "**Infrastructure**") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;

(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;

(All of the foregoing personal property described in (a) and (b) above are referred to as the "**Tangible Personalty**". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "**Premises**".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;

(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

EXHIBIT A
TO MORTGAGE

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June 25, 2008, recorded in the office of the Register of Deeds for Georgetown County on June 25, 2008, in Record Book 990 at Page 242.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION AND AFFIDAVIT REGARDING HMP MODIFICATION

PERSONALLY appeared before me, W. C. Lyerly, III, who being duly sworn, deposes and says:

1. That (s)he is the President for First South Bank (hereinafter "Plaintiff"), and (s)he has personal knowledge of the facts set forth in this affidavit and is authorized to execute it on behalf of Plaintiff;

2. That (s)he has read the within Complaint and the facts stated therein are true of his/her own knowledge, except those matters and things therein alleged on information and belief, and as for those (s)he believes them to be true; that there is now due from said **South Causeway, LLC** the sum of $4,808,929.35 together with interest from August 4, 2010 at the per diem rate of $563.61, and all just and lawful offsets, payments and credits have been allowed

3. That having reviewed the Administrative Order of the South Carolina Supreme Court (#2009-05-22-01) dated May 22, 2009 ("Order"), (s)he attests and states that no Defendant is entitled to relief under the Order for the following reasons (check all that apply):

__ The loan secures commercial, time-share or other non-residential property.

__ The loan is **not** owned, securitized or guaranteed by FNMA[1] or FHLMC[2] **and** the servicing agent has not executed an agreement under the HMP[3].

__ The loan is owned, securitized or guaranteed by FNMA or FHLMA, or the servicing agent has executed an agreement under the HMP, but:

__ The property is not a single family 1-4 unit property.
__ The property is not the primary residence of the homeowner.
__ The property is vacant or condemned.
__ The principal balance of the loan exceeds the regulatory amount.
__ The mortgage originated after January 1, 2009.
__ The loan as previously been modified under the HMP.
__ The Defendant/Borrower has refused to participate in the HMP.
__ The HMP modification process has been completed without modification.
__ Other: _____

Name: W C Lyerly III
Title: President

SWORN to before me this 5th day of August 2010

_____ (SEAL)
Notary Public for South Carolina
My Commission Expires: 6/10/2016

[1] Federal National Mortgage Association (Fannie Mae)
[2] Federal Home Loan Mortgage Corporation (Freddie Mac)
[3] Home Affordable Modification Program

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thereto), and the balance thereof shall be deposited by the Bank into the Interest Reserve Account and disbursed by Bank, together with funds already on deposit therein, to pay interest upon the Note as the same shall accrue and be due and payable, pay Georgetown County, South Carolina, property taxes due for the calendar year 2009 (the "2009 Taxes"), when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described in the Loan Agreement (with any funds remaining therein, if any, to be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan in full), (iii) acknowledge and agree that Bank shall not, nor shall Bank have any obligation to, make any Advance upon the Loan in excess of the Outstanding Balance, and (iv) agree and acknowledge with Bank the amendment and modification of the Loan Agreement, the Note, the Security Documents and the Guaranties (together with all other instruments, made, given, executed or delivered by Borrower or Guarantors in connection with the Loan the "Loan Documents"), to reduce the term of the Loan such that the Note and all obligations of the Borrower with respect to the Loan shall be due and payable not on July 5, 2011, but on July 5, 2010. Borrower and Guarantors are agreeable to these said terms and conditions imposed by Bank as are hereinabove and hereinafter set forth and accordingly the parties have entered this Agreement.

TEXT OF AGREEMENT AND RELEASE

NOW THEREFORE, for and in consideration of these premises and the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The factual recitals set forth in the Preliminary Statement are hereby incorporated as part hereof, and Borrower and each Guarantor, by execution hereof, hereby confirms the truth and accuracy thereof.

2. The terms and provisions hereof shall be deemed to and shall modify and amend the terms and provisions of the Loan Agreement, the Note, the Security Documents and each of the Guaranties, but shall not otherwise modify or amend the terms of any Loan Documents.. Other than as expressly set forth herein each and every term, provision and condition of each and every Loan Document remains in full effect, and as modified and amended hereby, is hereby ratified and affirmed.

3. Borrower and each Guarantor hereby, and by these presents does, on its, his and her behalf, respectively, and on behalf of its, his and her respective legal representatives, heirs, successors and assigns, remise, release and forever discharge Bank, its successors, assigns, officers, directors, shareholders, employees, attorneys, agents and servants (collectively and individually the "Released Parties"), of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands, whatsoever,

 Initial: _____ _____

FWL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	Case No.: 2010-CP-22-01233
	)	
First South Bank,	)	
	)	
Plaintiff,	)	DEFENDANT SOUTH CAUSEWAY,
	)	LLC'S ANSWER TO PLAINTIFF'S
vs.	)	COMPLAINT
	)	
South Causeway, LLC,	)	
	)	
Defendant.	)	
	)	

The Defendant, South Causeway, LLC ("Causeway") answering the Complaint of Plaintiff, would show unto this Honorable Court as follows:

1. The Defendant Causeway denies all the allegations of the Complaint not expressly admitted herein.

2. Defendant Causeway admits the allegations of Paragraph 2.

3. Defendant Causeway is without sufficient information to admit or deny the allegations of Paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 and therefore denies the same and demands strict proof thereof.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant requests;

A. That this Court determine the priority and validity of the liens against the property which serves as collateral for the mortgages or liens claimed by Plaintiff; and

B. Such other and further relief as the Court deems just and proper.

C. Defendant requests a jury trial for this matter.

FILED
GEORGETOWN COUNTY, SC
2010 SEP -3 AM 11:05
ALICIA C. HILL
CLERK OF COURT

Respectfully Submitted,

Daniel W. Stacy, Jr.
90 Wall Street, Unit B
Pawleys Island, SC 29585
Telephone: 843-235-6747
Facsimile: 843-235-6650

Attorney for the Defendant South Causeway, LLC

September 2, 2010

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	Civil Action No. 2010-CP-22-01233
First South Bank,	)	
	)	
Plaintiff,	)	AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIMS ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC
	)	
vs.	)	
	)	
South Causeway, LLC,	)	
	)	[*JURY TRIAL DEMANDED*]
Defendant.	)	
	)	

Defendant South Causeway, LLC, by and through its undersigned counsel, hereby submits this Amended Answer and Counterclaims in response to Plaintiff's Complaint. This Defendant would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(GENERAL DENIAL)

1. Each and every allegation of the Complaint not specifically admitted herein is denied.
2. Defendant South Causeway, LLC demands a jury trial.
3. The allegations of Paragraph 1 are admitted, upon information and belief.
4. The allegations of Paragraph 2 are admitted.
5. The allegations of Paragraph 3 are admitted.
6. In response to Paragraph 4, Defendant craves reference to the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Further answering, Defendant expressly denies the validity and enforceability of the alleged modification agreement as it relates to the obligations of South Causeway, LLC. Defendant denies the remaining and/or inconsistent allegations contained in Paragraph 4 of the Complaint.

7. In response to Paragraph 5, Defendant craves reference to the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Defendant denies the remaining and/or inconsistent allegations contained in Paragraph 5 of the Complaint.

8. The allegations of Paragraph 6 state legal conclusions and do not require an affirmative response from this Defendant. However, to the extent said allegations could be construed so as to form affirmative allegations against Defendant, the allegations are denied and strict proof is demanded thereof.

9. Upon information and belief, the allegations of Paragraph 7 of the Complaint are admitted inasmuch as it alleged that the referenced documents were filed with the Georgetown County Register of Deeds on or about June 25, 2008. The remaining and/or inconsistent allegations of Paragraph 7 are denied.

10. In response to Paragraph 8, Defendant craves reference to the transaction documents, which speak for themselves and will be interpreted by the Court as a matter of law. Defendant denies the remaining and/or inconsistent allegations contained in Paragraph 8 of the Complaint.

11. Upon information and belief, the allegations of Paragraph 9 of the Complaint are admitted inasmuch as it alleged that the referenced documents were filed with the Georgetown County Register of Deeds on or about June 25, 2008. With regard to the remaining allegations of Paragraph 9, Defendant is without sufficient information to truthfully admit or deny the allegations contained therein.

12. The allegations of Paragraph 10 state legal conclusions and do not require an affirmative response from this Defendant. However, to the extent said

allegations could be construed so as to form affirmative allegations against Defendant, the allegations are denied and strict proof is demanded thereof.

13. The allegations of Paragraph 11 are denied and strict proof is demanded thereof.

14. The allegations of Paragraph 12 are denied and strict proof is demanded thereof.

15. The allegations of Paragraph 13 are denied and strict proof is demanded thereof.

16. The allegations of Paragraph 14 state legal conclusions and do not require an affirmative response from this Defendant. However, to the extent said allegations could be construed so as to form affirmative allegations against Defendant, the allegations are denied and strict proof is demanded thereof.

17. The allegations of Paragraph 15 do not require an affirmative response from this Defendant. However, to the extent said allegations could be construed so as to form affirmative allegations against Defendant, the allegations are denied and strict proof is demanded thereof.

FOR A SECOND DEFENSE
(UNCLEAN HANDS)

18. Plaintiff is not entitled to relief because Plaintiff has unclean hands.

FOR A THIRD DEFENSE
(ESTOPPEL AND LACHES)

19. Plaintiff cannot recover because Plaintiff's claims, if any, are barred by estoppel and laches.

FOR A FOURTH DEFENSE
(WAIVER)

20. Plaintiff has waived any right to recovery under the causes of actions contained in the Complaint.

FOR A FIFTH DEFENSE
(MITIGATION OF DAMAGES)

21. Plaintiff has failed to exercise reasonable diligence in the mitigation of its alleged damages, which damages are denied.

FOR A SIXTH DEFENSE
(NO DAMAGES)

22. Plaintiff has not sustained any damages and, therefore, Plaintiff may not recover on its claims.

FOR A SEVENTH DEFENSE
(IN PARI DELICTO)

23. Plaintiff's claims, if any, are barred by the defense of in pari delicto.

FOR AN EIGHTH DEFENSE
(CONDONATION, ACQUIESCENCE, AND RATIFICATION)

24. Plaintiff's claims, if any, are barred by condonation, acquiescence, and/or ratification.

FOR A NINTH DEFENSE
(BARRED BY THE TERMS OF THE AGREEMENT)

25. Plaintiff's claims, if any, are barred by the terms of the parties' agreements and the applicable loan documents.

FOR A TENTH DEFENSE
(LACK OF CONSIDERATION)

26. Plaintiff's claims, if any, are barred because the mortgages and loan documents are unenforceable for lack of consideration.

FOR AN ELEVENTH DEFENSE
(FRAUD IN THE INDUCEMENT)

27. Plaintiff's claims, if any, are barred because the mortgages and loan documents are null, void, and unenforceable in that the documents were procured by fraud in the inducement.

FOR A TWELFTH DEFENSE
(UNCONSCIONABILITY)

28. Plaintiff's claims, if any, are barred because the mortgages and loan documents are null, void, and unenforceable because the terms of the documents and the manner in which they were procured is unconscionable.

FOR A THIRTEENTH DEFENSE
(DURESS)

29. Plaintiff's claims, if any, are barred because the mortgages and loan documents are null, void, and unenforceable because the documents were procured while Defendant was under duress caused by Plaintiff.

FOR AN FOURTEENTH DEFENSE
(RESERVATION AND NON-WAIVER OF ADDITIONAL AFFIRMATIVE DEFENSES)

30. Defendant South Causeway, LLC specifically reserves any additional and/or affirmative defenses as may be available to Defendant, or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with applicable law.

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTERCLAIMS

Parties, Jurisdiction and Venue

31. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

32. South Causeway, LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and with its principal place of business in the County of Georgetown, South Carolina. Peggy Wheeler-Cribb is the sole member of South Causeway, LLC.

33. Plaintiff First South Bank is a corporation organized and existing under the laws of the State of South Carolina, which regularly transacts business in Georgetown County.

34. Venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30 (E)(2).

35. This Court has subject matter jurisdiction with respect to all causes of action stated herein and has jurisdiction over the parties to this action.

Substantive Factual Allegations

36. In our about October of 2005, Peggy Wheeler-Cribb and Will Darwin Wheeler (hereinafter collectively referred to as "the Wheelers") executed a Promissory Note in favor of First Palmetto Savings Bank, F.S.B. (hereinafter "First Palmetto") in the amount of Four Million Five Hundred Thousand and NO/100 Dollars ($4,500,000.00). The Note was secured by mortgages on two properties: (1) 17.49 acres of undeveloped, commercial property in Pawleys Island, South Carolina owned by Peggy Wheeler-Cribb (hereinafter "the South Causeway Property"); and (2) residential property located in Pawleys Island, South Carolina owned by Will Darwin Wheeler, individually.

37. The First Palmetto Note was originally due on October 15, 2007, but it was later extended to October 15, 2008. When the Note was extended by First Palmetto, the bank released its mortgage on the residential property owned by Will Darwin Wheeler. Thus, after January 25, 2007, the First Palmetto loan was secured solely by the South Causeway Property.

38. Through their dealings with First Palmetto, the Wheelers came to meet F. Wayne Lovelace, who, at that time, was Vice President of First Palmetto. Lovelace was their primary contact at First Palmetto, and they communicated with Lovelace about their loan and the renewal thereof on numerous occasions.

39. In April of 2006, Wheeler-Cribb acquired an additional 1.68 acres abutting the South Causeway Property. Thus, the South Causeway Property now totaled approximately 19.17 acres.

40. Wheeler-Cribb had engaged in negotiations with a national, retail grocery chain about building a facility on the South Causeway Property and entering a long-term lease. The grocery store had issued a letter of intent, memorializing the plan.

41. At some point in 2007, Lovelace left his employment with First Palmetto, and he joined First South Bank as its Senior Vice President.

42. Thereafter, in or about September of 2007, Lovelace contacted Wheeler-Cribb and inquired about the possibility of moving the First Palmetto loan to First South Bank. Lovelace represented to Wheeler-Cribb that First South Bank could offer her a better rate and could help with the development of the South Causeway Property.

43. Throughout her negotiations with Lovelace and other agents of First South, Wheeler-Cribb repeatedly explained that she was unwilling to cross-collateralize a development loan with other properties owned by the Wheelers individually. She was repeatedly assured that additional collateral would not be necessary. This was a critical term since Wheeler-Cribb anticipated she may need addition funds if the grocery store was unable to open in time, and in the event she did, Wheeler-Cribb needed other property that could be used as collateral.

44. In May of 2008, South Causeway, LLC was organized, and thereafter, in exchange for her membership interest, Wheeler-Cribb deeded the South Causeway Property to the company.

45. The First South Bank loan was scheduled to close in June of 2008. Prior to closing, Lovelace sent copies of the loan documents to Wheeler-Cribb by electronic mail. Upon review of the documents, Wheeler-Cribb discovered that

the draft Note was secured by mortgages covering the South Causeway Property, as well as property owned by Will Darwin Wheeler, individually.

46. Wheeler-Cribb immediately telephoned Lovelace to object to the inclusion of the additional property, and Lovelace assured her this would be corrected prior to closing.

47. During the closing on June 25, 2008, the Wheelers discovered that Lovelace had not corrected the Note, and that in order to close, Will Darwin Wheeler had to agree to mortgage his individual property as security for the loan. At that point, the Wheelers had no other choice since the First Palmetto loan was coming due, and Lovelace assured them that First South Bank would see the development through its conclusion. Reluctantly, the Wheelers agreed to close.

48. At closing, South Causeway, LLC executed a Promissory Note in favor of First South Bank in the principal amount of Six Million Five Hundred Thousand and NO/100 Dollars ($6,500,000.00). Under the terms of the Note, South Causeway, LLC was obligated to make monthly payments of accrued interest with the principal due on July 5, 2011.

49. Shortly after closing, in mid-July of 2008, Lovelace called Wheeler-Cribb and requested a meeting. During their meeting, Lovelace informed the Wheelers that First South Bank was freezing its loan, and no further funds would be advanced thereunder. The Wheelers were shocked and requested the Bank reconsider, but Lovelace refused to do so.

50. In 2009, the Wheelers approached First South Bank about making a second loan to be secured by residential property they owned. However, First South Bank refused to advance the Wheelers any funds.

51. Finally, the Wheelers found a lender, Kennedy Funding out of New Jersey, that was willing to loan them money on their residential properties. However, the lender required as security the lot that was being held by First South Bank as security under its loan. The Wheelers approached Lovelace and requested the lot be released from First South Bank's mortgage.

52. Lovelace agreed to release the lot owned by Will Darwin Wheeler, but do to so, the Wheelers had to pay First South Bank $300,000.00. In addition, Kennedy Funding required a $50,000.00 non-refundable deposit. The parties agreed.

53. At closing, after the $50,000.00 had been paid, the Wheelers discovered that in addition to the $300,000.00 payment, First South Bank was taking back a year from the South Causeway, LLC Promissory Note and demanding an acceleration of the maturity date. Thus, the Bank demanded a new maturity date of July 5, 2010. Wheeler-Cribb was taken completely off-guard, and if she refused to close on the loan, she would be forced to forfeit the $50,000.00 deposit. Additionally, if she did not close, the lot would remain subject to First South Bank's mortgage, preventing her from closing with Kennedy Funding. Faced with no other option, Wheeler-Cribb executed the closing documents.

54. Thereafter, Wheeler-Cribb immediately began soliciting offers for the purchase of the South Causeway Property. She executed a listing agreement with Robbie Buice of Prudential Source One Realty.

55. During this time, Lovelace continued to involve himself in the marketing and sale of the property. He consistently suggested other realtors, and at some point, William Hudson, an agent with Keystone Commercial Realty, presented Wheeler-Cribb with a contract for sale of the South Causeway Property. Wheeler-Cribb declined to accept the contract because it contained an

unacceptable closing date. Hudson then informed Wheeler-Cribb that he had spoken with Lovelace, that Lovelace told him it was a good offer, and that she should accept it.

56. After speaking with Hudson, Wheeler-Cribb contacted Lovelace and demanded that he and the Bank stop interfering with her efforts to sell the property and allow her to market the property as she saw fit. However, Lovelace and the Bank continued to impede the company's attempts to find a purchaser for the property.

57. Then, in April of 2010, Lovelace informed Wheeler-Cribb that First South Bank was considering selling the South Causeway, LLC loan to a third party individual even though the Bank contended the loan was to mature just three months later. Apparently, Lovelace had been in negotiations with this individual about buying the loan for some time. Wheeler-Cribb demanded to know what information the Bank had disclosed and to whom the Bank made such disclosure.

58. Initially, Lovelace refused to give Wheeler-Cribb any information regarding the potential purchaser. Later, Lovelace disclosed the potential purchaser as Charles McCullen, a long-time, valued customer of the Bank. However, Lovelace and the Bank continued to refuse to provide Wheeler-Cribb with copies of the documents provided to McCullen.

59. In the meantime, South Causeway, LLC had contracted with Christie's Auction Company to auction the South Causeway Property. The company paid for advertising and marketing materials, as well as the auction fees.

60. The Christie's auction was scheduled to take place in June of 2010. Only eighteen days before the auction, Lovelace contacted the company's broker and agent, informed them of the status of the South Causeway, LLC loan, and told

them that it would not be renewed. Thus, the auction officials had no choice but to disclose to potential purchasers what Lovelace had communicated to them. In addition, Lovelace told the agent and broker that the property could not be subdivided and sold in lots, thereby limiting the options of the auction company and potential purchasers.

61. As a result of Lovelace's disclosures and restrictions on the manner of sale, the auction was unsuccessful, and the company received no acceptable offers of purchase.

62. Thereafter, on August 5, 2010, First South Bank initiated the present foreclosure, seeking to foreclose on the South Causeway Property.

FOR A FIFTEENTH DEFENSE AND FIRST COUNTERCLAIM
(BREACH OF CONTRACT)

63. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

64. The Promissory Note, executed by and between South Causeway, LLC and First South Bank on June 25, 2008, constituted a binding and enforceable contract between the parties, the terms of which are set forth more fully therein.

65. In good faith and in reliance upon First South Bank's promises of performance, South Causeway, LLC has fulfilled its obligations under the agreement and made all loan payments due thereunder.

66. In contrast, First South Bank has deliberately and intentionally breached the agreement by refusing to perform as required by the terms of the agreement.

67. Specifically, First South Bank has breached its contract with South Causeway, LLC in the following particulars, among others:

a. Instituting the present foreclosure action prior to the contractually-agreed upon maturity date;

b. Failing and refusing to advance the amounts promised under the terms of the loan;

c. Failing and refusing to deliver adequate notices to South Causeway, LLC regarding its alleged default;

d. Failing and refusing to provide South Causeway, LLC with loan documents requested by the company;

e. Providing confidential, commercial information regarding South Causeway, LLC to third parties without the consent or knowledge of the company; and

f. Interfering with and ultimately preventing South Causeway, LLC from consummating a sale of the South Causeway Property and paying off the balance of its Promissory Note with the Bank.

68. In addition to the foregoing, under South Carolina law, every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement, which First South Bank has breached as set forth above.

69. First South Bank has no justification for deliberately and intentionally causing the breach of the agreement.

70. As a direct and proximate result of the breach of contract by First South Bank, South Causeway, LLC has been required to expend substantial amounts of money. South Causeway, LLC has been denied the benefit of its bargain. South Causeway, LLC has suffered other consequential and incidental damages.

71. Based upon First South Bank's breach, South Causeway, LLC is informed and believes that it is entitled to recover damages from Plaintiff for actual, incidental and consequential damages in an amount a jury deems fair, just and equitable.

FOR A SIXTEENTH DEFENSE AND SECOND COUNTERCLAIM
(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT)

72. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

73. As set forth above in greater detail, First South Bank has breached its agreement with South Causeway, LLC by deliberately and intentionally refusing to perform as required by the terms of the agreement, and it did so with a fraudulent intent.

74. Pursuant to the terms of the agreement, conversations and negotiations by and among Plaintiff and Defendant, F. Wayne Lovelace, as an authorized agent of First South Bank, made the following direct and express representations to South Causeway, LLC:

a. First South Bank would not require additional collateral to secure the Promissory Note from South Causeway, LLC;

b. First South Bank would support South Causeway, LLC in its efforts to develop the South Causeway Property and would see the development through its completion;

c. First South Bank would not leave South Causeway, LLC without the financial means to complete the development of the property;

d. If necessary, First South Bank would diligently and expeditiously work with South Causeway, LLC to prevent a default under the terms of the parties' agreement;

e. First South Bank would return any remaining balance of the $300,000.00 paid to the Bank in 2009 after the necessary expenses incurred in releasing its mortgage on property owned by Will Darwin Wheeler were paid; and

f. First South Bank would discharge its duties and obligations under the agreement with the utmost good faith and fair dealing.

75. First South Bank has caused a breach of the agreement, engaged in unfair dealing, and unlawfully appropriated South Causeway's property by design. Further, First South Bank has withheld any explanation or justification for the retention of approximately $32,000.00 left over from the $300,000.00 paid to the Bank in 2009. These separate acts constitute fraudulent conduct.

76. The aforementioned conduct constitutes a breach of contract accompanied by fraudulent acts.

77. First South Bank's conduct is willful and in reckless disregard of the rights of South Causeway, LLC

78. Based on the foregoing, South Causeway, LLC is entitled to judgment against First South Bank for actual and punitive damages in an amount as determined by the jury sufficient to punish First South Bank and deter such conduct in the future.

FOR A SEVENTEENTH DEFENSE AND THIRD COUNTERCLAIM
(VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT)

79. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

80. First South Bank has engaged in unfair and deceptive acts and practices by entering into an agreement with South Causeway, LLC with no intention of performing thereunder, while deliberately and intentionally misleading the company.

81. First South Bank has engaged in unfair and deceptive acts and practices by engaging in, *inter alia*, the following acts:

a. Wrongfully and unlawfully refusing to advance funds promised under the terms of the loan agreement;

b. Refusing to close on the loan on terms agreed to by the parties and instead, requiring additional property owned by Will Darwin Wheeler be submitted as collateral;

c. Attempting to accelerate the maturity date of the Promissory Note while South Causeway, LLC was under economic duress caused by First South Bank's deceptive and unfair practices;

d. Failing to provide South Causeway, LLC with any consideration for the proposed acceleration of the Promissory Note;

e. Attempting to enforce the Promissory Note and foreclose on the mortgage based upon the alleged, accelerated maturity date, despite having knowledge of its unenforceability;

f. Concocting a scheme whereby First South Bank would accelerate the maturity date of South Causeway, LLC's Promissory Note, foreclose on the property and sell it to another customer of the Bank at a reduced price;

g. Failing to provide South Causeway, LLC with adequate notice of its alleged default;

h. Interfering with and ultimately preventing South Causeway, LLC from consummating a sale of the South Causeway Property and paying off the balance of its Promissory Note with the Bank; and

i. Wrongfully retaining approximately $32,000.00 belonging to South Causeway, LLC despite the company's demand for its return.

82. The actions of First South Bank are unfair in that they are offensive to public policy, immoral, unethical and oppressive. Alternatively, or in addition to the foregoing, the acts of First South Bank were deceptive in that they had the tendency to mislead.

83. The procedures and practices of First South Bank create a potential for repetition of the unfair and deceptive acts.

84. South Causeway, LLC is informed and believes that further information regarding First South Bank's previous acts of deception and unlawful trade practices will be revealed by discovery.

85. First South Bank, through its unfair and deceptive acts and practices, has caused South Causeway, LLC to suffer damages in an amount to be determined at trial, and the practices and procedures of First South Bank create a potential for repetition of the unfair and deceptive acts. Further, it is believed that First South Bank has previously engaged in similar acts and practices which further reveal the potential for repetition of these acts and practices.

86. First South Bank knew or should have known that its conduct, as described in herein, was in violation of S.C. Code Ann. § 39-5-20 et seq. (1976).

87. The actions of First South Bank were made in the conduct of trade and commerce.

88. As a proximate result of First South Bank's actions, South Causeway, LLC has suffered damages in amount to be proven at trial. South Causeway, LLC is also entitled to all attorney's fees and costs pursuant to S.C. Code Ann. § 39-5-140(a) (1976).

89. As a proximate result of First South Bank's willful and knowing violation of the South Carolina Unfair Trade Practices Act, South Causeway, LLC is entitled to

three times its actual damages sustained as a result of First South Bank's wrongful, malicious, and commercially unfair and deceptive conduct.

FOR AN EIGHTEENTH DEFENSE AND FOURTH COUNTERCLAIM
(BREACH OF FIDUCIARY DUTY)

90. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

91. While generally the relationship of mortgagor-mortgagee does not create a fiduciary relationship, special circumstances exist in this case so as to create a fiduciary relationship between First South Bank and South Causeway, LLC.

92. Specifically, Lovelace and Wheeler-Cribb had a long-standing business relationship, dating back to Lovelace's employment with First Palmetto Savings Bank.

93. Lovelace and other agents of First South Bank approached Wheeler-Cribb and vigorously solicited the business of Wheeler-Cribb, going as far as sending her flowers and taking her for lunches and dinners.

94. Agents of First South Bank, including Lovelace, were constantly in communication with Wheeler-Cribb and were intimately involved in development negotiations involving the South Causeway Property.

95. As a part of its loan transactions with South Causeway, LLC, First South Bank and its agents undertook to advise the company on financial and development issues, including, *inter alia*, how the property should be developed, the capital necessary to fully develop the property, the terms under which the property should be sold or leased, and who was best suited to market and develop the property.

96. The relationship between the Bank and Wheeler-Cribb was such that First South Bank knew that Wheeler-Cribb and South Causeway, LLC reposed a special trust and confidence in the Bank.

97. Based upon this relationship, First South Bank was in a superior position to that of South Causeway, LLC and Wheeler-Cribb, and this enabled the Bank to exercise influence over South Causeway, LLC and Wheeler-Cribb.

98. South Causeway, LLC and Wheeler-Cribb had a foundation for the belief that Lovelace and other agents of First South Bank, who were giving advice to the company, were acting not on the Bank's behalf, but in the interests of South Causeway, LLC.

99. Based on the foregoing, First South Bank owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to South Causeway, LLC. First South Bank was required to disclose to South Causeway, LLC material facts that may have affected the company's interests.

100. First South Bank has breached its fiduciary duty to South Causeway, LLC in numerous respects including, but not limited to the following:

a. Wrongfully and unlawfully refusing to advance the funds promised under the terms of the loan agreement;

b. Refusing to close on the loan on the terms agreed to by the parties and instead, requiring additional property owned by Will Darwin Wheeler be submitted as collateral;

c. Attempting to accelerate the maturity date of the Promissory Note while South Causeway, LLC was under economic duress caused by First South Bank's deceptive and unfair practices;

d. Failing to provide South Causeway, LLC with any consideration for the proposed acceleration of the Promissory Note;

e. Attempting to enforce the Promissory Note and foreclose on the mortgage based upon the alleged, accelerated maturity date, despite having knowledge of its unenforceability;

f. Concocting a scheme whereby First South Bank would accelerate the maturity date of South Causeway, LLC's Promissory Note, foreclose on the property and sell it to another customer of the Bank at a reduced price;

g. Failing to provide South Causeway, LLC with adequate notice of its alleged default;

h. Interfering with and ultimately preventing South Causeway, LLC from consummating a sale of the South Causeway Property and paying off the balance of its Promissory Note with the Bank; and

i. Wrongfully retaining approximately $32,000.00 belonging to South Causeway, LLC despite the company's demand for its return.

101. The conduct of First South Bank is willful and malicious and detrimental to South Causeway, LLC.

102. South Causeway, LLC is entitled to compensatory and punitive damages, costs, and attorney's fees as a direct and proximate result of these breaches of fiduciary duties to the company.

FOR A NINTEENTH DEFENSE AND FIFTH COUNTERCLAIM
(FRAUD, CONSTRUCTIVE FRAUD, AND MISREPRESENTATION)

103. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

104. South Causeway, LLC is informed and believes that First South Bank committed the act of fraud upon South Causeway, LLC by falsely representing to the company that the loan would be secured solely by the South Causeway Property, the Bank would see the development through its conclusion, the Bank would not interfere with or prevent the proposed development, and the Bank would advance to total amount promised under the terms of the loan documents.

105. When Wheeler-Cribb objected to the inclusion of additional property as security, she was repeatedly reassured that it was merely a formality, First South Bank would see the development through its conclusion, and no additional funds would be necessary to complete the development. This was clearly material to the subject matter of the agreement and clearly false.

106. South Causeway, LLC relied on First South Bank's representations in good faith, and the company's reliance was reasonable.

107. At the time such representations were made, First South Bank either knew they were false or recklessly disregarded the possibility that they were false. First South Bank had a pecuniary interest in making these false statements in that they wanted to take over the loan from First Palmetto Savings Bank and retain a first mortgage on the South Causeway Property, as well as other property owned by Will Darwin Wheeler, individually.

108. First South Bank made these representations to South Causeway, LLC with the intent that they be relied upon and acted upon by the company.

109. South Causeway, LLC and its agent, Wheeler-Cribb, were ignorant of the falsity of First South Bank's representations and could not have learned of their falsity.

110. First South Bank reinforced South Causeway, LLC's belief in the truth of these misrepresentations through the Bank's insistence that it would see the development of the South Causeway Property through its conclusion.

111. As a direct and proximate result of South Causeway, LLC's reliance upon First South Bank's actions and representations, South Causeway, LLC has been damaged in an amount to be determined at trial. In addition, South Causeway, LLC is entitled to punitive damages in an amount to be determined at trial sufficient to punish First South Bank and deter such conduct in the future.

FOR A TWENTIETH DEFENSE AND SIXTH COUNTERCLAIM
(TORTIOUS INTERFERENCE WITH CONTRACT)

112. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

113. South Causeway, LLC had an existing contractual relationship with Christie's Auction Company for the auction of the South Causeway Property.

114. There existed a valid, enforceable contract by and between South Causeway, LLC and Christie's Auction Company, and the contract was in force and effect at the time of the breach that First South Bank caused.

115. First South Bank had actual knowledge of the contract described above. Alternatively, First South Bank had knowledge of facts which, if followed by reasonable inquiry, would have led to complete disclosure of the contractual relations and the rights of the parties.

116. By deliberately inducing Christie's Auction Company not to fully perform its contract with South Causeway, LLC, First South Bank intentionally procured a breach of the contract by Christie's. Specifically, under its contract with South Causeway, LLC, Christie's was obligated to use its best professional judgment to

structure the auction of the South Causeway Property in a manner that would produce highest sales price.

117. However, because of First South Bank's interference, Christie's could not subdivide the property and auction the subdivided lots, which was clearly the most commercially-favorable manner of auctioning the property.

118. First South Bank had no justification for deliberately and intentionally causing the breach of the agreement between Christie's and South Causeway, LLC.

119. As a direct and proximate result of First South Bank's actions, South Causeway, LLC has sustained actual damages in an amount to be determined by the Court. South Causeway, LLC has suffered other consequential and incidental damages.

120. First South Bank's aggravated, unjustified interference with South Causeway LLC's contractual rights was in reckless disregard of the rights of the contracting parties.

121. Based on the foregoing, South Causeway, LLC is entitled to judgment against First South Bank for actual and punitive damages in an amount as determined by a jury sufficient to punish First South Bank and deter such conduct in the future.

FOR A TWENTY-FIRST DEFENSE AND SEVENTH COUNTERCLAIM
(TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACT)

122. The foregoing defenses, denials and averments are incorporated hereinto by reference as if fully repeated verbatim herein.

123. South Causeway, LLC and its agents actively promoted the Christie's auction, and prior to the auction, a number of potential purchasers voiced substantial interest in the South Causeway Property.

124. Based upon the representations of various potential purchasers, there existed a reasonable probability that a contract to purchase the South Causeway Property

would have been realized at the Christie's auction. Such an agreement was a close certainty.

125. However, prior to the auction, First South Bank intentionally interfered with the South Causeway, LLC's potential contractual relationships by preventing the subdivision of the property and disclosing materially-adverse financial information about the company to auction officials.

126. First South Bank knew that the auction officials would be required to disclose to potential purchasers the materially-adverse financial information regarding South Causeway, LLC. The Bank further knew, or should have known, that disclosure of this information would effectively foreclose any possibility of South Causeway, LLC procuring contracts to sell the property.

127. The sole purpose of First South Bank in interfering with the prospective contractual relationship was to prevent the sale of the property, which would allow the Bank to attempt to foreclose and transfer the property to another long-time, valued customer of the Bank at a reduced price.

128. Moreover, the method of interference utilized by First South Bank was improper in that it involved a misuse of inside, confidential information and a breach of fiduciary duty.

129. As a direct and proximate result of First South Bank's actions, South Causeway, LLC has sustained actual damages in an amount to be determined by the Court. South Causeway, LLC has suffered other consequential and incidental damages.

130. First South Bank's aggravated, unjustified interference was in reckless disregard of the rights of South Causeway, LLC.

131. Based on the foregoing, South Causeway, LLC is entitled to judgment against First South Bank for actual and punitive damages in an amount as determined

by a jury sufficient to punish First South Bank and deter such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, South Causeway, LLC, having fully answered the Complaint of Plaintiff First South Bank, prays that the same be dismissed with prejudice and prays that the Court grant it the following relief:

A. Enter judgment in favor of South Causeway, LLC and against First South Bank in accordance with each of its Counterclaims;

B. Award South Causeway, LLC compensatory damages from First South Bank in an amount to be determined at trial;

C. Award South Causeway, LLC punitive damages from First South Bank in an amount to be determined at trial;

D Award South Causeway, LLC prejudgment interest on all Counterclaims;

E. Grant South Causeway, LLC a jury trial on all issues so triable; and

F. Award South Causeway, LLC such other and further relief as the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

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ATTORNEYS FOR DEFENDANT
SOUTH CAUSEWAY, LLC

October 4, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-22-1233

First South Bank,

☒ Plaintiff,

vs.

South Causeway, LLC,

☐ Defendants,

MOTION AND ORDER
INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:
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☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information
Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 60 minutes Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion Type
☒ Written motion attached
☐ Form Motion -
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

May 27, 2011
Date submitted

SECTION III: Motion Fee
☒ PAID - AMOUNT: $25.00
☐ EXEMPT:
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

FILED
2011 JUN -3 PM 2:59
CLERK OF COURT

JUDGE'S SECTION
☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE:_____ Date: ____ _ __

CLERK'S VERIFICATION
DATE FILED 6-3-11
Collected by: Vickie Tompkins
(print name)
☑ MOTION FEE COLLECTED: $25
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	IN THE COURT OF COMMON PLEAS FOR THE 15TH JUDICIAL CIRCUIT
First South Bank, Plaintiff, vs. South Causeway, LLC, Defendant,	C/A NO.: 2010-CP-22-1233 NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

FILED
2011 JUN -3 PM 2:59
CLERK OF COURT

PLEASE TAKE NOTICE that the Plaintiff will move before the Court on the tenth (10th) day after service hereof or soon thereafter as counsel may be heard for an Order granting it Summary Judgment as to its Complaint pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the basis there is no genuine issue as to any material fact and the Plaintiff is entitled to a judgment as a matter of law.

This Motion is based upon the pleading in this action, such Affidavits as may be served and filed of record, on such law as is appropriate, and the exhibits attached hereto and incorporated herein as follows:

1. Responses to Plaintiff's First Set of Requests for Production of Documents on Behalf of Defendant South Causeway, LLC.
2. Supplemental Responses to Plaintiff's First Set of Requests for Production of Documents on Behalf of Defendant South Causeway, LLC.
3. Answers of Plaintiff's First Set of Interrogatories on Behalf of Defendant South Causeway, LLC.
4. Plaintiff's First Requests to Admit to Defendant, Responses to Plaintiff's Requests to Admit on Behalf of Defendant South Causeway, LLC, and

Supplemental Responses to Plaintiff's Requests to Admit on Behalf of Defendant South Causeway, LLC.

5. Deposition Transcript of Douglas L. Hinds.

6. Deposition Transcript of Robert H. Gwin, III.

7. Portion of Deposition Transcript of Don S. Thomas

TYLER, CASSELL, JACKSON,
PEACE & SILVER, LLC

BY: _____

Donald W. Tyler, Jr.
Donald W. Tyler
Post Office Box 11656
Columbia, South Carolina 29211
(803)779-4997
ATTORNEYS FOR PLAINTIFF

May 27, 2011
Columbia, South Carolina.

EXHIBIT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2010-CP-22-1233
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	**RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC**
vs.	)	
	)	
SOUTH CAUSEWAY, LLC	)	
	)	
Defendant.	)	
	)	

TO: DONALD W. TYLER, ESQUIRE, ATTORNEY FOR PLAINTIFF FIRST SOUTH BANK

Defendant South Causeway, LLC, by and through its undersigned counsel, pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, responds to the First Set of Requests for Production of Documents of Plaintiff First South Bank, as follows:

GENERAL OBJECTION

Defendant objects to each and every Request propounded by Plaintiff First South Bank, to the extent that:

1. The Request seeks documents that are not relevant to the issues raised in this action and that are not reasonably calculated to lead to the discovery of admissible evidence;

2. The Request seeks documents that are already in Plaintiff First South Bank's possession or readily available to it;

3. The Request seeks documents protected by the attorney-client privilege, the work product doctrine or any other protection or privilege recognized by law;

4. The Request seeks documents that are commercially confidential and proprietary in nature or which constitute trade secrets;

5. A full and complete response to the request would subject Defendant to undue burden and expense;

6. The Request purports to require Defendant to gather information from documents which are not in Defendant's possession, custody or control; and,

7. The Request purports to impose upon Defendant discovery obligations beyond those specified in the South Carolina Rules of Civil Procedure.

Without waiving these objections and without admitting the relevance or materiality of any of the documents Plaintiff First South Bank seeks through its Requests, Defendant responds to these Requests as follows:

REQUESTS FOR PRODUCTION

1. Provide any and all documents related to any claim and/or defense presented in this lawsuit.

RESPONSE: See documents attached hereto and produced herewith bates stamped as South Causeway_00001 – 00182.

2. Provide any and all documents upon which the Defendant intends to rely upon in support of their allegations as set forth in the Amended Answer and Counterclaims dated October 4, 2010 (the "Answer") to Plaintiff's Complaint.

RESPONSE: See documents attached hereto and produced herewith bates stamped as South Causeway_00001 – 00182. In addition, Defendant reserves the right to utilize the documents produced by Plaintiff First South Bank and third parties during the course of discovery in this action.

3. Provide any and all documents which Defendant set forth in Defendant's Responses to Plaintiff's First Set of Interrogatories.

RESPONSE: See documents attached hereto and produced herewith bates stamped as South Causeway_00001 – 00182. In addition, Defendant has requested and expects to receive additional documents responsive to this Request, and Defendant will supplement this Response accordingly as additional documents are received.

4. Provide all loan documents (including, without limitation any commitment letter or other offer to lend) with respect to the loan of Kennedy funding of New Jersey referenced in paragraphs 51 through 53 of the Answer.

RESPONSE: These documents have been requested by Defendant and will be produced immediately upon receipt of the same. Further answering, upon information and belief, the requested documentation is within the possession and control of Kennedy Financial Services and can be obtained by Plaintiff through discovery in this matter.

5. Provide a copy of the document described as the listing agreement entered with Robbie Buice of Prudential Source One Realty referenced in paragraph 54 of the Answer.

RESPONSE: Defendant is currently unable to locate the requested document. Further answering, upon information and belief, the requested contract is within the possession and control of Mr. Robbie Buice and can be obtained by Plaintiff through discovery in this matter. This Response will be supplemented at such time as the requested document is received by Defendant.

6. Provide a copy of the document described as the contract of sale presented to Peggy Wheeler-Cribb described in paragraph 55 of the Answer.

RESPONSE: Defendant is unable to locate the requested document. Further answering, upon information and belief, the requested contract is within the possession and control of Mr. Will Hudson and can be obtained by Plaintiff through discovery in this matter. This Response will be supplemented at such time as the requested document is received by Defendant.

7. Provide a copy of the document described as the contract with Christie's Auction Company described in paragraph 59 and in Defendant's Twentieth Defense and Sixth Counterclaim of the Answer.

RESPONSE: See documents attached hereto and produced herewith bates stamped as South Causeway_00176 – 00178.

8. Provide copies of all documents from, with or on behalf of each person referred to as a "potential purchaser" in paragraph 123 of the Answer.

RESPONSE: Defendant does not any such documents within its possession and control. However, upon information and belief, Plaintiff First South Bank has documents responsive to this Request within its possession and control. Further answering, upon information and belief, the requested documentation is within the possession and control of Mr. Will Hudson, Mr. Robbie Buice, Mr. Chuck Cooper and/or Mr. Don Thomas and can be obtained by Plaintiff through discovery in this matter. This Response will be supplemented at such time as the requested documentation is received by Defendant.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar #01068)
WByrd@TurnerPadget.com
Audra M. Byrd (S.C. Bar #76719)
AByrd@TurnerPadget.com
2411 North Oak Street, Suite 301
P.O. Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555
ATTORNEYS FOR DEFENDANT
SOUTH CAUSEWAY, LLC

December 10, 2010

First South Bank

July 16, 2010

Ms. Peggy Wheeler-Cribb
South Causeway, LLC
Post Office Box 3727
Pawleys Island, South Carolina 29585

Re: South Causeway, LLC
Loan [redacted]

Dear Peggy:

You are familiar with our previously stated position regarding extensions or renewals of the above referenced promissory note. The note matured for payment on Monday, July 5, 2010, and is currently past due for principal, accrued interest and late charges.

Please accept this letter as our formal demand for payment and remit the amount required to clear this account by no later than the close of business, **Monday, July 26, 2010, at 5:00 p.m.** The amount needed to clear this account will be **$4,771,887.97**, which includes principal ($4,774,112.73), accrued interest ($28,744.13), late charges ($999.99) and a credit of $31,968.88 derived from the proceeds of an interest reserve account (#102243) previously pledged as additional collateral to the note. The per diem is $563.61.

Your failure to act on our request and remit the amount needed by the date and time indicated will provide us cause to refer this matter to our attorneys for appropriate legal action.

Sincerely,

Wayne Lovelace
Senior Vice President
First South Bank

Cc: Ms. Peggy Wheeler-Cribb
Personal Guarantor

Mr. W. Darwin Wheeler
Personal Guarantor

EXHIBIT
2

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON
)	
COUNTY OF GEORGETOWN)	C/A NO.: 2010-CP-22-1233
FIRST SOUTH BANK,)	
)	
Plaintiff,)	**SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC**
)	
vs.)	
)	
SOUTH CAUSEWAY, LLC)	
)	
Defendant.)	

TO: DONALD W. TYLER, ESQUIRE, ATTORNEY FOR PLAINTIFF FIRST SOUTH BANK

Defendant South Causeway, LLC, by and through its undersigned counsel, pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, submits this supplemental response to the First Set of Requests for Production of Documents of Plaintiff First South Bank, as follows:

SUPPLEMENTAL RESPONSES TO REQUESTS FOR PRODUCTION

1. **Provide any and all documents related to any claim and/or defense presented in this lawsuit.**

SUPPLEMENTAL RESPONSE: See documents previously produced (bates stamped as South Causeway_00001 – 00182), as well as the compact disc attached hereto and produced herewith, containing documents bates stamped as South Causeway_00183 – 00482.

2. **Provide any and all documents upon which the Defendant intends to rely upon in support of their allegations as set forth in the Amended Answer and Counterclaims dated October 4, 2010 (the "Answer") to Plaintiff's Complaint.**

SUPPLEMENTAL RESPONSE: See documents previously produced (bates stamped as South Causeway_00001 – 00182), as well as the compact disc attached hereto and produced

herewith, containing documents bates stamped as South Causeway_00183 – 00482. In addition, Defendant reserves the right to utilize the documents produced by Plaintiff First South Bank and third parties during the course of discovery in this action.

3. Provide any and all documents which Defendant set forth in Defendant's Responses to Plaintiff's First Set of Interrogatories.

SUPPLEMENTAL RESPONSE: See documents previously produced (bates stamped as South Causeway_00001 – 00182), as well as the compact disc attached hereto and produced herewith, containing documents bates stamped as South Causeway_00183 – 00482. In addition, Defendant reserves the right to utilize the documents produced by Plaintiff First South Bank and third parties during the course of discovery in this action.

4. Provide all loan documents (including, without limitation any commitment letter or other offer to lend) with respect to the loan of Kennedy funding of New Jersey referenced in paragraphs 51 through 53 of the Answer.

SUPPLEMENTAL RESPONSE: See the compact disc attached hereto and produced herewith, containing documents bates stamped as South Causeway_00421 – 00437. Further answering, upon information and belief, the requested documentation is within the possession and control of Kennedy Financial Services and can be obtained by Plaintiff through discovery in this matter.

5. Provide a copy of the document described as the listing agreement entered with Robbie Buice of Prudential Source One Realty referenced in paragraph 54 of the Answer.

SUPPLEMENTAL RESPONSE: See the compact disc attached hereto and produced herewith, containing documents bates stamped as South Causeway_00268 – 00281. Further answering, upon information and belief, the requested contract is within the possession and control of Mr. Robbie Buice and can be obtained by Plaintiff through discovery in this matter.

6. Provide a copy of the document described as the contract of sale presented to Peggy Wheeler-Cribb described in paragraph 55 of the Answer.

SUPPLEMENTAL RESPONSE: See the compact disc attached hereto and produced herewith containing documents bates stamped as South Causeway_00183 – 00322. Various contracts have been submitted and are contained on the compact disc produced herewith. Further answering, upon information and belief, the requested contract(s) is (are) within the possession and control of Mr. Will Hudson and can be obtained by Plaintiff through discovery in this matter.

8. Provide copies of all documents from, with or on behalf of each person referred to as a "potential purchaser" in paragraph 123 of the Answer.

SUPPLEMENTAL RESPONSE: See the compact disc attached hereto and produced herewith containing documents bates stamped as South Causeway_00183 – 00322. Further answering, upon information and belief, Plaintiff First South Bank has documents responsive to this Request within its possession and control. In addition, upon information and belief, the requested documentation is within the possession and control of Mr. Will Hudson, Mr. Robbie Buice, Mr. Chuck Cooper and/or Mr. Don Thomas and can be obtained by Plaintiff through discovery in this matter.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar #01068)
WByrd@TurnerPadget.com
Audra M. Byrd (S.C. Bar #76719)
AByrd@TurnerPadget.com
2411 North Oak Street, Suite 301
P.O. Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555
ATTORNEYS FOR DEFENDANT
SOUTH CAUSEWAY, LLC

December 16, 2010

KENNEDY FUNDING, INC.

TWO UNIVERSITY PLAZA
SUITE 402
HACKENSACK, NEW JERSEY 07601
TEL: (201) 342-8500
FAX: (201) 342-8373
www.kennedyfunding.com

February 12, 2009

South Causeway LLC
P.O. Box 3727
Pawleys Island, SC 29585

Attn: Ms. Peggy Wheeler-Cribb

Re: Financing Request $1,200,000

Dear Ms. Wheeler-Cribb:

We are pleased to advise you of our commitment to provide financing. This commitment supersedes all previous communications and correspondence without limitation. The terms of this Loan Commitment are as follows:

LENDER: Kennedy Funding, Inc. (KFI), or any other Lender designated by KFI: KFI intends to bring participants into this transaction and reserves the right to assign or sell participations in all or part of the Loan (the "Loan") described hereunder.

BORROWER: South Causeway LLC FEIN #
P.O. Box 3727
Pawleys Island, SC 29585

GUARANTORS: Peggy Wheeler-Cribb SS# [redacted]
334 Myrtle Avenue
Pawleys Island, SC 29585

COLLATERAL/ PROJECT: A first lien on the Collateral as described in Schedule "C".

MAXIMUM LOAN: A Loan of One Million Two Hundred Thousand Dollars ($1,200,000) including the FEE, fees and costs in accordance with Schedule A attached.

pwc

TERMS: The term of the Loan shall be three (3) years from the date of closing. The closing shall take place not later than March 6, 2009, time of the essence. The time of the essence date was included at the insistence of the Borrower who has represented that it will be in a position to meet all requirements contained herein by said date.

INTEREST:

A. The interest rate for the first year of the loan shall be equal to the greater of (i) Twelve Percent (12%) or (ii) the One (1) month Libor Rate initially set on the day prior to the Loan closing date, then subsequently reset on the 1st of each month, plus Eleven Percent (11%) prepaid from the loan proceeds at closing.

B. The interest rate for the second year of the Loan shall be equal to the greater of (i) Eighteen Percent (18%) or (ii) the One (1) month Libor reset on the 1st of each month, plus Seventeen Percent (17%).

C. The interest rate for the third year of the Loan shall be equal to the greater of (i) Twenty One Percent (21%) or (ii) the One (1) month Libor reset on the 1st of each month, plus Twenty Percent (20%).

D. Monthly payments of interest only on the unpaid balance shall be due on the first day of each month for the prior month's interest until the maturity date, at which time the entire balance of principal and accrued and unpaid interest thereon shall be due and payable in full.

E. Monthly payments will be computed on a 30 day month and a 360 day year.

F. Interest from the date of closing to the end of the month in which the closing takes place shall be paid at the time of the closing.

G. As used in herein, the term One (1) month Libor shall mean (a) the posted rate for one-month deposits in United States Dollars appearing on Telerate page 3750, or a successor page, as of 11:00 a.m. (London time) on such day or (b) if no such rate appears on Telerate page 3750, or a successor page, at such time and day, then LIBOR shall be determined by the Agent selecting an equivalent publication that published the One (1) month Libor, and if such One (1) month Libor rate is no longer generally published or are limited, regulated or administered by a governmental or quasigovernmental body, then Agent shall elect a comparable interest rate index.

REPAYMENT: The Loan may be prepaid in full or in part without penalty except there shall be no refund of the FEE, points, fees and the like. The unused portion of any Monthly Prepaid Interest is refundable.

LEGAL MATTERS: **The interests of the Borrower and Lender are or may be different and may conflict, and the Lender's attorney represents only the Lender and not the Borrower and the Borrower is, therefore, advised to employ an attorney of the Borrower's choice licensed to practice in the State of New Jersey to represent the interests of the Borrower.**

The Borrower shall be required to pay to the Lender's attorney, reasonable legal fees and expenses of Lender's attorney for services provided to Lender in connection with this transaction. The legal fees of Lender's attorney shall be calculated on a time spent basis, based upon the standard hourly rates of Lender's attorney generally charged to clients of that firm for similar matters. The legal fee of Lender's attorney which Borrower will be required to pay hereunder shall be actual and reasonable.

Borrower agrees upon acceptance of the Loan Offer to forward Ten Thousand Dollars ($10,000) to KFI on account of preliminary due diligence including, without limitation, environmental, survey and title review by KFI and third parties. The acceptance of any such amount by KFI or any third party shall not be construed as evidence that the Borrower has fulfilled all of its obligations under the terms of this commitment. Upon KFI's completion of its preliminary due diligence, KFI shall forward your Loan file to outside counsel to schedule and complete the Loan closing. This Ten Thousand Dollars ($10,000) will be applied toward third party fees due in connection with the Loan at the Loan closing.

DOCUMENTATION: KFI's commitment to provide the Loan is subject to the negotiation, execution and delivery of definitive Loan and security agreements, mortgages or deeds of trust, notes, and other documentation and customary certificates and legal opinions (collectively, the "Loan Documents"), which in each case will be in form, substance and enforceability reasonably satisfactory to KFI. The Loan Documents shall contain conditions precedent, representations and warranties, covenants, events of default and other terms and conditions consistent with the terms hereof as shall be reasonable and customary for a transaction of the type contemplated herein.

ACCEPTANCE OF COMMITMENT: The commitment and all of its terms and conditions will become effective only upon delivery to this office of a signed copy of this commitment, duly accepted by the Borrower, accompanied with the commitment fee in the amount of One Hundred Twenty Thousand Dollars ($120,000) which is non-refundable and earned for, among other things, the commitment to provide funds.

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Said fee is not refundable under any circumstances, except as agreed to herein.

Notwithstanding anything to the contrary contained in this commitment, the Borrower agrees that the basis for the Loan is the as is market value of the real estate Collateral in its present condition. Market value is defined as a six (6) month sale to a cash buyer. The Borrower understands that KFI will inspect the Collateral and will, in its sole discretion, determine the as is market value. Upon making a determination of value, KFI will deliver to Borrower a Loan Offer equal to Fifty Percent (50%) of the as is market value not to exceed the Financing Request. Failure by the Borrower to either accept or reject in writing the Loan Offer within three (3) days of receipt shall be deemed to be a rejection of the Loan Offer. Acceptance by Borrower of the Loan Offer shall constitute a waiver of the right to engage the services of a third party appraiser as described herein. Borrower understands that KFI cannot and will not lend more than Fifty Percent (50%) of the as is market value of the real estate Collateral. If KFI's determination of the value of the property is disputed by Borrower, Borrower may reject the Loan Offer and elect to engage the services of a third party appraiser. If Borrower makes this election, the Borrower and KFI shall mutually agree on a third party MAI appraiser, with proper credentials, contracted by KFI, and any fees for said appraiser to be reimbursed to KFI by Borrower prior to the appraisal being performed. Upon receipt of the determination of value by the third party appraiser, KFI will, at its option, either offer a Loan (not to exceed in any event the Financing Request) of Fifty Percent (50%) of the as is market value of the real estate Collateral as determined by said appraiser or return the paid portion of the commitment fee.

If the Collateral is determined to have a value which would require KFI to make a Loan of One Million Dollars ($1,000,000) or less, KFI will not be obligated to make the Loan unless the Borrower provides additional Collateral acceptable to KFI in its sole discretion to increase the amount of this loan to at least One Million Dollars ($1,000,000). If the Loan amount is not increased, the commitment fee will be earned by KFI.

This letter will become a commitment once signed by all parties and returned with the One Hundred Twenty Thousand Dollars ($120,000) as outlined above. This commitment will expire February 6, 2009, time of the essence. KFI shall have no obligation with respect to the Loan unless and until this commitment letter is fully executed and received by KFI along with the commitment fee.

RETURN OF COMMITMENT FEE:

If KFI is unable to perform its obligations under the terms of this commitment for whatever reason, KFI shall only be obligated to refund the paid portion of the commitment fee. SAID REFUND SHALL BE THE TOTAL EXTENT OF ANY

LIABILITY OR OBLIGATION ON THE PART OF KFI UNDER ANY CIRCUMSTANCE. There will be no refund if Borrower does not accept the loan offer(s) made by KFI pursuant to this commitment or Borrower has not complied with all the conditions of this commitment.

OTHER: KFI hereby acknowledges receipt of Ten Thousand Dollars ($10,000) which is non-refundable, for the preparation of this commitment.

EXPENSES: Borrower agrees that the Loan shall be without cost to KFI. Borrower assumes liability for and will pay all actual and reasonable costs and expenses required to satisfy the conditions hereof and the making of the Loan. Such costs and expenses shall be paid at or prior to the Loan closing, or upon demand if the Loan does not close or if this commitment is terminated. Such obligation shall survive termination.

RELEASES: During the term of the Loan, provided all payments of principal and interest on the Loan shall be current on the date of the sale and at the time of the sale and there are no uncured defaults or events of uncured defaults under the Loan Documents, Borrower may sell for cash individual parcels of the Collateral. KFI agrees to release such sold parcels provided that KFI receives the Release Price for such parcel which will be applied to the outstanding balance. The Release price will be the greater of:

(i) 80% of the net sale price of the parcel taking into account reasonable and customary closing adjustments and customary sales commissions;

(ii) 75% of the gross sale price of the parcel;

(iii) the minimum release amount as agreed to on a schedule to be approved by KFI prior to closing.

(The greater of the above three amounts being the "Release Price".)

GOVERNING LAW, ETC. This commitment may be executed in counterparts which, taken together, shall constitute one original. This commitment is for the benefit of the Borrower only and may not be assigned except upon the prior written consent of KFI, which consent may be withheld for any reason or no reason. No party other than Borrower or a permitted assignee may rely upon the terms and conditions of this commitment. This commitment will be governed by and construed in accordance with the laws of the State of New Jersey without regard to the principles of conflicts of laws thereof.

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WAIVER: No failure on the part of KFI to exercise and no delay in exercising any rights under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by KFI of any right under the Loan Documents preclude any further exercise thereof, or the exercise of any other right. Each and every right or remedy granted under the Loan Documents or under any document delivered thereunder or in connection therewith or allowed to KFI in law or equity shall be deemed cumulative and may be exercised from time to time.

This Commitment is executed by an individual strictly in his capacity as a representative of the Lender. By the acceptance of this Commitment, Borrower agrees that no representative, member, partner, shareholder, employee or agent of the Lender shall be personally liable for the payment of any claim or the performance of any obligations hereunder.

LIMITATION OF DAMAGES: **KFI SHALL HAVE NO LIABILITY TO BORROWER, OR ANY OTHER ENTITY OR PERSON, UNDER ANY THEORY OF LAW OR EQUITY FOR ANY AMOUNT IN EXCESS OF THE PAID PORTION OF THE COMMITMENT FEE. BORROWER ACKNOWLEDGES THAT THIS LIMITATION OF DAMAGES CLAUSE IS REASONABLE. BORROWER AGREES NOT TO PURSUE ANY CLAIM IN EXCESS OF THE ABOVE SUM.**

WAIVER OF TRIAL BY JURY: **BORROWER AND LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, COUNTERCLAIM, OR CROSS-CLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO THIS COMMITMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATION, THE COLLATERAL, OR ANY RELATED TRANSACTION.**

MISCELLANEOUS: **BORROWER UNDERSTANDS THAT KFI CANNOT AND WOULD NOT ENTER INTO THIS COMMITMENT WITHOUT BORROWER'S AGREEMENT TO THE LIMITATION OF DAMAGES, CHOICE OF FORUM AND WAIVER OF TRIAL BY JURY CLAUSES CONTAINED HEREIN.**

BORROWER AND GUARANTOR(S) UNDERSTAND THAT THEY ARE OBLIGATED TO DISCLOSE TO LENDER THE NAME AND ADDRESS OF ANY THIRD PARTY FEE PROVIDER(S). IN THE EVENT THERE IS A THIRD PARTY FEE PROVIDER, THE THIRD PARTY FEE PROVIDER SHALL BE REQUIRED TO SIGN THIS LOAN COMMITMENT. IN THE

EVENT THAT BORROWER FAILS TO MAKE SUCH DISCLOSURE, BORROWER AND GUARANTOR(S) AGREE TO INDEMNIFY AND HOLD HARMLESS LENDER AGAINST ANY AND ALL CLAIMS ASSERTED BY SUCH UNDISCLOSED PARTY AS WELL AS ANY ATTORNEYS' FEES INCURRED IN DEFENDING AGAINST SAME.

COMMITMENT FEE MODIFICATION: **Notwithstanding the above requirement to pay One Hundred Twenty Thousand Dollars ($120,000) at the signing of the commitment, as consideration for the parties unconditionally and irrevocably waiving all right to trial by jury and the parties agreeing to the Choice of Forum and Limitation of Damages clauses, KFI will accept payment of the One Hundred Twenty Thousand Dollars ($120,000) in the following manner:**

a) **Fifty Thousand Dollars ($50,000) to be paid at the time this commitment is signed, prior to our due diligence, which signing will be no later than February 2, 2009, time of the essence;**

b) **Seventy Thousand Dollars ($70,000) to be paid at the closing or upon Borrower electing not to proceed to a Loan closing. In addition, any default by the Borrower under this commitment, or other failure of Borrower to comply with this commitment, or misrepresentation by Borrower of any fact or state of facts to KFI either in connection with this commitment or otherwise, or any material adverse change of any type shall not relieve Borrower of its obligation to pay such amount to KFI.**

Notwithstanding anything to the contrary contained herein, in the event Borrower has accepted the Loan Offer but Borrower is unable to close due to no fault of Borrower (other than electing to close with another lender), Borrower may terminate this loan commitment. Provided Borrower does so in writing no later than February 25, 2008, time of the essence; KFI would refund Ten Thousand Dollars ($10,000); waive the balance of commitment fee due in b) above, and the parties would have no further obligation to each other.

South Causeway LLC
Loan Commitment
February 12, 2009

Borrower acknowledges that Schedule "B" annexed hereto represents conditions of the Loan commitment required by Lender and that this document would not be executed by Lender without Borrower's agreement thereto. Borrower further acknowledges that each and every delivery required under this Loan Commitment (including those required under Schedule "B") must be made directly to KFI or its designated legal counsel. Any deliveries made to any other person or entity (including without limitation any appraiser or broker involved with the proposed loan transaction) shall not be deemed a delivery to KFI as required hereunder.

This document is an arms length and negotiated agreement. It shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

Sincerely,

KENNEDY FUNDING, INC.

BY: _____
Kevin Wolfer, Co-Chief Executive Officer

DATE: _____

COMMITMENT ACCEPTED
SOUTH CAUSEWAY LLC

BY: Peggy Wheeler-Cribb
Peggy Wheeler-Cribb, Managing Member

Peggy Wheeler-Cribb
Peggy Wheeler-Cribb, Individually and as Guarantor

DATE: 02/12/09

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South Causeway LLC
Loan Commitment
February 12, 2009

SCHEDULE "A"

LOAN AMOUNT	$1,200,000

PROPOSED LOAN AND USE OF PROCEEDS

MONTHLY PREPAID INTEREST (Refundable if unused) (12 months@ $12,000/mo.)	$144,000
CLOSING COSTS	UNKNOWN
BROKERAGE COMMISSION Red Model Management	UNKNOWN
BALANCE OF COMMITMENT FEE	$70,000

PWC

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SCHEDULE "B"

These General Conditions are part of the attached commitment and deemed a part hereof as if set forth therein.

1. **Survey:** The Borrower shall provide a survey certified to the Lender and the title company satisfactory to the title company on each piece of Collateral prepared by a surveyor licensed by the State showing the project to be free of encroachments, overlapped and other survey defects, delineating all wetlands on the property (if any), all in accordance with the Lender's survey requirements.

2. **Insurance:** The Borrower must furnish liability and hazard insurance in a sum not less than the replacement value of the Collateral but in no event less than the amount of the Loan insured by a company or companies satisfactory to Lender.

3. **Title:** The Lender shall receive a first lien on the Collateral acceptable to its Counsel and Borrower shall provide a paid title insurance policy in an amount no less than the amount of the Loan insured by a title company or companies satisfactory to Lender.

4. **Flood Insurance:** If any material part of any parcel of the Collateral is located in an area designated as being subject to a special flood hazard, Borrower shall obtain all available flood insurance. If insurance is not available, and if such unavailability legally precludes the mortgage from covering such affected parcel, such parcel shall be removed from the Collateral and all Loan amounts recalculated.

5. **Easements:** All necessary easements for utilities, public road access, parking or otherwise shall be provided for prior to closing.

6. **Additional Collateral:** As additional Collateral Borrower agrees to allow Lender to lien all inventory, machinery, equipment, accounts receivable and all other assets owned by Borrower.

7. **Approval of Lender's Counsel:** The title in the project and the form and substance of each and every document evidencing the Loan and the security thereof or incident thereto, must be satisfactory to and approved by Counsel to the Lender in its sole discretion.

8. **Approval of Borrower's Counsel, Etc.:** Borrower acknowledges that it has consulted with counsel of its choice and with such other experts and advisors as it deemed necessary in connection with the negotiation, execution, and delivery of this Commitment and Borrower acknowledges that it will consult with counsel of its choice and with such other experts and advisors as it deems necessary in connection with the negotiation, execution and delivery of the other Loan Documents. This Commitment and the other Loan Documents shall be construed without regard to any presumption or rule requiring that they be construed against the party causing them, or any part of them, to be drafted.

9. **Representations and Warranties of Borrower and Guarantor:** Customary for transactions of this type, including, but not limited to, the following:

(a) Neither the Loan Documents nor the performance by Borrower of its obligations thereunder violate any provisions of law, of Borrower's partnership agreement, corporate by-laws, or of any agreement which is binding upon Borrower or the Guarantors. No action or permission by any governmental commission, bureau or agency is required in connection with the execution or the performance of the Loan Documents by Borrower, and Borrower is not subject to filing, reporting or like requirements of any governmental commission, bureau or agency charged with control or supervision of environmental concern.

(b) All financial information furnished or disclosed to KFI by Borrower and Guarantors touching upon the financial condition of any of them is true and correct as of the date furnished, and there has been no omission of any material fact relating thereto, and there has been no material adverse change in the financial condition, operations or business of any of them since the date of such financial information. Borrower and Guarantor(s) authorize KFI to obtain any credit information which KFI deems appropriate or necessary regarding the Borrower and/or Guarantor(s).

(c) Borrower or Guarantors is not in default in the performance, observance or fulfillment of any of the obligations or conditions contained in any agreement or instrument to which it is a party, or with respect to any evidence of indebtedness or obligation for borrowed money which affects in any way the Collateral, nor does any condition exist which, upon the lapse of time or giving of notice, or both, would constitute an event of default under, or grounds for termination of, any such agreement or instrument.

(d) No actions, suits or proceedings at law or in equity are pending or, to the best of Borrower's or Guarantor's knowledge, threatened, in any court or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality against or affecting Borrower, the Guarantors, or any of its properties or rights which, if adversely determined would materially adversely affect the financial condition of Borrower or Guarantors or materially impair the right of either to carry on its business substantially as now conducted, nor is either in default

with respect to any judgement, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality.

(e) At Lender's option, Borrower will establish and maintain reserves for ongoing taxes and insurance premiums, prepaid interest and replacement reserves in amounts acceptable to Lender. The tax and insurance reserve will be funded up front and from monthly cash flow and will be 1/12th of the annual amount payable All funds held in the reserve accounts will be held for the benefit of the Borrower, except for the tax and insurance reserve (which shall be for the benefit of the Lender).

10. **Miscellaneous:** Prior to the closing of the Loan and disbursement of funds, in each instance the Borrower must comply with the following:

(a) The Borrower is to produce such evidence as Lender may require to demonstrate current full compliance with all applicable zoning, health, environmental and safety laws, ordinances and regulations (including without limit approval of local, private or public sewage or water utility). The Borrower shall certify or supply other satisfactory evidence to the Lender at the time of the closing that there is no action or proceeding pending before any Court or Administrative Agency with respect to the validity of any laws, ordinances or regulations, and any certifications or permits issued thereunder, pertaining to the premises. The Borrower shall certify or supply other evidence satisfactory to the Lender that the Borrower is not a party to any existing or pending or threatened litigation, unless specifically noted herein.

(b) All appropriate approvals necessary for the current use and the completed project contemplated by this commitment (if applicable) must be provided and must meet all applicable requirements of all governmental authorities having jurisdiction, including, but not limited to subdivision and site plan approvals, the Department of Environmental Protection and its several subdepartments as they pertain to potable water supply, sewage discharge and sewage connection, use of septic tanks or alternatives. The Lender shall require prior to closing, evidence satisfactory to it and its Counsel of full compliance with all Environmental Clean-Up Responsibility Acts and that no action is pending or liens imposed under any Spill Compensation and/or Control Acts.

(c) During the term of the Loan, there shall be no additional financing nor any transfer of title, not contemplated in the Loan Documents without the prior written approval of the Lender.

(d) Execution by the Borrower of such Loan Documents including, but not limited to, a mortgage and mortgage note, satisfactory in form and substance to the Lender and its Counsel, including a prohibition against the transfer of title of any of the Collateral not contemplated in the Loan Documents, and if the Borrower is a

corporation or partnership, a change in the management or controlling interest in the Borrower. Borrower may prepay the Lender at any time, in whole or in part, without penalty except for all of the FEE which is considered earned at the time of closing.

(e) This commitment is subject to the accuracy of all information, representations, exhibits and other materials submitted with or in support of the Loan request and there must be no adverse change in the set of facts prior to the disbursements of funds or during the term of the Loan. This commitment may be terminated by KFI and the Commitment Fee retained and earned by KFI in the event of the following:

(i) If the Borrower shall fail to comply with any of the terms or conditions hereof.
(ii) In the event of a sale, conveyance or other disposition of any of the Collateral.
(iii) In the event of a materially adverse change in the financial condition of the Borrower or any Guarantor.
(iv) Any fraudulent material misrepresentation or any omission or concealment by the Borrower or any Guarantor of any material fact.

(f) In the event of any default during the term of this Commitment, KFI may, at its option, require immediate payment of the balance of the Commitment Fee and KFI may terminate the Commitment and retain the paid portion of the Commitment Fee.

(g) The Borrower has the obligation to disclose all material facts, past and present, related to the Borrower, Guarantors, the Collateral, the transaction, etc.

(h) The Borrower specifically acknowledges and agrees that KFI and/or Lender rely on counsel opinion letters relating to, among other items, usury. This commitment is subject to the express condition that at no time will the Borrower be obligated or required to pay interest at a rate which could subject KFI and/or Lender to either civil or criminal liability as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If, by the terms of this commitment or the Loan Documents the Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest shall be deemed to be immediately reduced to such maximum rate and the portion, if any, of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance.

(i) At Lender's option at closing, the owner of the collateral and the Borrower shall be a newly formed single-purpose "bankruptcy remote" limited liability company or limited partnership acceptable to Lender. The Borrower's organizational documents shall contain provisions satisfactory to Lender. These provisions may not be amended in any material respect during the term of the Loan without Lender's consent. The sole business activity of the Borrower shall be the ownership and

operation of the Mortgage Property. The Borrower shall have no debt other than the Loan at closing. The Borrower shall be prohibited from incurring additional debt other than the Loan throughout the Loan term, including without limitation, partnership debt. Any advances made to Borrower from any partner, member of Borrower or shareholder shall be in the form of equity not debt.

11. **Validity of Loan:** The Loan and the closing thereof shall in all respects be legal and not violate any applicable law or other requirements of any governmental authority. The Borrower will submit to the Lender at closing a current written opinion by the Borrower's legal Counsel, satisfactory to Lender, to the effect, among other things, that all Loan Documents are valid and binding upon the Borrower and any other mortgagor and are enforceable in accordance with their terms and are legal and do not violate any local, state or federal laws including, but not limited to, all usury laws. Once the Loan is closed and funded by the Lender, the Loan shall be governed and construed pursuant to the laws of the State of New Jersey. Borrower understands that KFI has entered into this Commitment expecting to receive a return on the Loan as set forth in this Loan Commitment. In the event that the jurisdiction in which the Collateral is located and/or from which payment is made requires the payment of a tax, assessment, or other charges in connection with the Loan by Lender, Borrower will be responsible for the payment of such tax, assessment or charge and shall reimburse Lender for any payment required to be made by the Lender.

12. **Governing Law:** This Commitment and the other Loan Documents (except the Mortgage which shall be construed in accordance with the law of the situs of the realty), shall be governed by and construed in accordance with the internal substantive laws of the State of New Jersey, without regard to the choice of law principles of such state.

13. **Usury:** It is expressly understood and acknowledged by the Borrower that KFI may not be familiar with the usury statutes in the Collateral's jurisdiction and relies on counsel opinions delivered at closing. This commitment is subject to the express condition that at no time shall the Borrower be obligated or required to pay interest at a rate which could subject KFI or the Co-Lenders to either civil or criminal liability as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If by the terms of this commitment or the note the Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder and/or under the note shall be deemed to be immediately reduced to such maximum rate and interest payable shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of principal balance or, if the Loan has not closed shall be void, and if KFI deems it a hardship to close the Loan under the usury statutes, all fees paid to KFI shall be refunded and this commitment shall be null and void.

14. **Choice of Forum:** Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New Jersey for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and KFI under any theory of law in connection with, out of, or otherwise relating to this Commitment and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this commitment, Borrower and Guarantor(s) authorize KFI to obtain credit information on Borrower and Guarantor.

15. **WAIVER OF TRIAL BY JURY: Borrower and Lender each hereby unconditionally and irrevocably waive any and all right to trial by jury in any suit, counterclaim, or cross-claim arising in connection with, out of, or otherwise relating to this Commitment, the other Loan Documents, the Obligation, the Collateral, or any related transaction.**

16. **No Oral Modifications:** Notwithstanding any course of dealing between the parties, no amendment, modification, rescission, waiver, or release of any provision of this Commitment shall be effective unless the same shall be in writing and signed by the Borrower and Lender.

17. **Complete Agreement:** This Commitment, together with the other Loan Documents, constitutes the entire agreement and understanding among the parties relating to the subject matter of this Mortgage Loan, and supersedes all prior proposals, negotiations, agreements, and understanding relating to such subject matter. In entering into this agreement, Borrower acknowledges that it is relying on no statement, representation or agent of the Lender, except for the agreements of Lender set forth herein.

18. **Survival of Commitment:** Borrower and Lender hereby acknowledge and agree that this commitment shall not survive closing. Furthermore, notwithstanding the provisions of paragraph 16 above, the parties specifically acknowledge and agree that the terms and conditions of this Loan may be modified by mutual agreement at any time up to and including the date of closing and that any such modifications shall be incorporated directly into the Loan Documents without the need to amend this Commitment.

19. **Execution.** This Loan Commitment may be executed in any number of counterparts, each in which shall be considered an original. Delivery of an executed copy by one party to the other, via facsimile, shall constitute a valid delivery.

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South Causeway LLC
Loan Commitment
February 12, 2009

The undersigned does hereby accept this Commitment and does hereby agree to keep and perform each and every item and condition herein before set forth and do acknowledge that the performance of such terms and conditions are obligations of the undersigned. The undersigned acknowledges and agrees that Lender requires satisfaction of the conditions herein (and in the Loan Documents) at least 48 hours prior to the closing and funding of the Loan. The attorney for the Borrower has reviewed this commitment and has explained all of its terms and ramifications to the Borrower and the Guarantor.

ACCEPTED:
SOUTH CAUSEWAY LLC

BY: Peggy Wheeler-Cribb
Peggy Wheeler-Cribb, Managing Member

Peggy Wheeler-Cribb
Peggy Wheeler-Cribb, Individually and as Guarantor

DATE: 02/12/09

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South Causeway LLC
Loan Commitment
February 4, 2009

SCHEDULE "C"
(COLLATERAL / PROJECT DESCRIPTION)
PROVIDED BY BORROWER

A first lien on 2 residential lots located on Myrtle Avenue in Pawley's Island, SC 29585.

Lot 3 is .75 acres
Lot 4 is 22,764 sq. ft.

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMO
	)	
COUNTY OF GEORGETOWN	)	C/A NO.: 2010-CP-22-1233
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	**ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC**
vs.	)	
	)	
SOUTH CAUSEWAY, LLC	)	
	)	
Defendant.	)	
	)	

TO: DONALD W. TYLER, ESQUIRE, ATTORNEY FOR PLAINTIFF FIRST SOUTH BANK

Defendant South Causeway, LLC, by and through its undersigned counsel, hereby responds to the First Set of Interrogatories propounded by Plaintiff First South Bank, as follows:

GENERAL OBJECTION

Defendant objects to each and every Interrogatory propounded by Plaintiff First South Bank, to the extent that:

1. The Interrogatory seeks information that is not relevant to the issues raised in this action and that is not reasonably calculated to lead to the discovery of admissible evidence;

2. The Interrogatory seeks information that is already in Plaintiff's possession or readily available to it;

3. The Interrogatory seeks information protected by the attorney-client privilege, the work product doctrine or any other protection or privilege recognized by law;

4. The Interrogatory seeks information that is commercially confidential and proprietary in nature of which constitute trade secrets;

5. A full and complete answer to the Interrogatory would subject Defendant to undue burden and expense;

6. The Interrogatory purports to require Defendant to gather information from documents which are not in Defendant's possession, custody or control; and,

7. The Interrogatory purports to impose upon Defendant discovery obligations beyond those specified in the South Carolina Rules of Civil Procedure.

Without waiving these objections, and without admitting the relevance or materiality of any of the information Plaintiff First South Bank seeks through its Interrogatories, Defendant answers these Interrogatories as follows:

ANSWERS TO INTERROGATORIES

1. Identify any and all persons known to you to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements

ANSWER:

a) Ms. Peggy Wheeler-Cribb – No Written or Recorded Statement.

b) Mr. Will Darwin Wheeler – No Written or Recorded Statement.

c) Rule 30(b)(6), SCRCP Representative of Defendant South Causeway, LLC – No Written or Recorded Statement.

d) Rule 30(b)(6), SCRCP Representative of Plaintiff First South Bank – No Written or Recorded Statement.

e) Mr. F. Wayne Lovelace – No Written or Recorded Statement.

f) Mr. W.C. Lyerly, III – No Written or Recorded Statement.

g) Mr. Charles McCallum – Recorded Statement which will be made available for review and inspection at a mutually convenient time at the law office of Turner Padget Graham & Laney P.A.

h) Mr. William Hudson – No Written or Recorded Statement.

i) Mr. Robbie Buice – No Written or Recorded Statement.

j) Mr. Steve Strickland – No Written or Recorded Statement.

k) Mr. Chuck Cooper – No Written or Recorded Statement.

l) Mr. Don Thomas – No Written or Recorded Statement.

m) Mr. Neil Mautone – No Written or Recorded Statement.

2. For each person known to you to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

a) Ms. Peggy Wheeler-Cribb – Ms. Wheeler-Cribb is the sole member of Defendant South Causeway, LLC, and she will testify in accordance with the allegations contained within the Amended Answer and Counterclaims filed in this action on behalf of Defendant.

b) Mr. Will Darwin Wheeler – Mr. Wheeler will testify in accordance with the allegations contained within the Amended Answer and Counterclaims filed in this action on behalf of Defendant.

c) Rule 30(b)(6), SCRCP Representative of Defendant South Causeway, LLC – A Rule 30(b)(6), SCRCP will testify in accordance with the allegations contained within the Amended Answer and Counterclaims filed in this action.

d) Rule 30(b)(6), SCRCP Representative of Plaintiff First South Bank – First South Bank is the plaintiff in this action, and it is expected that its representative will testify in accordance with the allegations contained in the Complaint.

e) Mr. F. Wayne Lovelace – Mr. Lovelace is the Senior Vice President of First South Bank, and it is expected that he will testify as to his personal

knowledge of the events and circumstances surrounding the loan transaction which is the subject matter of this action. Mr. Lovelace may also testify as to his written and oral communications with Mrs. Peggy Wheeler-Cribb, Mr. Will Darwin Wheeler, and other third parties with whom he has discussed the loan which is the subject matter of this action.

f) Mr. W.C. Lyerly, III – Mr. Lyerly is the President of First South Bank, and it is expected that he will testify as to his personal knowledge of the events and circumstances surrounding the loan transaction which is the subject matter of this action. Mr. Lyerly may also testify as to his written and oral communications with Mrs. Peggy Wheeler-Cribb, Mr. Will Darwin Wheeler, and other third parties with whom he has discussed the loan which is the subject matter of this action.

g) Mr. Charles McCallum – Mr. McCallum may testify as to his attempts to purchase the loan documents associated with the South Causeway Property from First South Bank and his communications with the parties regarding the same.

h) Mr. William Hudson – Mr. Hudson is an agent with Keystone Commercial Realty who presented Defendant with a contract for sale of the South Causeway Property. It is expected that Mr. Hudson will testify as to his personal knowledge of the events and circumstances surrounding the offer of purchase. Mr. Hudson may also testify as to his conversations with Mrs. Wheeler-Cribb, Mr. Lovelace and other agents of Plaintiff First South Bank.

i) Mr. Robbie Buice – Mr. Buice is an agent with Prudential Source One Realty, and he had a listing agreement with Defendant for the sale of the South Causeway Property. It is expected that he will testify as to his personal knowledge of the events and circumstances surrounding the listing agreement, as well as his communications with potential purchasers and agents of First South Bank.

j) Mr. Steve Strickland – Mr. Strickland is a land planner who has previously performed services relating to the South Causeway Property for Defendant. It is expected that Mr. Strickland may provide testify as to his services relating to the properties.

k) Mr. Chuck Cooper – Mr. Cooper works with My Vintage Christi Estates, which was the company that performed the auction relating to the South Causeway Property. It is expected that he will testify as to his personal knowledge of the events and circumstances surrounding the auction, as well as his communications with potential purchasers and agents of First South Bank.

l) Mr. Don Thomas – Mr. Thomas works with My Vintage Christi Estates, which was the company that performed the auction relating to the South Causeway Property. It is expected that he will testify as to his personal knowledge of the events and circumstances surrounding the auction, as well as his communications with potential purchasers and agents of First South Bank.

m) Mr. Neil Mautone – Mr. Mautone is a loan broker with Luxmac & Covino Company in Tarrytown, New York. Mr. Mautone worked extensively with Ms. Wheeler-Cribb to get the South Causeway and other properties uncross-collateralized. Mr. Mautone also assisted Ms. Wheeler-Cribb and Mr. Wheeler in obtaining the their loan with Kennedy Financial Services after First South Bank refused to provide additional funding to Defendant. It is expected that Mr. Mautone will testify as to his services relating to the properties at issue in this suit, as well as his communications with Mr. Lovelace and other agents of First South Bank.

3. Set forth a list of photographs, plats, sketches, invoices, or other prepared documents that relate to the defense (including counterclaims) in this case.

ANSWER: Please see documents attached hereto and produced herewith pursuant to Plaintiff's First Set of Requests for Production of Documents, which are bates labeled as South Causeway_00001 – 00182.

4. Identify any expert witness or witnesses who you expect to call as an expert witness at the trial and, for each such expert, state the subject matter on which each is expected to testify, the substance of the facts or the opinions to which each is expected to testify, give a summary of the grounds of each opinion, and identify all documents containing or otherwise related to such opinions

ANSWER: Defendant's counsel has not retained an expert witness at this stage of the litigation beyond the expertise possessed by any of the above-listed witnesses in their respective fields of employment. However, counsel reserves the right to name an expert at a later stage of litigation.

5. Set forth an itemized statement of all damages claimed to have been sustained by the Defendant specifically including those set forth in Paragraphs 71, 78, 89, 102, 111, 121 and 131 of your Amended Answer and Counterclaims dated October 4, 2010 (the "Answer") and identify any and all documents pertaining to same.

ANSWER: At this point in the litigation, Defendant nor its counsel are able to set forth an itemized statement of all damages sustained by Defendant. Discovery has just begun in this case, and this Answer will be supplemented as additional information becomes available to Defendant. Further answering, Defendant has suffered actual damages constituting the loss in value of its real property. In addition, Defendant has incurred significant costs and expenses in defending this improper and premature foreclosure action. Finally, Defendant is entitled to treble and punitive damages in an amount to be determined by the Court based upon Plaintiff's tortious acts and misconduct, as well as its violation of the South Carolina Unfair Trade Practices Act.

6. Identify all witnesses upon whose testimony you intend to rely at the trial of this case.

ANSWER: Defendant has not yet identified all witnesses whose testimony will be presented during the trial of this matter. Defendant reserves the right to use the witnesses named above, as well as those identified by the plaintiff in this action. Further answering, Defendant reserves the right to use additional witnesses identified during discovery in this matter, and this Answer will be supplemented, as necessary, in accordance with the applicable Rules of Civil Procedure prior to the time of trial.

7. Identify all exhibits upon which you intend to rely at the trial of this case.

ANSWER: Defendant has not yet identified all exhibits which will be presented during the trial of this matter. Defendant reserves the right to use the documents produced herewith, as well as those produced by the plaintiff and third parties in this action. Further answering, Defendant reserves the right to use any other documents and materials identified during discovery in this matter, and this Answer will be supplemented, as necessary, in accordance with the applicable Rules of Civil Procedure prior to the time of trial.

8. Identify each person referred to as a "potential purchaser" in Paragraph 123 of the Answer; if any such person was the agent of another person identify the person for which such "potential purchaser" was the agent.

ANSWER: Defendant is not aware of the identities of all such potential purchasers. However, upon information and belief, Mr. Chuck Cooper and Mr. Don Thomas of My Vintage Christi Estates and Mr. Robbie Buice of Prudential Source One Realty could provide this information. Upon information and belief, First South Bank and its agents are also in possession of information requested from Defendant relating to potential purchasers. However, Defendant is generally aware of interest in the property, and this Answer will be supplemented at such time as additional discovery is conducted in this matter.

9. Set forth in detail the representations referred to paragraph 124 of your Answer made by each of the "various potential purchasers"; identify the person making such representations; if any such person was the agent of another person identify the person for which such "potential purchaser" was the agent.

ANSWER: See Answer to Interrogatory Number Nine above.

10. Identify the "other agents of First South" mentioned in paragraph 43 of your Answer.

ANSWER: Upon information and belief, Mr. W.C. Lyerly, III is one such agent. Defendant is not aware of the names of the other agents of First South Bank. However, on several occasions, Mr. F. Wayne Lovelace was accompanied to meetings with Ms. Wheeler-Cribb and Mr. Will Darwin Wheeler by other individuals who Mr. Lovelace represented were also agents of First South Bank. The identities of these individuals are known to Plaintiff First South Bank and Mr. Lovelace and will be revealed during the course of discovery in this action.

11. Set forth the facts upon which you rely upon or which support your allegations in paragraph 56 of your Answer that the Plaintiff "continued to impede the company's attempts to find a purchaser for the property."

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this allegation is set forth in its Amended Answer and Counterclaims.

12. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Second Defense (unclean hands).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

13. Set forth any facts other than those set forth in your Answer up which you rely in asserting or which support your Third Defense (estoppels and laches).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

14. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Fourth Defense (waiver).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

15. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your fifth Defense (mitigation).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

16. Set forth any facts other than those set forth in your Answer upon whilch you rely in asserting or which support your Seventh Defense (in pari delicto).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

17. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Eighth Defense (condonation, acquiescence and ratification).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

18. Set forth any facts other than those set forth in your answer upon which you rely in asserting or which support your Ninth Defense (barred by the terms of the agreement).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

19. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Tenth Defense (lack of consideration).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

20. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Eleventh Defense (fraud in the inducement).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

21. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Twelfth Defense (unconscionability).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Amended Answer and Counterclaims.

22. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Thirteenth Defense (duress).

ANSWER: A summary of all pertinent facts currently known to Defendant relating to this defense is set forth in its Answer and Counterclaims.

23. Set forth any facts other than those set forth in your Answer upon which you rely in asserting or which support your Fourteenth Defense (reservation and non-waiver of additional defenses).

ANSWER: As set forth in its Fourteenth Defense (Reservation and Non-waiver of Additional Defenses), Defendant reserves the right to assert additional defenses in accordance with facts revealed to it during the course of discovery, which are not presently known to Defendant.

24. Identify all persons comprising (i) members of, (ii) owners of equity interests in, and (iii) exercising management or other power or ability to bind with respect to, Defendant since its formation. If any person other than a member or other owner of an equity interest in Defendant had or has exercised management or other power or ability to bind with respect to Defendant, set forth in detail the source of such authority.

ANSWER: Ms. Peggy Wheeler-Cribb is the sole member of Defendant South Causeway, LLC.

25. For any Requests that are denied in Plaintiff's First Requests to Admit, set forth all facts that form the basis of such denial.

ANSWER:

a) Request to Admit Number One: Defendant was not at all times and events described in Plaintiff's Complaint and in Defendant's Amended Answer and Counterclaims in this action, represented by legal counsel. Defendant was represented by counsel from time to time, when necessary, but Defendant was not constantly being represented by counsel during all of the events described in its Amended Answer and Counterclaims.

b) Request to Admit Number Four: The Commitment Letter was not executed by Ms. Peggy Wheeler-Cribb and Mr. Will Darwin Wheeler in the presence of and after an opportunity to confer with their counsel.

c) Request to Admit Number Six: Defendant cannot recall if it received the referenced letter. In addition, Defendant believes that one or more of the events upon which Lot 4/334 Myrtle Avenue, Pawleys Island, South Carolina, 29585 would have been released as provided in the Release Letter did occur.

d) Request to Admit Number Nine: Plaintiff did not fully fund at closing the "Initial Advance" (the "Initial Advance") referenced in Section 4.1 of the Loan Agreement.

e) Request to Admit Number Ten: Defendant did comply with the requirements set forth in Section 4.2 of the Loan Agreement to seek an "Advance" (as defined in the loan agreement) subsequent to the Initial Advance.

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar #1068)
Audra M. Byrd (S.C. Bar #76719)
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR SOUTH CAUSEWAY, LLC

December 10, 2010

EXHIBIT
4

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-22-1233
First South Bank, Plaintiff, vs. South Causeway, LLC, Defendant,	PLAINTIFF'S FIRST REQUESTS TO ADMIT TO DEFENDANT

TO: THE DEFENDANT AND ITS ATTORNEYS, R. WAYNE BYRD, ESQUIRE, AND AUDRA M. BYRD, ESQUIRE

The Plaintiff hereby requests, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, that the Defendant admit the truth of the following matters of fact:

1. The Defendant was at all times and events described in Plaintiff's Complaint and in Defendant's Amended Answer and Counterclaims in this action, represented by legal counsel of Defendant's choice, admitted to practice and in good standing in the State of South Carolina.

2. At all times since the formation of Defendant, Peggy Wheeler-Cribb has had full authority to execute documents on behalf of Defendant.

3. The Commitment Letter from First South Bank dated May 30, 2008 (the "Commitment Letter"), was signed by Peggy Wheeler-Cribb and Will Darwin Wheeler, a true copy of which is attached as Exhibit "A" hereto.

4. The Commitment Letter was executed by Peggy Wheeler-Cribb and Will Darwin Wheeler in the presence of and after an opportunity to confer with their counsel.

5. The Plaintiff delivered a letter to Peggy Wheeler-Cribb and Will Darwin dated June 25, 2008 ("Release Letter"), a true copy of which is attached as Exhibit "B" hereto.

6. None of the three events upon which Lot 4/334 Myrtle Avenue, Pawleys Island, South Carolina, 29585 would have been released as provided in the Release Letter ever occurred.

7. Peggy Wheeler-Cribb, on behalf of the Defendant, executed a Universal Note and Security Agreement dated June 25, 2008 (the "Note"), in the presence of and after an opportunity to confer with its counsel, a true copy of which is attached as Exhibit "C" hereto.

8. Peggy Wheeler-Cribb, on behalf of the Defendant, executed a Loan Agreement dated June 25, 2008 (the "Loan Agreement"), in the presence of and after an opportunity to confer with its counsel, a true copy of which is attached hereto as Exhibit "D" hereto.

9. The Plaintiff fully funded at closing the "Initial Advance" (the "Initial Advance") referenced in Section 4.1 of the Loan Agreement.

10. The Defendant never complied with the requirements set forth in Section 4.2 of the Loan Agreement to seek an "Advance" (as defined in the Loan Agreement) subsequent to the Initial Advance.

11. Defendant's attorney delivered to Plaintiff, an Attorney Opinion Letter dated June 25, 2008 ("Opinion Letter"), a true copy of which is attached hereto as Exhibit "E" hereto.

12. Peggy Wheeler-Cribb, on behalf of the Defendant, sent an email to Plaintiff dated September 30, 2008 ("Email"), a true copy of which is attached hereto as Exhibit "F" hereto.

13. Peggy Wheeler-Cribb on behalf of the Defendant, executed the Agreement dated April 10, 2009 (the "Agreement") in the presence of and after an opportunity to confer with its counsel, a true copy of which is attached hereto as Exhibit "G" hereto.

TYLER, CASSELL, JACKSON, PEACE & SILVER, L.L.P.

Donald W. Tyler, Esquire
S.C. Bar No. 5664
Donald W. Tyler, Jr., Esquire
S. C. Bar No. 14154
1331 Elmwood Avenue, Suite 300
Post Office Box 11656
Columbia, South Carolina 29211
(803) 252-7689
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
October 27, 2010

CERTIFICATE OF SERVICE BY MAIL

I, Jamie A. Weller, Legal Assistant to the firm of Tyler, Cassell, Jackson, Peace & Silver, L.L.P., do hereby certify that I have served a copy of the below named document(s) upon the parties listed below by U.S. Mail, postage prepaid, on Oct 27, 2010, and addressed as follows:

DOCUMENT(S) SERVED:
Plaintiff's First Set of Interrogatories to Defendant
Plaintiff's First Set of Requests for the Production of Documents to Defendant
Plaintiff's First Requests to Admit to Defendant

PARTIES SERVED:

Audra M. Byrd, Esquire
R. Wayne Byrd, Esquire
Turner, Padget, Graham and Laney, P.A.
2411 Oak Street, Suite 301
PO Box 2116
Myrtle Beach, SC 29578

Jamie A. Weller

First South Bank

PLAINTIFF'S EXHIBIT A

May 30, 2008

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
Post Office Box 3727
Pawleys Island, South Carolina 29585

Dear Peggy and Darwin:

This letter constitutes the commitment of First South Bank (the "Bank"), in reliance upon the financial information provided by you, to make a loan (the "Loan") in principal amount not to exceed $6,500,000.00, to an entity (herein referred to as the "Borrower") to be formed by the two of you and of which you will be the sole owners and principals, under the terms and conditions generally described below. The terms and conditions contained in this letter are not intended to be exhaustive. Final documentation of, with respect to and supporting the Loan will require approval of the Bank and its counsel.

Borrower: An entity formed under the laws of and resident in South Carolina, by and having as its principals, Peggy Wheeler-Cribb and Wil Darwin Wheeler, the organizational and constituent documents of which shall be reasonably acceptable in form and substance to Bank and its counsel.

Principal Amount of Loan: $6,500,000.00 (maximum), the proceeds of which shall be advanced and used solely in the amounts and for the purposes set forth in the Loan Purpose section of this letter.

Term: Thirty Six (36) months the first eight (8) months of which (the "Construction Period") shall be for construction of the Infrastructure (hereafter defined).

Loan Interest Rate: The interest rate on the principal balance of the Loan outstanding shall be a floating rate equal to Wall Street Journal Prime Rate as determined by Bank (the "Prime Rate") plus one hundred basis points (1.0%), changing concurrently with each change in the Prime Rate. The interest rate will be computed on the basis of a 360 day year and on the actual number of days elapsed in each period of interest.

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In the event of a default or event of default, the interest rate shall immediately change to the "Default Rate". The Default Rate shall be the rate which is 4% per annum above the rate otherwise payable. Documentation of the Loan shall also require in the event any monthly payment due upon the Loan is not received within ten (10) days of the date due, a late charge of five (5%) percent of the payment due shall be added to the payment due.

Loan Purpose: The proceeds of the Loan shall be used solely to:

A. Up to $3,600,000.00 of the proceeds shall be disbursed at closing to satisfy existing indebtedness encumbering undeveloped real property (the "Project Property") owned by Peggy Wheeler-Cribb and Wil Darwin Wheeler (fee simple title to which Project Property shall be conveyed to the Borrower on or prior to closing of the Loan) consisting of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres.

B. Up to $550,000.00 of the proceeds shall be disbursed at closing to satisfy existing indebtedness (owed to Bank and after application by Bank upon such indebtedness of funds on deposit with Bank as an interest reserve for said existing indebtedness) encumbering the real property and improvements (the "Beach Property") owned by Peggy Wheeler-Cribb and Wil Darwin Wheeler, having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006.

C. Up to $100,000.00 of the proceeds shall be disbursed at closing to pay costs associated with closing of the Loan, approved by Bank.

D. $300,000.00 of the proceeds shall be disbursed at closing into a restricted access demand deposit account (the "Interest Reserve Account") maintained with Bank, funds from which shall be disbursed by Bank monthly to make required interest payments due by Borrower upon the Loan.

E. Disbursement of funds for the categories set forth in A through D above shall not exceed the sums set forth with respect to the respective categories without written approval of the Bank. If less than $4,550,000.00 is disbursed at closing of the Loan, the difference between $4,550,000.00 and the amount disbursed shall not be advanced at closing of the Loan, but shall be held as an undisbursed contingency reserve and advanced for only such purposes as shall be expressly approved by Bank in writing.

F. An additional $550,000.00 of the proceeds of the Loan shall be disbursed by Bank into the Account to fund monthly interest payments due upon the Loan upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan closing.

G. Up to $1,400,000.00 for construction and installation of roads, drives, parking areas, storm water sewer system, utilities (to the lot lines of proposed retail lots within the Project Property) and other infrastructure for the Project Property (collectively the "Infrastructure") pursuant to the Construction Contract (hereafter defined). Disbursement of funds for this category shall not exceed the sum of $1,400,000.00 without written approval of the Bank. If less than $1,400,000.00 is disbursed for this category, the difference between $1,400,000.00 and the amount disbursed shall not be advanced, but shall be held as an undisbursed contingency reserve and advanced for only such purposes as shall be expressly approved by Bank in writing.

Non-refundable Loan Fee: A non-refundable loan fee of $65,000.00 (1.0% of the Loan amount)shall be due and payable in full upon acceptance of this commitment, and shall be paid at closing; provided, however, such loan fee shall be, so long as the Bank shall proceed in good faith with the making of the Loan, fully earned and due and payable in full regardless of whether any or all of the proceeds of the Loan are advanced.

Repayment Terms: The Loan shall be repayable interest only payable monthly on the same day of each month (such day to be selected by Bank) during the term of the Loan. The entire principal balance of the Loan plus all unpaid accrued interest thereon shall be due and payable in full on the date which is thirty six (36) months from the date of closing of the Loan.

Guarantors: The following named guarantors (each singularly a "Guarantor" and collectively the "Guarantors") shall each unconditionally guarantee payment of the entire principal amount of the Loan plus accrued interest with respect thereto, and costs including attorney's fees, of the Bank incurred in connection with the making and in the event of default collection, and in addition thereto performance of all the obligations of Borrower with respect to the Loan, to wit:

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler

Loan Documentation Required for Closing: Prior to closing the Loan and the disbursement of any funds thereupon, the Bank shall require, in form and content satisfactory to the Bank and its counsel, the following:

1. Note: The Loan shall be evidenced by the promissory note of the Borrower (the "Note").

2. Real Estate Mortgage: The Note and all other obligations of the Borrower with respect to the Loan (collectively the "Obligations") shall be secured by a first lien real estate mortgage and security agreement (whether one or more than one, the "Mortgage") upon the Project Property and the Beach Property and all appurtenances thereto (collectively the "Property"). The Mortgage shall contain terms, conditions and provisions typical of commercial security instruments including, without limitation, a due-on-sale and due-on-encumbrance clause, an indemnification against liability or loss resulting from hazardous or toxic waste, and a prohibition against transfer. The foregoing is not intended to be exhaustive and the Mortgage will contain additional terms, provisions, requirements and other clauses as are typically required by Bank of loans of this type and amount, or which Bank otherwise determines it requires with respect to the Loan. The Mortgage will require the Borrower to waive rights to seek an appraisal in the event a deficiency is sought upon foreclosure of the Mortgage.

3. Title Insurance: Borrower shall furnish Bank with a satisfactory ALTA mortgagee title insurance commitment with respect to the intended first mortgage lien(s) upon the Property in amount equal to the full amount of the Loan, issued by a title insurance company acceptable to the Bank. Such title commitment must be on an ALTA form satisfactory to the Bank, together with copies of the instruments creating or causing all reported exceptions. "FIRST SOUTH BANK, ITS SUCCESSORS AND ASSIGNS," shall be named as the proposed insured. The commitment and subsequent policy shall contain no matters objectionable to the Bank, including, without limitation, exceptions with respect to matters which would be revealed by a current survey and inspection, mechanics' and materialmen's liens, prior encumbrances of any nature, restrictive covenants, set-back lines, etc. The agent providing the commitment must provide evidence of authorization to issue the commitment to the Bank. The title insurance commitment shall be "marked-up" at closing to remove all conditions and contingencies to issuing the final mortgagee title policy and all exceptions unacceptable to Bank in form and substance acceptable to the Bank. The mortgagee title insurance policy shall include such other matters and such endorsements as Bank's counsel shall reasonably request.

4. Survey: A current (dated not more than 90 days before closing) Class A survey of the Project Property prepared, certified and sealed by a registered land surveyor. The survey shall be in recordable form and shall be duly approved by such public authorities as is necessary to record such survey in the public records of Georgetown

County, South Carolina. The survey shall show, among other things, all boundaries of the Project Property including internal boundary divisions dividing abutting tracts comprising the Project Property, if any, with a metes and bounds description (courses and distances indicated), the course and distance to and names of the nearest intersecting public streets or roads, the dimensions and location of any and all setback lines, building lines and sidelines, all existing buildings or improvements (if any), and all streets, roads, rights-of-way, easements, encroachments, or similar matters affecting the Project Property. Borrower will also shall supply to Bank, not later than the end of the Construction Period, a survey meeting the requirements set forth in this paragraph which shall also show in addition to the matters described above, the location of the Infrastructure, together with sufficient courses and distances to locate the Infrastructure upon the Project Property and establishing that the location of the Infrastructure does not violate any applicable set back lines or zoning requirement or inhibit or interfere with any easements or similar matters.

5. Flood Hazard Certification: Bank shall obtain a certification as to the location of the Property within any special flood, mudslide or erosion hazard area ("flood hazard area"). If the Property or any part thereof is located within a flood hazard area, then, notwithstanding any contrary provision of this commitment, this commitment may be terminated by the Bank at its sole option.

6. Loan Agreement: Borrower and Bank shall enter at closing a loan agreement (the "Loan Agreement") setting forth certain of the obligations, warranties, covenants and agreements of Borrower, events of default, and certain rights and remedies of the Bank, which shall be in form and substance approved by Bank and its counsel. In addition to other covenants and requirements the Loan Agreement shall require, without limitation, that the Borrower maintain a business demand deposit account (i.e., other than the Interest Reserve Account) with the Bank having at all times a minimum of $5,000.00 on deposit therein. The Loan Agreement shall require annual financial statements of Borrower (statements of income and retained earnings of Borrower for the immediately preceding calendar year and a balance sheet) due within 90 days of close of Borrower's fiscal year, and of each Guarantor due within 90 days of each calendar year end. The Loan Agreement shall also provide that at no time prior to the final advance for Infrastructure costs shall the amount advanced under the Loan during the Construction Period exceed a sum equal to ninety (90.0%) percent of actual costs of construction under the Construction Contract, to the date of each such advance. The Loan Agreement will include a proposed completion and

draw schedule and a breakdown of expenditure of Loan proceeds by category prepared by Borrower and approved by Bank, and set forth the requirements for the initial and subsequent advances upon the Loan. The final advance shall require for construction costs shall require, in addition to other matters, evidence of final approval or acceptance (as the case may be) of the improvements comprising the Infrastructure by appropriate governmental authorities and utility providers. The foregoing is not intended to be exhaustive and the Loan Agreement will contain additional terms, provisions, conditions and requirements as are typically required by Bank of loans of this type and amount, or which Bank otherwise determines it requires with respect to the Loan.

7. Security Agreement: Payment and performance of the Obligations shall be further secured by a security agreement (the "Security Agreement") granting to Bank a first priority security interest in all personal property of the Borrower including tangible personal property including furniture, furnishings, fixtures and equipment and all accessions thereto, and intangibles including instruments, documents, accounts, and general intangibles, together with the proceeds therefrom, used, held or obtained by Borrower in connection with its ownership or operation of the Property and the construction, sales, leasing and operation of the Project Property (collectively, without limitation, the "Personalty").

8. Construction Contract and Assignment thereof: The Infrastructure shall be constructed on and under the Project Property by a licensed contractor (the "Contractor") selected by Borrower and acceptable to Bank, pursuant to a construction contract (the "Construction Contract") which shall be in all respects, both as to form and substance, acceptable to Bank. As further security for payment and performance of the Obligations, Borrower shall collaterally assign unto Bank Borrower's rights with respect to the Construction Contract which assignment shall be duly acknowledged by the Contractor. The Contractor shall provide labor and materials payment and performance bonds with surety acceptable to Bank, assuring performance of the work and payment for labor and materials, which bonds shall be in form and substance acceptable to Bank and which shall name Borrower as obligee and Bank as co-obligee.

9. Hazard Insurance: The Beach Property and, if reasonably determined necessary the the Project Property, shall be insured by hazard insurance policy(ies) which must include fire, vandalism and malicious mischief coverage, in an amount sufficient to

avoid co-insurance liability and equal to the total replacement value of improvements to the Property. During the Construction Period if Bank requires the same such coverage with respect to the Project Propertymay be provided as part of builder's risk insurance furnished by the Contractor which shall in any event also include liability and worker's compensation insurance sufficient to meet all requirements of law. Each policy issued in respect to this paragraph (a) must be issued by a company approved by the Bank and licensed to transact business in the State of South Carolina; (b) must contain a standard mortgagee clause designating the Bank as mortgagee and loss payee; and (c) must contain provisions providing for written notice to the Bank at least thirty (30) days prior to any cancellation, termination or modification thereof or of any coverage therein.

10. Plans and Specifications and Assignment Thereof: Borrower shall have prepared a site plan showing the proposed location of the Infrastructure and proposed retail lots and development; and plans and specifications acceptable to Bank with respect to the Project (collectively the "Plans") by a licensed architect or engineer, reasonably acceptable to Bank (the "Architect"), which Architect shall seal and approve the Plans. A set of the Plans signed and approved by Architect, Borrower and Contractor shall be delivered to Bank prior to closing, together with a security assignment of all right, title and interest of Borrower in and to the Plans together with the acknowledgment and consent of the Architect to such assignment.

11. Zoning: Borrower shall provide evidence of satisfactory zoning and subdivision approval for the use and occupancy of the Project Property as a retail commercial shopping center.

12. Flood Insurance: Borrower shall obtain a flood insurance policy if improvements to any of the Property is located in a flood hazard area. The flood insurance policy shall be in such amount as Bank shall reasonably approve and shall conform with the last sentence of paragraph 8 above.

13. Liability Insurance: Borrower shall provide evidence of liability insurance in form and in an amount satisfactory to the Bank issued by a company approved by the Bank. The Bank shall be named as an additional insured on the liability policy if requested by the Bank. The liability policy must comply with subparts (a) and (c) of the last sentence of paragraph 8 above.

14. UCC Financing Statements: Uniform Commercial Code Financing Statements, shall be properly filed at or prior to closing, perfecting to the Bank a valid first lien on all of the Personalty.

15. Entity Authority and Constituent Documents: Bank shall be provided with appropriate and satisfactory evidence of authority documenting the right of the individuals acting for or on behalf of the Borrower to so act and bind the Borrower. The Bank shall also be provided with a certified true copy of the filed organizational documents (certified) and other material constituent documents of the Borrower, and with satisfactory evidence that the Borrower is legally constituted and is in current good standing and permitted to transact business in the State of South Carolina.

16. Utilities: Bank shall be provided prior to closing with evidence satisfactory to Bank, that utility services (including, without limitation electrical, water and sewer (sanitary and storm water)) are available at the Project Property in sufficient quantity and quality to construct, operate and maintain the proposed retail shopping center.

17. Guaranty Agreements: Each Guarantor will be jointly and severally liable for the entire amount of the Loan and for all cost and expense to the Bank of making the Loan and if collection is required collecting the Loan, including without limitation, the cost of collection from each Guarantor. Such costs include, without limitation, the Banks' attorneys' fees. Each Guarantor will execute an unconditional Guaranty (a "Guaranty"), guaranteeing the payment of the foregoing and the performance of all Obligations by the Borrower. Each Guarantor will be required to waive the right to require an appraisal in the event deficiency is sought as a result of foreclosure.

18. Legal Opinion: Bank shall be provided at closing the legal opinion of an attorney acceptable to the Bank to the effect that (a) the loan documents have been duly authorized, executed and delivered, are valid and enforceable according to their terms under all applicable laws and regulations and are not in violation of any applicable laws, rules or regulations, including without limitation, usury laws, (b) the Loan and the execution of the several documents required in connection therewith have been authorized by all necessary action of the Borrower and the person or persons executing said documents on behalf of such entity(ies) are authorized to do so, (c) execution and delivery by and enforceability of each Guaranty with respect to each Guarantor, (d) the financing statements together with the recorded Mortgage and the Security Agreement constitute a valid perfected lien on the real and personal property

described therein, (e) the Borrower is duly formed, validly existing and in good standing under the laws of the State of South Carolina and is qualified to transact business in the State of South Carolina, and (f) to the knowledge of such counsel, no litigation or proceeding is pending or threatened which, if adversely determined, would have a material adverse effect on the Borrower, or any Guarantor. The Bank may also require such other opinion(s) as the Bank or its counsel may deem reasonably necessary.

19. Environmental Audit: A Phase I environmental site addressed to the Bank, but paid for by Borrower at Borrower's sole cost and expense and prepared by an experienced competent environmental engineering firm satisfactory to the Bank which complies in all respects to the Bank's specifications for such site assessment, shall be delivered to Bank prior to closing. The Bank must be completely satisfied with the results of such assessment in its sole and absolute discretion. The loan documents will provide that Borrower and Guarantors will jointly and severally indemnify the Bank against all violations of the Property or the Borrower of any environmental laws, rules and regulations.

20. Appraisal: A written real estate appraisal of the unimproved Project Property indicating a current appraised value of not less than $7,000,000.00 and a value after completion of the proposed Infrastructure of not less than $9,000,000.00, in form and substance acceptable to the Bank, performed by a real estate appraiser acceptable to the Bank, shall be delivered to Bank prior to closing.

21. Financial Condition Requirements: Borrower and Guarantors shall certify at closing that there has been no material adverse change in financial condition to that previously described and provided to Bank. If there has been any material adverse change in financial position, the Bank shall be entitled to withdrawn this commitment whereupon the Bank shall have no further obligation or liability with respect to the commitment or the making of the Loan to the Borrower.

22. Lease letter of intent: Borrower shall provide to Bank a letter of intent (the "Letter of Intent") from Lowes Foods or other national or acceptable regional grocery chain to lease or purchase an anchor site of the retail space shown on the Plans at a purchase price/rental rate acceptable to Bank, together with evidence acceptable to Bank of initial approval of the site plan of the Plans by such proposed anchor occupant.

23. IRS Reporting Requirement: If the loan proceeds are to be used to fund a real estate transaction which is reportable pursuant to Section 6045 of the Internal Revenue Code, the Borrower must provide a copy of the Uniform Settlement Statement as prescribed under the Real Estate Setilement Procedures Act of 1974 ("RESPA") executed by a settlement agent or a designation agreement executed by the party responsible for supplying the applicable information to the IRS. Reportable transactions include, but are not limited to, sales, long term leases, and tax-free exchanges and are subject to limited exemptions.

24. Additional Items: Such other matters and items as the Bank or its counsel may reasonably request.

Other Conditions:

1. Costs: The Loan shall be closed without cost to the Bank, and all expenses incurred in connection with the closing of the Loan, (including, without limitation, the Bank's counsel's fees) are to be paid by the Borrower. Such expenses shall be paid by the Borrower and the addressees hereof whether or not the Loan closes.

2. Right of first refusal: By acceptance hereof Borrower and the addressees hereof do give, shall for all purposes be deemed to have given, to Bank the first right of refusal (the terms of which right may be incorporated in the Loan Agreement) to provide construction financing (by way of one or more construction loans) for each of the parts of the retail shopping center to be constructed upon the project Property

3. Modification and Refinance Fees: Any modification or refinance of the Loan may be conditioned by the Bank on the payment by the Borrower by a nonrefundable fee, which shall be in addition to any other fee or cost paid by the Borrower to the Bank in connection to the Loan. Nothing in this subparagraph shall obligate the Bank to modify or refinance the Loan, and the Bank reserves the right to require the Loan to be repaid strictly in accordance with the terms and conditions contained in the Note and the other loan documents.

Each of the addressees hereof understands and agrees that this commitment is issued directly to them and the Borrower and cannot be assigned without the prior written consent of the Bank. The commitment is for the sole and exclusive benefit of the addressees hereof and the Borrower to be formed by them in accordance herewith, and no third party may rely hereon nor is intended to be

benefitted in any respect hereby. Any attempted assignment hereof shall immediately release Bank from any obligation to make, or fund, the Loan. Any material adverse change in the condition (financial, business or otherwise) of the Borrower or any Guarantor shall, at the Bank's option, release the Bank from any and all obligations under this commitment.

If the Borrower or any Guarantor at or before the closing of the Loan should file a petition in bankruptcy under any of the provisions of the bankruptcy laws, or if a petition in bankruptcy should be filed against any one of them, or if any of them should make an assignment for the benefit of creditors, or otherwise become insolvent, or if any of them should become deceased or become mentally incapacitated, this commitment may be canceled at the option of the Bank.

Each of the addressees hereof by accepting this commitment represents and warrants to the Bank that except as disclosed to the Bank in writing on or prior to the date hereof, there are no actions, claims, suits or proceedings pending, or to the knowledge of each of them, threatened or reasonably anticipated against or affecting the Borrower, any Guarantor, the Property, the Infrastructure or the transactions contemplated by the Letter of Intent, at law or in equity or before or by any governmental authority and there is no possibility of any judgment, liability or award which may reasonably be expected to result in any material and adverse change in the condition (financial, business or otherwise) of the addressees hereof or the Borrower, or the prospects of building the Infrastructure and developing a retail shopping center upon the Project Property as contemplated by the Plans and leasing the anchor portion thereof to Lowes Foods as set forth above in this commitment.

All the provisions incorporated in this commitment shall survive the loan closing and the loan documents shall be deemed to contain the following provision:

> "All the terms and conditions of the commitment upon which the loan hereby secured was predicated are incorporated herein by this reference and made a part hereof and should Borrower default with respect to any term or provision thereof, such default shall constitute a default, event of default and Event of Default hereunder and under the Note hereby secured."

In the event of a conflict between the terms and conditions of this commitment and the loan documents used to close the Loan, the loan documents used to close the Loan shall prevail.

Each of the addressees hereof understands and acknowledges that the Bank is relying upon the statements and representations made to the Bank and upon such additional data as may be supplied to the Bank for the purpose of evaluating the request for the Loan. If any of such information is found to be inaccurate or to have been misrepresented in any material respect, this commitment may be canceled at the option of the Bank.

By acceptance hereof each of the addressees hereof certifies that all information provided to the Bank by or on behalf of the Borrower and each Guarantor is true and complete in all material respects and that the same was given to induce the Bank to make a loan as herein requested.

This commitment and the loan documents shall be construed according to and governed by the laws of the State of South Carolina.

If this commitment is being accepted by less than all parties (i.e. Borrower and all Guarantors), the undersigned hereby certifies and warrants to the Bank that the undersigned has been duly authorized to accept and deliver this commitment for and on behalf of, and as agent for, any such party whose signature does not appear below.

If this commitment is acceptable, please so indicate by signing in the space provided on the enclosed copy of this letter and return same to us by no later than seven (7) days from the date of this letter. If not so accepted, or if the Loan to be made pursuant to this commitment is not closed within thirty (30) days from the date of this letter, then on the occurrence of either event Bank shall have no obligation whatsoever under this commitment unless Bank shall at its sole option and upon such terms and conditions as it may require, reinstate this commitment; provided, however, such reinstatement, in order to be valid must be in writing and signed by an authorized officer of the Bank. Should you have any questions concerning the terms hereof, please contact F. Wayne Lovelace, Senior Vice President, (803) 806-3104.

Very truly yours,

F. Wayne Lovelace, Senior Vice President

The foregoing commitment and the Loan to be made thereby, subject to the terms set forth in the above commitment letter, are accepted this the 6 day of June, 2008.

In addition you are hereby notified that a **WAIVER OF APPRAISAL RIGHTS** will be required from you and the Borrower in connection with the above referenced transaction. As part of that transaction, you hereby expressly agree and acknowledge that 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.

Peggy Wheeler-Cribb

Peggy Wheeler-Cribb

Wil Darwin Wheeler

Wil Darwin Wheeler

First South Bank

June 25, 2008

Mr. Will Darwin Wheeler
Ms. Peggy Wheeler-Cribb
334 Myrtle Avenue
Pawleys Island, South Carolina, 29585

HAND DELIVERED

Re: Lot 4 / 334 Myrtle Avnue
Pawleys Island, South Carolina 29585

Dear Darwin and Peggy:

Please let this letter serve to confirm our agreement as to when, and under what conditions, First South Bank will agree to release its mortgage on Lot 4 / 334 Myrtle Avenue, Pawleys Island, South Carolina, 29585, which partially secures our loan to South Causeway, LLC.

Provided no default exists in any of the South Causeway, LLC loan documents at the time the request for a release is made, First South Bank will agree to release the referenced mortgage upon the occurrence of any of the following events:

1. Written certification from the project's supervising / design engineer, plus any agency from Georgetown County, SC, having supervisory jurisdiction over the development, that the proposed improvements including, but not limited to, roadways, water, sewer and storm drainage, have been completed in accordance with the project's original design plans and specifications, that the improvements are fully functional and operational, and that the project has been constructed in substantial compliance with any regulations required by Georgetown County, SC, and the State of South Carolina.

Approval(s) must be in form and content acceptable to First South Bank.

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2. First South Bank is furnished a copy of a signed lease between Alex Lee, Inc. / Lowe's Foods, Inc. and South Causeway, LLC, (by assignment from Peggy Wheeler-Cribb) on terms no less favorable than those outlined in the proposed Intent to Lease, dated May 10, 2008, between Alex Lee, Inc. / Lowe's Foods, Inc. and Peggy Wheeler-Cribb.

3. The appraised value of the property and proposed improvements reflects a value of, not less than, $9,500,000.

Thank you very much for allowing us to handle this transaction for you. Should you have any questions, please call me at (803) 806-3104.

Sincerely,

F. Wayne Lovelace
Senior Vice President
First South Bank

PLAINTIFF'S EXHIBIT

SOUTH CAUSEWAY, LLC 234 MYRTLE AVENUE PAWLEYS ISLAND, SC 29585 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	FIRST SOUTH BANK - COLUMBIA 1933 MAIN STREET COLUMBIA, SC 29201 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	Loan Number [redacted] Date 08-25-2008 Maturity Date 07-05-2011 Loan Amount $ 6,500,000.00 Renewal Of

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SIX MILLION FIVE HUNDRED THOUSAND AND NOT 100 Dollars $ 6,500,000.00

☐ **Single Advance:** I will receive all of this principal sum on _____. 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 08-25-2008 I will receive the amount of $ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are TERMS AND CONDITIONS OF COMMITMENT LETTER DATED MAY 30, 2008 AND OF LOAN AGREEMENT BETWEEN BORROWER AND LENDER OF EVEN DATE HEREWITH, ARE INCORPORATED HEREIN AND MADE A PART HEREOF

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and applies on _____.

☒ **Closed End Credit:** You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from 08-25-2008 at the rate of 9.000% per year until 08-25-2008.

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

☒ **Index Rate:** The future rate will be 1.000 PERCENT ABOVE the following index rate: THE HIGHEST PRIME RATE PUBLISHED IN MONEY SECTION OF THE WALL STREET JOURNAL

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

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY DAY BEGINNING 08-25-2008. A change in the interest rate will take effect ON THE SAME DAY.

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

☐ _____

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

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

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

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF $ 10.00

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: EXAMINATIONS FEE: $ 65,000.00; FLOOD CERT: $ 20.00; TAX REPORT: $ 85.00

PAYMENTS: I agree to pay the note as follows:

MONTHLY PAYMENTS OF ACCRUED INTEREST CALCULATED ON THE AMOUNT OF CREDIT OUTSTANDING BEGINNING ON 08-05-2008 AND PRINCIPAL DUE ON 07-05-2011. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE. THE FINAL PAYMENT MAY ALSO CHANGE.

PURPOSE: The purpose of this loan is ACQUISITION AND DEVELOPMENT FINANCING OF 19.72 +/- ACRES FOR INFRASTRUCTURE TO BE DEVELOPED FOR COMMERCIAL SHOPPING

SECURITY: You have certain rights that may affect my property as explained on page 2. In addition to these rights, this agreement is separately secured by a ☐ preexisting ☐ contemporaneous agreement described as _____.

ADDITIONAL TERMS:

TERMS AND CONDITIONS OF COMMITMENT LETTER DATED MAY 30, 2008 AND OF LOAN AGREEMENT BETWEEN BORROWER AND LENDER OF EVEN DATE HEREWITH, ARE INCORPORATED HEREIN AND MADE A PART HEREOF

SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.

☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.

☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their products, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FROM ON THE 10.22+/- ACRE TRACT LOCATED AT THE CORNER OF OCEAN HIGHWAY & SOUTH CAUSEWAY, GEORGETOWN COUNTY, PAWLEYS ISLAND, SC 29585 AND THE PROPOSED IMPROVEMENTS TO BE CONSTRUCTED THEREON, THE PROPERTY ALSO INCLUDES THE PERSONALTY DESCRIBED ON SCHEDULE "A" HERETO. AND A FIRM ON LOT 94, 304 MYRTLE AVENUE, PAWLEYS ISLAND, SC 29585 AS SHOWN ON A PLAT BY THE PARTHENIA GROUP, DATED JULY 8, 2008 AS FURTHER DESCRIBED IN A MORTGAGE TO BE EXECUTED AT CLOSING.

Earthworks Inc by Chris Pell

If applicable, enter real estate description and record owner information: _____

The Property will be used for a: ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.

Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive office or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan, I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any law or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will provide any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debtor if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right at reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from the agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trade for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in the security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

SEE ATTACHED HYPOTHECATION AGREEMENT

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PWC

SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.

☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery, and equipment, shop equipment, office and record keeping equipment; parts; and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.

☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

FROM ON THE 10.22+/- ACRE TRACT LOCATED AT THE CORNER OF OCEAN HIGHWAY & SOUTH CAUSEWAY, GEORGETOWN COUNTY, PAWLEYS ISLAND, SC 29585 AND THE PROPOSED IMPROVEMENTS TO BE CONSTRUCTED THEREON. THE PROPERTY ALSO INCLUDES THE PERSONALTY DESCRIBED ON SCHEDULE "A" HERETO. AND A FREM ON LOT #6, 334 MYRTLE AVENUE, PAWLEYS ISLAND, SC 29585 AS SHOWN ON A PLAT BY THE EARTHWORKS GROUP, DATED JULY 9, 2006 AS FURTHER DESCRIBED IN A MORTGAGES TO BE EXECUTED AT CLOSING.

If applicable, enter real estate description and record owner information: _____

The Property will be used for: ☐ personal ☒ business ☐ agricultural ☐ _____ purposes.

Borrower/Owner State of organization/registration (if applicable) SC

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change the specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent: (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan; and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired, or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat these payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks and for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement. If I fail to buy or maintain the insurance (or fail to name you as loss payee) you may purchase it yourself.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

SEE ATTACHED HYPOTHECATION AGREEMENT

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(f) this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - As used on pages 1 and 2, "I" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - The law of the state of South Carolina in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

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

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph on page 2.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

(1) any deposit account balance I have with you;

(2) any money owed to me on an item presented to you or in your possession (or collection or exchange); and

(3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

SECURITY - References to agreements securing this loan on page 1 shall not be considered an exclusive list of all such agreements. Other agreements you and I have executed or execute in the future which are not referenced on page 1 may secure this loan.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any creditor of mine attempts to collect any debt I owe him (through court proceedings); (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).

(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.

(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.

(4) You may refuse to make advances to me or allow purchases on credit by me.

(5) You may use any remedy you have under state or federal law.

(6) You may make use of any remedy given to you in any agreement securing this note.

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

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

(1) demand payment of amounts due (presentment);

(2) obtain official certification of nonpayment (protest); or

(3) give notice that amounts due have not been paid (notice of dishonor).

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

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a preseizure hearing prior to seizure of any personal property which may secure this transaction.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

SOUTH CAUSEWAY, LLC

Peggy Wheeler-Cobb

PEGGY WHEELER-COBB, MEMBER

SIGNATURE FOR LENDER: WAYNE LOVELACE, SR. VICE PRESIDENT

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SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "**Debtor**") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "**Land**") and the improvements thereto (collectively, without limitation, the "**Infrastructure**") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;

(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;

(All of the foregoing personal property described in (a) and (b) above are referred to as the "**Tangible Personalty**". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "**Premises**".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;

(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

EXHIBIT A
TO MORTGAGE

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June 25, 2008, recorded in the office of the Register of Deeds for Georgetown County on June 25, 2008, in Record Book 990 at Page 242.

LOAN AGREEMENT

This Loan Agreement (this "Agreement") dated June 25th, 2008, made by and between FIRST SOUTH BANK, ("**Bank**"), and SOUTH CAUSEWAY, LLC, a South Carolina limited liability company ("**Borrower**").

WITNESSETH:

That for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises herein made, Bank and Borrower, intending to be legally bound, agree as follows:

ARTICLE I - THE LOAN

Section 1.1. Bank hereby agrees to lend up to the principal sum of Six Million Five hundred Thousand and No/100 ($6,500,000.00) Dollars (the "**Loan**") the amount of which Loan or such part thereof as shall be made, shall be advanced to Borrower in installments ("**Advances**") within Bank's reasonable discretion, as and for the purposes hereinafter provided. Borrower's obligations to repay the Loan and the interest thereon shall be evidenced by a Promissory Note (the "**Note**") in form and substance satisfactory to Bank.

Section 1.2. Borrower agrees to pay interest on the Loan at the rate(s), on the date(s), and calculated by the method, set forth in the Note. Interest shall be calculated on the basis of a three hundred sixty (360) day year.

Section 1.3. Borrower shall make to Bank such payments of principal and interest on the Loan as are required by the terms of the Note.

Section 1.4. Borrower may prepay the Loan in whole or in part as provided in the Note. Any prepayment upon the Loan may not be re-borrowed and will be applied to payment installments due in their inverse order of maturity.

ARTICLE II - COLLATERAL

Section 2.1. The repayment by Borrower of its indebtedness under the Loan and the Note, and the performance by Borrower of all obligations under this Agreement, shall be secured by every mortgage, every security agreement, every assignment and every agreement (collectively the "**Security Documents**" and individually each a "**Security Document**") which secures or guarantees payment and/or performance of obligations so defined as to include the Loan or the Note, and by all property of Borrower in, or coming into, the possession, control or custody of Bank, or in which Bank has or hereafter acquires a lien, security interest, or other right (individually and collectively the "**Collateral**") including, without limitation, the following:

(1) Security Documents listed in Schedule 1.

LOAN AGREEMENT

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(1) Security Documents listed in Schedule 1.

(2) The Collateral described in Schedule 2.

Section 2.2. In addition to the Security Documents listed in Schedule 1, Borrower shall, at any time hereafter and so long as any Loan (or agreement to lend) is outstanding hereunder, execute and deliver such documents and instruments granting, confirming or ratifying Bank's liens upon and security interests in and to the Collateral as Bank may from time to time request.

ARTICLE III-REPRESENTATIONS AND WARRANTIES

BORROWER HEREBY REPRESENTS AND WARRANTS:

Section 3.1. Borrower is a limited liability company duly organized, formed and existing under the laws of the State of South Carolina, is qualified to do business in all jurisdictions in which it conducts its business, and has the power and authority to own its property and to carry on its business in each jurisdiction in which Borrower does or presently intends to do business.

Section 3.2. The execution and delivery by Borrower of, and the performance by Borrower of its obligations under, this Agreement, each Note and each Security Document have been duly authorized by all requisite action on the part of Borrower and do not and will not (i) violate any provision of Borrower's articles of organization, operating agreement, or other organizational documents, or of any law, or any judgment, order, regulation or ruling of any court or Governmental Authority (hereafter defined), or (ii) be in conflict with, result in a breach of, or constitute, following notice or lapse of time or both, a default under any indenture, agreement or other instrument to which Borrower is a party or by which Borrower or any of its property is bound.

Section 3.3. Each of this Agreement, the Note and every Security Document is, the legal, valid and binding agreement of Borrower, enforceable against Borrower in accordance with its respective terms.

Section 3.4. There are no pending or threatened actions or proceedings before any court or administrative or Governmental Authority or agency that may, individually or collectively, adversely affect the financial condition or business operations of Borrower or any Guarantor (hereafter defined).

Section 3.5. The financial statements of the Borrower and of each Guarantor heretofore delivered to Bank fairly and accurately present the financial condition of the Borrower and each Guarantor, respectively, as of the date of each thereof, and each has been prepared in accordance with generally accepted accounting principles consistently applied. Since the respective date of each of those financial statements, there has been no material adverse change in the financial condition of the Borrower or any Guarantor, and, after due inquiry, there exists no undisclosed material contingent liability or obligation assertable against the Borrower or any Guarantor.

Section 3.6. All federal, state and other tax returns of the Borrower and each Guarantor required by law to be filed have been completed in full and have been duly filed, and all taxes, assessments and withholdings shown on such returns or billed to the Borrower or a Guarantor, respectively, have been paid, and Borrower maintains adequate reserves and accruals in respect of all its federal, state and other taxes, assessments and withholdings. There are no unpaid assessments pending against the Borrower or any Guarantor for any taxes or withholdings, and Borrower knows of no basis therefor.

Section 3.7. The obligations of Borrower under this Agreement, the Note and each of the Security Documents are not subordinated in right of payment to any other obligation of Borrower.

Section 3.8. Borrower possesses all permits, contracts, licenses, trademark rights, trade names, patents, and other authorizations necessary to enable it to conduct its business operations as now conducted, and no filing with, and no consent, permission, authorization, order or license of, any individual, entity, or governmental authority is necessary in connection with the execution, delivery, performance or enforcement of this Agreement or the Note.

Section 3.9. No event has occurred and is continuing which is, or which with the giving of notice or lapse of time or both would be an Event of Default (as hereafter defined) of this Agreement.

Section 3.10. Borrower has good and marketable title to all of its properties and assets including, without limitation, the Collateral and the properties and assets reflected in the above-described financial statements of Borrower.

Section 3.11. The minimum funding standards of Section 302 of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") have been met at all times with respect to all "plans" (if any) of Borrower to which such standards apply; Borrower has not made a "partial withdrawal" or a "complete withdrawal" from any "multiemployer plan"; and no "reportable event" or "prohibited transaction" has occurred with respect to any such "plan" (as all of the quoted terms are defined in ERISA).

Section 3.12. Except as otherwise expressly disclosed by Borrower to Bank in writing on or before the date of this Agreement: No "hazardous substance" (as that term is defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**")) has been released, discharged, disposed of, or stored on any of Borrower's owned or leased real or personal property by Borrower, or to Borrower's knowledge after due inquiry by any third party or by any predecessor in interest or title to Borrower; Borrower and all of Borrower's properties are in compliance with all applicable local, state and federal environmental laws and regulations relating to the environment; no notice has been served on Borrower by any Governmental Authority or by any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; no "hazardous substance" (as defined in CERCLA) is produced or used in Borrower's business; and no improvement on any real property owned or leased by Borrower contains to Borrower's knowledge after inquiry any asbestos, including, without limitation, asbestos insulation on ceilings, piping or structural members or supports.

ARTICLE IV - CONDITIONS PRECEDENT TO AND USE OF ADVANCES

The obligation of Bank to make the Loan and Advances thereunder is subject to compliance by Borrower with all of the conditions set forth in the Commitment (hereafter defined), and with the following conditions precedent:

Section 4.1. Bank shall have received on or prior to the date of the first Advance upon the Loan (the "**Initial Advance**") hereunder:

(1) A letter of intent addressed to Borrower from a national or regional grocery store chain of size and financial strength reasonably acceptable to Bank (the "**Anchor Tenant**") indicating the desire of such Anchor Tenant to lease rentable space of the Project (hereafter defined) in an amount, at a rental rate and for a term each acceptable to Bank, and approving generally the Proposed Site Plan (hereafter defined) of the Project.

(2) Title insurance in a form approved by Bank (the "**Title Policy**") issued by a title company satisfactory to Bank (the "**Title Insurer**"), insuring the **Borrower Mortgage** and the **Guarantor Mortgage** (each as defined in Schedule 1) as a valid first lien on the real property and improvements described in Exhibit "A" of Schedule 2 hereto (the "**Mortgaged Property**") in a face amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars, free and clear of all liens (other than ad valorem taxes not yet due or payable), charges and encumbrances (including, but not limited to, unfiled mechanics' and materialmen's liens) except those, if any, acceptable to Bank, and including such endorsements (including, without limitation, an endorsement insuring contiguity of the parcels comprising the Project Property (hereafter defined)) as Bank and its counsel may reasonably require.

(3) One or more surveys (whether one or more than one the "**Survey**") of the Project Property of current date made by a registered or licensed engineer or surveyor satisfactory to Bank and the Title Insurer and field certified to each of them showing:

(a) the boundaries of the Project Property, the location of wetlands and of other environmentally sensitive areas (if any), the location of established building setback lines, if any, and the location of existing improvements, if any, on the Project Property; and

(b) all easements affecting the Project Property and other matters apparent thereon, the relation of the Project Property to public thoroughfares for access purposes and the lines and width of all dedicated streets and rights-of-way abutting or traversing the Project Property;

Bank agrees to waive the requirement that the Survey be of current date and certified to the Bank and the Title Insurer provided that: (i) the Survey shall be of reasonably recent date, (ii) no exception shall be taken by the Title Insurer with respect to the Title Policy by reason of the Survey not being of current date or certified as aforesaid, (iii) no exception which a survey would disclose and which is not currently depicted upon a survey acceptable to Bank, shall be taken in the Title Policy, and (iv) the Survey and the matters depicted thereon shall be acceptable to the Bank and the Title Insurer.

(4) By entry upon the Survey or by site plan (in either event the "**Proposed Site Plan**") a depiction of the proposed retail shopping center (the "**Project**") to be located upon that portion of the Mortgaged Property consisting of consisting of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres (the "**Project Property**").

(5) A certification by a flood certification agency acceptable to Bank of what area (if none, so stated) of the Project Property is located in an "**area of special flood hazard**" as determined pursuant to the standards of the Federal Emergency Management Agency.

(6) The Security Documents duly executed, and evidence satisfactory to Bank that the Borrower Mortgage and the Guarantor Mortgage has each been duly recorded in the appropriate filing office in the county where the Mortgaged Property is located, and that the Financing Statements (defined in Schedule 1) have been appropriately filed in said county and in the appropriate central filing office.

(7) A Guaranty (each a "**Guaranty**" and collectively the "**Guaranties**") executed by each Guarantor, in form and substance acceptable to Bank, guaranteeing timely payment and performance of all obligations of Borrower with respect to each Loan (including, without limitation, payment obligations under each Note).

(8) Evidence reasonably acceptable to Bank that (a) the construction of the Project and contemplated use of the Project Property therefor, and of the Improvements (hereafter defined) violate no restrictive covenants applicable to the Project Property, (b) all utility and municipal services required for the construction, occupancy and use of the Project are or will be available as and when needed to the Project Property, and (c) the Project Property is satisfactorily zoned and subdivided for the Project, and for the planned use and occupancy thereof as a retail shopping Center suitable for use in accordance with the requirements of the Anchor Tenant.

(9) Evidence(s) of Insurance showing that all policies of liability insurance required to be maintained by or on behalf of Borrower pursuant to the provisions of this Agreement and of each Security Document are in force and effect, cannot be canceled except upon thirty (30) days written notice, and name Bank as a certificate holder and/or additional insured thereunder.

(10) Evidence that no work has been done or materials supplied which could result in or give rise to a lien on the Mortgaged Property prior to or on a parity with the lien of the Borrower Mortgage, the Guarantor Mortgage and the other Security Documents.

(11) Evidence satisfactory to the Bank that the Project Property abuts and adjoins a dedicated street or road providing access thereto and that the remaining portion of the Mortgaged Property (the "**Beach Property**") has sufficient legal and actual access to public streets and roads.

(12) The following evidence of the authority of Borrower to enter into the transactions contemplated hereby shall have been received by Bank:

(a) A certified true and correct copy of Borrower's Articles of Organization and Operating Agreement (or, if there is no written Operating Agreement, evidence that Borrower is a single member limited liability company, the affairs of which are managed by such single member).

(b) Certificate of the Secretary of State of South Carolina dated a recent date and evidencing Borrower's proper registration to do business and good standing in South Carolina.

(c) Resolutions of the single or managing member (the "**Member**") of Borrower authorizing the execution and delivery of this Agreement, the Note, and the Security Documents.

(d) A certificate of the Member of Borrower as to the incumbency of the Member of Borrower who will sign this Agreement, the Note, the Security Documents, and requests for Advances upon the Loan, and to the effect that no amendment or modification to its Articles of Organization, Operating Agreement (written or oral, as the case may be) or registration in South Carolina have occurred since the date the same were certified as aforesaid.

(13) An opinion of counsel in form and substance satisfactory to counsel for Bank as to such matters as Bank may reasonably request.

Section 4.2. In addition to the foregoing it shall be a condition precedent of each subsequent Advance that:

(1) Borrower shall have provided to Bank an executed counterpart of Borrower's contract with Borrower's architect and/or engineer (in either case the "**Engineer**") the assignment whereof having been acknowledged by the Engineer, in order to assure Bank of the continued performance of the Engineer without any cost increases which result solely by reason of Bank or its designee taking possession of the Project Property or taking over the construction of the Improvements and of the general construction contract (the "**Construction Contract**") with the general or prime contractor (the "***Contractor***") for construction and installation of the Improvements, the fixed price amount or guaranteed maximum amount of which (as the case may be) shall not exceed One Million Four Hundred Thousand and No/100ths ($1,400,000.00) Dollars.

(2) Borrower shall have provided to Bank the executed **Construction Contract Assignment** (defined in Schedule 1) acknowledged by the Contractor, assuring Bank of the continued performance of the Contractor without any cost increases which result solely by reason of Bank or its designee taking possession of the Project Property or taking over the construction of the Improvements. The Construction Contract shall provide for retainage from each draw request of Ten (10.0%) percent prior to completion of the Improvements (the "Retainage").

(3) Borrower shall have provided to Bank labor and materials payment bond and performance bond issued by surety acceptable to Bank, naming Contractor as obligor in the full amount of the Construction Contract, in form and substance acceptable to Bank, together with dual-obligee rider(s) thereto naming Borrower as obligee and Bank as co-obligee (collectively the "**Bonds**").

(4) Borrower shall have provided to Bank a set of the final plans and specifications (the "**Plans**") for the construction and installation of the roads, drives, parking areas, exterior free-standing lighting and utilities (and installation thereof) and other infrastructure improvements for and to service the retail shopping areas of the Project the costs of which are to be defrayed with proceeds of the Loan (the "**Improvements**") (including, without limitation, a site plan showing the proposed locations thereof) signed as approved by the Engineer, the Contractor and the Borrower.

(5) Borrower shall have provided to Bank a breakdown by cost category of Project Costs (hereafter defined, which shall thereupon be attached hereto as Exhibit 1.

(6) All required permits, licenses and approvals of Governmental Authorities necessary to construct and use the Improvements (except those which are normally obtained during

the course of construction or which are not available until completion of construction of the Improvements, and, as to each such permit, license or approval, as soon as the same is reasonably obtainable or required) have been issued.

(7) The representations and warranties of Borrower in Article III shall be true and correct on and as of the date of each Advance with the same force and effect as if made on such date, and no Event of Default nor any event which, with notice or the lapse of time or both, would constitute an Event of Default, shall have occurred.

(8) As of the date of each Advance, the Improvements (constructed and under construction) shall not have been materially damaged or destroyed by casualty, unless there shall have been deposited with Bank monies in an amount sufficient in the judgment of Bank to permit restoration of the Improvements so damaged or destroyed in accordance with the Plans.

(9) Neither Bank nor Borrower shall have received notice that any of the Construction Contract, the Bonds, or all required licences and permits, is not in full force and effect.

(10) Borrower shall have furnished to Bank the Request for Advance (hereafter defined) and where required, the contractor's certificate and the other certificates and material referred to in Section 4.4.

(11) If requested by Bank Borrower shall furnish to Bank an additional opinion of counsel in form and substance satisfactory to Bank as to such additional matters as Bank may reasonably request.

(12) If requested by Bank or required by the Title Insurer Borrower shall cause to be furnished an endorsement to the Title Policy or other instrument signed by the Title Insurer indicating that since the date of the Title Policy, there has been no change in the state of title, which endorsement or instrument shall have the effect of changing the effective date of the Title Policy to the date of such Advance.

(13) Insurance as required hereunder and in the Security Documents shall continue in full force and effect.

(14) Sufficient undisbursed funds remain in the Loan and in each cost category with respect to which the Advance is sought, to fully fund the Advance sought.

Section 4.3. In addition to the foregoing it shall be a condition precedent with respect to the Final Advance that the Bank shall have received:

(1) Evidence acceptable to Bank that the Improvements have been fully completed.

(2) All requirements and conditions for the Final Advance must be satisfied in full in order for the Final Advance to be made not later than March 1, 2009 (the "**Completion Date**").

Section 4.4. Subject to the terms of this Agreement, Bank shall make Advances to Borrower on account of the Loan in an aggregate principal amount of up to, but not more than, $6,500,000.00. The Initial Advance shall be made upon accomplishment as determined by Bank with the conditions precedent set forth in Section 4.1 hereof, and shall be used for the purposes of

satisfying existing indebtedness encumbering the Project Property and the Beach Property (i.e., the Mortgaged Property), funding Three Hundred Thousand and No/100ths ($300,000.00) Dollars into a restricted access (limited to Bank only until the Loan has been repaid and satisfied in full) demand deposit account (the "**Interest Reserve Account**") of Borrower maintained by and with Bank to be used to make monthly interest payments due upon the Loan, and paying costs of closing and otherwise incurred in connection with the Loan, as approved by Bank. Except for the Final Advance (hereafter defined), Advances subsequent to the Initial Advance shall be made from time to time as construction of the Improvements progresses, but not more frequently than once each month, in a sum equal to (a) the total expenditures incurred by the Borrower and approved by the Bank for fees and costs incurred in connection with the Loan, funding the Interest Reserve Account, the satisfaction of existing indebtedness encumbering the Mortgaged Property, interest payments upon the Loan, and the construction of the Improvements (such total expenditures incurred by Borrower being referred to as the "**Project Costs**") less Retainage, through the end of the period covered by the Request for Advance, less (b) the aggregate amount of all Advances theretofore made on account of the Loan and the amount, if any, by which the Project Costs of any category exceed the amounts allocated thereto, subject, in each case, however, to the further provisions of this Article IV. Anything to the contrary herein notwithstanding Advances for Project Costs shall not exceed the sum of $6,500,000.00 in the aggregate. After the Initial Advance Advances shall be based upon percentage of completion of the Improvements, subject, in each case, however, to the provisions of this Article IV. The Final Advance (the "**Final Advance**") shall be made only upon completion in full of the Improvements and, in applicable cases approval or acceptance for service by appropriate Governmental Authorities. The Final Advance may include, to the extent of funds available, Retainage then due.

Section 4.5.

(1) Not less than seven (7) business days prior to the making of each Advance:

(a) Borrower shall submit to Bank a request for such Advance in such form as Bank may require (the "**Request for Advance**") setting forth the total amount for which such Advance is requested broken down by categories, and, if requested by Bank, an Request for Advance shall be accompanied by receipted bills, paid invoices, payroll records or other evidence satisfactory to Bank supporting each item covered by such Request for Advance; or

(b) In the case of an Request for Advance for or including construction costs, Bank shall have received as to each such Request for Advance a fully completed Application and Certificate for Payment (AIA Document G 702) executed and acknowledged by the Contractor and certified by the Architect.

(2) Prior to the making of any Advance, Bank and its agents shall have the opportunity to verify the facts certified to by Borrower and the Contractor which shall be accomplished as expeditiously as is reasonable under the circumstances. If requested by Bank, Bank shall also have received a report addressed to Bank of a construction engineer or architect designated by Bank (all costs of which shall be borne by Borrower) certifying such matters with respect to manner and quality of construction of the Improvements and percentage of completion as Bank may deem reasonably necessary.

(3) Prior to and as a condition precedent to each of the Advances after the Initial Advance, if required by Bank Borrower shall cause to be issued to Bank a bringdown setting forth any and all liens or other adverse matters filed or recorded against or with respect to the Mortgaged Property during the relevant period and an endorsement to the Title Policy insuring that as of the date of each of said Advances no lien has been filed against the Mortgaged Property or with respect to the Improvements and that each of the Borrower Mortgage and the Guarantor Mortgage continues its lien priority as described above.

(4) Each submission of a Request for Advance shall be deemed to constitute a certification by Borrower that (a) the representations and warranties of Borrower in Article III hereof are true and correct on and as of the date of such submission with the same force and effect as if made on such date; and (b) no Event of Default, nor any event which with notice or the lapse of time or both would constitute an Event of Default, has occurred and is continuing.

(5) Advances shall not exceed $6,500,000.00 in the aggregate. Advances shall be further limited to defray costs actually incurred by Borrower for the each category of such costs approved by Bank and to the amount shown for such category.

Section 4.6.

(1) The amount of each Advance (prior to the Final Advance) for construction costs shall not in any event exceed the lesser of (a) the amount requested for construction costs in the Request for Advance, or (b) the excess, if any, of the actual value as reasonably determined by Bank of all work and labor theretofore done and materials theretofore incorporated in the Improvements over the aggregate amount of all Advances theretofore made for construction costs of the Improvements plus Retainage.

(2) If any amount allocated to a category of Project Costs is at any time not sufficient in the reasonable judgment of Bank (without taking into account any amount allocated to any contingency category) to pay all remaining Project Costs in such category in full, Bank shall have no obligation to make further Advances until Borrower shall have paid such amounts as may be required so that the amount remaining for such category is sufficient to pay such Project Costs in full, although Bank may in its reasonable discretion exercised reasonably and in good faith upon request of Borrower elect to reallocate amounts remaining in the Loan for some other category to cover the deficiency.

(3) If at any time the unadvanced portion of the Loan shall in the reasonable judgment of Bank be insufficient to pay all Project Costs Borrower shall, at the request of Bank, deposit with Bank an amount equal to the deficiency.

(4) Bank shall have no obligation to lend if at the time of any requested Advance there shall have occurred an Event of Default hereunder.

(5) Bank shall have no obligation to lend if at any time, in the reasonable judgment of Bank, all permits and agreements necessary for the construction of the Improvements are not in full force and effect or in the reasonable judgment of Bank may not be immediately available when needed.

(6) Each Advance shall be credited to Borrower's account with Bank, or at the option of Bank, may be paid by Bank directly to the party or parties who have actually furnished labor, materials or services in connection with or incidental to the construction of the Improvements or may be directly applied by Bank to the payment of the cost of any of Borrower's obligations to

Bank on account of the Loan. No further direction or authorization for such direct payment shall be required, it being understood that any such payment or application shall pro tanto satisfy the obligation of Bank hereunder and shall be deemed an Advance as fully as if made to or requested by Borrower, regardless of the actual disposition thereof by the party or parties to whom such payment is made.

(7) The making of any Advance by Bank shall not be deemed an acceptance or approval by Bank (for the benefit of Borrower or any third party) of any work done or Improvements constructed or materials furnished or installed in connection with the construction of the Improvements.

(8 Bank may apply when due directly out of any Advance any amount necessary for the payment of indirect costs, including, without limitation, interest on the Loan, fees payable to Bank, inspection and review fees and costs, and fees payable to Bank and fees of Bank's counsel with respect to the Loan. All amounts so applied shall be deemed Advances and secured by the Security Documents and guaranteed by each Guarantor's Guaranty.

ARTICLE V- AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as Borrower may borrow under this Agreement or so long as any indebtedness remains outstanding under any Loan or under any Note, Borrower shall:

Section 5.1. Deliver to Bank (a) within ninety (90) days after the end of each fiscal year, statements of income and retained earnings and a balance sheet of Borrower, unaudited but certified as to truth, accuracy and completeness by the sole or managing Member or chief financial officer of Borrower and manually signed copies of all income tax returns (both federal and state) of Borrower and, (b) within fifteen days after the date due copies of all income tax returns (including all schedules thereto) of Borrower for the immediately preceding fiscal year bearing the original signature of the sole or managing Member or other member of senior management who signed the original filed return, (c) by March 1st of each calendar year a financial statement of each Guarantor in form and substance satisfactory to Bank certified as to accuracy and completeness by the Guarantor, (d) within fifteen days after the date due copies of all income tax returns (including all schedules thereto) of each Guarantor for the immediately preceding fiscal year bearing the original signature of the each such respective Guarantor, and (e) with reasonable promptness, such other information as Bank may reasonably request.

Section 5.2. Maintain Borrower's books, accounts and records in accordance with generally accepted accounting principles and shall permit any person or entity designated in writing by Bank to visit and inspect any of Borrower's properties, books and financial records, and to make copies thereof and take extracts therefrom, and to discuss Borrower's financial affairs with Borrower's sole or managing Member, financial officers, accountants and advisors.

Section 5.3. Pay and discharge all taxes, assessments, fees, withholdings and other governmental charges or levies imposed upon Borrower, or upon Borrower's income and profits, or upon any property belonging to Borrower, prior to the date on which penalties attach thereto, unless the legality thereof shall be promptly and actively contested in good faith by appropriate proceedings, and unless adequate reserves for such liability are maintained by Borrower pending determination of such contest.

Section 5.4. Maintain Borrower's existence in good standing in the state of its organization and its qualification and good standing in all jurisdictions where such qualification is required under applicable law, and conduct Borrower's business in the manner in which it is now conducted subject only to changes made in the ordinary course of business.

Section 5.5. Promptly notify Bank in writing of the occurrence of any Event of Default, of any event which but for the passage of time, the giving of notice or both would constitute an Event of Default, or of any pending or threatened litigation no admitted by the carrier to be fully covered by insurance and claiming damages in excess of $25,000 or seeking relief that, if granted, would adversely affect the financial condition or business operations of Borrower.

Section 5.6. Maintain and keep in force insurance of the types and in the amounts customarily carried in lines of business similar to Borrower, and such other insurance as Bank may require, including, without limitation, public liability, which insurance shall be carried with companies and in amounts satisfactory to Bank. Casualty and property damage insurance shall name Bank as mortgagee or loss payee, as appropriate, and all insurance policies shall require not less than thirty (30) days written notice of cancellation. Borrower shall deliver to Bank from time to time at Bank's request copies of all such insurance policies and evidences of insurance and schedules setting forth all insurance then in effect.

Section 5.7. Keep all of Borrower's properties in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that Borrower's properties shall be fully and efficiently preserved and maintained.

Section 5.8. Perform or take, or request of Bank such action as may be necessary or advisable to perfect any lien or security interest in the Collateral or otherwise to carry out the intent of this Agreement.

Section 5.9. Pay or reimburse Bank for any out-of-pocket expenses, including attorneys' fees, incurred by Bank in preparing or enforcing this Agreement, each Note, and the Security Documents, or in collecting the Loan and any other sum due under the Note or this Agreement.

Section 5.10. Fund all of Borrower's "plans" to which the minimum funding standards of Section 302 of ERISA apply in accordance with such standards; furnish Bank, promptly upon Bank's request, copies of all reports or other statements filed with, or received from, the United States Department of Labor, the Internal Revenue Service, or the Pension Benefit Guaranty Corporation with respect to all of Borrower's "plans"; and promptly advise Bank of the occurrence of any "reportable event" or "prohibited transaction" with respect to any such "plan" (as all of the quoted terms are defined in ERISA).

Section 5.11. Comply with all applicable present and future local, state and federal laws, including, without limitation, environmental laws and regulations: notify Bank immediately if any **"hazardous substance"** (as defined in CERCLA) is released, discharged, disposed of, stored, or discovered on any real or personal property owned or leased by Borrower; notify Bank in writing within three days after Borrower receives notice from any Governmental Authority or any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; and permit Bank from time to time to observe Borrower's operations and to perform tests (including soil tests and ground water tests) for "hazardous substances" on any real or personal property owned or leased by Borrower.

Section 5.12. Maintain the Interest Reserve Account and in addition thereto maintain a business demand deposit account of Borrower (which shall at all times have on deposit therein a principal balance of not less than Five Thousand and No/100ths ($5,000.00) Dollars), with Bank.

Section 5.13. Use the proceeds of the Loan only to pay Project Costs, and such other use(s) as Bank shall specifically approve in writing.

Section 5.14. Timely comply with all requirements of Governmental Authorities applicable to the construction of the Improvements, except where contested in good faith and by appropriate proceedings, and in accordance with the approved Plans such that the Improvements shall be fully completed on or prior to the Completion Date.

Section 5.15. If requested by Bank, deposit monthly in escrow with Bank such sums as may be necessary to pay when due all ad valorem taxes assessed against the Mortgaged Property, any special assessments with respect to the Mortgaged Property and the premiums for all insurance coverage with respect to the Project Property.

Section 5.16. Cause construction of the Improvements to be timely commenced and to be prosecuted with diligence and continuity to completion, and cause the same to be timely completed in a good and workmanlike manner in accordance with the Plans, respectively, and in compliance with all requirements of Governmental Authorities and any restrictive covenants applicable to the Project Property (subject only to delays by reason of force majeure), free and clear of all liens or claims of liens for materials supplied or work performed in connection therewith, such that the Improvements shall be fully completed on or prior to the Completion Date.

Section 5.17. Unless prior written approval has been obtained from Bank, not purchase any materials in any manner that will result in the ownership thereof not vesting unconditionally in the Borrower, free from all liens, charges, encumbrances and security interests, on delivery of such materials to the Project Property. Borrower shall cause all materials which are acquired or furnished to be but not yet incorporated into the Improvements and for which Borrower is entitled to an Advance to be stored at the Project Property, or at other locations approved by Bank, in each case under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects, and shall deliver to Bank, on demand, copies of any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to or interest in any such materials.

ARTICLE VI - NEGATIVE COVENANTS

Borrower covenants and agrees that, without the prior written consent of Bank, so long as any indebtedness remains outstanding under any Loan or any Note, Borrower will not:

Section 6.1. Use any proceeds of a Loan except for the purposes stated in Section 5.13.

Section 6.2. Create, incur, assume, or suffer to exist any indebtedness of any description whatsoever not existing as of the date of this Agreement, except (i) indebtedness incurred under this Agreement, (ii) any trade indebtedness incurred in the ordinary course of business payable within 60 days of its incurrence.

Section 6.3. Merge, consolidate or enter into a partnership or joint venture with any other person or entity; change, discharge or terminate present controlling management, or sell, lease,

transfer or otherwise dispose of all or any substantial portion of its assets, except for cash in the ordinary course of business.

Section 6.4. Guarantee or become contingently liable for any obligation or indebtedness of any other person or entity, except that Borrower may endorse negotiable instruments for collection in the ordinary course of business.

Section 6.5. Make any loans, advances or extensions of credit to any person or entity.

Section 6.6. Pay, declare or disburse any dividend or profit or redeem or purchase any Member's interest in whole or in part, provided, however, that if Borrower has elected partnership or Subchapter S status for income tax purposes Borrower may pay distributions not to exceed the amount of income taxes payable by its Member(s) solely attributable to Borrower's income.

Section 6.7. Grant any lien on or security interest in, or otherwise encumber, any of its properties or assets including, without limitation, the Collateral, and, except for liens for taxes not yet due and payable or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves are being maintained by Borrower, Borrower shall not permit to exist any lien, security interest or other encumbrance (other than easements, such as for utilities, which solely service the Project) on any of its properties or assets.

Section 6.8. Take, or fail to take, any act if such act or failure to act results in the imposition of withdrawal liability under Title IV of ERISA.

Section 6.9. Release, discharge, dispose of, store, accept or receive for storage or disposal, or allow to be stored or disposed of, any "hazardous substance" (as defined in CERCLA) on or in any real or personal property owned or leased by Borrower, except as otherwise expressly consented to by Bank in writing; or release, discharge, use, transport, or dispose of any "hazardous substance" in an unlawful manner.

Section 6.10. Change from the current fiscal year for financial and accounting purposes.

Section 6.11. Change the general character of the presently intended business of Borrower.

ARTICLE VII - EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Any one or more of the following shall constitute an event of default (an "**Event of Default**") hereunder by Borrower:

(1) Failure to pay any payment of principal or interest due on the Note or any other sum due hereunder when due; or

(2) Failure to pay when due any payment of principal or interest due on any other obligation for money borrowed on for the deferred purchase price of goods or services; or

(3) Default under the Note, any Security Document, any Guaranty or any other document, note, agreement, mortgage, security agreement, instrument, or understanding with, held by, or executed in favor of Bank with respect to the Loan, not cured within the cure period therein granted, if any; or

(4) Default or any event of default shall occur in the payment of any indebtedness or the performance of any obligation with respect to any other note, instrument granting a security interest securing such note or guaranteeing such note, or any loan agreement or credit agreement relating thereto of Borrower to Bank not cured within the cure period therein granted, if any.

(5) Should any representation or warranty contained herein or made by or furnished on behalf of Borrower in connection herewith be false or misleading in any material respect as of the date made; or

(6) Failure to timely perform or observe any covenant or agreement contained in this Agreement; or

(7) Failure to pay debts generally as they become due; or

(8) Borrower or a Guarantor making or taking any action to make an assignment for the benefit of creditors, or petitioning or taking any action to petition any tribunal for the appointment of a custodian, receiver or any trustee for it or him, or a substantial part of its, his or her assets, or commencing or taking any action to commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or debtor relief law or statute of any jurisdiction, whether now or hereafter in effect, including, without limitation, any chapter of the federal Bankruptcy Code; or, if there shall have been filed or commenced against Borrower or a Guarantor any such petition, application or proceeding which is not dismissed within 30 days or in which an order for relief is entered; or should Borrower or a Guarantor by any act or omission indicate its, his or her approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it ,him or her, or any substantial part of any of its, his or her properties; or should Borrower or any Guarantor suffer to exist any such custodianship, receivership or trusteeship; or

(9) Borrower's or a Guarantor's concealing, removing, or permitting to be concealed or removed, any part of its, his or her property, with intent to hinder, delay or defraud its, his or her creditors or any of them, or making or suffering a transfer of any of its, his or her property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or making any transfer of its, his or her property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its, his or her property through legal proceedings or distraint which is not vacated within 30 days after the date thereof; or

(10) Occurrence of any of the following with respect to Borrower or a Guarantor; death (with respect to individuals), dissolution or cessation of business (if a partnership, corporation, or other organization), or insolvency; or

(11) Any party shall obtain an order or decree in any court of competent jurisdiction enjoining or delaying the construction of the Improvements, or enjoining or prohibiting the carrying out of the terms and conditions hereof,

of the Note or of any Security Document and such proceedings are not discontinued or such order or decree is not vacated within 30 days; or

(12) Borrower shall neglect, refuse or fail to keep in full force and effect any permit or approval required to be kept in effect by any Governmental Authority in connection with the construction of the Improvements; or

(13) Borrower shall abandon construction of the Improvements with the intent not to resume construction for a period of 5 consecutive days; or

(14) The Mortgaged Property or any material part thereof shall be condemned or the Improvements or any material part thereof shall be substantially damaged by fire or other casualty in such manner as to preclude, in Bank's sole judgment, the timely completion of construction of the Improvements in accordance with the Plans on or prior to the Completion Date; or

(15) A survey at any time shall show an encroachment upon any street, easement, right-of-way or adjoining property or violate any setback requirement, or shall show that any structure on adjoining property encroaches on the Project Property and Borrower does not begin to diligently begin to cure the same within 30 days after Borrower becomes aware of same; or

(16) Any of the materials used in connection with the construction or operation of the Improvements shall not be in accordance with the Plans.

Section 7.2. Upon the occurrence and continuation of an Event of Default, Bank may (i) terminate all obligations of Bank to Borrower, including, without limitation, all obligations to lend money under this Agreement, (ii) declare immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived, the Note and any other note or obligation of Borrower held by Bank, including, without limitation, principal, accrued interest and costs of collection (including, without limitation, attorneys' fee if collected by or through an attorney, in bankruptcy or in other judicial proceedings) and (iii) pursue any remedy available to it under this Agreement, under the Note, under any Security Document, under any other note of Borrower held by Bank, or available at law or in equity.

Bank shall have the further right, upon the happening of any Event of Default, in addition to any rights or remedies available to the foregoing, to enter into and take possession of the Mortgaged Property(and any materials acquired or furnished in connection with the construction of, but not incorporated into, the Improvements) and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and employ security personnel to protect the Mortgaged Property (and all materials); and all sums so expended by Bank shall be deemed to have been advanced to Borrower hereunder on account of the Loan. For this purpose, Borrower hereby irrevocably constitutes and appoints Bank its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution (1) to complete, or cause to be completed, the Improvements in the name of Borrower in the manner called for by the Plans; (2) to make such additions and changes to and corrections of the Plans as may be necessary or desirable to complete the Improvements substantially in the manner contemplated by the Plans; (3) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (4) to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property or any part thereof, or may be necessary or desirable for the completion of the work or the clearance of title; (5) to execute all applications and certificates in the name of Borrower which may be required by any construction or other contract; (6) to prosecute and defend all actions

or proceedings in connection with the construction of the Improvements and to take such action and require such performance as Bank deems necessary; (7) to enter such leases and other agreements as are necessary to secure the Anchor Tenant as a resident of the Project, and (8) generally to do any and every act with respect to the construction and use of the Improvements and the proposed Project as Borrower may do in its own behalf.

ARTICLE VIII - DEFINITIONS

Section 8.1.

As used in this Agreement, the following terms shall have the meanings set forth below:

(1) Accounting terms used in or to comply with the terms of this Agreement such as "net income," "working capital," "current assets," and "current liabilities" shall have the meanings normally given them by, and shall be calculated, both as to amounts and classification of items, in accordance with, generally accepted accounting principles.

(2) "**Commitment**" means that letter of Bank addressed to the Guarantors dated May 30, 2008, with respect to the Loan.

(3) "**Governmental Authority**" means each one of and "**Governmental Authorities**" means all of the United State of America, the State of South Carolina and all political subdivisions thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

(4) "**Guarantor**" means each of and "**Guarantors**" means all of Peggy Wheeler-Cribb, Will Darwin Wheeler, and any person or entity who endorses the Note or who now or hereafter guarantees payment or collection of the Loan in whole or in part.

(5) "**Note**" is defined in Section 1.1 and includes any promissory note or notes given in extension or renewal of, or in substitution for, the original Note.

Other capitalized terms are otherwise defined in this Agreement or an Exhibit or Schedule hereto.

ARTICLE IX - MISCELLANEOUS

Section 9.1. No delay or failure on the part of Bank in the exercise of any right, power or privilege granted under this Agreement, the Note, each of the Security Documents or available at law or in equity, shall impair any such right, power or privilege or be construed as a waiver of any Event of Default of any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege. No waiver shall be valid against Bank unless made in writing and signed by Bank, and then only to the extent expressly specified therein.

Section 9.2. All notices and communications provided for hereunder shall be in writing, delivered by hand, by electronic mail (provided, however, any notice given by electronic mail shall,

in order to be effective, be also promptly given by mail in the method herein provided) or sent by first-class or certified mail, postage prepaid to the following addresses:

If to Bank: First South Bank
1333 Main Street, Suite 100
Columbia, SC 29201
Attention: F. Wayne Lovelace, Senior Vice President

If to Borrower: South Causeway, LLC
Post Office Box 3727
Pawleys Island, South Carolina 29585
Attention: Peggy Wheeler-Cribb

Borrower or Bank, or either of them, may change addresses for notice purposes by notice to the other party in the manner provided herein. All notices, demands, consents or other communications hereunder shall be in writing and shall be deemed effective when delivered personally or 3 days after mailing when sent by registered or certified mail, first class postage prepaid, addressed (1) if to Borrower, at the address set forth above, or (2) if to Bank, at its address set forth above, or as to either party, at such other address as it may specify in a notice to the other party(ies).

Section 9.3. Borrower shall pay (1) all out-of-pocket expenses of Bank in connection with the preparation, execution and delivery of this Agreement, the Note, the Security Documents, the Guaranties, any amendments hereto or thereto and any consents or waivers hereunder or thereunder (including the fees and expenses of Bank's counsel), (2) all taxes, (except Bank's income taxes), fees or other assessments, including stamp taxes, if any, upon any documents or transactions contemplated hereby or in connection with the recording and filing of the Borrower Mortgage, the Guarantor Mortgage, the Financing Statements and any other Security Document; and (3) costs of collection (including Bank's legal costs ands fees) if default is made in the payment of the Loan or any other sums payable to Bank hereunder or under the Security Documents. Borrower's obligations under this Section 9.3 shall survive the payment of the Loan. Borrower's obligations to make such payments shall exist whether or not any Advances are made hereunder unless Bank wrongfully and intentionally refuses to make such Advances.

Section 9.4. Borrower shall be solely responsible for the payment of any commissions due (if any). Bank represents that it has not dealt with any broker in connection with this transaction. Borrower shall indemnify and save harmless Bank from and against any and all claims for any brokerage commission arising out of the making of the Loans or the transactions contemplated hereby. Borrower's obligation under this Section 9.4 shall survive the payment of the Loans.

Section 9.5. All payments and prepayments of principal, interest and other amounts payable to Bank hereunder under the Note or under any Security Document shall be made in immediately available funds at Bank's principal office in Columbia, South Carolina, not later than 12:00 o'clock noon Columbia time on the date on which such payment shall become due. Borrower hereby authorizes Bank to charge principal, interest or any other amounts payable by Borrower hereunder, under the Note or any Security Document, as and when the same become due and payable, directly against the Interest Reserve Account or any general deposit account maintained by Borrower with Bank (up to the credit balance thereof), but Bank shall not be required to effect any such debit. If any principal of or interest on the Loan or any other amount payable by Borrower hereunder falls due on a Saturday, Sunday or public holiday at the place of payment, then such due date shall be extended to the next succeeding full business day at such place and interest shall be payable in respect to each such extension of principal.

Section 9.6. All proceedings taken in connection with the transactions provided for herein, including without limitation the surveys, appraisals and documents required or contemplated by this Agreement, the persons responsible for the execution and preparation thereof, all contractors, all sureties, all insurers and the forms of construction contracts, bonds, guaranties and policies of insurance required hereby, shall be satisfactory in form, scope and content to Bank.

Section 9.7. Borrower shall receive Advances hereunder and shall hold the same as a trust fund for the sole purpose of paying the costs for which such Advance was made.

Section 9.8. Nothing in this Agreement, whether express or implied, shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

Section 9.9. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 9.10. The terms, conditions and provisions of the Commitment are incorporated herein and made a part hereof by reference. To the extent that any specific inconsistencies exist between the Commitment, and this Agreement, the Note or any of the Security Documents, the provisions of this Agreement, the Note or such Security Document, respectively, shall govern; to the extent that any specific inconsistencies exist between this Agreement, and the Note or any of the Security Documents, the provisions of this Agreement shall govern.

Section 9.11. Notwithstanding anything to the contrary contained in any of this Agreement, the Commitment, the Note or the Security Documents, the obligations of Borrower to Bank under this Agreement, the Note and the Security Documents are subject to the limitation that payments of interest to Bank shall not be required to the extent that receipt of any such payment by Bank would be contrary to provisions of law applicable to Bank which limit the maximum rate of interest which may be charged or collected by Bank.

Section 9.12. This Agreement, the Commitment, the Note and the Security Documents shall be governed by and construed and enforced in accordance with the substantive laws of the United States and the State of South Carolina, without regard to that state's rules governing conflicts of law.

Section 9.13. All representations and warranties contained in this Agreement or made or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loan and shall continue in effect until the Note and the interest thereon are paid in full.

Section 9.14. This Agreement shall bind and inure to the benefit of Borrower and Bank, and their respective successors and assigns; provided, however, Borrower shall have no right to assign its rights or obligations hereunder to any person or entity.

Section 9.15. Time is of the essence in the payment and performance of every term and covenant of this Agreement, the Note and each of the Security Documents.

Section 9.16. This Agreement may be amended or modified, and Borrower may take any action herein prohibited, or omit to perform any action required to be performed, only if Borrower shall obtain the prior written consent of Bank to such amendment, modification, action or omission to act, and no course of dealing between Borrower and Bank shall operate as a waiver of any right,

power or privilege granted under this Agreement, under the Note or the Security Documents, or available at law or in equity. This Agreement, the Note, the Security Documents and the Commitment contain the entire agreement between Borrower and Bank regarding the Loan and the Collateral. No oral representations or statements shall be binding on Bank, and no agent of Bank has the authority to vary the terms of this Agreement except in writing on the face hereof or on a separate page attached hereto.

Section 9.17. All rights, powers and privileges granted hereunder shall be cumulative, and shall not be exclusive of any other rights, powers and privileges granted hereby, by the Note, the Security Documents or any other document or agreement, or available at law or in equity.

Section 9.18. Upon the occurrence and during the continuation of an Event of Default, Borrower recognizes Bank's right, without notice or demand, to apply any indebtedness due or to become due to Borrower from Bank in satisfaction of any of the indebtedness, liabilities or obligations of Borrower under this Agreement, under the Note, under the Security Documents or under any other note, instrument, agreement, document or writing of Borrower held by or executed in favor of Bank, including, without limitation, the right to set off against any deposits or cash collateral of Borrower held by Bank. In addition to the right of setoff, as additional collateral for the Loan, Borrower hereby grants to Bank a continuing lien on and security interest in all deposit accounts of Borrower now or hereafter held by Bank, including all certificates of deposits now or hereafter issued to Borrower by Bank.

Section 9.19. Borrower hereby agrees to indemnify Bank and its officers, directors, agents and attorneys against, and to hold Bank and all such other persons harmless from, any claims, demands, liabilities, costs, damages, and judgments (including, without limitation, liability under CERCLA, the Federal Resource Conservation and Recovery Act, and every other environmental law and regulation, and costs of defense and attorney's fees) resulting from any representation or warranty made by Borrower or on Borrower's behalf pursuant to Article III of this Agreement having been false when made, or resulting from Borrower's breach of any of the covenants set forth in Article V and Article VI of this Agreement. This agreement of indemnity shall be a continuing agreement and shall survive payment of the Loan and the Note and termination of this Agreement. Further, Borrower hereby agrees to indemnify Bank and its officers, directors, agents and attorneys against, and to hold Bank and all such other persons harmless from any and all loss, liability, suits, obligations, fines, damages, judgments, penalties, claims, charges, expenses and all out-of-pocket costs which may be imposed on, incurred or paid by or assessed against the Bank by reason of, on account of or in connection with the occurrence of (i) any default or Event of Default under this Agreement, (ii) Bank exercising any of its rights or remedies under this Agreement, the Note or any of the Security Documents, (iii) the commencement of any action by the Bank against Borrower or a Guarantor (including, without limitation, defenses or counterclaims asserted against the Bank), (iv) any bankruptcy proceeding involving Borrower or a Guarantor, (v) any other transaction arising out of or in any way connected with this Agreement, the Note, the Security Documents or the Collateral, or (vi) any suit of any nature in which the Bank is named as a party as a result of the foregoing. All indemnification obligations as set forth herein shall be secured by all Collateral. Provided, however, notwithstanding the foregoing Borrower shall not be obligated or responsible to indemnify or hold Bank harmless from any loss, liability, suit, obligation, fine, damage, judgment, penalty, claim, charge, expense or out-of-pocket cost incurred by Bank as the sole and exclusive result of the sole negligence of Bank as determined by a final unappealable decision of a court of competent jurisdiction.

Section 9.20. Borrower agrees that any dispute arising out of this Agreement shall be resolved solely by the Courts of the State of South Carolina (including United States District Courts

located therein) sitting without jury. **BORROWER EXPRESSLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY.**

WITNESS the hand and seal of the parties hereto on or as of the date first above written.

BORROWER:

SOUTH CAUSEWAY, LLC

By: _____ (SEAL)
Its: Member

BANK:

FIRST SOUTH BANK

By: _____
Its: Senior Vice President

SCHEDULE 1

a. Mortgage of Real Estate (first) given by Borrower, in the original principal amount of $6,500,000.00 encumbering the Project Property which consists of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres real property, and more particularly described on Exhibit A of Schedule 2, together with the Improvements, located in Georgetown County, South Carolina (the **"Borrower Mortgage"**).

b. Mortgage of Real Estate (first) given by the Guarantor, Will Darwin Wheeler, in the original principal amount of $6,500,000.00 encumbering the Beach P having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006, and more particularly described on Exhibit A of Schedule 2, located in Georgetown County, South Carolina (the **"Guarantor Mortgage"**).

c. Commercial Security Agreement of Borrower in favor of Bank.

d. UCC-1 Financing Statements of Borrower as debtor in favor of Bank as secured party (the **"Financing Statements"**).

e. Collateral Assignment of Construction Contract (the **"Construction Contract Assignment"**) acknowledged by Contractor.

f. Assignment of Contract Documents and Plans of Borrower, acknowledged by the Engineer.

g. Assignment of demand deposit account of Borrower to Bank.

h. Assignment of money market account of Borrower to Bank.

SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "**Debtor**") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "**Land**") and the improvements thereto (collectively, without limitation, the "**Infrastructure**") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;

(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;

(All of the foregoing personal property described in (a) and (b) above are referred to as the "**Tangible Personalty**". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "**Premises**".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;

(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

EXHIBIT A
TO LOAN AGREEMENT

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23. 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30; said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June ____, 2008, recorded in the office of the Register of Deeds for Georgetown County on June ___, 2008, in Record Book _____ at Page _____.

ALSO:

All that certain piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as Lot 4 on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

ALSO: A nonexclusive easement of ingress and egress over, across and upon that certain shaded area

"Gravel Driveway" adjacent to Lot 4 as shown on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

Being a portion of the premises conveyed to Will D. Wheeler by Porter B. Rose, John I. Rose, II, Bennett S. Rose and Patricia R. Gilmore by Deed dated March 11, 2003, recorded in the office of the Register of Deeds for Georgetown County on March 18, 2003, in Deed Book 1364 at Page 232.

LAW OFFICES
HINDS, COWAN, STRANGE & GEER
804 FRONT STREET
GEORGETOWN, SOUTH CAROLINA 29440

MAILING ADDRESS:
POST OFFICE DRAWER 1410
GEORGETOWN, SOUTH CAROLINA 29442

DOUGLAS L. HINDS
WILLIAM S. COWAN
HAL M. STRANGE
GEORGE R. GEER, JR.

TELEPHONE (843) 527-2441
FACSIMILE (843) 527-0066
E-MAIL HCSG@sc.rr.com

June 25, 2008

First South Bank
1333 Main Street, Suite 100
Columbia, SC 29201
Attn: F. Wayne Lovelace, Senior Vice President

Re: $6,500,000.00 development Loan (the "Loan") of First South Bank ("Bank") to South Causeway, LLC ("Borrower"), payment and performance of which is guaranteed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (each a "Guarantor" and collectively the "Guarantors")

Dear Sir:

We refer to the Loan Agreement (the "Agreement") of even date herewith between the Bank and the Borrower with respect to the Loan. Unless otherwise defined herein or the context otherwise requires, this opinion uses capitalized terms with the respective meanings ascribed to them in the Agreement. We have acted as counsel to the Borrower and the Guarantors in connection with the Loan. This opinion is delivered to you pursuant to the requirements of the Agreement and at the direction of our clients.

We have examined the Agreement, the Note, the Security Agreement, the Borrower Mortgage, the Financing Statements, and each and every one of the other Security Documents to be entered or given by Borrower (collectively the "Loan Documents"), and the Guarantor Mortgage and each of Guaranties. We have made inquiry of the Borrower and the Guarantor and have also examined, reviewed and relied upon to the extent we deem appropriate such other documents, records, abstracts, reports, papers, indices, books, certificates, both public and private, and other instruments, and matters of law, and have made such investigations as we deemed necessary or relevant for the rendering of this opinion.

Based thereupon it is our opinion that:

1. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina.

2. Borrower has qualified to do business and is in good standing in every jurisdiction where its conduct of business, ownership of property or other activities requires such qualifications under the laws of such jurisdiction.

3. Borrower has full power, authority and legal right to own its properties, to carry on its business and to enter into and perform its obligations under the Loan Documents.

4. The execution and delivery by Borrower of the Loan Documents through the person therein indicated to be its duly authorized representative, have been duly authorized by all necessary action of the Borrower.

5. Neither the execution and delivery of the Loan Documents by the Borrower, nor the execution and delivery of the Guarantor Mortgage and the Guaranties by the Guarantors, nor the consummation of the transactions contemplated thereby by each of the foregoing, nor the performance by Borrower and each Guarantor of its, his and her respective obligations thereunder, (a) violate, conflict with, breach or constitute a default under (i) any statute, law, rule, regulation, order, writ, decree, injunction or other proceeding of any court, regulatory body or other Governmental Authority, (ii) Borrower's Articles of Organization, Operating Agreement or similar charter or organizational document, or any duly adopted resolutions of Borrower presently in force or effect, or (iii) any mortgage, indenture, contract, agreement, or other instrument to which Borrower or a Guarantor (or any assets or properties of Borrower or a Guarantor, respectively) is subject or by which Borrower or a Guarantor is bound; (b) results in or constitutes an event by reason of which any holder of indebtedness of Borrower or a Guarantor would be entitled to accelerate such indebtedness in whole or in part; or (c) results in the creation or imposition of any security interest, lien, encumbrance or charge on or upon any asset or property of Borrower or a Guarantor (other than liens and security interests created pursuant to the Loan Documents and the Guarantor Mortgage).

6. There are no actions, suits or proceedings pending or, to the best of our knowledge (after due inquiry) threatened, against or affecting the Borrower or either Guarantor before or by any court, administrative agency, arbitrator or governmental body with respect to any of the transactions contemplated by the Loan Documents, the Guarantor Mortgage and the Guaranties, respectively, or which will, if determined adversely to Borrower or a Guarantor, respectively, materially and adversely affect its, his or her business, assets, operations or condition, financial or otherwise, or adversely affects its, his or her ability to perform its, his or her obligations under the Loan Documents, the Guarantor Mortgage and the respective Guaranties.

7. Borrower and each Guarantor has each obtained or made all necessary consents, approvals, waivers and notifications of stockholders, creditors, and other non-governmental persons, in connection with the execution and delivery of the Loan Documents, the Guarantor Mortgage and each of the Guaranties.

8. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required

in connection with Borrower's execution, delivery, and performance of its obligations under, or the consummation of the transactions contemplated by, the Loan Documents.

9. The Loan Documents constitute legal, valid and binding obligations of Borrower, enforceable against the Borrower in accordance with their terms.

10. Will Darwin Wheeler has executed the Guarantor Mortgage, and the Guarantor Mortgage constitutes the legal, valid and binding obligations of Will Darwin Wheeler enforceable against the Guarantors in accordance with its terms.

11. Each Guarantor has executed the Guaranty intended for such respective Guarantor, and the Guaranty of each such Guarantor constitutes the legal, valid and binding obligations of such Guarantor, enforceable against such Guarantor in accordance with its terms.

12. The Note is entitled to the benefit and security afforded by the Guarantor Mortgage, and the Borrower Mortgage and the other Security Documents.

13. No taxes, fees, or other charges are payable to any Governmental Authority in connection with the execution and delivery of the Loan Documents, or the consummation of the transactions therein contemplated, except for nominal recording taxes or fees payable in connection with the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements.

14. The execution and delivery of the Security Documents, and the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements, create a valid and perfected security interest in the Bank in the Collateral. No other filings in any jurisdiction are necessary to perfect the security interest of the Bank in the Collateral as against any third parties, and no further action is required to create, preserve, or perfect such security interest, except that an appropriate continuation statement with respect to each of the Financing Statements must be timely filed at within six months prior to each five year interval after the original filing in order to maintain the perfection of such security interest.

15. The Loan and all of the Loan Documents are governed by the laws of the State of South Carolina and the interest charged by and to be paid to the Bank as set forth in the Note is not usurious under those laws.

Very truly yours,

HINDS, COWAN, STRANGE & GEER

Douglas L. Hinds

DLH/rab

From: WheelerCribb@aol.com [mailto:WheelerCribb@aol.com]
Sent: Tuesday, September 30, 2008 10:28 PM
To: Lovelace, Wayne
Cc: wwheeler2@sc.rr.com
Subject: South Causeway, LLC

PLAINTIFF'S EXHIBIT F

Wayne, Darwin is in Florida and if we can work through this without going to Columbia we would certainly prefer not to.

Is there anything we aren't doing in compliance with our loan agreement? If so please advise us immediately. When you came and solicited us you knew we had gone through a million in interest with the other loans we had with you. When you came to us you were offering to finance the entire project including interest payments up to March 2010 and said you could find us an insurance company for our permanent financing.
We knew and talked about having never done a lease ourselves there would be some muddling through. We sat down with Steve Strickland, Doug Hinds and George Geer and struck a lot of things and they have sent back for us to go through again. We fully expect to work together with Lowe's to get a workable lease. We feel it would be easier to sell the property with a Lowe's lease in place and Lowe's said they had no problem with that.

We have sent a final contract to CVS and Rite Aid has made an offer last week, but we opted to go with CVS.

About two weeks ago we decided with the economy as it we would like to sell it and we have John Drawn with Chicora quietly trying to sell it (We offered to sell it with us keeping two or three out parcels). We don't feel anything will move before the first of the year and it may take until June. If we don't have anything by January we are considering listing it with an auction company to sell at auction in April.

We certainly expect you to honor the interest commitment you have made to us and we may need up to a year to sell and close. We fully expect you to fund our interest to give us time to dispose of this asset. You not only have this asset you have the deed to Darwin's lot.
If you want or need to do away with the construction part of the loan that is fine but we fully expect you to honor your commitment you made to us at the restaurant at Pawleys.

We are open to suggestions and if we aren't complying we would appreciate knowing so we can.

I will not be on line tomorrow. Wednesday's I spend the day in town. I have Bible Study from 9:30 to 12:00. Then I have prayer time from 12:00 to 1:00. I will check my phone messages before going to pray. I will be available by phone from 1:00 until 3:30 when I do activities with my special needs students until 6:00.

Thanks, Peggy

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PLAINTIFF'S EXHIBIT 9

AGREEMENT

This Agreement (this "Agreement") made and entered into as of the 10th day of April, 2009 (the "Effective Date"), by First South Bank ("Bank") on the one hand, and South Causeway, LLC ("Borrower"), Peggy Wheeler-Cribb and Will Darwin Wheeler (individually each a "Guarantor" and collectively "Guarantors") on the other hand.

PRELIMINARY STATEMENT

HERETOFORE on or about June 25, 2008, Bank made a loan (the "Loan") unto Borrower, a South Carolina limited liability company, in the original principal amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars pursuant to a Loan Agreement (the "Loan Agreement") dated June 25, 2008 and entered between Bank and Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement unless the context hereof requires otherwise. Bank has advanced, and there is currently outstanding, Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths ($4,769,725.23) Dollars (the "Outstanding Balance") in principal upon the Loan. The obligation of Borrower to repay the Loan are evidenced by the Note executed by the Borrower. Timely payment and performance of the Note is guaranteed by a Guaranty executed by each Guarantor and dated June 25, 2008. Payment and performance of Borrower's obligations with respect to the Loan are secured in part by a first mortgage lien evidenced by the Borrower Mortgage given by the Guarantor Will Darwin Wheeler and encumbering and comprising a first mortgage lien upon certain unimproved real property (the "Guarantor Parcel") having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006. The Borrower Mortgage was recorded in the ROD Office for Georgetown County, South Carolina on June 25, 2008, in Book 990at Page 265.

Borrower has failed to pay timely 2008 Georgetown County, South Carolina, property taxes (the "2008 Taxes") which were due January 15, 2009, upon the Project Property (encumbered by the Borrower Mortgage), and such 2008 Taxes are currently past due and owing.

Borrower and Guarantors have requested that Bank satisfy and cancel the Guarantor Mortgage and accordingly release the Guarantor Parcel from the Collateral such that Bank will no longer have a lien thereupon. Bank is agreeable to so doing upon the following express conditions and provided that Borrower and Guarantors: (i) release Bank from any, every and all claims which Borrower and each Guarantor might have or consider against Bank, (ii) simultaneously with the satisfaction and release by Bank of the Guarantor Mortgage deliver to Bank the sum of Three Hundred Thousand and No/100ths ($300,000.00) Dollars which funds shall be disbursed by Bank to pay (a) all costs incurred by Bank, including Bank's attorneys' fees (including, without limitation, Bank's attorneys' fees not heretofore paid), in connection with the Loan and with respect to this Agreement and the preparation hereof (collectively, without limitation, "Bank's Costs"), and (b) the 2008 Taxes (which includes all penalties and interest charged by the taxing authority with respect

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thereto), and the balance thereof shall be deposited by the Bank into the Interest Reserve Account and disbursed by Bank, together with funds already on deposit therein, to pay interest upon the Note as the same shall accrue and be due and payable, pay Georgetown County, South Carolina, property taxes due for the calendar year 2009 (the "2009 Taxes"), when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described in the Loan Agreement (with any funds remaining therein, if any, to be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan in full), (iii) acknowledge and agree that Bank shall not, nor shall Bank have any obligation to, make any Advance upon the Loan in excess of the Outstanding Balance, and (iv) agree and acknowledge with Bank the amendment and modification of the Loan Agreement, the Note, the Security Documents and the Guaranties (together with all other instruments, made, given, executed or delivered by Borrower or Guarantors in connection with the Loan the "Loan Documents"), to reduce the term of the Loan such that the Note and all obligations of the Borrower with respect to the Loan shall be due and payable not on July 5, 2011, but on July 5, 2010. Borrower and Guarantors are agreeable to these said terms and conditions imposed by Bank as are hereinabove and hereinafter set forth and accordingly the parties have entered this Agreement.

TEXT OF AGREEMENT AND RELEASE

NOW THEREFORE, for and in consideration of these premises and the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The factual recitals set forth in the Preliminary Statement are hereby incorporated as part hereof, and Borrower and each Guarantor, by execution hereof, hereby confirms the truth and accuracy thereof.

2. The terms and provisions hereof shall be deemed to and shall modify and amend the terms and provisions of the Loan Agreement, the Note, the Security Documents and each of the Guaranties, but shall not otherwise modify or amend the terms of any Loan Documents.. Other than as expressly set forth herein each and every term, provision and condition of each and every Loan Document remains in full effect, and as modified and amended hereby, is hereby ratified and affirmed.

3. Borrower and each Guarantor hereby, and by these presents does, on its, his and her behalf, respectively, and on behalf of its, his and her respective legal representatives, heirs, successors and assigns, remise, release and forever discharge Bank, its successors, assigns, officers, directors, shareholders, employees, attorneys, agents and servants (collectively and individually the "Released Parties"), of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands, whatsoever,

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both at law and in equity, which against the said Released Parties and any of them, Borrower and each Guarantor ever had, now has or which Borrower, each Guarantor, or its, his or her respective personal representatives, heirs, successors and assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour and minute of the execution of these presents, including, without limitation, with respect to the Loan, and any matter or thing whatever arising out of the same, either known or unknown at this time, apparent or not apparent, and both present and future.

4. Bank, Borrower and Guarantors agree that as of the date hereof the Outstanding Balance of the Loan is Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths ($4,769,725.23) Dollars. Borrower and each Guarantor further acknowledges and agrees that Bank shall not be obligated to make, and neither Borrower nor either Guarantor shall have any right to demand, request or otherwise require or seek to have Bank to make any further Advance upon the Loan, nor shall Bank be otherwise obligated or required in any fashion to loan or make available for borrowing any funds of the Loan in addition to the Outstanding Balance.

5. Bank has simultaneously with the entering hereof, delivered, in trust, unto the Borrower's and Guarantors' attorney, Robert Gwin, Esquire (the "Escrow Agent"), the Guarantor Mortgage, duly satisfied and cancelled (the "Satisfied Mortgage"). Escrow Agent shall release the Satisfied Mortgage from escrow for recording in the Georgetown County, South Carolina, ROD Office, upon, but only upon, receipt by Escrow Agent of the sum of Three Hundred Thousand and No/100ths ($300,000.00) Dollars, all of which funds shall promptly be delivered by federal funds wire transfer or such other commercially reasonable method as Bank shall select, by Escrow Agent unto Bank, and disbursed by Bank to (i) pay the 2008 taxes, (ii) pay Bank's Costs, and (iii) deposit the balance in the Interest Reserve Account to be disbursed by Bank to pay interest payments due upon the Note as and when due, to pay the 2009 Taxes when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described or permitted in the Loan Agreement and the Security Documents; any funds thereafter remaining in the Interest Reserve Account, if any, shall be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan, in full. With respect to the foregoing disbursements from the Interest Reserve Account, Borrower and Guarantors acknowledge and agree that Bank has made no representation or warranty whatsoever that the funds on deposit in the Interest Reserve Account are or will be sufficient to pay the items described above as and when due, and that nothing contained herein or in any of the Loan Documents relieves or reduces, or is intended to relieve or reduce, the absolute and unfettered obligation of Borrower and of each Guarantor to timely pay all indebtedness and other obligations (including, without limitation, 2009 taxes and all interest payments due upon the Note) as provided and required by the Loan Documents and each of them.

6. Bank and Borrower do hereby amend and modify the Note and each of the other Loan Documents as applicable, such that the term of the Note shall be reduced and all indebtedness under and with respect to the Note and Borrower's other obligations with respect to the Loan shall be due

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and payable in full July 5, 2010.

7. TIME IS OF THE ESSENCE in the performance of each, every and all of the terms, provisions and conditions hereof.

8. Borrower and each Guarantor by execution hereof does hereby represent and warrant that other than the failure to pay timely pay 2008 Taxes, Borrower and Guarantors are and will remain throughout completion of the performance of the transactions contemplated by this Agreement in full and complete compliance with all the terms, conditions, provisions and requirements of the Loan Agreement, the Note, the Guaranties and the other Loan Documents, and that other than failure to timely pay 2008 Taxes no default, event of default or Event of Default, or event or circumstance which but for the passage of time, the giving of notice, or both, would constitute a default, event of default or Event of Default, with respect to the Note, each of the Loan Documents and the Guaranty, exists.

9. All notices and communications provided for hereunder shall be in writing, delivered by hand or sent by first-class or certified mail, postage prepaid to the addresses of the parties hereto set forth in the respective Loan Documents. Bank, Borrower or either Guarantor may change address for notice purposes by notice to the other parties in the manner provided herein. All notices, demands, consents or other communications hereunder shall be deemed effective when delivered personally or by delivery service, or 3 days after mailing when sent by registered or certified mail, first class postage prepaid, addressed to each party to receive such notice at the address for such party as set forth above, or at such other address as such party may specify in a notice previously given to the other parties in the manner herein.

10. The Note and each other Loan Document as, but only to the extent, modified and amended hereby, is hereby approved, ratified, confirmed and affirmed by the Borrower and each respective Guarantor. Each Guarantor does further hereby acknowledge, agree and affirm that his and her respective Guaranty applies to, and guaranties timely payment and performance by Borrower of, all obligations of Borrower with respect to the Loan, and each of the Note and of the Security Documents, respectively.

11. The terms of this Agreement may be varied only by written agreement signed by the Bank, the Borrower and each of the Guarantors.

12. If any clause or provision of this Agreement is found to be invalid or is incapable of being enforced by any rule of law or public policy, all other clauses and provisions shall nevertheless shall remain in full force and effect.

13. This Agreement is binding upon the parties hereto and their respective heirs, successors, assigns and personal representatives.

Remainder of this page intentionally left blank.

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14. This Agreement may be executed in one or more counterparts, all of which shall collectively comprise one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement UNDER SEAL as of the Effective Date.

WITNESSES:

SOUTH CAUSEWAY, LLC

By: _____ (SEAL)
Its: Member

_____ (SEAL)
Peggy Wheeler-Cribb

_____ (SEAL)
Will Darwin Wheeler

FIRST SOUTH BANK

By: _____
Its: Senior Vice President

Initial: _____ _____

FWL

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	Civil Action Number: 2010-CP-26-01233
FIRST SOUTH BANK PLAINTIFF vs. SOUTH CAUSEWAY, LLC DEFENDANT.	**RESPONSES TO PLAINTIFF'S REQUESTS TO ADMIT ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC**

Defendant South Causeway, LLC, by and through its undersigned counsel, makes response to the Requests to Admit of Plaintiff pursuant to and in accordance with Rules 26 and 36, SCRCP as follows:

1. Please admit that the Defendant was at all times and events described in Plaintiff's Complaint and in Defendant's Amended Answer and Counterclaims in this action, represented by legal counsel of Defendant's choice, admitted to practice and in good standing in the State of South Carolina.

RESPONSE: **Denied.**

2. Please admit that at all times since the formation of Defendant, Peggy Wheeler-Crib has had full authority to execute documents on behalf of Defendant.

RESPONSE: **Admitted.**

3. Please admit that the Commitment Letter from First South Bank dated May 30, 2008 (the "Commitment Letter"), was signed by Peggy Wheeler-Cribb and Will Darwin Wheeler, a true copy of which is attached as Exhibit "G" hereto.

RESPONSE: **Defendant denies that Exhibit "G" is a Commitment Letter from First South Bank dated May 30, 2008. Further answering, Defendant admits that Exhibit "A" is a Commitment Letter from First South Bank dated May 30, 2008. Defendant further admits that the Commitment Letter was signed by Peggy Wheeler-Cribb and Will Darwin .**

4. Please admit that the Commitment Letter was executed by Peggy Wheeler-Cribb and Will Darwin Wheeler in the presence of and after an opportunity to confer with their counsel.

RESPONSE: **Denied.**

5. Please admit that the Plaintiff delivered a letter to Peggy Wheeler-Cribb and Will Darwin dated June 25, 2008 ("Release letter"), a true copy of which is attached as Exhibit "B" hereto.

RESPONSE: **Defendant is without sufficient information to truthfully admit or deny Request to Admit Number six.**

6. Please admit that none of the three events upon which Lot 4/334 Myrtle Avenue, Pawleys Island, South Carolina, 29585 would have been released as provided in the Release Letter ever occurred.

RESPONSE: **Denied.**

7. Please admit that Peggy Wheeler-Cribb, on behalf of the Defendant, executed a Universal Note and Security Agreement dated June 25, 2008 (the "Note"), in the presence of and after an opportunity to confer with its counsel, a true copy of which is attached as Exhibit "C" hereto.

RESPONSE: **Admitted.**

8. Please admit that Peggy Wheeler-Cribb, on behalf of the Defendant, executed a Loan Agreement dated June 25, 2008 (the "Loan Agreement") in the presence of and after an opportunity to confer with its counsel, a true copy of which is attached hereto as Exhibit "D" hereto.

RESPONSE: **Admitted.**

9. Please admit that the Plaintiff fully funded at closing the "Initial Advance" (the "Initial Advance") referenced in Section 4.1 of the Loan Agreement.

RESPONSE: **Denied.**

10. Please admit that Defendant never complied with the requirements set forth in Section 4.2 of the Loan Agreement to seek an "Advance" (as defined in the loan agreement) subsequent to the Initial Advance.

RESPONSE: **Denied.**

11. Please admit that the Defendant's attorney delivered to Plaintiff, an Attorney Opinion Letter dated June 25, 2008 ("Opinion Letter"), a true copy of which is attached hereto as Exhibit "E" hereto.

RESPONSE: **Defendant is without sufficient information to truthfully admit or deny Request to Admit Number Twelve.**

12. Please admit that Peggy Wheeler-Cribb, on behalf of the Defendant, sent an email to Plaintiff dated September 30, 2008 ("Email"), a true copy of which is attached hereto as Exhibit "F" hereto.

RESPONSE: **Admitted.**

13. Please admit that Peggy Wheeler-Cribb on behalf of the Defendant, executed the Agreement dated April 10, 2009 (the "Agreement") in the presence of and after an

opportunity to confer with its counsel, a true copy of which is attached hereto as Exhibit "G" hereto.

RESPONSE: **Admitted.**

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar #01068)
WByrd@TurnerPadget.com
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2411 North Oak Street, Suite 301
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Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555
ATTORNEYS FOR DEFENDANT
SOUTH CAUSEWAY, LLC

November 29, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GEORGETOWN)	Civil Action Number: 2010-CP-26-01233
FIRST SOUTH BANK)	
)	
PLAINTIFF)	
)	
vs.)	**CERTIFICATE OF SERVICE**
)	
SOUTH CAUSEWAY, LLC.)	
)	
DEFENDANT.)	
)	

I hereby certify that on this 29th day of November, 2010 a copy of the above and foregoing RESPONSE TO PLAINTIFF'S REQUEST TO ADMIT ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC has been served upon counsel of record by depositing it in the United States mail, postage prepaid and properly addressed as follows:

Donald W. Tyler, Jr., Esquire
Tyler, Cassell, Jackson, Peace & Silver, L.L.P.
Post Office Box 11656
Columbia, South Carolina 29211

Jo Ellen Shaw

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	Civil Action Number: 2010-CP-26-01233
FIRST SOUTH BANK	)	
	)	
PLAINTIFF	)	
	)	**SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUESTS TO ADMIT ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC**
vs.	)	
	)	
SOUTH CAUSEWAY, LLC	)	
	)	
DEFENDANT.	)	
	)	

Defendant South Causeway, LLC, by and through its undersigned counsel, makes supplemental response to the Requests to Admit of Plaintiff pursuant to and in accordance with Rules 26 and 36, SCRCP as follows:

3. Please admit that the Commitment Letter from First South Bank dated May 30, 2008 (the "Commitment Letter"), was signed by Peggy Wheeler-Cribb and Will Darwin Wheeler, a true copy of which is attached as Exhibit "A" hereto.

RESPONSE: **Admitted.**

5. Please admit that the Plaintiff delivered a letter to Peggy Wheeler-Cribb and Will Darwin dated June 25, 2008 ("Release letter"), a true copy of which is attached as Exhibit "B" hereto.

RESPONSE: **Defendant is without sufficient information to truthfully admit or deny Request to Admit number five. Defendant has made reasonable inquiry, and the information known or readily obtainable by it is insufficient to enable it to admit or deny Request to Admit number five. Further answering, the referenced letter is not contained**

within the files maintained by Defendant, and Defendant has no independent recollection of receiving the letter.

11. Please admit that the Defendant's attorney delivered to Plaintiff, an Attorney Opinion Letter dated June 25, 2008 ("Opinion Letter"), a true copy of which is attached hereto as Exhibit "E" hereto.

RESPONSE: Defendant is without sufficient information to truthfully admit or deny Request to Admit number eleven. Defendant has made reasonable inquiry, and the information known or readily obtainable by it is insufficient to enable it to admit or deny Request to Admit number eleven. Further answering, the referenced letter is not contained within the files maintained by Defendant, and Defendant has no independent recollection of its attorney delivering the referenced letter to Plaintiff.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar #01068)
WByrd@TurnerPadget.com
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2411 North Oak Street, Suite 301
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Telephone: (843) 213-5500
Facsimile: (843) 213-5555
ATTORNEYS FOR DEFENDANT
SOUTH CAUSEWAY, LLC

December 7, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	Civil Action Number: 2010-CP-26-01233
FIRST SOUTH BANK	)	
	)	
PLAINTIFF	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
SOUTH CAUSEWAY, LLC	)	
	)	
DEFENDANT.	)	
	)	

I hereby certify that on this 7th day of December, 2010 a copy of the above and foregoing SUPPLEMENTAL RESPONSES TO PLAINTIFF'S REQUEST TO ADMIT ON BEHALF OF DEFENDANT SOUTH CAUSEWAY, LLC has been served upon counsel of record by depositing it in the United States mail, postage prepaid and properly addressed as follows:

Donald W. Tyler, Jr., Esquire
Tyler, Cassell, Jackson, Peace & Silver, L.L.P.
Post Office Box 11656
Columbia, South Carolina 29211

Jo Ellen Shaw
Jo Ellen Shaw

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

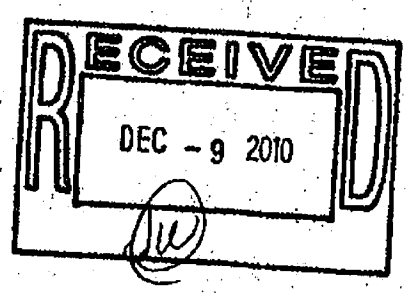
REPLY TO:

Audra M. Byrd

E-Mail: AByrd@TurnerPadget.com
Writer's Direct Dial: (843) 213-5520
Direct Fax: (843) 213-5620

December 7, 2010

Donald W. Tyler, Esquire
Tyler Cassell Jackson Peace & Silver, LLP
Post Office Box 11656
Columbia, SC 29211



Re: **First South Bank v. South Causeway, LLC**
Civil Action Number: 2010-CP-22-01233
Our File Number: 10748.00101

Dear Mr. Tyler:

Enclosed herewith please find South Causeway, LLC's Supplemental Responses to Plaintiff's Requests to Admit, along with the appropriate Certificate of Service in the above matter.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

Audra M. Byrd

Audra M. Byrd

Enclosures

TPGL 3558795v1

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN

2010-CP-22-01233

FIRST SOUTH BANK,

Plaintiff,

vs. Case No. 2010-CP-22-1233

SOUTH CAUSEWAY, LLC,

Defendant.

CERTIFIED COPY

D E P O S I T I O N

WITNESS: DOUGLAS L. HINDS

DATE: Friday, March 11, 2011

TIME: 2:10 p.m.

LOCATION: Hinds, Cowan, Strange & Geer
604 Front Street
Georgetown, South Carolina

TAKEN BY: Attorneys for Plaintiff

REPORTED BY: TERESA J. F. BAUTZ
Registered Professional Reporter

- -

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

ATTORNEYS FOR THE PLAINTIFF:

TYLER, CASSELL, JACKSON, PEACE & SILVER, L.L.P.
BY: DONALD W. TYLER, ESQUIRE
1331 Elmwood Avenue, Suite 300
PO Box 11656
Columbia, South Carolina 29211

ATTORNEYS FOR THE DEFENDANTS:

TURNER PADGET GRAHAM & LANEY, P.A.
BY: AUDRA M. BYRD, ESQUIRE
Abyrd@turnerpadget.com
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina 29577

- - -

ALSO PRESENT:

W.C. "CHIP" LYERLY, III
President, First South Bank

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION: It is stipulated by counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent does not waive the right to read and sign the deposition transcript.

- - - - - - - - - - - - - - - -

DOUGLAS L. HINDS, being first duly sworn, testified as follows:

EXAMINATION

BY MR. TYLER:

Q What is your name, please, sir?

A Doug Hinds, Douglas L. Hinds.

Q Mr. Hinds, I'm sure you know this so I'm preaching to the choir, but obviously you have the right to read and sign this deposition if you would like. It does not matter to me. If you would like to read and sign, that's fine. If you want to waive it, that's also fine with me.

A Let me see how long it is.

Q Good answer. Good answer. I understand you're an attorney practicing here in Georgetown?

A Yes.

Q And how long have you been in practice?

A Admitted in '63, I don't know how long

that is.

Q Okay. And you've been in private practice in Georgetown since?

A No. I practiced in Columbia for a couple years and then came down here, so it's got to be '65.

Q Any particular areas that you've dealt in more than others in the practice of law?

A Well, yes. I guess I've been more -- in the last 20 years or so I've been more into representing real estate developers and that type of...

Q Does that involve buying and selling and financing and developing real estate?

A Yes.

Q Have you sometime in the past represented a company named South Causeway, LLC?

A Yes. I created it.

Q Okay. And when you formed that company, for whom did you form that?

A Peggy Wheeler-Cribb.

Q Do you know why that company was formed or what that company did once it was formed?

A Well, it held title to real estate and the real estate was -- they were trying to

development the real estate.

Q I believe this is primarily a parcel of land on Highway 17 near Pawleys Island?

A Right. At the first causeway going north at Pawleys Island and 17.

Q Okay. Do you know who owned that parcel before South Causeway, LLC acquired title?

A Peggy did.

Q Okay. And did she convey it to the South Causeway, LLC as sort of the initial capital contribution to the company?

A Yes.

Q Let me ask you one other question, let me change that, sorry. Are you also familiar with a piece of land over on Pawleys Island that was owned by Will Darwin Wheeler, lots three and four on -- I'll give you a little better description. Sorry, I'm fumbling.

A I'm familiar with that.

Q 334 Myrtle Avenue, Pawleys Island, tax map 42-1670-42.3?

A There was kind of a complex there. He owned a couple of lots and his mother owned a couple of lots. I'm not sure as to what the designation was.

Q And did you in fact represent Ms. Wheeler-Cribb and her son Will Darwin Wheeler with respect to a financing by First South Bank that was secured by a mortgage on that what I'll call beach property?

A Okay. Now, who was the -- these names are very similar here, and I should have written them down, I guess.

Q I'll tell you what, let me hand you this and see if this will help refresh your recollection.

A This is certainly my signature and my stationery and this letter that I wrote to First South Bank.

Q And was that with respect to a loan secured by a mortgage on the beach front property?

A Yes, it was. It was.

Q I believe that loan was for 550,000?

A I think so. One of them was, and I assume this was the one that was. Yes, right.

Q And that's your letter that was given to First South Bank as a consequence of that transaction?

A That's correct.

Q And in that transaction you represented Peggy Wheeler-Cribb and Will Darwin Wheeler?

A Yes.

MR. TYLER: Mark that one.

- - -

(Whereupon, Exhibit No. P-A, 2-page Letter dated 12/3/07, was marked for identification.)

- - -

BY MR. TYLER:

Q Did you represent South Causeway, LLC and Ms. Peggy Wheeler-Cribb and Will Darwin Wheeler with respect to a subsequent loan by First South Bank to develop the approximately 19 acres that South Causeway owned on US 17 at Pawleys Island?

A Yes.

Q And were you the attorney in representing all those folks?

A Yes.

MR. TYLER: Incidentally, just for the record, the Plaintiff's Exhibit A was bates stamped document 1932 through 1934.

MS. BYRD: Thank you.

BY MR. TYLER:

Q We've been referring to them that way earlier, so it's easier to keep up. I'm going to hand you a document that's been bates stamped 2350 and 2351, a two-page letter, ask if you're familiar with that or if you recall that.

A I'm not -- I don't have an independent recollection of it. Let me see if I have it in my file. I don't have an independent recollection of that.

Q Do you know whether there had been a discussion with a grocery store chain or other anchor type tenants to occupy the property there on 17?

A Yes. There was -- you know, there was a lot of conversation with a lot of different people.

Q Okay.

A And I was seldom if ever that I recall privy to that. I mean, they would tell me or when I saw at church or on the street or we talked about something. But it wasn't like we had a meeting with these people and they carried me along as their lawyer, I had...

Q I understand completely.

- - -

(Whereupon, Exhibit No. P-B, Lease Proposal, was marked for identification.)

- - -

BY MR. TYLER:

Q Let me ask you this question: Was it your understanding that Ms. Wheeler-Cribb and Will Darwin Wheeler have been involved themselves in real estate purchasing and selling and development in the past?

A I'm trying to think. They owned a house on South Island Road, and then they bought a lot out there, and they built another house, Peggy did. But, I mean, that was just a normal transaction. I didn't know any other transactions, although I may have handled it if they did it.

But I have no independent recollection of other transactions other than that property there on -- one time she owned a property in Willow Bine, but that was a residential house that she lived and had a kindergarten.

Q I'm going to hand you a letter that's been bates stamped 2059 through 2071 and ask you if you've seen that before.

A Well, I don't have a copy of it in this

particular file, but I feel sure that I've seen it. I mean, I --

Q Is that not the commitment letter for the First South loan to develop the property there on 17 at South Causeway?

A That resulted in the '08 mortgage that we've talked about?

Q Yes, sir.

A Yeah.

Q Well, no, no, I'm sorry. The first loan I had asked you about was a $550,000 loan.

A That's right.

Q This is the subsequent one of 6 million --

A Five.

Q -- $500,000 loan?

A Yeah, okay.

Q Is that not the commitment letter for the making of that loan?

A That certainly is a commitment letter for 6 million 5, and without examining every inch of it, I would say it is, yes.

Q I ask you to look at the last page. Does that appear to be the signature of Peggy Wheeler-Cribb and Will Darwin Wheeler accepting

the letter, accepting the terms of the commitment? I'm sorry.

MS. BYRD: Object to the form of the question.

BY MR. TYLER:

Q Go ahead and answer.

A You know, I never paid much attention to their signature, but it appears to be a signature that matches the name under it.

Q Okay.

- - -

(Whereupon, Exhibit No. P-C, Commitment Letter dated 5/30/08, was marked for identification.)

- - -

BY MR. TYLER:

Q I hand you a document that's been bates stamped 3251 through 3275, and ask you if you can identify that.

A It is a loan agreement, and it has attached to it Exhibit A which is, I'm almost sure, a description of property which I prepared which was prepared here in my office. And based upon that I would say that I'm familiar with it.

Q That's the loan agreement with respect

to the 6 million --

A 6 million 5.

Q All right, sir.

- - -

(Whereupon, Exhibit No. P-D, Loan Agreement, was marked for identification.)

- - -

BY MR. TYLER:

Q I ask you to look back at the loan agreement which has been marked as Plaintiff's Exhibit D, and specifically after the last two pages, Exhibit A. Were those pages that you prepared?

A These appear to me to be pages that were prepared on my -- on the typewriter in my office. And I have very preliminarily reviewed my file, and this is a description that I'm sure was created in this office.

Q And was it your understanding that those two properties were to be mortgaged, or those properties -- sorry, don't mean to predispose you to an answer -- the properties on Exhibit A were to be mortgaged to secure the $6,500,000 loan?

A Yes.

Q Was one of those two properties the

beach property that we've talked about that was owned by Will Darwin Wheeler?

A I don't think so.

Q If you look at the second part of the description.

A Oh, also, oh. Okay, yeah, I didn't see that, I thought that was a derivation clause. But yes, that lot number four, I think, was owned by Darwin.

Q But that was also required to be mortgaged; correct?

MS. BYRD: Object to the form of the question.

THE WITNESS: Yes.

BY MR. TYLER:

Q Was it also required to be mortgaged?

A Yes.

Q I hand you a document that's been bates stamped 2363 through 2369 and ask you if you can identify that.

A I have no independent recollection of it, but I appeared as a witness and that is my signature, two places on the probate and as a witness.

Q Okay. Is that a mortgage that --

A That is a mortgage for -- doesn't say -- 6 million 5.

Q And what does that encumber, does that encumber the beach property we talked about, the beach lot?

MS. BYRD: Object to the form of the question.

THE WITNESS: That encumbers beach lot number four, yes.

BY MR. TYLER:

Q Okay.

A Which was the beach lot in the other, in the commitment.

- - -

(Whereupon, Exhibit No. P-E, Mortgage, was marked for identification.)

- - -

BY MR. TYLER:

Q I'm going to ask you to refer back to the loan agreement, specifically section 4.1 that appears on bates stamped pages 3254 through 3257 and section 4.2 that appears on bates stamped pages 3257 through 3258.

A Is it captioned, Conditions precedent to and use of advances?

Q Yes, sir.
A It's through 58, 3258?
Q Yes, sir. Section 4.2, I think, begins on 3257, but it goes to 3258.
A Okay all right. Section 4.2.
Q Section 4.2, yes, sir.
A Okay.
Q What is the purpose of section 4.1; does that lay out requirements for the initial advance of the $6,500,000 loan?
MS. BYRD: Object to the form of the question.
THE WITNESS: It's under the section -- it's under the article captioned, Conditions precedent to and use of advances, and it's under the section that begins, In addition to the foregoing it shall be a condition precedent of each subsequent advance that, and --
BY MR. TYLER:
Q Okay. I believe 4.1 relates to the initial advance to be made on the closing loan, and 4.2 the subsequent advances; is that correct?
MS. BYRD: Object to the form of the question.
BY MR. TYLER:

Q Is that correct?

A Yes.

Q Was the initial advance made under the loan made by First South Bank, did they loan the initial part of the loan?

A You got me.

Q All right. Hold a second. I'm going to hand you what's been bates stamped as page 3226 and 3227 and ask you if that refreshes your recollection.

A And I have a copy of that in my file which I also recognize my -- I also recognize my signature on here, so I'm sure that's --

Q Is that the closing statement?

A -- the closing statement. Yes, it is.

Q For the initial disbursement of the loan?

A Yes.

Q And how much does that reflect of the loan was disbursed?

A It reflects that $4,769,725.23.

Q Were those by your law firm from First South Bank?

A They were received by my law firm from First South Bank.

Q And they were disbursed by your law firm --

A They were.

Q -- in accordance with the closing statement?

A Yes.

MR. TYLER: If you would mark that.

- - -

(Whereupon, Exhibit No. P-F, Closing Statement, was marked for identification.)

- - -

BY MR. TYLER:

Q The closing statement marked as Plaintiff's Exhibit F. The funds were disbursed in accordance with the closing statement marked as Plaintiff's Exhibit F?

A Yes.

Q And were those funds disbursed with the approval of South Causeway, LLC?

A Yes, they were.

Q Okay. If you'll look on the loan agreement on section 4.2, what does section 4.2, just the initial part of it, you don't have to read all the conditions off, but what does 4.2 say?

A You mean paragraph parenthesis, one, parenthesis?

Q Before that just where it starts 4.2.

A In addition to the foregoing it shall be a condition precedent of each subsequent advance that -- and then they --

Q And those conditions?

A It lists 14 conditions.

Q All right. And if you would look at the first six conditions under 4.2.

A All right, sir. List the conditions precedent is captioned.

Q Were, to your knowledge, any of those conditions ever met?

A I don't know one way or the other.

Q Okay.

A And I did not --

Q To your knowledge?

A No, I don't know.

Q Okay. The next document I'm going to hand you is bates stamped 3234 through 3236. Ask if you can identify that.

A Yes, I can identify it.

Q What is that?

A That's a hypothecation agreement.

Q And what were the terms of that hypothecation? Just generally, you don't have to go into great detail.

MR. TYLER: Off the record.

- - -

(Whereupon, an off-the-record discussion was held.)

- - -

THE WITNESS: So what was the question again?

BY MR. TYLER:

Q What was the purpose of the hypothecation agreement?

A The bank asked for it.

Q Say that.

A You know, I'd have to sit down and look at it in more detail than this.

Q Well, let me ask you this, then: Was that signed by or executed by Will Darwin Wheeler?

A Yes, it was. And I was a witness and my secretary was a witness.

Q All right, that's fine. We're going to mark the hypothecation agreement as Plaintiff's Exhibit G.

- - -

(Whereupon, Exhibit No. P-G, Hypothecation Agreement, was marked for identification.)

- - -

BY MR. TYLER:

Q I'm going to hand you what's bates stamped as 3237 through 3239 and ask if you can identify that.

A That's a borrower's closing certificate. And I did not witness it, but my secretary did, and I can say that's her signature.

Q Okay. And was that to your knowledge signed in connection with the closing of the $6,500,000 loan?

A Yes. Yes.

MR. TYLER: If you would mark that as H.

- - -

(Whereupon, Exhibit No. P-H, Borrower's Closing Certificate, was marked for identification.)

- - -

BY MR. TYLER:

Q I'm going to hand you a document that bears bates stamped pages 3240 to 3242 and ask if

you can identify that.

A Yes. Has my signature as a witness.

Q I believe this is a closing certificate signed by Ms. Wheeler-Cribb personally; is that correct?

A Yes.

MR. TYLER: If you would mark that as I.

- - -

(Whereupon, Exhibit No. P-I, Closing Certificate-P. Wheeler-Cribb, was marked for identification.)

- - - I

BY MR. TYLER:

Q I would ask you another question about Plaintiff's Exhibit F which was the closing statement. If you'll look at line 105, what was that item?

A Excess deposits, see instructions.

Q I'm sorry, 105.

A I'm sorry, I'm looking at 501. All right. Pay off mortgage to First South Bank.

Q Okay. Was that pay-off, do you know what mortgage that paid off; was that the mortgage on the beach property?

A I have no clue.

Q I hand you a document bates stamp 3244 through 3246 and ask if you can identify that.

A That is another guarantor's closing certificate.

Q And who's that one from?

A Will Darwin Wheeler.

Q Okay.

A And my secretary and I witnessed that.

Q Okay.

MR. TYLER: I'm going to ask you to mark that as J.

- - -

(Whereupon, Exhibit No. P-J, Closing Certificate-W. Wheeler, was marked for identification.)

- - -

BY MR. TYLER:

Q I hand you a document and ask you to identify it that's bates stamped 3276 through 3277.

A All right, sir.

Q I believe that's a letter from First South Bank addressed to South Causeway and to?

A Darwin and Peggy.

Q Okay.

A Individually.

Q And what does that letter deal with?

A Infrastructure.

Q Maybe I have the wrong letter. Okay. Does it set the terms by which First South Bank would release its mortgage lien on the lot on the beach, the beach property, what we call the beach property on Pawleys Island?

A That's what the first paragraph says.

Q And do you know if those conditions were ever met?

A I have no idea.

Q Okay.

MR. TYLER: Mark that as K.

- - -

(Whereupon, Exhibit No. P-K, Letter dated 6/25/08, was marked for identification.)

- - -

BY MR. TYLER:

Q Was that letter delivered by First South Bank to Ms. Wheeler-Cribb and Mr. Darwin Wheeler at the closing of the $6,500,000 loan?

A I have no idea.

Q And was it dated the same date as the

closing of the loan?

A Yes.

Q Thank you. I think although you were not privy to them, you understood there have been discussions with a grocery store chain --

A Yes.

Q -- about locating there. Do you know who participated in those discussions?

A No.

Q Was it your understanding that Ms. Wheeler-Cribb and/or Will Darwin Wheeler participated in those?

A They were the ones that told me about it, so I assume they did. But I don't know.

Q Did any grocery store ever locate on that property?

A No.

Q Do you know what happened or why that occurred?

A No.

Q Okay.

A I may have been told, but I don't have an independent recollection of it.

Q Okay. I hand you what is bates stamped as 2372 through 2375 and ask if you can identify

that.

A Yes. It's a letter written on my office stationery and signed by me.

Q And was that a letter to First South Bank?

A To First South Bank in re 6,500,000 development loan.

Q And I think it provided certain opinions to the bank?

A Yes, it did.

Q And were those your opinions?

A Yes, they were.

Q Based on your representation?

A Yes.

Q And to your knowledge are any of those opinions incorrect?

A Well, I haven't read them recently, but I would not have put them in there if they were incorrect.

Q Okay.

A And I have no recollection of them.

Q If you want to take a glance through, that's fine too. But you are comfortable that you would not have given a loan that's incorrect?

A No, I wouldn't.

MR. TYLER: We will mark that one as L.

- - -

(Whereupon, Exhibit No. P-L, Letter dated 6/25/08 from D. Hinds, was marked for identification.)

- - -

BY MR. TYLER:

Q In the course of your representation of South Causeway, LLC, Peggy Wheeler-Cribb and Will Darwin Wheeler, would you have allowed or permitted or agreed to or counselled them to not tell the truth about anything?

A No, sir.

Q Would you have reviewed the documents they signed before they signed them?

A Yes.

Q Looked at them. I'm going to ask you to look at paragraph six of Exhibit H, the borrower's closing certificate.

A All right, sir.

Q Would you have permitted or allowed your client to sign that if it were not true, to your knowledge?

A To my knowledge. But I wasn't witness to it. But no, I would not.

Q All right. I ask you to look at --

A Had I known it was not true.

Q Yes, sir, I understand, I understand. I also ask you to look at Plaintiff's Exhibit I which is the closing certificate of Ms. Wheeler-Cribb, paragraph seven of that.

Would you have permitted or counselled or allowed Ms. Wheeler-Cribb to sign that if you had reason to believe it was untrue?

A I would not have.

Q Okay. I hand you Exhibit J which is guarantor's closing certificate of Will Darwin Wheeler and ask you to look at paragraph seven of that.

A Appears to be a duplicate paragraph.

Q Okay. And again, the same question, would you have permitted or allowed or counselled Mr. Will Darwin Wheeler to sign that if you had reason to believe it was not true?

A No.

Q Have you represented South Causeway in any matter since the $6,500,000 loan with respect to the First South Bank closed?

A Say that.

Q Have you ever represented South Causeway

since this loan was made?

A I have done some work for them, I'm sure.

Q Just give me a general description of what, if you don't mind.

MS. BYRD: To the extent that your answer would implicate anything covered by the attorney/client privilege, South Causeway does not waive the privilege and hereby asserts it.

BY MR. TYLER:

Q If you think it's covered by the privilege, just so state.

A I think it is.

Q Covered by the privilege?

A I think.

Q Okay.

A Although I don't know what it is. But that general question, if you would be specific.

Q I don't know what it is either, so that makes it hard for me to be specific.

A Okay.

Q I believe there was an October 9th meeting between First South Bank and Ms. Wheeler-Cribb and Will Darwin Wheeler. Did you attend that meeting?

A Golly, I don't know.

Q Because that would have been attended by --

A What year was that?

Q I'm sorry, should have included that. 2008.

A 2008.

Q Could that have been a meeting that perhaps George Geer of your firm attended rather than you, or do you recall?

A I just don't have a recollection.

Q You don't recall that meeting?

A One way or another, no.

MR. TYLER: Excuse us a second, I'll be right back.

- - -

(Whereupon, there was a recess in the proceedings.)

- - -

BY MR. TYLER:

Q Were you familiar at all with a company named Pawleys Island North, LLC?

A Pawleys Island North, LLC. I don't have any recollection of it.

MR. TYLER: Okay, that's all I have.

Thank you, sir.

THE WITNESS: Okay.

(Witness excused.)

- - -

(The deposition concluded at approximately 2:53 p.m.)

- - -

CERTIFICATE OF REPORTER

I, Teresa J.F. Bautz, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of March, 2011, at Myrtle Beach, Horry County, South Carolina.

Teresa J.F. Bautz
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
March 8, 2020

I N D E X

WITNESS:		PAGE
DOUGLAS L. HINDS		
BY MR. TYLER:		3

- - -

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
P-A	2-page Letter dated 12/3/07	7
P-B	Lease Proposal	9
P-C	Commitment Letter dated 5/30/08	11
P-D	Loan Agreement	12
P-E	Mortgage	14
P-F	Closing Statement	17
P-G	Hypothecation Agreement	20
P-H	Borrower's Closing Certificate	20
P-I	Closing Certificate-P. Wheeler-Cribb	21
P-J	Closing Certificate-W. Wheeler	22
P-K	Letter dated 6/25/08	23
P-L	Letter dated 6/25/08 from D. Hinds	26

- - -

SIGNATURE OF DEPONENT

I, the undersigned, DOUGLAS L. HINDS, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

_____

DOUGLAS L. HINDS DATE

LAW OFFICES
HINDS, COWAN, STRANGE & GEER
804 FRONT STREET
GEORGETOWN, SOUTH CAROLINA 29440

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POST OFFICE DRAWER 1410
GEORGETOWN, SOUTH CAROLINA 29442

DOUGLAS L. HINDS
WILLIAM S. COWAN
HAL M. STRANGE
GEORGE R. GEER, JR.

TELEPHONE (843) 527-2441
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E-MAIL HCSG@sc.rr.com

December 3, 2007

FIRST SOUTH BANK
P. O. Box 11509
Columbia, SC 29211-1509

Re: Loan to Peggy Wheeler-Cribb and Will D. Wheeler (the "Borrower") in the amount of $550,000.00, secured by Mortgage on real property located at Lot 4, 334 Myrtle Ave., Pawleys Island, SC (the "Loan").

Gentlemen:

We have acted as counsel to Peggy Wheeler-Cribb and Will D. Wheeler (the "Borrower") in connection with a loan (the "Loan") by First South Bank (the "Lender") to Borrower. This opinion is delivered to you pursuant to the Attorney's Instruction Letter dated November 23, 2007.

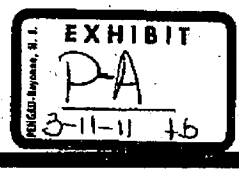
In connection with the Loan and for purposes of this opinion, we have reviewed the following documents all dated as of the date hereof (the "Closing Date") unless otherwise indicated below:

1. The Promissory Note evidencing the Loan and executed and delivered to you by the Borrower (the "Note");

2. The Mortgage encumbering the Property owned by Will Darwin Wheeler, and executed and delivered to you by Will Darwin Wheeler for the purpose of securing the Note (the "Mortgage") executed by Will Darwin Wheeler as Mortgagor to Lender as Mortgagee;

3. The Business Credit Application, Certification And Correction Agreement executed and delivered to you by the Borrower ("Agreement");

4. Certification of Name and Address executed and delivered to you by Borrower.



FSB-SC 01932

5. Errors and Omissions Agreement executed and delivered to you by Borrower.

6. New Account Signature Card executed and delivered to you by Borrower.

7. Settlement Statement executed and delivered to you by Borrower.

The documents listed above as documents 1 through 7 are collectively referred to herein as the "Loan Documents".

We have for the purposes of this opinion, assumed the genuineness of all signatures other than Borrower's signatures, the authenticity of all documents submitted to us as originals and the conformity with the originals of all documents submitted to us as copies. In addition, we have assumed the due authorization, execution and delivery of the documents submitted to us by any party other than the Borrower.

Based upon the foregoing, but subject to the assumptions, qualifications and limitations hereinafter set forth, it is our opinion that:

(1) The Borrower has the power to execute, deliver and perform the Loan Documents to which it is a party.

(2) The Loan Documents have each been duly authorized, executed and delivered by the Borrower as applicable. The Loan Documents constitute legally valid and binding obligations of the Borrower as applicable, enforceable in accordance with their respective terms, except that:

(a) enforcement may be limited by bankruptcy, insolvency, reorganizations, moratorium or similar laws, or by equitable principles, relating to or limited the rights of creditors generally; and

(b) the use of the term "Enforceable" shall not imply any opinion as to the availability of equitable remedies other than the judicial foreclosure of the lien credited by the Mortgage in accordance with the South Carolina law. Certain rights, remedies and waivers contained in the Loan Documents may be limited or rendered ineffective by applicable South Carolina laws where judicial decisions govern such provisions, but such laws and judicial decisions do not render the Loan Documents invalid as a whole, and there exist, in the Loan Documents or pursuant to the applicable law, legally adequate remedies for a realization of the principal benefits and/or security intended to be provided by the Loan Documents.

(3) The Note will be entitled to the benefit and security of the Mortgages except to the extent that enforcement thereof may be limited as set forth in Paragraph (4) above.

(4) The execution and delivery of, and performance by the Borrower and the Guarantors of their respective obligations pursuant to the terms of the Loan Documents do not and will not conflict with, or violate or constitute a default under any existing statute, rule or regulation applicable to, or based upon information provided to us by the Borrower, the terms or conditions or provisions of any agreement or instrument to which the Borrower, as the case may be, is a party or by which it or them or any of its assets or their assets, as the case may be, is bound or affected, or any judgment, decree or other order of any court or public body known to us.

(5) Based upon representations of the Borrower and upon information furnished to us by them, we do not know of any actions or proceedings pending or threatened against the Borrower before any court, board of arbitration or administrative or regulatory agency, the outcome of which might materially adversely affect the business, financial positions, results, operation prospects, or any of them, or which brings into question the validity of the Loan Documents or actions to be taken pursuant to any of them.

(6) The Loan and all documents evidencing or controlling it, are governed by the laws of the State of South Carolina and the interest charged by and to be paid to you is not usurious under those laws.

(7) The exceptions contained in the Title Insurance Commitment will not adversely affect the proposed use and development by the Borrower of the real property encumbered by the Mortgage.

(8) We are admitted to practice in the State of South Carolina, and these opinions are strictly limited in scope and application to the federal laws of the United States of America and the laws of the State of South Carolina. This opinion is rendered solely to Bank in connection with the Loan and may not be relied upon by any other party (except counsel to Bank) or for any other purposes other than the purposes herein stated without our prior written consent.

Yours sincerely,

HINDS, GOWAN, STRANGE & GEER

Douglas L. Hinds

DLH/rab

FSB-SC 01934

Alex Lee, Inc.

May 10, 2008

Peggy Wheeler-Cribb

Pawley's Island, SC. 29585
Re: New Lowes Food Store in Pawley's Island SC
Located at: SEC of Highway 17 and South Causeway

Dear Peggy:

Lowe's Foods, Inc. is pleased to submit the following terms in association with the construction of a new +\- 42,500 sq. ft. Lowe's Foods, Inc. store in the above referenced location.

LEASE PROPOSAL:

Premises:	Approximately 42,500 sqft.
Lease Term:	Twenty-Year initial base term.
Completion Date:	January 1, 2010 (Anticipated opening March 17, 2010)
Rent:	$16.00 psf based on $80.00 psf construction cost of tenant's demised premises. Rent psf to be adjusted up or down based on 9% of actual construction cost. By way of example: Actual construction cost equal $75.00 rent would be $15.55 psf. ($5.00 X 9%= $0.45)
Construction Cost:	Construction Cost shall mean the amount to be paid to the selected general contractor for construction of the Demised Premises, including work performed within five feet (5') of the perimeter walls of the Demised Premises (including the loading dock, fire exits, freezer or refrigerated storage coolers, electrical switchgear and the storefront/canopy overhang of the Demised Premises which may extend beyond five feet from the perimeter wall), together with the cost of any permits and approvals necessary to construct the Demised Premises (including building permits and utility tap fees), and the cost of any payment and performance bonds that may be required by Landlord or its mortgagee. The term "Construction Cost" shall not include any fees or costs of any kind associated with the site; site improvement; infrastructure; common area; or off-site improvements. Construction Cost however will include fees for full architectural, plumbing, electrical and mechanical drawings necessary for the construction of Tenant's Demised Premises.
Options:	Four (4) 5-year options.

FSB-SC 02350

Option Rent:	Base rent of the initial term increases $0.75 psf during each five-year option.
Percentage Rent:	One percent (1%) over the natural break.
Common Area Maintenance:	Pro-rata share of actual expenses paid monthly and reconciled annually. Tenant's first year contribution is $1.00 per square foot. CAM Charges, excluding taxes and insurance not to increase more than 3% per year from 2nd year actual.
Real Estate Taxes:	Pro-Rata, paid annually
Insurance:	Pro-Rata, paid annually
Landlord Repairs and Maintenance:	Exterior portions and structural elements of Demised Premises including roof, roof structure and supports; foundation and structural supports; structural walls and supports.
Tenant Repairs and Maintenance:	Interior of the Demised Premises; HVAC; and automatic door operators.
Construction:	Landlord may elect to have Tenant construct the demised premises based on Tenant's plans and specifications and reimburse Tenant its Construction Cost (as defined above). Said reimbursement to be paid no later than the Rent Commencement Date specified in the lease.

The information set forth in this proposal is not binding upon the tenant or the landlord and is subject to (a) final approval of the site plan and (b) execution of, essentially, the Lowe's Foods, Inc. Standard lease form.
If the foregoing general terms and conditions of this proposal are acceptable please sign where indicated below and return one countersigned original to my attention.

Sincerely,

Roger Henderson
Vice President Real Estate
Alex Lee, Inc.\Lowe's Foods, Inc.

Date: 10/25/06

FSB-SC 02351

First South Bank

May 30, 2008

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
Post Office Box 3727
Pawleys Island, South Carolina 29585

Dear Peggy and Darwin:

This letter constitutes the commitment of First South Bank (the "Bank"), in reliance upon the financial information provided by you, to make a loan (the "Loan") in principal amount not to exceed $6,500,000.00, to an entity (herein referred to as the "Borrower") to be formed by the two of you and of which you will be the sole owners and principals, under the terms and conditions generally described below. The terms and conditions contained in this letter are not intended to be exhaustive. Final documentation of, with respect to and supporting the Loan will require approval of the Bank and its counsel.

Borrower: An entity formed under the laws of and resident in South Carolina, by and having as its principals, Peggy Wheeler-Cribb and Wil Darwin Wheeler, the organizational and constituent documents of which shall be reasonably acceptable in form and substance to Bank and its counsel.

Principal Amount of Loan: $6,500,000.00 (maximum), the proceeds of which shall be advanced and used solely in the amounts and for the purposes set forth in the Loan Purpose section of this letter.

Term: Thirty Six (36) months the first eight (8) months of which (the "Construction Period") shall be for construction of the Infrastructure (hereafter defined).

Loan Interest Rate: The interest rate on the principal balance of the Loan outstanding shall be a floating rate equal to Wall Street Journal Prime Rate as determined by Bank (the "Prime Rate") plus one hundred basis points (1.0%), changing concurrently with each change in the Prime Rate. The interest rate will be computed on the basis of a 360 day year and on the actual number of days elapsed in each period of interest.

EXHIBIT P-C 3-11-11 tb

1333 Main Stroet ▪ Suite 100 ▪ Columbia, South Carolina 29201 ▪ (803) 343-3435 ▪ Fax (803) 343-3477

FSB-SC 02059

In the event of a default or event of default, the interest rate shall immediately change to the "Default Rate". The Default Rate shall be the rate which is 4% per annum above the rate otherwise payable. Documentation of the Loan shall also require in the event any monthly payment due upon the Loan is not received within ten (10) days of the date due, a late charge of five (5%) percent of the payment due shall be added to the payment due.

Loan Purpose: The proceeds of the Loan shall be used solely to:

A. Up to $3,600,000.00 of the proceeds shall be disbursed at closing to satisfy existing indebtedness encumbering undeveloped real property (the "Project Property") owned by Peggy Wheeler-Cribb and Wil Darwin Wheeler (fee simple title to which Project Property shall be conveyed to the Borrower on or prior to closing of the Loan) consisting of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres.

B. Up to $550,000.00 of the proceeds shall be disbursed at closing to satisfy existing indebtedness (owed to Bank and after application by Bank upon such indebtedness of funds on deposit with Bank as an interest reserve for said existing indebtedness) encumbering the real property and improvements (the "Beach Property") owned by Peggy Wheeler-Cribb and Wil Darwin Wheeler, having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006.

C. Up to $100,000.00 of the proceeds shall be disbursed at closing to pay costs associated with closing of the Loan, approved by Bank.

D. $300,000.00 of the proceeds shall be disbursed at closing into a restricted access demand deposit account (the "Interest Reserve Account") maintained with Bank, funds from which shall be disbursed by Bank monthly to make required interest payments due by Borrower upon the Loan.

E. Disbursement of funds for the categories set forth in A through D above shall not exceed the sums set forth with respect to the respective categories without written approval of the Bank. If less than $4,550,000.00 is disbursed at closing of the Loan, the difference between $4,550,000.00 and the amount disbursed shall not be advanced at closing of the Loan, but shall be held as an undisbursed contingency reserve and advanced for only such purposes as shall be expressly approved by Bank in writing.

F. An additional $550,000.00 of the proceeds of the Loan shall be disbursed by Bank into the Account to fund monthly interest payments due upon the Loan upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan closing.

G. Up to $1,400,000.00 for construction and installation of roads, drives, parking areas, storm water sewer system, utilities (to the lot lines of proposed retail lots within the Project Property) and other infrastructure for the Project Property (collectively the "Infrastructure") pursuant to the Construction Contract (hereafter defined). Disbursement of funds for this category shall not exceed the sum of $1,400,000.00 without written approval of the Bank. If less than $1,400,000.00 is disbursed for this category, the difference between $1,400,000.00 and the amount disbursed shall not be advanced, but shall be held as an undisbursed contingency reserve and advanced for only such purposes as shall be expressly approved by Bank in writing.

Non-refundable Loan Fee: A non-refundable loan fee of $65,000.00 (1.0% of the Loan amount)shall be due and payable in full upon acceptance of this commitment, and shall be paid at closing; provided, however, such loan fee shall be, so long as the Bank shall proceed in good faith with the making of the Loan, fully earned and due and payable in full regardless of whether any or all of the proceeds of the Loan are advanced.

Repayment Terms: The Loan shall be repayable interest only payable monthly on the same day of each month (such day to be selected by Bank) during the term of the Loan. The entire principal balance of the Loan plus all unpaid accrued interest thereon shall be due and payable in full on the date which is thirty six (36) months from the date of closing of the Loan.

Guarantors: The following named guarantors (each singularly a "Guarantor" and collectively the "Guarantors") shall each unconditionally guarantee payment of the entire principal amount of the Loan plus accrued interest with respect thereto, and costs including attorney's fees, of the Bank incurred in connection with the making and in the event of default collection, and in addition thereto performance of all the obligations of Borrower with respect to the Loan, to wit:

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler

Loan Documentation Required for Closing: Prior to closing the Loan and the disbursement of any funds thereupon, the Bank shall require, in form and content satisfactory to the Bank and its counsel, the following:

I. Note: The Loan shall be evidenced by the promissory note of the Borrower (the "Note").

2. Real Estate Mortgage: The Note and all other obligations of the Borrower with respect to the Loan (collectively the "Obligations") shall be secured by a first lien real estate mortgage and security agreement (whether one or more than one, the "Mortgage") upon the Project Property and the Beach Property and all appurtenances thereto (collectively the "Property"). The Mortgage shall contain terms, conditions and provisions typical of commercial security instruments including, without limitation, a due-on-sale and due-on-encumbrance clause, an indemnification against liability or loss resulting from hazardous or toxic waste, and a prohibition against transfer. The foregoing is not intended to be exhaustive and the Mortgage will contain additional terms, provisions, requirements and other clauses as are typically required by Bank of loans of this type and amount, or which Bank otherwise determines it requires with respect to the Loan. The Mortgage will require the Borrower to waive rights to seek an appraisal in the event a deficiency is sought upon foreclosure of the Mortgage.

3. Title Insurance: Borrower shall furnish Bank with a satisfactory ALTA mortgagee title insurance commitment with respect to the intended first mortgage lien(s) upon the Property in amount equal to the full amount of the Loan, issued by a title insurance company acceptable to the Bank. Such title commitment must be on an ALTA form satisfactory to the Bank, together with copies of the instruments creating or causing all reported exceptions. "FIRST SOUTH BANK, ITS SUCCESSORS AND ASSIGNS," shall be named as the proposed insured. The commitment and subsequent policy shall contain no matters objectionable to the Bank, including, without limitation, exceptions with respect to matters which would be revealed by a current survey and inspection, mechanics' and materialmen's liens, prior encumbrances of any nature, restrictive covenants, set-back lines, etc. The agent providing the commitment must provide evidence of authorization to issue the commitment to the Bank. The title insurance commitment shall be "marked-up" at closing to remove all conditions and contingencies to issuing the final mortgagee title policy and all exceptions unacceptable to Bank in form and substance acceptable to the Bank. The mortgagee title insurance policy shall include such other matters and such endorsements as Bank's counsel shall reasonably request.

4. Survey: A current (dated not more than 90 days before closing) Class A survey of the Project Property prepared, certified and sealed by a registered land surveyor. The survey shall be in recordable form and shall be duly approved by such public authorities as is necessary to record such survey in the public records of Georgetown

County, South Carolina. The survey shall show, among other things, all boundaries of the Project Property including internal boundary divisions dividing abutting tracts comprising the Project Property, if any, with a metes and bounds description (courses and distances indicated), the course and distance to and names of the nearest intersecting public streets or roads, the dimensions and location of any and all setback lines, building lines and sidelines, all existing buildings or improvements (if any); and all streets, roads, rights-of-way, easements, encroachments, or similar matters affecting the Project Property. Borrower will also shall supply to Bank, not later than the end of the Construction Period, a survey meeting the requirements set forth in this paragraph which shall also show in addition to the matters described above, the location of the Infrastructure, together with sufficient courses and distances to locate the Infrastructure upon the Project Property and establishing that the location of the Infrastructure does not violate any applicable set back lines or zoning requirement or inhibit or interfere with any easements or similar matters.

5. Flood Hazard Certification: Bank shall obtain a certification as to the location of the Property within any special flood, mudslide or erosion hazard area ("flood hazard area"). If the Property or any part thereof is located within a flood hazard area, then, notwithstanding any contrary provision of this commitment, this commitment may be terminated by the Bank at its sole option.

6. Loan Agreement: Borrower and Bank shall enter at closing a loan agreement (the "Loan Agreement") setting forth certain of the obligations, warranties, covenants and agreements of Borrower, events of default, and certain rights and remedies of the Bank, which shall be in form and substance approved by Bank and its counsel. In addition to other covenants and requirements the Loan Agreement shall require, without limitation, that the Borrower maintain a business demand deposit account (i.e., other than the Interest Reserve Account) with the Bank having at all times a minimum of $5,000.00 on deposit therein. The Loan Agreement shall require annual financial statements of Borrower (statements of income and retained earnings of Borrower for the immediately preceding calendar year and a balance sheet) due within 90 days of close of Borrower's fiscal year, and of each Guarantor due within 90 days of each calendar year end. The Loan Agreement shall also provide that at no time prior to the final advance for Infrastructure costs shall the amount advanced under the Loan during the Construction Period exceed a sum equal to ninety (90.0%) percent of actual costs of construction under the Construction Contract, to the date of each such advance. The Loan Agreement will include a proposed completion and

draw schedule and a breakdown of expenditure of Loan proceeds by category prepared by Borrower and approved by Bank; and set forth the requirements for the initial and subsequent advances upon the Loan. The final advance shall require for construction costs shall require, in addition to other matters, evidence of final approval or acceptance (as the case may be) of the improvements comprising the Infrastructure by appropriate governmental authorities and utility providers. The foregoing is not intended to be exhaustive and the Loan Agreement will contain additional terms, provisions, conditions and requirements as are typically required by Bank of loans of this type and amount, or which Bank otherwise determines it requires with respect to the Loan.

7. Security Agreement: Payment and performance of the Obligations shall be further secured by a security agreement (the "Security Agreement") granting to Bank a first priority security interest in all personal property of the Borrower including tangible personal property including furniture, furnishings, fixtures and equipment and all accessions thereto, and intangibles including instruments, documents, accounts, and general intangibles, together with the proceeds therefrom, used, held or obtained by Borrower in connection with its ownership or operation of the Property and the construction, sales, leasing and operation of the Project Property (collectively, without limitation, the "Personalty").

8. Construction Contract and Assignment thereof: The Infrastructure shall be constructed on and under the Project Property by a licensed contractor (the "Contractor") selected by Borrower and acceptable to Bank, pursuant to a construction contract (the "Construction Contract") which shall be in all respects, both as to form and substance, acceptable to Bank. As further security for payment and performance of the Obligations, Borrower shall collaterally assign unto Bank Borrower's rights with respect to the Construction Contract which assignment shall be duly acknowledged by the Contractor. The Contractor shall provide labor and materials payment and performance bonds with surety acceptable to Bank, assuring performance of the work and payment for labor and materials, which bonds shall be in form and substance acceptable to Bank and which shall name Borrower as obligee and Bank as co-obligee.

9. Hazard Insurance: The Beach Property and, if reasonably determined necessary the the Project Property, shall be insured by hazard insurance policy(ies) which must include fire, vandalism and malicious mischief coverage, in an amount sufficient to

avoid co-insurance liability and equal to the total replacement value of improvements to the Property. During the Construction Period if Bank requires the same such coverage with respect to the Project Propertymay be provided as part of builder's risk insurance furnished by the Contractor which shall in any event also include liability and worker's compensation insurance sufficient to meet all requirements of law. Each policy issued in respect to this paragraph (a) must be issued by a company approved by the Bank and licensed to transact business in the State of South Carolina; (b) must contain a standard mortgagee clause designating the Bank as mortgagee and loss payee; and (c) must contain provisions providing for written notice to the Bank at least thirty (30) days prior to any cancellation, termination or modification thereof or of any coverage therein.

10. Plans and Specifications and Assignment Thereof: Borrower shall have prepared a site plan showing the proposed location of the Infrastructure and proposed retail lots and development, and plans and specifications acceptable to Bank with respect to the Project (collectively the "Plans") by a licensed architect or engineer, reasonably acceptable to Bank (the "Architect"), which Architect shall seal and approve the Plans. A set of the Plans signed and approved by Architect, Borrower and Contractor shall be delivered to Bank prior to closing, together with a security assignment of all right, title and interest of Borrower in and to the Plans together with the acknowledgment and consent of the Architect to such assignment.

11. Zoning: Borrower shall provide evidence of satisfactory zoning and subdivision approval for the use and occupancy of the Project Property as a retail commercial shopping center.

12. Flood Insurance: Borrower shall obtain a flood insurance policy if improvements to any of the Property is located in a flood hazard area. The flood insurance policy shall be in such amount as Bank shall reasonably approve and shall conform with the last sentence of paragraph 8 above.

13. Liability Insurance: Borrower shall provide evidence of liability insurance in form and in an amount satisfactory to the Bank issued by a company approved by the Bank. The Bank shall be named as an additional insured on the liability policy if requested by the Bank. The liability policy must comply with subparts (a) and (c) of the last sentence of paragraph 8 above.

14. UCC Financing Statements: Uniform Commercial Code Financing Statements, shall be properly filed at or prior to closing, perfecting to the Bank a valid first lien on all of the Personalty.

15. Entity Authority and Constituent Documents: Bank shall be provided with appropriate and satisfactory evidence of authority documenting the right of the individuals acting for or on behalf of the Borrower to so act and bind the Borrower. The Bank shall also be provided with a certified true copy of the filed organizational documents (certified) and other material constituent documents of the Borrower, and with satisfactory evidence that the Borrower is legally constituted and is in current good standing and permitted to transact business in the State of South Carolina.

16. Utilities: Bank shall be provided prior to closing with evidence satisfactory to Bank, that utility services (including, without limitation electrical, water and sewer (sanitary and storm water)) are available at the Project Property in sufficient quantity and quality to construct, operate and maintain the proposed retail shopping center.

17. Guaranty Agreements: Each Guarantor will be jointly and severally liable for the entire amount of the Loan and for all cost and expense to the Bank of making the Loan and if collection is required collecting the Loan, including without limitation, the cost of collection from each Guarantor. Such costs include, without limitation, the Banks' attorneys' fees. Each Guarantor will execute an unconditional Guaranty (a "Guaranty"), guaranteeing the payment of the foregoing and the performance of all Obligations by the Borrower. Each Guarantor will be required to waive the right to require an appraisal in the event deficiency is sought as a result of foreclosure.

18. Legal Opinion: Bank shall be provided at closing the legal opinion of an attorney acceptable to the Bank to the effect that (a) the loan documents have been duly authorized, executed and delivered, are valid and enforceable according to their terms under all applicable laws and regulations and are not in violation of any applicable laws, rules or regulations, including without limitation, usury laws, (b) the Loan and the execution of the several documents required in connection therewith have been authorized by all necessary action of the Borrower and the person or persons executing said documents on behalf of such entity(ies) are authorized to do so, (c) execution and delivery by and enforceability of each Guaranty with respect to each Guarantor, (d) the financing statements together with the recorded Mortgage and the Security Agreement constitute a valid perfected lien on the real and personal property

described therein, (e) the Borrower is duly formed, validly existing and in good standing under the laws of the State of South Carolina and is qualified to transact business in the State of South Carolina, and (f) to the knowledge of such counsel, no litigation or proceeding is pending or threatened which, if adversely determined, would have a material adverse effect on the Borrower, or any Guarantor. The Bank may also require such other opinion(s) as the Bank or its counsel may deem reasonably necessary.

19. Environmental Audit: A Phase I environmental site addressed to the Bank, but paid for by Borrower at Borrower's sole cost and expense and prepared by an experienced competent environmental engineering firm satisfactory to the Bank which complies in all respects to the Bank's specifications for such site assessment, shall be delivered to Bank prior to closing. The Bank must be completely satisfied with the results of such assessment in its sole and absolute discretion. The loan documents will provide that Borrower and Guarantors will jointly and severally indemnify the Bank against all violations of the Property or the Borrower of any environmental laws, rules and regulations.

20. Appraisal: A written real estate appraisal of the unimproved Project Property indicating a current appraised value of not less than $7,000,000.00 and a value after completion of the proposed Infrastructure of not less than $9,000,000.00, in form and substance acceptable to the Bank, performed by a real estate appraiser acceptable to the Bank, shall be delivered to Bank prior to closing.

21. Financial Condition Requirements: Borrower and Guarantors shall certify at closing that there has been no material adverse change in financial condition to that previously described and provided to Bank. If there has been any material adverse change in financial position, the Bank shall be entitled to withdrawn this commitment whereupon the Bank shall have no further obligation or liability with respect to the commitment or the making of the Loan to the Borrower.

22. Lease letter of intent: Borrower shall provide to Bank a letter of intent (the "Letter of Intent") from Lowes Foods or other national or acceptable regional grocery chain to lease or purchase an anchor site of the retail space shown on the Plans at a purchase price/rental rate acceptable to Bank, together with evidence acceptable to Bank of initial approval of the site plan of the Plans by such proposed anchor occupant.

23. IRS Reporting Requirement: If the loan proceeds are to be used to fund a real estate transaction which is reportable pursuant to Section 6045 of the Internal Revenue Code, the Borrower must provide a copy of the Uniform Settlement Statement as prescribed under the Real Estate Settlement Procedures Act of 1974 ("RESPA") executed by a settlement agent or a designation agreement executed by the party responsible for supplying the applicable information to the IRS. Reportable transactions include, but are not limited to, sales, long term leases, and tax-free exchanges and are subject to limited exemptions.

24. Additional Items: Such other matters and items as the Bank or its counsel may reasonably request.

Other Conditions:

1. Costs: The Loan shall be closed without cost to the Bank, and all expenses incurred in connection with the closing of the Loan, (including, without limitation, the Bank's counsel's fees) are to be paid by the Borrower. Such expenses shall be paid by the Borrower and the addressees hereof whether or not the Loan closes.

2. Right of first refusal: By acceptance hereof Borrower and the addressees hereof do give, shall for all purposes be deemed to have given, to Bank the first right of refusal (the terms of which right may be incorporated in the Loan Agreement) to provide construction financing (by way of one or more construction loans) for each of the parts of the retail shopping center to be constructed upon the project Property

3. Modification and Refinance Fees: Any modification or refinance of the Loan may be conditioned by the Bank on the payment by the Borrower by a nonrefundable fee, which shall be in addition to any other fee or cost paid by the Borrower to the Bank in connection to the Loan. Nothing in this subparagraph shall obligate the Bank to modify or refinance the Loan, and the Bank reserves the right to require the Loan to be repaid strictly in accordance with the terms and conditions contained in the Note and the other loan documents.

Each of the addressees hereof understands and agrees that this commitment is issued directly to them and the Borrower and cannot be assigned without the prior written consent of the Bank. The commitment is for the sole and exclusive benefit of the addressees hereof and the Borrower to be formed by them in accordance herewith, and no third party may rely hereon nor is intended to be

benefitted in any respect hereby. Any attempted assignment hereof shall immediately release Bank from any obligation to make, or fund, the Loan. Any material adverse change in the condition (financial, business or otherwise) of the Borrower or any Guarantor shall, at the Bank's option, release the Bank from any and all obligations under this commitment.

If the Borrower or any Guarantor at or before the closing of the Loan should file a petition in bankruptcy under any of the provisions of the bankruptcy laws, or if a petition in bankruptcy should be filed against any one of them, or if any of them should make an assignment for the benefit of creditors, or otherwise become insolvent, or if any of them should become deceased or become mentally incapacitated, this commitment may be canceled at the option of the Bank.

Each of the addressees hereof by accepting this commitment represents and warrants to the Bank that except as disclosed to the Bank in writing on or prior to the date hereof, there are no actions, claims, suits or proceedings pending, or to the knowledge of each of them, threatened or reasonably anticipated against or affecting the Borrower, any Guarantor, the Property, the Infrastructure or the transactions contemplated by the Letter of Intent, at law or in equity or before or by any governmental authority and there is no possibility of any judgment, liability or award which may reasonably be expected to result in any material and adverse change in the condition (financial, business or otherwise) of the addressees hereof or the Borrower, or the prospects of building the Infrastructure and developing a retail shopping center upon the Project Property as contemplated by the Plans and leasing the anchor portion thereof to Lowes Foods as set forth above in this commitment.

All the provisions incorporated in this commitment shall survive the loan closing and the loan documents shall be deemed to contain the following provision:

> "All the terms and conditions of the commitment upon which the loan hereby secured was predicated are incorporated herein by this reference and made a part hereof and should Borrower default with respect to any term or provision thereof, such default shall constitute a default, event of default and Event of Default hereunder and under the Note hereby secured."

In the event of a conflict between the terms and conditions of this commitment and the loan documents used to close the Loan, the loan documents used to close the Loan shall prevail.

Each of the addressees hereof understands and acknowledges that the Bank is relying upon the statements and representations made to the Bank and upon such additional data as may be supplied to the Bank for the purpose of evaluating the request for the Loan. If any of such information is found to be inaccurate or to have been misrepresented in any material respect, this commitment may be canceled at the option of the Bank.

By acceptance hereof each of the addressees hereof certifies that all information provided to the Bank by or on behalf of the Borrower and each Guarantor is true and complete in all material respects and that the same was given to induce the Bank to make a loan as herein requested.

This commitment and the loan documents shall be construed according to and governed by the laws of the State of South Carolina.

If this commitment is being accepted by less than all parties (i.e. Borrower and all Guarantors), the undersigned hereby certifies and warrants to the Bank that the undersigned has been duly authorized to accept and deliver this commitment for and on behalf of, and as agent for, any such party whose signature does not appear below.

If this commitment is acceptable, please so indicate by signing in the space provided on the enclosed copy of this letter and return same to us by no later than seven (7) days from the date of this letter. If not so accepted, or if the Loan to be made pursuant to this commitment is not closed within thirty (30) days from the date of this letter, then on the occurrence of either event Bank shall have no obligation whatsoever under this commitment unless Bank shall at its sole option and upon such terms and conditions as it may require, reinstate this commitment; provided, however, such reinstatement, in order to be valid must be in writing and signed by an authorized officer of the Bank. Should you have any questions concerning the terms hereof, please contact F. Wayne Lovelace, Senior Vice President, (803) 806-3104.

Very truly yours,

F. Wayne Lovelace, Senior Vice President

FSB-SC 02070

The foregoing commitment and the Loan to be made thereby, subject to the terms set forth in the above commitment letter, are accepted this the 6 day of June, 2008.

In addition you are hereby notified that a **WAIVER OF APPRAISAL RIGHTS** will be required from you and the Borrower in connection with the above referenced transaction. As part of that transaction, you hereby expressly agree and acknowledge that 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.

✓ Peggy Wheeler-Cribb
Peggy Wheeler-Cribb

✓ Wil Darwin Wheeler
Wil Darwin Wheeler

FSB-SC 02071

LOAN AGREEMENT

This Loan Agreement (this "Agreement") dated June 25th, 2008, made by and between FIRST SOUTH BANK, ("Bank"), and SOUTH CAUSEWAY, LLC, a South Carolina limited liability company ("Borrower").

WITNESSETH:

That for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises herein made, Bank and Borrower, intending to be legally bound, agree as follows:

ARTICLE I - THE LOAN

Section 1.1. Bank hereby agrees to lend up to the principal sum of Six Million Five hundred Thousand and No/100 ($6,500,000.00) Dollars (the "Loan") the amount of which Loan or such part thereof as shall be made, shall be advanced to Borrower in installments ("Advances") within Bank's reasonable discretion, as and for the purposes hereinafter provided. Borrower's obligations to repay the Loan and the interest thereon shall be evidenced by a Promissory Note (the "Note") in form and substance satisfactory to Bank.

Section 1.2. Borrower agrees to pay interest on the Loan at the rate(s), on the date(s), and calculated by the method, set forth in the Note. Interest shall be calculated on the basis of a three hundred sixty (360) day year.

Section 1.3. Borrower shall make to Bank such payments of principal and interest on the Loan as are required by the terms of the Note.

Section 1.4. Borrower may prepay the Loan in whole or in part as provided in the Note. Any prepayment upon the Loan may not be re-borrowed and will be applied to payment installments due in their inverse order of maturity.

ARTICLE II - COLLATERAL

Section 2.1. The repayment by Borrower of its indebtedness under the Loan and the Note, and the performance by Borrower of all obligations under this Agreement, shall be secured by every mortgage, every security agreement, every assignment and every agreement (collectively the "**Security Documents**" and individually each a "**Security Document**") which secures or guarantees payment and/or performance of obligations so defined as to include the Loan or the Note, and by all property of Borrower in, or coming into, the possession, control or custody of Bank, or in which Bank has or hereafter acquires a lien, security interest, or other right (individually and collectively the "**Collateral**") including, without limitation, the following:

(1) Security Documents listed in Schedule 1.

LOAN AGREEMENT

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(i) Security Documents listed in Schedule 1.

(2) The Collateral described in Schedule 2.

Section 2.2. In addition to the Security Documents listed in Schedule 1, Borrower shall, at any time hereafter and so long as any Loan (or agreement to lend) is outstanding hereunder, execute and deliver such documents and instruments granting, confirming or ratifying Bank's liens upon and security interests in and to the Collateral as Bank may from time to time request.

ARTICLE III-REPRESENTATIONS AND WARRANTIES

BORROWER HEREBY REPRESENTS AND WARRANTS:

Section 3.1. Borrower is a limited liability company duly organized, formed and existing under the laws of the State of South Carolina, is qualified to do business in all jurisdictions in which it conducts its business, and has the power and authority to own its property and to carry on its business in each jurisdiction in which Borrower does or presently intends to do business.

Section 3.2. The execution and delivery by Borrower of, and the performance by Borrower of its obligations under, this Agreement, each Note and each Security Document have been duly authorized by all requisite action on the part of Borrower and do not and will not (i) violate any provision of Borrower's articles of organization, operating agreement, or other organizational documents, or of any law, or any judgment, order, regulation or ruling of any court or Governmental Authority (hereafter defined), or (ii) be in conflict with, result in a breach of, or constitute, following notice or lapse of time or both, a default under any indenture, agreement or other instrument to which Borrower is a party or by which Borrower or any of its property is bound.

Section 3.3. Each of this Agreement, the Note and every Security Document is, the legal, valid and binding agreement of Borrower, enforceable against Borrower in accordance with its respective terms.

Section 3.4. There are no pending or threatened actions or proceedings before any court or administrative or Governmental Authority or agency that may, individually or collectively, adversely affect the financial condition or business operations of Borrower or any Guarantor (hereafter defined).

Section 3.5. The financial statements of the Borrower and of each Guarantor heretofore delivered to Bank fairly and accurately present the financial condition of the Borrower and each Guarantor, respectively, as of the date of each thereof, and each has been prepared in accordance with generally accepted accounting principles consistently applied. Since the respective date of each of those financial statements, there has been no material adverse change in the financial condition of the Borrower or any Guarantor, and, after due inquiry, there exists no undisclosed material contingent liability or obligation assertable against the Borrower or any Guarantor.

Section 3.6. All federal, state and other tax returns of the Borrower and each Guarantor required by law to be filed have been completed in full and have been duly filed, and all taxes, assessments and withholdings shown on such returns or billed to the Borrower or a Guarantor, respectively, have been paid, and Borrower maintains adequate reserves and accruals in respect of all its federal, state and other taxes, assessments and withholdings. There are no unpaid assessments pending against the Borrower or any Guarantor for any taxes or withholdings, and Borrower knows of no basis therefor.

Section 3.7. The obligations of Borrower under this Agreement, the Note and each of the Security Documents are not subordinated in right of payment to any other obligation of Borrower.

Section 3.8. Borrower possesses all permits, contracts, licenses, trademark rights, trade names, patents, and other authorizations necessary to enable it to conduct its business operations as now conducted, and no filing with, and no consent, permission, authorization, order or license of, any individual, entity, or governmental authority is necessary in connection with the execution, delivery, performance or enforcement of this Agreement or the Note.

Section 3.9. No event has occurred and is continuing which is, or which with the giving of notice or lapse of time or both would be an Event of Default (as hereafter defined) of this Agreement.

Section 3.10. Borrower has good and marketable title to all of its properties and assets including, without limitation, the Collateral and the properties and assets reflected in the above-described financial statements of Borrower.

Section 3.11. The minimum funding standards of Section 302 of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") have been met at all times with respect to all "plans" (if any) of Borrower to which such standards apply; Borrower has not made a "partial withdrawal" or a "complete withdrawal" from any "multiemployer plan"; and no "reportable event" or "prohibited transaction" has occurred with respect to any such "plan" (as all of the quoted terms are defined in ERISA).

Section 3.12. Except as otherwise expressly disclosed by Borrower to Bank in writing on or before the date of this Agreement: No "hazardous substance" (as that term is defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**")) has been released, discharged, disposed of, or stored on any of Borrower's owned or leased real or personal property by Borrower, or to Borrower's knowledge after due inquiry by any third party or by any predecessor in interest or title to Borrower; Borrower and all of Borrower's properties are in compliance with all applicable local, state and federal environmental laws and regulations relating to the environment; no notice has been served on Borrower by any Governmental Authority or by any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; no "hazardous substance" (as defined in CERCLA) is produced or used in Borrower's business; and no improvement on any real property owned or leased by Borrower contains to Borrower's knowledge after inquiry any asbestos, including, without limitation, asbestos insulation on ceilings, piping or structural members or supports.

ARTICLE IV - CONDITIONS PRECEDENT TO AND USE OF ADVANCES

The obligation of Bank to make the Loan and Advances thereunder is subject to compliance by Borrower with all of the conditions set forth in the Commitment (hereafter defined), and with the following conditions precedent:

Section 4.1. Bank shall have received on or prior to the date of the first Advance upon the Loan (the "**Initial Advance**") hereunder:

(1) A letter of intent addressed to Borrower from a national or regional grocery store chain of size and financial strength reasonably acceptable to Bank (the "**Anchor Tenant**") indicating the desire of such Anchor Tenant to lease rentable space of the Project (hereafter defined) in an amount, at a rental rate and for a term each acceptable to Bank, and approving generally the Proposed Site Plan (hereafter defined) of the Project.

(2) Title insurance in a form approved by Bank (the "**Title Policy**") issued by a title company satisfactory to Bank (the "**Title Insurer**"), insuring the **Borrower Mortgage** and the **Guarantor Mortgage** (each as defined in Schedule 1) as a valid first lien on the real property and improvements described in Exhibit "A" of Schedule 2 hereto (the "**Mortgaged Property**") in a face amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars, free and clear of all liens (other than ad valorem taxes not yet due or payable), charges and encumbrances (including, but not limited to, unfiled mechanics' and materialmen's liens) except those, if any, acceptable to Bank, and including such endorsements (including, without limitation, an endorsement insuring contiguity of the parcels comprising the Project Property (hereafter defined)) as Bank and its counsel may reasonably require.

(3) One or more surveys (whether one or more than one the "**Survey**") of the Project Property of current date made by a registered or licensed engineer or surveyor satisfactory to Bank and the Title Insurer and field certified to each of them showing:

(a) the boundaries of the Project Property, the location of wetlands and of other environmentally sensitive areas (if any), the location of established building setback lines, if any, and the location of existing improvements, if any, on the Project Property; and

(b) all easements affecting the Project Property and other matters apparent thereon, the relation of the Project Property to public thoroughfares for access purposes and the lines and width of all dedicated streets and rights-of-way abutting or traversing the Project Property;

Bank agrees to waive the requirement that the Survey be of current date and certified to the Bank and the Title Insurer provided that: (i) the Survey shall be of reasonably recent date, (ii) no exception shall be taken by the Title Insurer with respect to the Title Policy by reason of the Survey not being of current date or certified as aforesaid, (iii) no exception which a survey would disclose and which is not currently depicted upon a survey acceptable to Bank, shall be taken in the Title Policy, and (iv) the Survey and the matters depicted thereon shall be acceptable to the Bank and the Title Insurer.

(4) By entry upon the Survey or by site plan (in either event the "**Proposed Site Plan**") a depiction of the proposed retail shopping center (the "**Project**") to be located upon that portion of the Mortgaged Property consisting of consisting of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres (the "**Project Property**").

(5) A certification by a flood certification agency acceptable to Bank of what area (if none, so stated) of the Project Property is located in an "**area of special flood hazard**" as determined pursuant to the standards of the Federal Emergency Management Agency.

(6) The Security Documents duly executed, and evidence satisfactory to Bank that the Borrower Mortgage and the Guarantor Mortgage has each been duly recorded in the appropriate filing office in the county where the Mortgaged Property is located, and that the Financing Statements (defined in Schedule 1) have been appropriately filed in said county and in the appropriate central filing office.

(7) A Guaranty (each a "**Guaranty**" and collectively the "**Guaranties**") executed by each Guarantor, in form and substance acceptable to Bank, guaranteeing timely payment and performance of all obligations of Borrower with respect to each Loan (including, without limitation, payment obligations under each Note).

(8) Evidence reasonably acceptable to Bank that (a) the construction of the Project and contemplated use of the Project Property therefor, and of the Improvements (hereafter defined) violate no restrictive covenants applicable to the Project Property, (b) all utility and municipal services required for the construction, occupancy and use of the Project are or will be available as and when needed to the Project Property, and (c) the Project Property is satisfactorily zoned and subdivided for the Project, and for the planned use and occupancy thereof as a retail shopping Center suitable for use in accordance with the requirements of the Anchor Tenant.

(9) Evidence(s) of Insurance showing that all policies of liability insurance required to be maintained by or on behalf of Borrower pursuant to the provisions of this Agreement and of each Security Document are in force and effect, cannot be canceled except upon thirty (30) days written notice, and name Bank as a certificate holder and/or additional insured thereunder.

(10) Evidence that no work has been done or materials supplied which could result in or give rise to a lien on the Mortgaged Property prior to or on a parity with the lien of the Borrower Mortgage, the Guarantor Mortgage and the other Security Documents.

(11) Evidence satisfactory to the Bank that the Project Property abuts and adjoins a dedicated street or road providing access thereto and that the remaining portion of the Mortgaged Property (the "**Beach Property**") has sufficient legal and actual access to public streets and roads.

(12) The following evidence of the authority of Borrower to enter into the transactions contemplated hereby shall have been received by Bank:

(a) A certified true and correct copy of Borrower's Articles of Organization and Operating Agreement (or, if there is no written Operating Agreement, evidence that Borrower is a single member limited liability company, the affairs of which are managed by such single member).

(b) Certificate of the Secretary of State of South Carolina dated a recent date and evidencing Borrower's proper registration to do business and good standing in South Carolina.

(c) Resolutions of the single or managing member (the "**Member**") of Borrower authorizing the execution and delivery of this Agreement, the Note, and the Security Documents.

(d) A certificate of the Member of Borrower as to the incumbency of the Member of Borrower who will sign this Agreement, the Note, the Security Documents, and requests for Advances upon the Loan, and to the effect that no amendment or modification to its Articles of Organization, Operating Agreement (written or oral, as the case may be) or registration in South Carolina have occurred since the date the same were certified as aforesaid.

(13) An opinion of counsel in form and substance satisfactory to counsel for Bank as to such matters as Bank may reasonably request.

Section 4.2. In addition to the foregoing it shall be a condition precedent of each subsequent Advance that:

(1) Borrower shall have provided to Bank an executed counterpart of Borrower's contract with Borrower's architect and/or engineer (in either case the "**Engineer**") the assignment whereof having been acknowledged by the Engineer, in order to assure Bank of the continued performance of the Engineer without any cost increases which result solely by reason of Bank or its designee taking possession of the Project Property or taking over the construction of the Improvements and of the general construction contract (the "**Construction Contract**") with the general or prime contractor (the "***Contractor***") for construction and installation of the Improvements, the fixed price amount or guaranteed maximum amount of which (as the case may be) shall not exceed One Million Four Hundred Thousand and No/100ths ($1,400,000.00) Dollars.

(2) Borrower shall have provided to Bank the executed **Construction Contract Assignment** (defined in Schedule 1) acknowledged by the Contractor, assuring Bank of the continued performance of the Contractor without any cost increases which result solely by reason of Bank or its designee taking possession of the Project Property or taking over the construction of the Improvements. The Construction Contract shall provide for retainage from each draw request of Ten (10.0%) percent prior to completion of the Improvements (the "Retainage").

(3) Borrower shall have provided to Bank labor and materials payment bond and performance bond issued by surety acceptable to Bank, naming Contractor as obligor in the full amount of the Construction Contract, in form and substance acceptable to Bank, together with dual-obligee rider(s) thereto naming Borrower as obligee and Bank as co-obligee (collectively the "**Bonds**").

(4) Borrower shall have provided to Bank a set of the final plans and specifications (the "**Plans**") for the construction and installation of the roads, drives, parking areas, exterior free-standing lighting and utilities (and installation thereof) and other infrastructure improvements for and to service the retail shopping areas of the Project the costs of which are to be defrayed with proceeds of the Loan (the "**Improvements**") (including, without limitation, a site plan showing the proposed locations thereof) signed as approved by the Engineer, the Contractor and the Borrower.

(5) Borrower shall have provided to Bank a breakdown by cost category of Project Costs (hereafter defined, which shall thereupon be attached hereto as Exhibit 1.

(6) All required permits, licenses and approvals of Governmental Authorities necessary to construct and use the Improvements (except those which are normally obtained during

the course of construction or which are not available until completion of construction of the Improvements, and, as to each such permit, license or approval, as soon as the same is reasonably obtainable or required) have been issued.

(7) The representations and warranties of Borrower in Article III shall be true and correct on and as of the date of each Advance with the same force and effect as if made on such date, and no Event of Default nor any event which, with notice or the lapse of time or both, would constitute an Event of Default, shall have occurred.

(8) As of the date of each Advance, the Improvements (constructed and under construction) shall not have been materially damaged or destroyed by casualty, unless there shall have been deposited with Bank monies in an amount sufficient in the judgment of Bank to permit restoration of the Improvements so damaged or destroyed in accordance with the Plans.

(9) Neither Bank nor Borrower shall have received notice that any of the Construction Contract, the Bonds, or all required licences and permits, is not in full force and effect.

(10) Borrower shall have furnished to Bank the Request for Advance (hereafter defined) and where required, the contractor's certificate and the other certificates and material referred to in Section 4.4.

(11) If requested by Bank Borrower shall furnish to Bank an additional opinion of counsel in form and substance satisfactory to Bank as to such additional matters as Bank may reasonably request.

(12) If requested by Bank or required by the Title Insurer Borrower shall cause to be furnished an endorsement to the Title Policy or other instrument signed by the Title Insurer indicating that since the date of the Title Policy, there has been no change in the state of title, which endorsement or instrument shall have the effect of changing the effective date of the Title Policy to the date of such Advance.

(13) Insurance as required hereunder and in the Security Documents shall continue in full force and effect.

(14) Sufficient undisbursed funds remain in the Loan and in each cost category with respect to which the Advance is sought, to fully fund the Advance sought.

Section 4.3. In addition to the foregoing it shall be a condition precedent with respect to the Final Advance that the Bank shall have received:

(1) Evidence acceptable to Bank that the Improvements have been fully completed.

(2) All requirements and conditions for the Final Advance must be satisfied in full in order for the Final Advance to be made not later than March 1, 2009 (the "**Completion Date**").

Section 4.4. Subject to the terms of this Agreement, Bank shall make Advances to Borrower on account of the Loan in an aggregate principal amount of up to, but not more than, $6,500,000.00. The Initial Advance shall be made upon accomplishment as determined by Bank with the conditions precedent set forth in Section 4.1 hereof, and shall be used for the purposes of

satisfying existing indebtedness encumbering the Project Property and the Beach Property (i.e., the Mortgaged Property), funding Three Hundred Thousand and No/100ths ($300,000.00) Dollars into a restricted access (limited to Bank only until the Loan has been repaid and satisfied in full) demand deposit account (the "**Interest Reserve Account**") of Borrower maintained by and with Bank to be used to make monthly interest payments due upon the Loan, and paying costs of closing and otherwise incurred in connection with the Loan, as approved by Bank. Except for the Final Advance (hereafter defined), Advances subsequent to the Initial Advance shall be made from time to time as construction of the Improvements progresses, but not more frequently than once each month, in a sum equal to (a) the total expenditures incurred by the Borrower and approved by the Bank for fees and costs incurred in connection with the Loan, funding the Interest Reserve Account, the satisfaction of existing indebtedness encumbering the Mortgaged Property, interest payments upon the Loan, and the construction of the Improvements (such total expenditures incurred by Borrower being referred to as the "**Project Costs**") less Retainage, through the end of the period covered by the Request for Advance, less (b) the aggregate amount of all Advances theretofore made on account of the Loan and the amount, if any, by which the Project Costs of any category exceed the amounts allocated thereto, subject, in each case, however, to the further provisions of this Article IV. Anything to the contrary herein notwithstanding Advances for Project Costs shall not exceed the sum of $6,500,000.00 in the aggregate. After the Initial Advance Advances shall be based upon percentage of completion of the Improvements, subject, in each case, however, to the provisions of this Article IV. The Final Advance (the "**Final Advance**") shall be made only upon completion in full of the Improvements and, in applicable cases approval or acceptance for service by appropriate Governmental Authorities. The Final Advance may include, to the extent of funds available, Retainage then due.

Section 4.5.

(1) Not less than seven (7) business days prior to the making of each Advance:

(a) Borrower shall submit to Bank a request for such Advance in such form as Bank may require (the "**Request for Advance**") setting forth the total amount for which such Advance is requested broken down by categories, and, if requested by Bank, an Request for Advance shall be accompanied by receipted bills, paid invoices, payroll records or other evidence satisfactory to Bank supporting each item covered by such Request for Advance; or

(b) In the case of an Request for Advance for or including construction costs, Bank shall have received as to each such Request for Advance a fully completed Application and Certificate for Payment (AIA Document G 702) executed and acknowledged by the Contractor and certified by the Architect.

(2) Prior to the making of any Advance, Bank and its agents shall have the opportunity to verify the facts certified to by Borrower and the Contractor which shall be accomplished as expeditiously as is reasonable under the circumstances. If requested by Bank, Bank shall also have received a report addressed to Bank of a construction engineer or architect designated by Bank (all costs of which shall be borne by Borrower) certifying such matters with respect to manner and quality of construction of the Improvements and percentage of completion as Bank may deem reasonably necessary.

(3) Prior to and as a condition precedent to each of the Advances after the Initial Advance, if required by Bank Borrower shall cause to be issued to Bank a bringdown setting forth any and all liens or other adverse matters filed or recorded against or with respect to the Mortgaged Property during the relevant period and an endorsement to the Title Policy insuring that as of the date of each of said Advances no lien has been filed against the Mortgaged Property or with respect to the Improvements and that each of the Borrower Mortgage and the Guarantor Mortgage continues its lien priority as described above.

(4) Each submission of a Request for Advance shall be deemed to constitute a certification by Borrower that (a) the representations and warranties of Borrower in Article III hereof are true and correct on and as of the date of such submission with the same force and effect as if made on such date, and (b) no Event of Default, nor any event which with notice or the lapse of time or both would constitute an Event of Default, has occurred and is continuing.

(5) Advances shall not exceed $6,500,000.00 in the aggregate. Advances shall be further limited to defray costs actually incurred by Borrower for the each category of such costs approved by Bank and to the amount shown for such category.

Section 4.6.

(1) The amount of each Advance (prior to the Final Advance) for construction costs shall not in any event exceed the lesser of (a) the amount requested for construction costs in the Request for Advance, or (b) the excess, if any, of the actual value as reasonably determined by Bank of all work and labor theretofore done and materials theretofore incorporated in the Improvements over the aggregate amount of all Advances theretofore made for construction costs of the Improvements plus Retainage.

(2) If any amount allocated to a category of Project Costs is at any time not sufficient in the reasonable judgment of Bank (without taking into account any amount allocated to any contingency category) to pay all remaining Project Costs in such category in full, Bank shall have no obligation to make further Advances until Borrower shall have paid such amounts as may be required so that the amount remaining for such category is sufficient to pay such Project Costs in full, although Bank may in its reasonable discretion exercised reasonably and in good faith upon request of Borrower elect to reallocate amounts remaining in the Loan for some other category to cover the deficiency.

(3) If at any time the unadvanced portion of the Loan shall in the reasonable judgment of Bank be insufficient to pay all Project Costs Borrower shall, at the request of Bank, deposit with Bank an amount equal to the deficiency.

(4) Bank shall have no obligation to lend if at the time of any requested Advance there shall have occurred an Event of Default hereunder.

(5) Bank shall have no obligation to lend if at any time, in the reasonable judgment of Bank, all permits and agreements necessary for the construction of the Improvements are not in full force and effect or in the reasonable judgment of Bank may not be immediately available when needed.

(6) Each Advance shall be credited to Borrower's account with Bank, or at the option of Bank, may be paid by Bank directly to the party or parties who have actually furnished labor, materials or services in connection with or incidental to the construction of the Improvements or may be directly applied by Bank to the payment of the cost of any of Borrower's obligations to

Bank on account of the Loan. No further direction or authorization for such direct payment shall be required, it being understood that any such payment or application shall pro tanto satisfy the obligation of Bank hereunder and shall be deemed an Advance as fully as if made to or requested by Borrower, regardless of the actual disposition thereof by the party or parties to whom such payment is made.

(7) The making of any Advance by Bank shall not be deemed an acceptance or approval by Bank (for the benefit of Borrower or any third party) of any work done or Improvements constructed or materials furnished or installed in connection with the construction of the Improvements.

(8 . Bank may apply when due directly out of any Advance any amount necessary for the payment of indirect costs, including, without limitation, interest on the Loan, fees payable to Bank, inspection and review fees and costs, and fees payable to Bank and fees of Bank's counsel with respect to the Loan.. All amounts so applied shall be deemed Advances and secured by the Security Documents and guaranteed by each Guarantor's Guaranty.

ARTICLE V- AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, so long as Borrower may borrow under this Agreement or so long as any indebtedness remains outstanding under any Loan or under any Note, Borrower shall:

Section 5.1. Deliver to Bank (a) within ninety (90) days after the end of each fiscal year, statements of income and retained earnings and a balance sheet of Borrower, unaudited but certified as to truth, accuracy and completeness by the sole or managing Member or chief financial officer of Borrower and manually signed copies of all income tax returns (both federal and state) of Borrower and, (b) within fifteen days after the date due copies of all income tax returns (including all schedules thereto) of Borrower for the immediately preceding fiscal year bearing the original signature of the sole or managing Member or other member of senior management who signed the original filed return, (c) by March 1st of each calendar year a financial statement of each Guarantor in form and substance satisfactory to Bank certified as to accuracy and completeness by the Guarantor, (d) within fifteen days after the date due copies of all income tax returns (including all schedules thereto) of each Guarantor for the immediately preceding fiscal year bearing the original signature of the each such respective Guarantor, and (e) with reasonable promptness, such other information as Bank may reasonably request.

Section 5.2. Maintain Borrower's books, accounts and records in accordance with generally accepted accounting principles and shall permit any person or entity designated in writing by Bank to visit and inspect any of Borrower's properties, books and financial records, and to make copies thereof and take extracts therefrom, and to discuss Borrower's financial affairs with Borrower's sole or managing Member, financial officers, accountants and advisors.

Section 5.3. Pay and discharge all taxes, assessments, fees, withholdings and other governmental charges or levies imposed upon Borrower, or upon Borrower's income and profits, or upon any property belonging to Borrower, prior to the date on which penalties attach thereto, unless the legality thereof shall be promptly and actively contested in good faith by appropriate proceedings, and unless adequate reserves for such liability are maintained by Borrower pending determination of such contest.

Section 5.4. Maintain Borrower's existence in good standing in the state of its organization and its qualification and good standing in all jurisdictions where such qualification is required under applicable law, and conduct Borrower's business in the manner in which it is now conducted subject only to changes made in the ordinary course of business.

Section 5.5. Promptly notify Bank in writing of the occurrence of any Event of Default, of any event which but for the passage of time, the giving of notice or both would constitute an Event of Default, or of any pending or threatened litigation no admitted by the carrier to be fully covered by insurance and claiming damages in excess of $25,000 or seeking relief that, if granted, would adversely affect the financial condition or business operations of Borrower.

Section 5.6. Maintain and keep in force insurance of the types and in the amounts customarily carried in lines of business similar to Borrower, and such other insurance as Bank may require, including, without limitation, public liability, which insurance shall be carried with companies and in amounts satisfactory to Bank. Casualty and property damage insurance shall name Bank as mortgagee or loss payee, as appropriate, and all insurance policies shall require not less than thirty (30) days written notice of cancellation. Borrower shall deliver to Bank from time to time at Bank's request copies of all such insurance policies and evidences of insurance and schedules setting forth all insurance then in effect.

Section 5.7. Keep all of Borrower's properties in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that Borrower's properties shall be fully and efficiently preserved and maintained.

Section 5.8. Perform or take, or request of Bank, such action as may be necessary or advisable to perfect any lien or security interest in the Collateral or otherwise to carry out the intent of this Agreement.

Section 5.9. Pay or reimburse Bank for any out-of-pocket expenses, including attorneys' fees, incurred by Bank in preparing or enforcing this Agreement, each Note, and the Security Documents, or in collecting the Loan and any other sum due under the Note or this Agreement.

Section 5.10. Fund all of Borrower's "plans" to which the minimum funding standards of Section 302 of ERISA apply in accordance with such standards; furnish Bank, promptly upon Bank's request, copies of all reports or other statements filed with, or received from, the United States Department of Labor, the Internal Revenue Service, or the Pension Benefit Guaranty Corporation with respect to all of Borrower's "plans"; and promptly advise Bank of the occurrence of any "reportable event" or "prohibited transaction" with respect to any such "plan" (as all of the quoted terms are defined in ERISA).

Section 5.11. Comply with all applicable present and future local, state and federal laws, including, without limitation, environmental laws and regulations; notify Bank immediately if any "**hazardous substance**" (as defined in CERCLA) is released, discharged, disposed of, stored, or discovered on any real or personal property owned or leased by Borrower; notify Bank in writing within three days after Borrower receives notice from any Governmental Authority or any individual or entity claiming violation of any environmental protection law or regulation, or demanding compliance with any environmental protection law or regulation, or demanding payment, indemnity, or contribution for any environmental damage or injury to natural resources; and permit Bank from time to time to observe Borrower's operations and to perform tests (including soil tests and ground water tests) for "hazardous substances" on any real or personal property owned or leased by Borrower.

Section 5.12. Maintain the Interest Reserve Account and in addition thereto maintain a business demand deposit account of Borrower (which shall at all times have on deposit therein a principal balance of not less than Five Thousand and No/100ths ($5,000.00) Dollars), with Bank.

Section 5.13. Use the proceeds of the Loan only to pay Project Costs, and such other use(s) as Bank shall specifically approve in writing.

Section 5.14. Timely comply with all requirements of Governmental Authorities applicable to the construction of the Improvements, except where contested in good faith and by appropriate proceedings, and in accordance with the approved Plans such that the Improvements shall be fully completed on or prior to the Completion Date.

Section 5.15. If requested by Bank, deposit monthly in escrow with Bank such sums as may be necessary to pay when due all ad valorem taxes assessed against the Mortgaged Property, any special assessments with respect to the Mortgaged Property and the premiums for all insurance coverage with respect to the Project Property.

Section 5.16. Cause construction of the Improvements to be timely commenced and to be prosecuted with diligence and continuity to completion, and cause the same to be timely completed in a good and workmanlike manner in accordance with the Plans, respectively, and in compliance with all requirements of Governmental Authorities and any restrictive covenants applicable to the Project Property (subject only to delays by reason of force majeure), free and clear of all liens or claims of liens for materials supplied or work performed in connection therewith, such that the Improvements shall be fully completed on or prior to the Completion Date.

Section 5.17. Unless prior written approval has been obtained from Bank, not purchase any materials in any manner that will result in the ownership thereof not vesting unconditionally in the Borrower, free from all liens, charges, encumbrances and security interests, on delivery of such materials to the Project Property. Borrower shall cause all materials which are acquired or furnished to be but not yet incorporated into the Improvements and for which Borrower is entitled to an Advance to be stored at the Project Property, or at other locations approved by Bank, in each case under adequate safeguards to minimize the possibility of loss, theft, damage or commingling with other materials or projects, and shall deliver to Bank, on demand, copies of any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower claims title to or interest in any such materials.

ARTICLE VI - NEGATIVE COVENANTS

Borrower covenants and agrees that, without the prior written consent of Bank, so long as any indebtedness remains outstanding under any Loan or any Note, Borrower will not:

Section 6.1. Use any proceeds of a Loan except for the purposes stated in Section 5.13.

Section 6.2. Create, incur, assume, or suffer to exist any indebtedness of any description whatsoever not existing as of the date of this Agreement, except (i) indebtedness incurred under this Agreement, (ii) any trade indebtedness incurred in the ordinary course of business payable within 60 days of its incurrence.

Section 6.3. Merge, consolidate or enter into a partnership or joint venture with any other person or entity; change, discharge or terminate present controlling management, or sell, lease,

transfer or otherwise dispose of all or any substantial portion of its assets, except for cash in the ordinary course of business.

Section 6.4. Guarantee or become contingently liable for any obligation or indebtedness of any other person or entity, except that Borrower may endorse negotiable instruments for collection in the ordinary course of business.

Section 6.5. Make any loans, advances or extensions of credit to any person or entity.

Section 6.6. Pay, declare or disburse any dividend or profit or redeem or purchase any Member's interest in whole or in part, provided, however, that if Borrower has elected partnership or Subchapter S status for income tax purposes Borrower may pay distributions not to exceed the amount of income taxes payable by its Member(s) solely attributable to Borrower's income.

Section 6.7. Grant any lien on or security interest in, or otherwise encumber, any of its properties or assets including, without limitation, the Collateral, and, except for liens for taxes not yet due and payable or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves are being maintained by Borrower, Borrower shall not permit to exist any lien, security interest or other encumbrance (other than easements, such as for utilities, which solely service the Project) on any of its properties or assets.

Section 6.8. Take, or fail to take, any act if such act or failure to act results in the imposition of withdrawal liability under Title IV of ERISA.

Section 6.9. Release, discharge, dispose of, store, accept or receive for storage or disposal, or allow to be stored or disposed of, any "hazardous substance" (as defined in CERCLA) on or in any real or personal property owned or leased by Borrower, except as otherwise expressly consented to by Bank in writing; or release, discharge, use, transport, or dispose of any "hazardous substance" in an unlawful manner.

Section 6.10. Change from the current fiscal year for financial and accounting purposes.

Section 6.11. Change the general character of the presently intended business of Borrower.

ARTICLE VII - EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Any one or more of the following shall constitute an event of default (an "**Event of Default**") hereunder by Borrower:

(1) Failure to pay any payment of principal or interest due on the Note or any other sum due hereunder when due; or

(2) Failure to pay when due any payment of principal or interest due on any other obligation for money borrowed on for the deferred purchase price of goods or services; or

(3) Default under the Note, any Security Document, any Guaranty or any other document, note, agreement, mortgage, security agreement, instrument, or understanding with, held by, or executed in favor of Bank with respect to the Loan, not cured within the cure period therein granted, if any; or

(4) Default or any event of default shall occur in the payment of any indebtedness or the performance of any obligation with respect to any other note, instrument granting a security interest securing such note or guaranteeing such note, or any loan agreement or credit agreement relating thereto of Borrower to Bank not cured within the cure period therein granted, if any.

(5) Should any representation or warranty contained herein or made by or furnished on behalf of Borrower in connection herewith be false or misleading in any material respect as of the date made; or

(6) Failure to timely perform or observe any covenant or agreement contained in this Agreement; or

(7) Failure to pay debts generally as they become due; or

(8) Borrower or a Guarantor making or taking any action to make an assignment for the benefit of creditors, or petitioning or taking any action to petition any tribunal for the appointment of a custodian, receiver or any trustee for it or him, or a substantial part of its, his or her assets, or commencing or taking any action to commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, liquidation or debtor relief law or statute of any jurisdiction, whether now or hereafter in effect, including, without limitation, any chapter of the federal Bankruptcy Code; or, if there shall have been filed or commenced against Borrower or a Guarantor any such petition, application or proceeding which is not dismissed within 30 days or in which an order for relief is entered; or should Borrower or a Guarantor by any act or omission indicate its, his or her approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it ,him or her, or any substantial part of any of its, his or her properties; or should Borrower or any Guarantor suffer to exist any such custodianship, receivership or trusteeship; or

(9) Borrower's or a Guarantor's concealing, removing, or permitting to be concealed or removed, any part of its, his or her property, with intent to hinder, delay or defraud its, his or her creditors or any of them, or making or suffering a transfer of any of its, his or her property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or making any transfer of its, his or her property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or suffering or permitting, while insolvent, any creditor to obtain a lien upon any of its, his or her property through legal proceedings or distraint which is not vacated within 30 days after the date thereof; or

(10) Occurrence of any of the following with respect to Borrower or a Guarantor; death (with respect to individuals), dissolution or cessation of business (if a partnership, corporation, or other organization), or insolvency; or

(11) Any party shall obtain an order or decree in any court of competent jurisdiction enjoining or delaying the construction of the Improvements, or enjoining or prohibiting the carrying out of the terms and conditions hereof;

of the Note or of any Security Document and such proceedings are not discontinued or such order or decree is not vacated within 30 days; or

(12) Borrower shall neglect, refuse or fail to keep in full force and effect any permit or approval required to be kept in effect by any Governmental Authority in connection with the construction of the Improvements; or

(13) Borrower shall abandon construction of the Improvements with the intent not to resume construction for a period of 5 consecutive days; or

(14) The Mortgaged Property or any material part thereof shall be condemned or the Improvements or any material part thereof shall be substantially damaged by fire or other casualty in such manner as to preclude, in Bank's sole judgment, the timely completion of construction of the Improvements in accordance with the Plans on or prior to the Completion Date; or

(15) A survey at any time shall show an encroachment upon any street, easement, right-of-way or adjoining property or violate any setback requirement, or shall show that any structure on adjoining property encroaches on the Project Property and Borrower does not begin to diligently begin to cure the same within 30 days after Borrower becomes aware of same; or

(16) Any of the materials used in connection with the construction or operation of the Improvements shall not be in accordance with the Plans.

Section 7.2. Upon the occurrence and continuation of an Event of Default, Bank may (i) terminate all obligations of Bank to Borrower, including, without limitation, all obligations to lend money under this Agreement, (ii) declare immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived, the Note and any other note or obligation of Borrower held by Bank, including, without limitation, principal, accrued interest and costs of collection (including, without limitation, attorneys' fee if collected by or through an attorney, in bankruptcy or in other judicial proceedings) and (iii) pursue any remedy available to it under this Agreement, under the Note, under any Security Document, under any other note of Borrower held by Bank, or available at law or in equity.

Bank shall have the further right, upon the happening of any Event of Default, in addition to any rights or remedies available to the foregoing, to enter into and take possession of the Mortgaged Property(and any materials acquired or furnished in connection with the construction of, but not incorporated into, the Improvements) and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and employ security personnel to protect the Mortgaged Property (and all materials); and all sums so expended by Bank shall be deemed to have been advanced to Borrower hereunder on account of the Loan. For this purpose, Borrower hereby irrevocably constitutes and appoints Bank its true and lawful attorney-in-fact, coupled with an interest, with full power of substitution (1) to complete, or cause to be completed, the Improvements in the name of Borrower in the manner called for by the Plans; (2) to make such additions and changes to and corrections of the Plans as may be necessary or desirable to complete the Improvements substantially in the manner contemplated by the Plans; (3) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (4) to pay, settle or compromise all existing bills and claims which are or may be liens against the Mortgaged Property or any part thereof, or may be necessary or desirable for the completion of the work or the clearance of title; (5) to execute all applications and certificates in the name of Borrower which may be required by any construction or other contract; (6) to prosecute and defend all actions

or proceedings in connection with the construction of the Improvements and to take such action and require such performance as Bank deems necessary; (7) to enter such leases and other agreements as are necessary to secure the Anchor Tenant as a resident of the Project, and (8) generally to do any and every act with respect to the construction and use of the Improvements and the proposed Project as Borrower may do in its own behalf.

ARTICLE VIII - DEFINITIONS

Section 8.1.

As used in this Agreement, the following terms shall have the meanings set forth below:

(1) Accounting terms used in or to comply with the terms of this Agreement such as "net income," "working capital," "current assets," and "current liabilities" shall have the meanings normally given them by, and shall be calculated, both as to amounts and classification of items, in accordance with, generally accepted accounting principles.

(2) "**Commitment**" means that letter of Bank addressed to the Guarantors dated May 30, 2008, with respect to the Loan.

(3) "**Governmental Authority**" means each one of and "**Governmental Authorities**" means all of the United State of America, the State of South Carolina and all political subdivisions thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

(4) "**Guarantor**" means each of and "**Guarantors**" means all of Peggy Wheeler-Cribb, Will Darwin Wheeler, and any person or entity who endorses the Note or who now or hereafter guarantees payment or collection of the Loan in whole or in part.

(5) "**Note**" is defined in Section 1.1 and includes any promissory note or notes given in extension or renewal of, or in substitution for, the original Note.

Other capitalized terms are otherwise defined in this Agreement or an Exhibit or Schedule hereto.

ARTICLE IX - MISCELLANEOUS

Section 9.1. No delay or failure on the part of Bank in the exercise of any right, power or privilege granted under this Agreement, the Note, each of the Security Documents or available at law or in equity, shall impair any such right, power or privilege or be construed as a waiver of any Event of Default of any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege. No waiver shall be valid against Bank unless made in writing and signed by Bank, and then only to the extent expressly specified therein.

Section 9.2. All notices and communications provided for hereunder shall be in writing, delivered by hand, by electronic mail (provided, however, any notice given by electronic mail shall,

in order to be effective, be also promptly given by mail in the method herein provided) or sent by first-class or certified mail, postage prepaid to the following addresses:

If to Bank: First South Bank
1333 Main Street, Suite 100
Columbia, SC 29201
Attention: F. Wayne Lovelace, Senior Vice President

If to Borrower: South Causeway, LLC
Post Office Box 3727
Pawleys Island, South Carolina 29585
Attention: Peggy Wheeler-Cribb

Borrower or Bank, or either of them, may change addresses for notice purposes by notice to the other party in the manner provided herein. All notices, demands, consents or other communications hereunder shall be in writing and shall be deemed effective when delivered personally or 3 days after mailing when sent by registered or certified mail, first class postage prepaid, addressed (1) if to Borrower, at the address set forth above, or (2) if to Bank, at its address set forth above, or as to either party, at such other address as it may specify in a notice to the other party(ies).

Section 9.3. Borrower shall pay (1) all out-of-pocket expenses of Bank in connection with the preparation, execution and delivery of this Agreement, the Note, the Security Documents, the Guaranties, any amendments hereto or thereto and any consents or waivers hereunder or thereunder (including the fees and expenses of Bank's counsel), (2) all taxes, (except Bank's income taxes), fees or other assessments, including stamp taxes, if any, upon any documents or transactions contemplated hereby or in connection with the recording and filing of the Borrower Mortgage, the Guarantor Mortgage, the Financing Statements and any other Security Document; and (3) costs of collection (including Bank's legal costs ands fees) if default is made in the payment of the Loan or any other sums payable to Bank hereunder or under the Security Documents. Borrower's obligations under this Section 9.3 shall survive the payment of the Loan. Borrower's obligations to make such payments shall exist whether or not any Advances are made hereunder unless Bank wrongfully and intentionally refuses to make such Advances.

Section 9.4. Borrower shall be solely responsible for the payment of any commissions due (if any). Bank represents that it has not dealt with any broker in connection with this transaction. Borrower shall indemnify and save harmless Bank from and against any and all claims for any brokerage commission arising out of the making of the Loans or the transactions contemplated hereby. Borrower's obligation under this Section 9.4 shall survive the payment of the Loans.

Section 9.5. All payments and prepayments of principal, interest and other amounts payable to Bank hereunder under the Note or under any Security Document shall be made in immediately available funds at Bank's principal office in Columbia, South Carolina, not later than 12:00 o'clock noon Columbia time on the date on which such payment shall become due. Borrower hereby authorizes Bank to charge principal, interest or any other amounts payable by Borrower hereunder, under the Note or any Security Document, as and when the same become due and payable, directly against the Interest Reserve Account or any general deposit account maintained by Borrower with Bank (up to the credit balance thereof), but Bank shall not be required to effect any such debit. If any principal of or interest on the Loan or any other amount payable by Borrower hereunder falls due on a Saturday, Sunday or public holiday at the place of payment, then such due date shall be extended to the next succeeding full business day at such place and interest shall be payable in respect to each such extension of principal.

Section 9.6. All proceedings taken in connection with the transactions provided for herein, including without limitation the surveys, appraisals and documents required or contemplated by this Agreement, the persons responsible for the execution and preparation thereof, all contractors, all sureties, all insurers and the forms of construction contracts, bonds, guaranties and policies of insurance required hereby, shall be satisfactory in form, scope and content to Bank.

Section 9.7. Borrower shall receive Advances hereunder and shall hold the same as a trust fund for the sole purpose of paying the costs for which such Advance was made.

Section 9.8. Nothing in this Agreement, whether express or implied, shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

Section 9.9. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 9.10. The terms, conditions and provisions of the Commitment are incorporated herein and made a part hereof by reference. To the extent that any specific inconsistencies exist between the Commitment, and this Agreement, the Note or any of the Security Documents, the provisions of this Agreement, the Note or such Security Document, respectively, shall govern; to the extent that any specific inconsistencies exist between this Agreement, and the Note or any of the Security Documents, the provisions of this Agreement shall govern.

Section 9.11. Notwithstanding anything to the contrary contained in any of this Agreement, the Commitment, the Note or the Security Documents, the obligations of Borrower to Bank under this Agreement, the Note and the Security Documents are subject to the limitation that payments of interest to Bank shall not be required to the extent that receipt of any such payment by Bank would be contrary to provisions of law applicable to Bank which limit the maximum rate of interest which may be charged or collected by Bank.

Section 9.12. This Agreement, the Commitment, the Note and the Security Documents shall be governed by and construed and enforced in accordance with the substantive laws of the United States and the State of South Carolina, without regard to that state's rules governing conflicts of law.

Section 9.13. All representations and warranties contained in this Agreement or made or furnished on behalf of Borrower in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loan and shall continue in effect until the Note and the interest thereon are paid in full.

Section 9.14. This Agreement shall bind and inure to the benefit of Borrower and Bank, and their respective successors and assigns; provided, however, Borrower shall have no right to assign its rights or obligations hereunder to any person or entity.

Section 9.15. Time is of the essence in the payment and performance of every term and covenant of this Agreement, the Note and each of the Security Documents.

Section 9.16. This Agreement may be amended or modified, and Borrower may take any action herein prohibited, or omit to perform any action required to be performed, only if Borrower shall obtain the prior written consent of Bank to such amendment, modification, action or omission to act, and no course of dealing between Borrower and Bank shall operate as a waiver of any right,

power or privilege granted under this Agreement, under the Note or the Security Documents, or available at law or in equity. This Agreement, the Note, the Security Documents and the Commitment contain the entire agreement between Borrower and Bank regarding the Loan and the Collateral. No oral representations or statements shall be binding on Bank, and no agent of Bank has the authority to vary the terms of this Agreement except in writing on the face hereof or on a separate page attached hereto.

Section 9.17. All rights, powers and privileges granted hereunder shall be cumulative, and shall not be exclusive of any other rights, powers and privileges granted hereby, by the Note, the Security Documents or any other document or agreement, or available at law or in equity.

Section 9.18. Upon the occurrence and during the continuation of an Event of Default, Borrower recognizes Bank's right, without notice or demand, to apply any indebtedness due or to become due to Borrower from Bank in satisfaction of any of the indebtedness, liabilities or obligations of Borrower under this Agreement, under the Note, under the Security Documents or under any other note, instrument, agreement, document or writing of Borrower held by or executed in favor of Bank, including, without limitation, the right to set off against any deposits or cash collateral of Borrower held by Bank. In addition to the right of setoff, as additional collateral for the Loan, Borrower hereby grants to Bank a continuing lien on and security interest in all deposit accounts of Borrower now or hereafter held by Bank, including all certificates of deposits now or hereafter issued to Borrower by Bank.

Section 9.19. Borrower hereby agrees to indemnify Bank and its officers, directors, agents and attorneys against, and to hold Bank and all such other persons harmless from, any claims, demands, liabilities, costs, damages, and judgments (including, without limitation, liability under CERCLA, the Federal Resource Conservation and Recovery Act, and every other environmental law and regulation, and costs of defense and attorney's fees) resulting from any representation or warranty made by Borrower or on Borrower's behalf pursuant to Article III of this Agreement having been false when made, or resulting from Borrower's breach of any of the covenants set forth in Article V and Article VI of this Agreement. This agreement of indemnity shall be a continuing agreement and shall survive payment of the Loan and the Note and termination of this Agreement. Further, Borrower hereby agrees to indemnify Bank and its officers, directors, agents and attorneys against, and to hold Bank and all such other persons harmless from any and all loss, liability, suits, obligations, fines, damages, judgments, penalties, claims, charges, expenses and all out-of-pocket costs which may be imposed on, incurred or paid by or assessed against the Bank by reason of, on account of or in connection with the occurrence of (i) any default or Event of Default under this Agreement, (ii) Bank exercising any of its rights or remedies under this Agreement, the Note or any of the Security Documents, (iii) the commencement of any action by the Bank against Borrower or a Guarantor (including, without limitation, defenses or counterclaims asserted against the Bank), (iv) any bankruptcy proceeding involving Borrower or a Guarantor, (v) any other transaction arising out of or in any way connected with this Agreement, the Note, the Security Documents or the Collateral, or (vi) any suit of any nature in which the Bank is named as a party as a result of the foregoing. All indemnification obligations as set forth herein shall be secured by all Collateral. Provided, however, notwithstanding the foregoing Borrower shall not be obligated or responsible to indemnify or hold Bank harmless from any loss, liability, suit, obligation, fine, damage, judgment, penalty, claim, charge, expense or out-of-pocket cost incurred by Bank as the sole and exclusive result of the sole negligence of Bank as determined by a final unappealable decision of a court of competent jurisdiction.

Section 9.20. Borrower agrees that any dispute arising out of this Agreement shall be resolved solely by the Courts of the State of South Carolina (including United States District Courts

located therein) sitting without jury. **BORROWER EXPRESSLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY.**

WITNESS the hand and seal of the parties hereto on or as of the date first above written.

BORROWER:

SOUTH CAUSEWAY, LLC

By: Peggy Wheeler-Cuff (SEAL)
Its: Member

BANK:

FIRST SOUTH BANK

By: Wayne Sivels
Its: Senior Vice President

SCHEDULE 1

a. Mortgage of Real Estate (first) given by Borrower, in the original principal amount of $6,500,000.00 encumbering the Project Property which consists of two tracts located at the intersection of South Causeway Road and Highway 17 South in Georgetown County, South Carolina, the first having TMS Nos. 04-164-30 and 04-169-1 and containing approximately 17.54 acres and the second having TMS No. 04-169-03 and containing approximately 1.68 acres, comprising a total approximately 19.22 acres real property, and more particularly described on Exhibit A of Schedule 2, together with the Improvements, located in Georgetown County, South Carolina (the **"Borrower Mortgage"**).

b. Mortgage of Real Estate (first) given by the Guarantor, Will Darwin Wheeler, in the original principal amount of $6,500,000.00 encumbering the Beach P having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006, and more particularly described on Exhibit A of Schedule 2, located in Georgetown County, South Carolina (the **"Guarantor Mortgage"**).

c. Commercial Security Agreement of Borrower in favor of Bank.

d. UCC-1 Financing Statements of Borrower as debtor in favor of Bank as secured party (the **"Financing Statements"**).

e. Collateral Assignment of Construction Contract (the **"Construction Contract Assignment"**) acknowledged by Contractor.

f. Assignment of Contract Documents and Plans of Borrower, acknowledged by the Engineer.

g. Assignment of demand deposit account of Borrower to Bank.

h. Assignment of money market account of Borrower to Bank.

SCHEDULE A
PERSONALTY

(a) All fixtures and articles of personal property now or hereafter owned by the Borrowers (also referred to collectively and individually as "**Debtor**") and attached to or contained in or to be attached to or contained in the real property described in Exhibit "A" hereto (which description is incorporated herein by reference) (the "**Land**") and the improvements thereto (collectively, without limitation, the "**Infrastructure**") including, but not limited to, all apparatus, machinery, piping, conduit, outdoor lighting, cable, wire, paving materials, sprinkler equipment, and all other equipment and fixtures used or useful in connection with the construction and installation of the roads, streets, drives, parking areas, exterior lighting and utilities and the installation of the same, and appurtenances thereto and all renewals or replacements thereof or article in substitution thereof, whether or not the same are or shall be attached to the Land and Infrastructure in any manner;

(b) All building materials, fixtures, building machinery and building equipment of Borrowers (Debtor) delivered on-site to the Land during the course of or in connection with construction of the Infrastructure;

(All of the foregoing personal property described in (a) and (b) above are referred to as the "**Tangible Personalty**". The Land, the Infrastructure and the Tangible Personalty are herewith referred to as the "**Premises**".)

(c) All proceeds from the sale or other disposition of the Premises, all insurance proceeds and all condemnation proceeds, and security deposits, rents, issues, profits and revenues of the Premises from time to time accruing;

(d) All of the right, title and the interest of the Borrower (Debtor) in and to any and all contracts, agreements and leases (including equipment leases) including particularly, but not limited to, all present and future construction contracts, architects' contracts, insurance contracts and policies, technical services agreements, licenses and permits now or hereafter arising affecting, relating to or pertaining to the Premises.

EXHIBIT A
TO LOAN AGREEMENT

(Legal Description)

All those certain pieces, parcels or tracts of land situate, lying and being in the County of Georgetown, South Carolina, and designated as Parcel A containing 11.66 acres and Parcel B containing 0.91 acre and Parcel C containing 4.92 acres on the plat entitled "Plat of 17.49 Acres at the Southeastern intersection of U. S. Highway 17 and the South Causeway to Pawleys Island, Surveyed For Peggy Wheeler-Cribb", said plat prepared by Trico Engineering Consultants, dated October 5, 2005, and recorded in the Office of the Register of Deeds for Georgetown County in Slide 564 at Page 2, all of which will more fully appear by reference to the aforesaid plat which is incorporated herein and made a part and parcel hereof by reference thereto.

ALSO: All right, title and interest in and to the easements reserved in Indenture Deed from Ruth Oliver Bell, et al. to C. B. Foster, as Trustee for the RBP Trust dated January 31, 1989, recorded on April 23, 1989, in Deed Book 332 at Page 125.

ALSO:

All that certain piece, parcel or tract of land situate, lying and being in Tax District Number Four (4), County of Georgetown, State of South Carolina, shown and designated as 1.68 acres on a map prepared for James N. Lewis by Samuel M. Harper, R.L.S., dated June 4, 1982, recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 2 at Page 30: said parcel measuring and containing 1.68 acres and Butting and Bounding as follows: to the Northeast a distance of 473.1 feet on lands designated "C. W. Stamper"; to the Southeast a distance of 379.9 feet on lands of A. H. Parsons, et al; to the Northwest a distance of 50 feet by U. S. Highway 17; and to the Southwest a distance of 140 feet on lands of A. H. Parsons, et al.; all of which will more fully and at large appear by reference to said map.

This being the same property conveyed to South Causeway, LLC by Peggy Wheeler-Cribb by Deed dated June ____, 2008, recorded in the office of the Register of Deeds for Georgetown County on June ___, 2008, in Record Book _____ at Page _____.

ALSO:

All that certain piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as Lot 4 on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

ALSO: A nonexclusive easement of ingress and egress over, across and upon that certain shaded area

"Gravel Driveway" adjacent to Lot 4 as shown on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

Being a portion of the premises conveyed to Will D. Wheeler by Porter B. Rose, John I. Rose, II, Bennett S. Rose and Patricia R. Gilmore by Deed dated March 11, 2003, recorded in the office of the Register of Deeds for Georgetown County on March 18, 2003, in Deed Book 1364 at Page 232.

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Instrument 200800011836 Book 990 Page 265

This document was prepared by (name, address, phone):
FIRST SOUTH BANK - COLUMBIA
1333 MAIN STREET
COLUMBIA, SC 29201
(803) 343-3435

Lot 4 release on Parker's Island

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 08-25-2008 and the parties and their addresses are as follows:

MORTGAGOR: WILL DARWIN WHEELER
334 MYRTLE AVENUE
PAWLEYS ISLAND, SC 29585

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

LENDER: FIRST SOUTH BANK - COLUMBIA
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA
1333 MAIN STREET
COLUMBIA, SC 29201

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 EXHIBIT A**********

The property is located in GEORGETOWN (County) at LOT #4/ 334 MYRTLE AVENUE (Address), PAWLEYS ISLAND (City), South Carolina 29585 (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.

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EXHIBIT P-E 3-11-11 tb

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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 $ 6,500,000.00. 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)*:

      NOTE DATED 6-25 2008 IN THE AMOUNT OF $6,500,000.00

   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 in 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.

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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

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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

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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.

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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").

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☐ **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.**

THIS MORTGAGE IS TO PROVIDE COLLATERAL / SECURITY FOR A LOAN TO SOUTH CAUSEWAY, LLC.
WILL DARWIN WHEELER WILL BE A GUARANTOR ON SAID LOAN BY WAY OF HYPOTHARICATION AGREEMENT OF EVEN DATE HEREWITH.

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: _____

Will Darwin Wheeler 6/25/08 (Seal)
(Signature) WILL DARWIN WHEELER (Date)

_____ (Seal)
(Signature) (Date)

Signed, Sealed and delivered in the presence of:

_____ (Witness)

Rebecca A Rathbe (Witness)

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

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Instrument 200800011836 Book 990 Page 288

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Georgetown } 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 25TH day of JUNE, 2008

Notary Public for South Carolina

My commission expires: 1/25/12

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FSB-SC 02368

EXHIBIT A
TO MORTGAGE

(Lot 4)

All that certain piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as Lot 4 on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

ALSO: A nonexclusive easement of ingress and egress over, across and upon that certain shaded area "Gravel Driveway" adjacent to Lot 4 as shown on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

Being a portion of the premises conveyed to Will D. Wheeler by Porter B. Rose, John I. Rose, II, Bennett S. Rose and Patricia R. Gilmore by Deed dated March 11, 2003, recorded in the office of the Register of Deeds for Georgetown County on March 18, 2003, in Deed Book 1364 at Page 232.

[redacted]ement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502 0265

B. Type of Loan			
1☐ FHA 2☐ FmHA 3.☒ Conv. Unins 4☐ VA 5.☐ Conv. Ins.	6. File Number: SCAUSEWAY	7. Loan Number: [redacted]	8. Mortgage Insurance Case Number

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME OF BORROWER: South Causeway, LLC

ADDRESS OF BORROWER: P O Box 3727, Pawleys Island, SC 29585

E. NAME OF SELLER:

ADDRESS OF SELLER:

F. NAME OF LENDER: FIRST SOUTH BANK

ADDRESS OF LENDER: P O BOX 11509, COLUMBIA, SC 29211-1509

G. PROPERTY LOCATION: 17 49 acres, 1.68 acres & Lot 4, 334 Myrtle Ave, Pawleys Island, SC 29585

H. SETTLEMENT AGENT: HINDS, COWAN, STRANGE & GEER

PLACE OF SETTLEMENT: 604 FRONT STREET, POST OFFICE DRAWER 1410, GEORGETOWN, SC 29442-1410

I. SETTLEMENT DATE: 6/25/2008

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER		400. GROSS AMOUNT DUE TO SELLER	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	588,633.95	403.	
104. Payoff Mtg to First Palmetto Savings Bank	3,659,898.18	404.	
105. Payoff Mtg to First South Bank	521,193.10	405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109. to		409. to	
110. to		410. to	
111. to		411. to	
112. to		412. to	
120. GROSS AMOUNT DUE FROM BORROWER ▶	4,769,725.23	420 GROSS AMOUNT DUE TO SELLER ▶	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER		500. REDUCTIONS IN AMOUNT DUE TO SELLER	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	(6,500,000.00)	502. Settlement charges to seller(line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. First Draw against A&D	4,769,725.23	504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. Principal amount of seller financing		506. Principal amount of seller financing	
207.		507.	
208.		508.	
209.		509.	
209a		509a	
209b		509b	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213. to		513. to	
214. to		514. to	
215. to		515. to	
216. to		516. to	
217. to		517. to	
218. to		518. to	
219. to		519. to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER ▶	1,730,274.77	520. TOTAL REDUCTIONS IN AMOUNT DUE SELLER ▶	
300. CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER	
301. Gross amount due from borrower (line 120)	4,769,725.23	601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	4,769,725.23	602. Less reductions in amount due seller (line 520)	
303. CASH ☒ From ☐ To BORROWER ▶	-0-	603. CASH ☒ To ☐ From SELLER ▶	

PAGE 1.

[redacted] Display Systems, Inc. (561) 743-5466 - Laser Generated

HUD-1 (3-86) RESPA, HB 4305.2

FSB-SC 03226

EXHIBIT P-F 3-11-11 tb

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SETTLEMENT STATEMENT

L.	Charges			Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
700	[redacted]ALES/BROKER'S COM. based on price @ %=				
	] of Commission (line 700) as follows:				
701.		to			
702.		to			
703.	Commission paid at Settlement				
704.		to			
800.	Items Payable In Connection With Loan				
801.	Loan Origination Fee 1.00 %	to	FIRST SOUTH BANK	65,000.00	
802.	Loan Discount %	to			
803.	Appraisal Fee	to			
804.	Credit Report	to			
805.	Lender's Inspection Fee	to			
806.	Mortgage Insurance Application Fee	to			
807.	Interest Reserve $300,000 $51,246.98	to	FIRST SOUTH BANK	248,753.02	
808.	Flood Certification Fee	to	FIRST SOUTH BANK	10.00	
809.	EDR Report Fee	to	FIRST SOUTH BANK	95.00	
810.	Bank's attorney's fee	to	Tyler, Cassell, Jackson, Pearce & Silver	9,322.50	
811.	Deposit in First South Bank account	to	FIRST SOUTH BANK	5,000.00	
812.	Disputed rollback taxes held in escrow 4-164-03	to	HINDS, COWAN, STRANGE & GEER	51,246.98	
813.		to			
814.		to			
815.		to			
900.	Items Required By Lender To Be Paid In Advance				
901.	Interest from to	@	/day		
902.	Mortgage Insurance Premium for months	to			
903.	Hazard Insurance Premium for years	to			
904.	years	to			
905.	years	to			
1000.	Reserves Deposited With Lender				
1001.	Hazard insurance	months@	per month		
1002.	Mortgage insurance	months@	per month		
1003.	City property taxes	months@	per month		
1004.	County property taxes	months@	per month		
1005.	Annual assessments	months@	per month		
1006.		months@	per month		
1007.		months@	per month		
1008.		months@	per month		
1009.					
1100.	Title Charges				
1101.	Settlement or closing fee	to			
1102.	Abstract or title search	to			
1103.	Title examination	to	TA Title Services	480.00	
1104.	Title insurance binder	to	HINDS, COWAN, STRANGE & GEER	75.00	
1105.	Document preparation	to			
1106.	Notary fees	to			
1107.	Attorney's fees	to	HINDS, COWAN, STRANGE & GEER	2,750.00	
	(includes above items numbers:				
1108.	Title insurance	to	HINDS LAW FIRM, AS AGT FOR OLD REPUBLIC	4,612.50	
	(includes above items numbers:				
1109.	Lender's Coverage: 4,612.50		INS AMT:		
1110.	Owner's Coverage:		INS AMT:		
1110a					
1111.	Preparation of Deed	to	HINDS, COWAN, STRANGE & GEER	75.00	
1112.	Preparation of LLC documents	to	HINDS, COWAN, STRANGE & GEER	560.00	
1113.	Title Insurance Commission $2767.50	to	HINDS, COWAN, STRANGE & GEER		
1200.	Government Recording and Transfer Charges				
1201.	Recording Fees: Deed $11.00; L-Mortgage(s) $32.00; Releases $15.00			58.00	
1202.	City/county tax/stamps: L-Mortgage(s)				
1203.	State tax/stamps: L-Mortgage(s)				
1204.	Recording UCC-GC		Register of Deeds	16.00	
1205.	Recording UCC-SOS		Secretary of State	20.00	
1300.	Additional Settlement Charges				
1301.	Survey	to	The Earthworks Group, Inc.	*P.O.C.*	
1302.	Phase I	to	The Earthworks Group, Inc.	*P.O.C.*	
1303.	Administrative Costs	to	HINDS, COWAN, STRANGE & GEER	25.00	
1304.	UCC Search	to	Secretary of State	15.00	
1305.	Federal Express	to	HINDS, COWAN, STRANGE & GEER	50.00	
1306.	Review of Lease etc by Gepner Geer	to	HINDS, COWAN, STRANGE & GEER	449.95	
1307.	Reimbursement	to	Peggy Wheeler Cribb	116,325.74	
1308.	Escrow of rollback taxes 4-169-01-03.00	to	HINDS, COWAN, STRANGE & GEER	83,674.26	
1309.		to			
1400.	Total Settlement Charges (enter on lines 103, Section J and 502, SectionK)			588,633.95	

CERTIFICATION DATE: 6/25/2008

I have carefully reviewed the HUD - 1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD - 1 Settlement Statement.

South Causeway, LLC

By: Peggy Wheeler-Cribb Borrower

Peggy Wheeler-Cribb, Member

Borrower

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

HINDS, COWAN, STRANGE & GEER

Settlement Agent 6/25/2008 Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

SCAUSEWAY

FSB-SC 03227

HYPOTHECATION AGREEMENT

To: FIRST SOUTH BANK
1333 Main Street, Suite 100
Columbia, South Carolina
Attention A. Wayne Lovelace, Senior Vice President

June 25th, 2008

In consideration of your making a loan to SOUTH CAUSEWAY, LLC, a South Carolina limited liability company, hereinafter referred to as "Debtor", for which the following property belonging to me has been tendered to you as collateral to wit:

For description of property see Exhibit A attached hereto.

and for the purpose of enabling Debtor to obtain credit therefor, I hereby certify and warrant that the said property is completely free of all security interests, except such as may be created hereunder and by these presents, I do hereby assign, release and transfer unto said Debtor all of my right, title and interest in and to said property, and hereby agree to and expressly authorize Debtor to pledge or hypothecate all or any part of said property for the indebtedness aforesaid, and all renewals and extensions thereof, and also for any and all other indebtedness of the Debtor to you, whether alone or with others, direct or indirect, absolute or contingent and howsoever acquired by you, created at any time before receipt by you of written revocation of this authorization, and all renewals and extensions thereof, and I hereby waive notice and statement of all or any such indebtedness or extensions or renewal thereof.

Furthermore, I request that you give, or continue to give, to Debtor credit in the form of the loan, and renewals and extensions thereof as aforesaid, and in consideration of all or any such credit so granted by you, I agree that all or any property pledged or hypothecated as aforesaid, shall be subjected in your hands or those of your successors, assigns, or pledgee or pledgees, to all powers and rights which would apply thereto by contract or otherwise if said property in fact so pledged or

FSB-SC 03234

hypothecated stood in the name of Debtor itself, and not in my name. You are expressly authorized to give to the Debtor (who is hereby appointed my agent for any and all such purposes) any required notice with respect to the collateral, or any substitutions or additions thereto, and the same shall be regarded as notice to me, and to accept or act upon any or all instructions of Debtor regarding any disposition of any or all of the collateral, or any substitutions therefor or additions thereto or proceeds thereof, including any surplus upon sale or other disposition of such collateral or any part thereof, and including, also, the delivery or payment of the same or any part thereof to Debtor, or upon its order, and you shall have no responsibility for any action taken or omitted at the direction of or on authority from Debtor.

This agreement shall be binding on me, my heirs, executors, administrators and assigns and shall inure to the benefit of your successors and assigns.

IN THE PRESENCE OF:

Will Darwin Wheeler

FSB-SC 03235

EXHIBIT A
TO HYPOTHECATION AGREEMENT

(Lot 4)

All that certain piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as Lot 4 on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

ALSO: A nonexclusive easement of ingress and egress over, across and upon that certain shaded area "Gravel Driveway" adjacent to Lot 4 as shown on "SUBDIVISION PLAT OF LOT 5 TOTALING 3.07± ACRES TMS 42-0167-042-00-00 LOCATED ON MYRTLE AVENUE PAWLEYS ISLAND, GEORGETOWN COUNTY, SOUTH CAROLINA PREPARED FOR: WILL DARWN WHEELER", prepared by The Earthworks Group, dated July 9, 2006, and recorded in the office of the register of deeds for Georgetown County in Slide 625 at Page 10.

Being a portion of the premises conveyed to Will D. Wheeler by Porter B. Rose, John I. Rose, II, Bennett S. Rose and Patricia R. Gilmore by Deed dated March 11, 2003, recorded in the office of the Register of Deeds for Georgetown County on March 18, 2003, in Deed Book 1364 at Page 232.

BORROWER'S CLOSING CERTIFICATE

WHEREAS, SOUTH CAUSEWAY, LLC, a South Carolina limited liability company (herein referred to as the "Borrower") has accepted a loan in the maximum principal amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars (the "Loan") from First South Bank ("Lender"); and

WHEREAS, the following instruments, each of even date herewith (the "Loan Documents"), have been duly executed and delivered to the Lender pursuant to the terms, provisions, and conditions of the Loan:

1. Loan Agreement made by the Borrower with the Lender providing for the terms and conditions of the Loan;

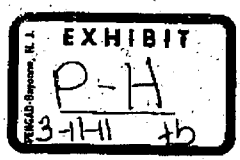
2. Promissory Note made by the Borrower in the principal sum of Six Million Five hundred Thousand and No/100 ($6,500,000.00) Dollars, payable to the order of the Lender with interest at the rate therein provided;

3. A Guaranty (each a "Guaranty") guaranteeing payment and performance by the Borrower of the Loan executed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (individually a "Guarantor" and collectively the "Guarantors").

4. Each of the other "Security Documents" as defined and identified in the Loan Agreement.

WHEREAS, as an inducement for Lender to make the Loan to the Borrower, the Borrower makes the following representations and warranties in favor of the Lender.

NOW, THEREFORE, the Borrower represents, warrants, covenants and states as follows:



1. The Borrower and, to the best of Borrower's knowledge, each of the Guarantors, is solvent, is not bankrupt, is not contemplating nor has recently contemplated bankruptcy, receivership or reorganization (nor is there any prospect of such), and there are no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Borrower or, to the best of Borrower's knowledge, any Guarantor, insolvent or bankrupt.

2. There has been no material adverse change, financial or otherwise, in the condition of the Borrower or, to the best of Borrower's knowledge, of any Guarantor, from that heretofore disclosed to Lender in writing or in other supporting data submitted therewith.

3. All of the Borrower's representations, warranties, and affirmative covenants contained in this Borrower's Closing Certificate, the Loan Agreement, each of the other Loan Documents, and all other documents and instruments executed and delivered in furtherance thereof or pursuant thereto, if any, are true and correct as of the date hereof.

4. To the best of Borrower's knowledge, all of the representations, warranties, and affirmative covenants of each Guarantor contained in the Guaranty of each such Guarantor, and all other documents and instruments executed and delivered by the Guarantors in connection with the Loan, are true and correct as of the date hereof.

5. All documents necessary to authorize the Borrower to execute any of the Loan Documents and to engage in any transaction or business in connection with which the Loan is made have been duly authorized, executed and filed.

6. The Borrower acknowledges that, except as expressly set forth in the Loan Documents, no representations of any kind or character have been made to Borrower by the Lender to induce Borrower to execute and deliver this document and the Loan Documents. The Borrower further acknowledges that the Borrower has had an adequate opportunity to have this document, each

of the Loan Documents and any other documents executed and delivered by the Borrower in connection with the Loan reviewed by an attorney or representative of the Borrower's choice acting on the Borrower's behalf, that the contents of this document, the Loan Documents and any other documents executed and delivered by Borrower in connection with the Loan have been explained to the Borrower, that the Borrower understands the contents hereof and thereof, and that the Borrower signed this document, each of the Loan Documents to which the Borrower is a party, and any other documents executed and delivered by the Borrower in connection with this Loan voluntarily.

EXECUTED AND DELIVERED as of the 25th day of June, 2008.

WITNESSES:

BORROWER:
SOUTH CAUSEWAY, LLC

By: _____ (SEAL)
Its Member

FSB-SC 03239

GUARANTOR'S CLOSING CERTIFICATE
Peggy Wheeler-Cribb

WHEREAS, SOUTH CAUSEWAY, LLC, a South Carolina limited liability company (herein referred to as the "Borrower") has accepted a loan in the maximum principal amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars (the "Loan") from First South Bank ("Lender"); and

WHEREAS, the following instruments, each of even date herewith (the "Loan Documents"), have been duly executed and delivered to the Lender pursuant to the terms, provisions, and conditions of the Loan:

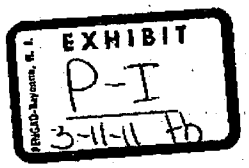
1. Loan Agreement made by the Borrower with the Lender providing for the terms and conditions of the Loan;

2. Promissory Note made by the Borrower in the principal sum of Six Million Five hundred Thousand and No/100 ($6,500,000.00) Dollars, payable to the order of the Lender with interest at the rate therein provided;

3. A Guaranty (each a "Guaranty") guaranteeing payment and performance by the Borrower of the Loan executed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (individually a "Guarantor" and collectively the "Guarantors").

4. Each of the other "Security Documents" as defined and identified in the Loan Agreement.

WHEREAS, as an inducement for Lender to make the Loan to the Borrower, the undersigned Guarantor makes the following representations and warranties in favor of the Lender.



1

FSB-SC 03240

NOW, THEREFORE, the undersigned does hereby certify, represent, warrant, covenant and state:

1. The Guarantor and, to the best of Guarantor's knowledge, each of the Borrower and the other Guarantor is solvent, is not bankrupt, is not contemplating nor has recently contemplated bankruptcy, receivership or reorganization (nor is there any prospect of such), and there are no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Guarantor or, to the best of Guarantor's knowledge, Borrower or the other Guarantor, insolvent or bankrupt.

2. There has been no material adverse change, financial or otherwise, in the condition of the Guarantor or, to the best of Guarantor's knowledge, the Borrower or the other Guarantor, from that heretofore disclosed to Lender in writing or in other supporting data submitted therewith.

3. All of the Guarantor's representations, warranties, and affirmative covenants contained in this Guarantor's Closing Certificate, Guaranty, and all other documents and instruments executed and delivered by Guarantor in connection with the Loan, if any, are true and correct as of the date of delivery and all actions necessary to authorize the Guarantor to enter into any of the aforesaid documents have been taken.

4. To the best of Guarantor's knowledge, all of the Borrower's representations, warranties and affirmative covenants contained in the Borrower's Closing Certificate executed and delivered in connection with the Loan, each of the Loan Documents, and all other instruments and documents executed and delivered pursuant thereto, if any, are true and correct as of the date of delivery.

5. To the best of Guarantor's knowledge, the representations, warranties, and affirmative covenants of the other Guarantor contained in the other Guarantor's Closing Certificate executed in

connection with the Loan, the other Guarantor's Guaranty, and all other documents and instruments, if any, executed and delivered by the other Guarantor, in connection with the Loan, are true and correct as of the date hereof.

6. To the best of Guarantor's knowledge, all documents necessary to authorize the Borrower to execute the Loan Documents and to engage in any transaction or business in connection with which the Loan is made have been duly authorized, executed and filed.

7. The Guarantor acknowledges that, except as expressly set forth in the Loan Documents, no representations of any kind or character have been made to Guarantor by the Lender to induce Guarantor to execute and deliver this document and Guarantor's Guaranty. The Guarantor further acknowledges that the Guarantor has had an adequate opportunity to have this document and each of the Loan Documents reviewed by an attorney or representative of the Guarantor's choice acting on the Guarantor's behalf, that the contents of this document and the Loan Documents have been explained to the Guarantor, that the Guarantor understands the contents hereof and thereof, and that the Guarantor signed this document, the Guaranty, and all other documents executed by the Guarantor in connection with the Loan, voluntarily.

EXECUTED AND DELIVERED as of the 25th day of June, 2008.

WITNESSES:

GUARANTOR:

Peggy Wheeler-Cribb (SEAL)

GUARANTOR'S CLOSING CERTIFICATE
Will Darwin Wheeler

WHEREAS, SOUTH CAUSEWAY, LLC, a South Carolina limited liability company (herein referred to as the "Borrower") has accepted a loan in the maximum principal amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars (the "Loan") from First South Bank ("Lender"); and

WHEREAS, the following instruments, each of even date herewith (the "Loan Documents"), have been duly executed and delivered to the Lender pursuant to the terms, provisions, and conditions of the Loan:

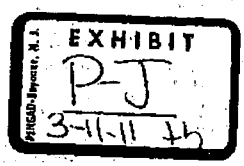
1. Loan Agreement made by the Borrower with the Lender providing for the terms and conditions of the Loan;

2. Promissory Note made by the Borrower in the principal sum of Six Million Five hundred Thousand and No/100 ($6,500,000.00) Dollars, payable to the order of the Lender with interest at the rate therein provided;

3. A Guaranty (each a "Guaranty") guaranteeing payment and performance by the Borrower of the Loan executed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (individually a "Guarantor" and collectively the "Guarantors").

4. Each of the other "Security Documents" as defined and identified in the Loan Agreement.

WHEREAS, as an inducement for Lender to make the Loan to the Borrower, the undersigned Guarantor makes the following representations and warranties in favor of the Lender.



NOW, THEREFORE, the undersigned does hereby certify, represent, warrant, covenant and state:

1. The Guarantor and, to the best of Guarantor's knowledge, each of the Borrower and the other Guarantor is solvent, is not bankrupt, is not contemplating nor has recently contemplated bankruptcy, receivership or reorganization (nor is there any prospect of such), and there are no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Guarantor or, to the best of Guarantor's knowledge, Borrower or the other Guarantor, insolvent or bankrupt.

2. There has been no material adverse change, financial or otherwise, in the condition of the Guarantor or, to the best of Guarantor's knowledge, the Borrower or the other Guarantor, from that heretofore disclosed to Lender in writing or in other supporting data submitted therewith.

3. All of the Guarantor's representations, warranties, and affirmative covenants contained in this Guarantor's Closing Certificate, Guaranty, and all other documents and instruments executed and delivered by Guarantor in connection with the Loan, if any, are true and correct as of the date of delivery and all actions necessary to authorize the Guarantor to enter into any of the aforesaid documents have been taken.

4. To the best of Guarantor's knowledge, all of the Borrower's representations, warranties and affirmative covenants contained in the Borrower's Closing Certificate executed and delivered in connection with the Loan, each of the Loan Documents, and all other instruments and documents executed and delivered pursuant thereto, if any, are true and correct as of the date of delivery.

5. To the best of Guarantor's knowledge, the representations, warranties, and affirmative covenants of the other Guarantor contained in the other Guarantor's Closing Certificate executed in

connection with the Loan, the other Guarantor's Guaranty, and all other documents and instruments, if any, executed and delivered by the other Guarantor, in connection with the Loan, are true and correct as of the date hereof.

6. To the best of Guarantor's knowledge, all documents necessary to authorize the Borrower to execute the Loan Documents and to engage in any transaction or business in connection with which the Loan is made have been duly authorized, executed and filed.

7. The Guarantor acknowledges that, except as expressly set forth in the Loan Documents, no representations of any kind or character have been made to Guarantor by the Lender to induce Guarantor to execute and deliver this document and Guarantor's Guaranty. The Guarantor further acknowledges that the Guarantor has had an adequate opportunity to have this document and each of the Loan Documents reviewed by an attorney or representative of the Guarantor's choice acting on the Guarantor's behalf, that the contents of this document and the Loan Documents have been explained to the Guarantor, that the Guarantor understands the contents hereof and thereof, and that the Guarantor signed this document, the Guaranty, and all other documents executed by the Guarantor in connection with the Loan, voluntarily.

EXECUTED AND DELIVERED as of the 25th day of June, 2008.

WITNESSES:

GUARANTOR:

(SEAL)
Will Darwin Wheeler

First South Bank

June 25, 2008

Mr. Will Darwin Wheeler
Ms. Peggy Wheeler-Cribb
334 Myrtle Avenue
Pawleys Island, South Carolina, 29585

HAND DELIVERED

Re: Lot 4 / 334 Myrtle Avnue
Pawleys Island, South Carolina 29585

Dear Darwin and Peggy:

Please let this letter serve to confirm our agreement as to when, and under what conditions, First South Bank will agree to release its mortgage on Lot 4 / 334 Myrtle Avenue, Pawleys Island, South Carolina, 29585, which partially secures our loan to South Causeway, LLC.

Provided no default exists in any of the South Causeway, LLC loan documents at the time the request for a release is made, First South Bank will agree to release the referenced mortgage upon the occurrence of any of the following events:

1. Written certification from the project's supervising / design engineer, plus any agency from Georgetown County, SC, having supervisory jurisdiction over the development, that the proposed improvements including, but not limited to, roadways, water, sewer and storm drainage, have been completed in accordance with the project's original design plans and specifications, that the improvements are fully functional and operational, and that the project has been constructed in substantial compliance with any regulations required by Georgetown County, SC, and the State of South Carolina.

Approval(s) must be in form and content acceptable to First South Bank.

1333 Main Street ▪ Suite 100 ▪ Columbia, South Carolina 29201 ▪ (803) 343-3435 ▪ Fax (803) 343-3477

2. First South Bank is furnished a copy of a signed lease between Alex Lee, Inc. / Lowe's Foods, Inc. and South Causeway, LLC. (by assignment from Peggy Wheeler-Cribb) on terms no less favorable than those outlined in the proposed Intent to Lease, dated May 10, 2008, between Alex Lee, Inc. / Lowe's Foods, Inc. and Peggy Wheeler-Cribb.

3. The appraised value of the property and proposed improvements reflects a value of, not less than, $9,500,000.

Thank you very much for allowing us to handle this transaction for you. Should you have any questions, please call me at (803) 806-3104.

Sincerely,

F. Wayne Lovelace
Senior Vice President
First South Bank

FSB-SC 03277

LAW OFFICES
HINDS, COWAN, STRANGE & GEER
804 FRONT STREET
GEORGETOWN, SOUTH CAROLINA 29440

DOUGLAS L. HINDS
WILLIAM S. COWAN
HAL M. STRANGE
GEORGE R. GEER, JR.

MAILING ADDRESS:
POST OFFICE DRAWER 1410
GEORGETOWN, SOUTH CAROLINA 29442

TELEPHONE (843) 527-2441
FACSIMILE (843) 527-0665
E-MAIL HCSG@sc.rr.com

June 25, 2008

First South Bank
1333 Main Street, Suite 100
Columbia, SC 29201
Attn: F. Wayne Lovelace, Senior Vice President

Re: $6,500,000.00 development Loan (the "Loan") of First South Bank ("Bank") to South Causeway, LLC ("Borrower"), payment and performance of which is guaranteed by each of Peggy Wheeler-Cribb and Will Darwin Wheeler (each a "Guarantor" and collectively the "Guarantors")

Dear Sir:

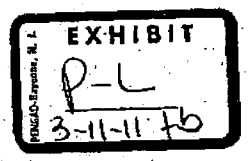
We refer to the Loan Agreement (the "Agreement") of even date herewith between the Bank and the Borrower with respect to the Loan. Unless otherwise defined herein or the context otherwise requires, this opinion uses capitalized terms with the respective meanings ascribed to them in the Agreement. We have acted as counsel to the Borrower and the Guarantors in connection with the Loan. This opinion is delivered to you pursuant to the requirements of the Agreement and at the direction of our clients.

We have examined the Agreement, the Note, the Security Agreement, the Borrower Mortgage, the Financing Statements, and each and every one of the other Security Documents to be entered or given by Borrower (collectively the "Loan Documents"), and the Guarantor Mortgage and each of Guaranties. We have made inquiry of the Borrower and the Guarantor and have also examined, reviewed and relied upon to the extent we deem appropriate such other documents, records, abstracts, reports, papers, indices, books, certificates, both public and private, and other instruments, and matters of law, and have made such investigations as we deemed necessary or relevant for the rendering of this opinion.

Based thereupon it is our opinion that:

1. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina.

2. Borrower has qualified to do business and is in good standing in every jurisdiction where its conduct of business, ownership of property or other activities requires such qualifications under the laws of such jurisdiction.



FSB-SC 02372

3. Borrower has full power, authority and legal right to own its properties, to carry on its business and to enter into and perform its obligations under the Loan Documents.

4. The execution and delivery by Borrower of the Loan Documents through the person therein indicated to be its duly authorized representative, have been duly authorized by all necessary action of the Borrower.

5. Neither the execution and delivery of the Loan Documents by the Borrower, nor the execution and delivery of the Guarantor Mortgage and the Guaranties by the Guarantors, nor the consummation of the transactions contemplated thereby by each of the foregoing, nor the performance by Borrower and each Guarantor of its, his and her respective obligations thereunder, (a) violate, conflict with, breach or constitute a default under (i) any statute, law, rule, regulation, order, writ, decree, injunction or other proceeding of any court, regulatory body or other Governmental Authority, (ii) Borrower's Articles of Organization, Operating Agreement or similar charter or organizational document, or any duly adopted resolutions of Borrower presently in force or effect, or (iii) any mortgage, indenture, contract, agreement, or other instrument to which Borrower or a Guarantor (or any assets or properties of Borrower or a Guarantor, respectively) is subject or by which Borrower or a Guarantor is bound; (b) results in or constitutes an event by reason of which any holder of indebtedness of Borrower or a Guarantor would be entitled to accelerate such indebtedness in whole or in part; or (c) results in the creation or imposition of any security interest, lien, encumbrance or charge on or upon any asset or property of Borrower or a Guarantor (other than liens and security interests created pursuant to the Loan Documents and the Guarantor Mortgage).

6. There are no actions, suits or proceedings pending or, to the best of our knowledge (after due inquiry) threatened, against or affecting the Borrower or either Guarantor before or by any court, administrative agency, arbitrator or governmental body with respect to any of the transactions contemplated by the Loan Documents, the Guarantor Mortgage and the Guaranties, respectively, or which will, if determined adversely to Borrower or a Guarantor, respectively, materially and adversely affect its, his or her business, assets, operations or condition, financial or otherwise, or adversely affects its, his or her ability to perform its, his or her obligations under the Loan Documents, the Guarantor Mortgage and the respective Guaranties.

7. Borrower and each Guarantor has each obtained or made all necessary consents, approvals, waivers and notifications of stockholders, creditors, and other non-governmental persons, in connection with the execution and delivery of the Loan Documents, the Guarantor Mortgage and each of the Guaranties.

8. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required

in connection with Borrower's execution, delivery, and performance of its obligations under, or the consummation of the transactions contemplated by, the Loan Documents.

9. The Loan Documents constitute legal, valid and binding obligations of Borrower, enforceable against the Borrower in accordance with their terms.

10. Will Darwin Wheeler has executed the Guarantor Mortgage, and the Guarantor Mortgage constitutes the legal, valid and binding obligations of Will Darwin Wheeler enforceable against the Guarantors in accordance with its terms.

11. Each Guarantor has executed the Guaranty intended for such respective Guarantor, and the Guaranty of each such Guarantor constitutes the legal, valid and binding obligations of such Guarantor, enforceable against such Guarantor in accordance with its terms.

12. The Note is entitled to the benefit and security afforded by the Guarantor Mortgage, and the Borrower Mortgage and the other Security Documents.

13. No taxes, fees, or other charges are payable to any Governmental Authority in connection with the execution and delivery of the Loan Documents, or the consummation of the transactions therein contemplated, except for nominal recording taxes or fees payable in connection with the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements.

14. The execution and delivery of the Security Documents, and the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements, create a valid and perfected security interest in the Bank in the Collateral. No other filings in any jurisdiction are necessary to perfect the security interest of the Bank in the Collateral as against any third parties, and no further action is required to create, preserve, or perfect such security interest, except that an appropriate continuation statement with respect to each of the Financing Statements must be timely filed at within six months prior to each five year interval after the original filing in order to maintain the perfection of such security interest.

15. The Loan and all of the Loan Documents are governed by the laws of the State of South Carolina and the interest charged by and to be paid to the Bank as set forth in the Note is not usurious under those laws.

Very truly yours,

HINDS, COWAN, STRANGE & GEER

Douglas L. Hinds

DLH/rab

FSB-SC 02375

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN

2010-CP-22-01233

FIRST SOUTH BANK,

Plaintiff,

vs. Case No: 2010-CP-22-1233

SOUTH CAUSEWAY, LLC,

Defendant.

CERTIFIED COPY

D E P O S I T I O N

WITNESS: ROBERT H. GWIN, III

DATE: Friday, March 11, 2011

TIME: 9:56 a.m.

LOCATION: Richardson Plowden
2103 Farlow Street, Suite B
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for Plaintiff

REPORTED BY: TERESA J. F. BAUTZ
Registered Professional Reporter

- -

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

ATTORNEYS FOR THE PLAINTIFF:

TYLER, CASSELL, JACKSON, PEACE & SILVER, L.L.P.
BY: DONALD W. TYLER, ESQUIRE
1331 Elmwood Avenue, Suite 300
PO Box 11656
Columbia, South Carolina 29211

ATTORNEYS FOR THE DEFENDANTS:

TURNER PADGET GRAHAM & LANEY, P.A.
BY: AUDRA M. BYRD, ESQUIRE
Abyrd@turnerpadget.com
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina 29577

- - -

ALSO PRESENT:

W.C. "CHIP" LYERLY, III
President, First South Bank

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION: It is stipulated by counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent waives the right to read and sign the deposition transcript.

- - - - - - - - - - - - - - - - -

ROBERT H. GWIN, III, being first duly sworn, testified as follows:

EXAMINATION

BY MR. TYLER:

Q Before we get started, Mr. Gwin, you're an attorney, I know, so you're familiar with this. And I have not talked with Ms. Byrd about this, I have no objection, if you want to read and sign the deposition, that's fine. If you want to waive the reading and signing, I don't care.

A I'll waive it unless Ms. Byrd --

Q That's fine with me, I don't care. Okay. What's your full name, please, sir?

A Robert Harrison Gwin, III.

Q And I believe you practice law in the Myrtle Beach, South Carolina area?

A Yes, sir.

Q And at the time of the events we're

talking about which would have been in the spring, specifically, well, the late winter and spring of 2009, you were a practicing attorney here in Myrtle Beach?

A Yes, sir.

Q Okay. Licensed and authorized by the South Carolina Bar and so forth?

A Yes, sir.

Q Okay. Were you at some point retained and did you represent a company named South Causeway, LLC and a lady named Peggy Wheeler-Cribb and a gentleman named Will Darwin Wheeler in connection with a loan to be made by a company named Kennedy Funding?

A Okay. I was not retained, in my opinion, by South Causeway, LLC. I did represent Peggy Wheeler-Cribb and Will Darwin Wheeler in connection with the entity that I represented was Pawleys Island North, LLC.

Q Okay. Do you know who the principals are, the members who own South Causeway, LLC? Would it be Peggy Wheeler-Cribb to your knowledge?

A I know she had some affiliation with South Causeway, LLC. As to whether she was a

member, manager or whatever, I don't know what her capacity was.

Q Okay. Are you familiar with First South Bank at all?

A No, not -- other than this action, really not.

Q Have you ever represented First South Bank, or do you represent First South Bank?

A Not to my knowledge.

Q Okay. Did to your knowledge First South Bank play any part in your selection by Ms. Wheeler-Cribb or Mr. Wheeler or Pawleys Island Partners selection of you to represent them in connection with this Kennedy Funding loan?

A No, sir, not to my knowledge.

MR. TYLER: Off the record.

- - -

(Whereupon, an off-the-record discussion was held.)

- - -

BY MR. TYLER:

Q I'm going to hand you a letter that appears to be from Kennedy Funding, Inc., and ask if you can identify that. And you might want to

refer to your file.

A I don't recall seeing that commitment letter. I don't know, I don't think I have a copy of that commitment letter in my file.

Q You don't recall?

A No, sir.

Q Okay. Do you know whether or not you ever saw the commitment letter from Kennedy Funding with respect to the loan it made that we're talking about?

A No, I don't believe I did.

Q Okay.

MR. TYLER: The document I showed you, I'm going to go ahead and ask the court reporter so we'll know for identification purposes, go ahead and mark that as Exhibit P-1.

- - -

(Whereupon, Exhibit No. P-1, Commitment Letter dated 2/4/09, was marked for identification.)

- - -

MS. BYRD: Could I have the bates stamp number, please.

MR. TYLER: This is bates stamp numbered document 1959 to 1975.

MS. BYRD: Thank you.

BY MR. TYLER:

Q I'm going to hand you a document, and this one is bates stamped numbered 3291 to 3298, and ask you if you can identify that, sir.

A Yes, I can identify this.

Q What is that?

A That is the promissory note from Pawleys Island North to Kennedy Funding for the loan transaction I represented them for.

Q Okay.

MR. TYLER: I ask you if you can mark that as Plaintiffs-2.

- - -

(Whereupon, Exhibit No. P-2, Promissory Note, was marked for identification.)

- - -

BY MR. TYLER:

Q I hand you this and ask you if you can identify that. I'm sorry, I didn't give you the bates stamp number, I apologize.

A This would appear to be the first page and the signature page of the mortgage for the transaction that I represented Pawleys Island North, page 1, page 49 and the legal description

in the back page.

Q Okay.

MR. TYLER: Mark that, please.

- - -

(Whereupon, Exhibit No. P-3, Mortgage and Security Agreement pages, was marked for identification.)

- - -

MR. TYLER: This is bates stamp numbered pages 3300 to 3303.

MS. BYRD: Thank you.

BY MR. TYLER:

Q I ask you to look at page bates stamp numbered 3302 of Exhibit 3. I believe that's described as lot four.

A Well, there are two lots, lot three and lot four.

Q Okay. Were those properties that Kennedy Funding required a first mortgage lien on in order to make the loan to Pawleys Island North?

A Yes, sir.

Q And do you recall at the time the transaction commenced or you commenced your representation who or what entity owned lot four?

A I believe it was Mr. Wheeler individually.

Q And did he convey that lot to Pawleys Island North as part of the transaction?

A Yes, sir.

Q Okay. I believe I asked you this, but was a first mortgage required by Kennedy Funding on that particular lot in order to make its loan to Pawleys Island North?

A Yes, sir.

Q Okay. At the time this loan transaction was taking place, was the lot four encumbered?

A Yes.

Q And how was it encumbered or who had a mortgage on it?

A There was a mortgage to First South Bank.

Q Okay. And as a consequence of that, did you and I have discussions about the release of the First South Bank mortgage?

A Yes. I believe you called me in connection.

Q Okay. And as a consequence of that did I send you a letter dated April 8, 2009?

A Yes, sir.

Q Okay.

MR. TYLER: If you would mark that, please.

- - -

(Whereupon, Exhibit No. P-4, Letter dated 4/8/09, was marked for identification.)

- - -

BY MR. TYLER:

Q Is what I have handed you as P-4 a true and correct copy of the letter that was sent to you?

A Yes, sir, it is.

Q Okay. And that's bates stamp numbered 3279 to 3280. And did the letter that's marked as Exhibit 4, was it accompanied by an agreement dated April 10, 2009?

A Yes, sir.

Q Okay.

MR. TYLER: Mark that.

- - -

(Whereupon, Exhibit No. P-5, Agreement, was marked for identification.)

- - -

MR. TYLER: I'm sorry, it's bates stamp

numbered 2052 to 2056.

BY MR. TYLER:

Q And did that agreement set forth the terms and conditions for First South Bank to release its mortgage on lot four that we've discussed earlier?

A Yes.

Q The agreement speaks for itself?

A Yes. I thought this was as to confirmation that they would release the lot four for $300,000.

Q And the signing of that agreement?

A Yes, sir. You directed me to have that agreement signed.

Q Okay. And did you agree to those conditions?

A Yes, I agreed to those conditions.

Q Okay. And did you in fact get the agreement signed by Peggy Wheeler-Cribb on behalf of South Causeway, LLC and by Peggy Wheeler-Cribb and Will Darwin Wheeler personally?

A Yes, sir.

Q Okay. And did you receive with that letter the satisfied mortgage?

A Yes, sir, I did.

Q Okay. I've handed you what I'm going to ask the reporter to mark as Plaintiff's Exhibit 6. Is that a copy of the satisfaction of the mortgage that you received?

A This is a copy of the first page of the satisfaction of mortgage that I received.

Q But it bears the satisfaction on there?

A It bears the satisfaction, yes.

MR. TYLER: And that's bates stamp numbered 3278.

- - -

(Whereupon, Exhibit No. P-6, Satisfaction of Mortgage - 1st page, was marked for identification.)

- - -

BY MR. TYLER:

Q Did you satisfy the conditions of the agreement that was marked as Plaintiff's Exhibit 5?

A Yes, sir. The settlement agreement?

Q Yes, sir.

A Yes.

Q Okay.

A Although when I initially had them sign it, I failed to get them to initial each page,

and you e-mailed me after the fact asking me to resubmit it to them to get them to initial each page, which I did.

Q Which you did, okay. And did you in reliance upon the satisfaction of the terms of the agreement release the mortgage, release the first page of which is marked as Plaintiff's Exhibit 6, release that from escrow and record that satisfaction?

A In my opinion, I met the terms of our escrow arrangement, and I had that filed with the Georgetown County records.

Q Okay. Did you witness the discussion of the agreement by South Causeway, LLC by Peggy Wheeler-Cribb personally and by Will Darwin Wheeler?

A Yes, sir, I did.

Q Okay. To your knowledge at the time that document was executed, were any of those parties under any legal or actual disability?

A None to my knowledge.

Q Okay. Were you of the opinion that document had been validly executed and was valid and binding?

A This settlement agreement was signed in

conjunction with all of the closing documents in Kennedy Funding loan. So yes, I thought they were competent to sign the documentation.

Q Do you still represent Pawleys Island North, or have you done any subsequent legal work for Pawleys Island North or Peggy Wheeler-Cribb or Will Darwin Wheeler?

A I did make an appearance for Peggy Wheeler-Cribb individually and Darwin Wheeler in connection with in the area three residential foreclosures that they were trying to get modified with various lenders. And so I did file answers on their behalf and appear at the hearings on their behalf.

Q Nothing to do with First South Bank or the loan of Kennedy Funding, though?

A No, sir. Well, let me take that back. I believe Ms. Wheeler did forward to me a forbearance agreement with Kennedy Funding several months ago, but that was in conjunction, I didn't...

Q Did you do anything ultimately with that?

A No, I don't think. I think someone may have called her back or whatever. I don't

recall.

Q Okay. You were not actively involved in that?

A I was not actively involved, no.

Q Okay.

MR. TYLER: I think that's all I have. Thank you very much.

(Witness excused.)

- - -

(The deposition concluded at approximately 10:15 a.m.)

- - -

CERTIFICATE OF REPORTER

I, Teresa J.F. Bautz, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of March, 2011, at Myrtle Beach, Horry County, South Carolina.

Teresa J.F. Bautz
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
March 8, 2020

I N D E X

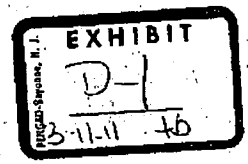
WITNESS:		PAGE
ROBERT H. GWIN, III		
	BY MR. TYLER:	3

- - -

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
P-1	Commitment Letter dated 2/4/09	6
P-2	Promissory Note	7
P-3	Mortgage and Security Agreement pages	8
P-4	Letter dated 4/8/09	10
P-5	Agreement	10
P-6	Satisfaction of Mortgage - 1st page	12

- - -



KENNEDY FUNDING, INC.

TWO UNIVERSITY PLAZA
SUITE 402
HACKENSACK, NEW JERSEY 07601
TEL (201) 342-8500
FAX (201) 342-8373
www.kennedyfunding.com

February 4, 2009

South Causeway LLC
P.O. Box 3727
Pawleys Island, SC 29585

Attn: Ms. Peggy Wheeler-Cribb

Re: Financing Request $1,200,000

Dear Ms. Wheeler-Cribb:

We are pleased to advise you of our commitment to provide financing. This commitment supersedes all previous communications and correspondence without limitation. The terms of this Loan Commitment are as follows:

LENDER:	Kennedy Funding, Inc. (KFI), or any other Lender designated by KFI: KFI intends to bring participants into this transaction and reserves the right to assign or sell participations in all or part of the Loan (the "Loan") described hereunder.	
BORROWER:	South Causeway LLC P.O. Box 3727 Pawleys Island, SC 29585	FEIN #
GUARANTORS:	Peggy Wheeler-Cribb 334 Myrtle Avenue Pawleys Island, SC 29585	SS# [redacted]
COLLATERAL/ PROJECT:	A first lien on the Collateral as described in Schedule "C".	
MAXIMUM LOAN:	A Loan of One Million Two Hundred Thousand Dollars ($1,200,000) including the FEE, fees and costs in accordance with Schedule A attached.	

FSB-SC 01959

South Causeway LLC
Loan Commitment
February 4, 2009

TERMS: The term of the Loan shall be three (3) years from the date of closing. The closing shall take place not later than March 6, 2009, time of the essence. The time of the essence date was included at the insistence of the Borrower who has represented that it will be in a position to meet all requirements contained herein by said date.

INTEREST: A. The interest rate for the first year of the loan shall be equal to the greater of (i) Twelve Percent (12%) or (ii) the One (1) month Libor Rate initially set on the day prior to the Loan closing date, then subsequently reset on the 1st of each month, plus Eleven Percent (11%) prepaid from the loan proceeds at closing.

B. The interest rate for the second year of the Loan shall be equal to the greater of (i) Eighteen Percent (18%) or (ii) the One (1) month Libor reset on the 1st of each month, plus Seventeen Percent (17%).

C. The interest rate for the third year of the Loan shall be equal to the greater of (i) Twenty One Percent (21%) or (ii) the One (1) month Libor reset on the 1st of each month, plus Twenty Percent (20%).

D. Monthly payments of interest only on the unpaid balance shall be due on the first day of each month for the prior month's interest until the maturity date, at which time the entire balance of principal and accrued and unpaid interest thereon shall be due and payable in full.

E. Monthly payments will be computed on a 30 day month and a 360 day year.

F. Interest from the date of closing to the end of the month in which the closing takes place shall be paid at the time of the closing.

G. As used in herein, the term One (1) month Libor shall mean (a) the posted rate for one-month deposits in United States Dollars appearing on Telerate page 3750, or a successor page, as of 11:00 a.m. (London time) on such day or (b) if no such rate appears on Telerate page 3750, or a successor page, at such time and day, then LIBOR shall be determined by the Agent selecting an equivalent publication that published the One (1) month Libor, and if such One (1) month Libor rate is no longer generally published or are limited, regulated or administered by a governmental or quasigovernmental body, then Agent shall elect a comparable interest rate index.

REPAYMENT: The Loan may be prepaid in full or in part without penalty except there shall be no refund of the FEE, points, fees and the like. The unused portion of any Monthly Prepaid Interest is refundable.

LEGAL MATTERS: **The interests of the Borrower and Lender are or may be different and may conflict, and the Lender's attorney represents only the Lender and not the Borrower and the Borrower is, therefore, advised to employ an attorney of the Borrower's choice licensed to practice in the State of New Jersey to represent the interests of the Borrower.**

The Borrower shall be required to pay to the Lender's attorney, reasonable legal fees and expenses of Lender's attorney for services provided to Lender in connection with this transaction. The legal fees of Lender's attorney shall be calculated on a time spent basis, based upon the standard hourly rates of Lender's attorney generally charged to clients of that firm for similar matters. The legal fee of Lender's attorney which Borrower will be required to pay hereunder shall be actual and reasonable.

Borrower agrees upon acceptance of the Loan Offer to forward Ten Thousand Dollars ($10,000) to KFI on account of preliminary due diligence including, without limitation, environmental, survey and title review by KFI and third parties. The acceptance of any such amount by KFI or any third party shall not be construed as evidence that the Borrower has fulfilled all of its obligations under the terms of this commitment. Upon KFI's completion of its preliminary due diligence, KFI shall forward your Loan file to outside counsel to schedule and complete the Loan closing. This Ten Thousand Dollars ($10,000) will be applied toward third party fees due in connection with the Loan at the Loan closing.

DOCUMENTATION: KFI's commitment to provide the Loan is subject to the negotiation, execution and delivery of definitive Loan and security agreements, mortgages or deeds of trust, notes, and other documentation and customary certificates and legal opinions (collectively, the "Loan Documents"), which in each case will be in form, substance and enforceability reasonably satisfactory to KFI. The Loan Documents shall contain conditions precedent, representations and warranties, covenants, events of default and other terms and conditions consistent with the terms hereof as shall be reasonable and customary for a transaction of the type contemplated herein.

ACCEPTANCE OF COMMITMENT: The commitment and all of its terms and conditions will become effective only upon delivery to this office of a signed copy of this commitment, duly accepted by the Borrower, accompanied with the commitment fee in the amount of One Hundred Twenty Thousand Dollars ($120,000) which is non-refundable and earned for, among other things, the commitment to provide funds.

Said fee is not refundable under any circumstances, except as agreed to herein.

Notwithstanding anything to the contrary contained in this commitment, the Borrower agrees that the basis for the Loan is the as is market value of the real estate Collateral in its present condition. Market value is defined as a six (6) month sale to a cash buyer. The Borrower understands that KFI will inspect the Collateral and will, in its sole discretion, determine the as is market value. Upon making a determination of value, KFI will deliver to Borrower a Loan Offer equal to Fifty Percent (50%) of the as is market value not to exceed the Financing Request. Failure by the Borrower to either accept or reject in writing the Loan Offer within three (3) days of receipt shall be deemed to be a rejection of the Loan Offer. Acceptance by Borrower of the Loan Offer shall constitute a waiver of the right to engage the services of a third party appraiser as described herein. Borrower understands that KFI cannot and will not lend more than Fifty Percent (50%) of the as is market value of the real estate Collateral. If KFI's determination of the value of the property is disputed by Borrower, Borrower may reject the Loan Offer and elect to engage the services of a third party appraiser. If Borrower makes this election, the Borrower and KFI shall mutually agree on a third party MAI appraiser, with proper credentials, contracted by KFI, and any fees for said appraiser to be reimbursed to KFI by Borrower prior to the appraisal being performed. Upon receipt of the determination of value by the third party appraiser, KFI will, at its option, either offer a Loan (not to exceed in any event the Financing Request) of Fifty Percent (50%) of the as is market value of the real estate Collateral as determined by said appraiser or return the paid portion of the commitment fee.

If the Collateral is determined to have a value which would require KFI to make a Loan of One Million Dollars ($1,000,000) or less, KFI will not be obligated to make the Loan unless the Borrower provides additional Collateral acceptable to KFI in its sole discretion to increase the amount of this loan to at least One Million Dollars ($1,000,000). If the Loan amount is not increased, the commitment fee will be earned by KFI.

This letter will become a commitment once signed by all parties and returned with the One Hundred Twenty Thousand Dollars ($120,000) as outlined above. This commitment will expire February 6, 2009, time of the essence. KFI shall have no obligation with respect to the Loan unless and until this commitment letter is fully executed and received by KFI along with the commitment fee.

RETURN OF COMMITMENT FEE:

If KFI is unable to perform its obligations under the terms of this commitment for whatever reason, KFI shall only be obligated to refund the paid portion of the commitment fee. SAID REFUND SHALL BE THE TOTAL EXTENT OF ANY

LIABILITY OR OBLIGATION ON THE PART OF KFI UNDER ANY CIRCUMSTANCE. There will be no refund if Borrower does not accept the loan offer(s) made by KFI pursuant to this commitment or Borrower has not complied with all the conditions of this commitment.

OTHER: KFI hereby acknowledges receipt of Ten Thousand Dollars ($10,000) which is non-refundable, for the preparation of this commitment.

EXPENSES: Borrower agrees that the Loan shall be without cost to KFI. Borrower assumes liability for and will pay all actual and reasonable costs and expenses required to satisfy the conditions hereof and the making of the Loan. Such costs and expenses shall be paid at or prior to the Loan closing, or upon demand if the Loan does not close or if this commitment is terminated. Such obligation shall survive termination.

RELEASES: During the term of the Loan, provided all payments of principal and interest on the Loan shall be current on the date of the sale and at the time of the sale and there are no uncured defaults or events of uncured defaults under the Loan Documents, Borrower may sell for cash individual parcels of the Collateral. KFI agrees to release such sold parcels provided that KFI receives the Release Price for such parcel which will be applied to the outstanding balance. The Release price will be the greater of:

(i) 80% of the net sale price of the parcel taking into account reasonable and customary closing adjustments and customary sales commissions;

(ii) 75% of the gross sale price of the parcel;

(iii) the minimum release amount as agreed to on a schedule to be approved by KFI prior to closing.

(The greater of the above three amounts being the "Release Price".)

GOVERNING LAW, ETC. This commitment may be executed in counterparts which, taken together, shall constitute one original. This commitment is for the benefit of the Borrower only and may not be assigned except upon the prior written consent of KFI, which consent may be withheld for any reason or no reason. No party other than Borrower or a permitted assignee may rely upon the terms and conditions of this commitment. This commitment will be governed by and construed in accordance with the laws of the State of New Jersey without regard to the principles of conflicts of laws thereof.

WAIVER: No failure on the part of KFI to exercise and no delay in exercising any rights under the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise by KFI of any right under the Loan Documents preclude any further exercise thereof, or the exercise of any other right. Each and every right or remedy granted under the Loan Documents or under any document delivered thereunder or in connection therewith or allowed to KFI in law or equity shall be deemed cumulative and may be exercised from time to time.

This Commitment is executed by an individual strictly in his capacity as a representative of the Lender. By the acceptance of this Commitment, Borrower agrees that no representative, member, partner, shareholder, employee or agent of the Lender shall be personally liable for the payment of any claim or the performance of any obligations hereunder.

LIMITATION OF DAMAGES: KFI SHALL HAVE NO LIABILITY TO BORROWER, OR ANY OTHER ENTITY OR PERSON, UNDER ANY THEORY OF LAW OR EQUITY FOR ANY AMOUNT IN EXCESS OF THE PAID PORTION OF THE COMMITMENT FEE. BORROWER ACKNOWLEDGES THAT THIS LIMITATION OF DAMAGES CLAUSE IS REASONABLE. BORROWER AGREES NOT TO PURSUE ANY CLAIM IN EXCESS OF THE ABOVE SUM.

WAIVER OF TRIAL BY JURY: BORROWER AND LENDER EACH HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, COUNTERCLAIM, OR CROSS-CLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO THIS COMMITMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATION, THE COLLATERAL, OR ANY RELATED TRANSACTION.

MISCELLANEOUS: BORROWER UNDERSTANDS THAT KFI CANNOT AND WOULD NOT ENTER INTO THIS COMMITMENT WITHOUT BORROWER'S AGREEMENT TO THE LIMITATION OF DAMAGES, CHOICE OF FORUM AND WAIVER OF TRIAL BY JURY CLAUSES CONTAINED HEREIN.

BORROWER AND GUARANTOR(S) UNDERSTAND THAT THEY ARE OBLIGATED TO DISCLOSE TO LENDER THE NAME AND ADDRESS OF ANY THIRD PARTY FEE PROVIDER(S). IN THE EVENT THERE IS A THIRD PARTY FEE PROVIDER, THE THIRD PARTY FEE PROVIDER SHALL BE REQUIRED TO SIGN THIS LOAN COMMITMENT. IN THE

EVENT THAT BORROWER FAILS TO MAKE SUCH DISCLOSURE, BORROWER AND GUARANTOR(S) AGREE TO INDEMNIFY AND HOLD HARMLESS LENDER AGAINST ANY AND ALL CLAIMS ASSERTED BY SUCH UNDISCLOSED PARTY AS WELL AS ANY ATTORNEYS' FEES INCURRED IN DEFENDING AGAINST SAME.

COMMITMENT FEE MODIFICATION: Notwithstanding the above requirement to pay One Hundred Twenty Thousand Dollars ($120,000) at the signing of the commitment, as consideration for the parties unconditionally and irrevocably waiving all right to trial by jury and the parties agreeing to the Choice of Forum and Limitation of Damages clauses, KFI will accept payment of the One Hundred Twenty Thousand Dollars ($120,000) in the following manner:

a) Fifty Thousand Dollars ($50,000) to be paid at the time this commitment is signed, prior to our due diligence, which signing will be no later than February 6, 2009, time of the essence;

b) Seventy Thousand Dollars ($70,000) to be paid at the closing or upon Borrower electing not to proceed to a Loan closing. In addition, any default by the Borrower under this commitment, or other failure of Borrower to comply with this commitment, or misrepresentation by Borrower of any fact or state of facts to KFI either in connection with this commitment or otherwise, or any material adverse change of any type shall not relieve Borrower of its obligation to pay such amount to KFI.

Notwithstanding anything to the contrary contained herein, in the event Borrower has accepted the Loan Offer but Borrower is unable to close due to no fault of Borrower (other than electing to close with another lender), Borrower may terminate this loan commitment. Provided Borrower does so in writing no later than February 25, 2008, time of the essence; KFI would refund Ten Thousand Dollars ($10,000); waive the balance of commitment fee due in b) above, and the parties would have no further obligation to each other.

South Causeway LLC
Loan Commitment
February 4, 2009

Borrower acknowledges that Schedule "B" annexed hereto represents conditions of the Loan commitment required by Lender and that this document would not be executed by Lender without Borrower's agreement thereto. Borrower further acknowledges that each and every delivery required under this Loan Commitment (including those required under Schedule "B") must be made directly to KFI or its designated legal counsel. Any deliveries made to any other person or entity (including without limitation any appraiser or broker involved with the proposed loan transaction) shall not be deemed a delivery to KFI as required hereunder.

This document is an arms length and negotiated agreement. It shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

Sincerely,

KENNEDY FUNDING, INC.

BY: _____
Jeffrey Wolfer, President and Co-Chief Executive Officer

DATE: _____

COMMITMENT ACCEPTED
SOUTH CAUSEWAY LLC

BY: _____
Peggy Wheeler-Cribb, Managing Member

_____
Peggy Wheeler-Cribb, Individually and as Guarantor

DATE: _____

sg\conf\South Wheeler-Cribb Executed2

FSB-SC 01966

South Causeway LLC
Loan Commitment
February 4, 2009

SCHEDULE "A"

LOAN AMOUNT	$1,200,000

PROPOSED LOAN AND USE OF PROCEEDS

MONTHLY PREPAID INTEREST (Refundable if unused) (12 months@ $12,000/mo.)	$144,000
CLOSING COSTS	UNKNOWN
BROKERAGE COMMISSION Red Model Management	UNKNOWN
BALANCE OF COMMITMENT FEE	$70,000

SCHEDULE "B"

These General Conditions are part of the attached commitment and deemed a part hereof as if set forth therein

1. **Survey:** The Borrower shall provide a survey certified to the Lender and the title company satisfactory to the title company on each piece of Collateral prepared by a surveyor licensed by the State showing the project to be free of encroachments, overlapped and other survey defects, delineating all wetlands on the property (if any); all in accordance with the Lender's survey requirements.

2. **Insurance:** The Borrower must furnish liability and hazard insurance in a sum not less than the replacement value of the Collateral but in no event less than the amount of the Loan insured by a company or companies satisfactory to Lender.

3. **Title:** The Lender shall receive a first lien on the Collateral acceptable to its Counsel and Borrower shall provide a paid title insurance policy in an amount no less than the amount of the Loan insured by a title company or companies satisfactory to Lender.

4. **Flood Insurance:** If any material part of any parcel of the Collateral is located in an area designated as being subject to a special flood hazard, Borrower shall obtain all available flood insurance. If insurance is not available, and if such unavailability legally precludes the mortgage from covering such affected parcel, such parcel shall be removed from the Collateral and all Loan amounts recalculated.

5. **Easements:** All necessary easements for utilities, public road access, parking or otherwise shall be provided for prior to closing.

6. **Additional Collateral:** As additional Collateral Borrower agrees to allow Lender to lien all inventory, machinery, equipment, accounts receivable and all other assets owned by Borrower.

7. **Approval of Lender's Counsel:** The title in the project and the form and substance of each and every document evidencing the Loan and the security thereof or incident thereto, must be satisfactory to and approved by Counsel to the Lender in its sole discretion.

8. **Approval of Borrower's Counsel, Etc.:** Borrower acknowledges that it has consulted with counsel of its choice and with such other experts and advisors as it deemed necessary in connection with the negotiation, execution, and delivery of this Commitment and Borrower acknowledges that it will consult with counsel of its choice and with such other experts and advisors as it deems necessary in connection with the negotiation, execution and delivery of the other Loan Documents. This Commitment and the other Loan Documents shall be construed without regard to any presumption or rule requiring that they be construed against the party causing them, or any part of them, to be drafted.

9. **Representations and Warranties of Borrower and Guarantor:** Customary for transactions of this type, including, but not limited to, the following:

(a) Neither the Loan Documents nor the performance by Borrower of its obligations thereunder violate any provisions of law, of Borrower's partnership agreement, corporate by-laws, or of any agreement which is binding upon Borrower or the Guarantors. No action or permission by any governmental commission, bureau or agency is required in connection with the execution or the performance of the Loan Documents by Borrower, and Borrower is not subject to filing, reporting or like requirements of any governmental commission, bureau or agency charged with control or supervision of environmental concern.

(b) All financial information furnished or disclosed to KFI by Borrower and Guarantors touching upon the financial condition of any of them is true and correct as of the date furnished; and there has been no omission of any material fact relating thereto, and there has been no material adverse change in the financial condition, operations or business of any of them since the date of such financial information. Borrower and Guarantor(s) authorize KFI to obtain any credit information which KFI deems appropriate or necessary regarding the Borrower and/or Guarantor(s).

(c) Borrower or Guarantors is not in default in the performance, observance or fulfillment of any of the obligations or conditions contained in any agreement or instrument to which it is a party, or with respect to any evidence of indebtedness or obligation for borrowed money which affects in any way the Collateral, nor does any condition exist which, upon the lapse of time or giving of notice, or both, would constitute an event of default under, or grounds for termination of, any such agreement or instrument.

(d) No actions, suits or proceedings at law or in equity are pending or, to the best of Borrower's or Guarantor's knowledge, threatened, in any court or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality against or affecting Borrower, the Guarantors, or any of its properties or rights which, if adversely determined would materially adversely affect the financial condition of Borrower or Guarantors or materially impair the right of either to carry on its business substantially as now conducted, nor is either in default

with respect to any judgement, writ, injunction, decree, rule or regulation of any court or federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality.

(e) At Lender's option, Borrower will establish and maintain reserves for ongoing taxes and insurance premiums, prepaid interest and replacement reserves in amounts acceptable to Lender. The tax and insurance reserve will be funded up front and from monthly cash flow and will be 1/12th of the annual amount payable. All funds held in the reserve accounts will be held for the benefit of the Borrower, except for the tax and insurance reserve (which shall be for the benefit of the Lender).

10. **Miscellaneous:** Prior to the closing of the Loan and disbursement of funds, in each instance the Borrower must comply with the following:

(a) The Borrower is to produce such evidence as Lender may require to demonstrate current full compliance with all applicable zoning, health, environmental and safety laws, ordinances and regulations (including without limit approval of local, private or public sewage or water utility). The Borrower shall certify or supply other satisfactory evidence to the Lender at the time of the closing that there is no action or proceeding pending before any Court or Administrative Agency with respect to the validity of any laws, ordinances or regulations, and any certifications or permits issued thereunder, pertaining to the premises. The Borrower shall certify or supply other evidence satisfactory to the Lender that the Borrower is not a party to any existing or pending or threatened litigation, unless specifically noted herein.

(b) All appropriate approvals necessary for the current use and the completed project contemplated by this commitment (if applicable) must be provided and must meet all applicable requirements of all governmental authorities having jurisdiction, including, but not limited to subdivision and site plan approvals, the Department of Environmental Protection and its several subdepartments as they pertain to potable water supply, sewage discharge and sewage connection, use of septic tanks or alternatives. The Lender shall require prior to closing, evidence satisfactory to it and its Counsel of full compliance with all Environmental Clean-Up Responsibility Acts and that no action is pending or liens imposed under any Spill Compensation and/or Control Acts.

(c) During the term of the Loan, there shall be no additional financing nor any transfer of title, not contemplated in the Loan Documents without the prior written approval of the Lender.

(d) Execution by the Borrower of such Loan Documents including, but not limited to, a mortgage and mortgage note, satisfactory in form and substance to the Lender and its Counsel, including a prohibition against the transfer of title of any of the Collateral not contemplated in the Loan Documents, and if the Borrower is a

corporation or partnership, a change in the management or controlling interest in the Borrower. Borrower may prepay the Lender at any time, in whole or in part, without penalty except for all of the FEE which is considered earned at the time of closing.

(e) This commitment is subject to the accuracy of all information, representations, exhibits and other materials submitted with or in support of the Loan request and there must be no adverse change in the set of facts prior to the disbursements of funds or during the term of the Loan. This commitment may be terminated by KFI and the Commitment Fee retained and earned by KFI in the event of the following:

(i) If the Borrower shall fail to comply with any of the terms or conditions hereof.
(ii) In the event of a sale, conveyance or other disposition of any of the Collateral.
(iii) In the event of a materially adverse change in the financial condition of the Borrower or any Guarantor.
(iv) Any fraudulent material misrepresentation or any omission or concealment by the Borrower or any Guarantor of any material fact.

(f) In the event of any default during the term of this Commitment, KFI may, at its option, require immediate payment of the balance of the Commitment Fee and KFI may terminate the Commitment and retain the paid portion of the Commitment Fee.

(g) The Borrower has the obligation to disclose all material facts, past and present, related to the Borrower, Guarantors, the Collateral, the transaction, etc.

(h) The Borrower specifically acknowledges and agrees that KFI and/or Lender rely on counsel opinion letters relating to, among other items, usury. This commitment is subject to the express condition that at no time will the Borrower be obligated or required to pay interest at a rate which could subject KFI and/or Lender to either civil or criminal liability as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If, by the terms of this commitment or the Loan Documents the Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest shall be deemed to be immediately reduced to such maximum rate and the portion, if any, of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance.

(i) At Lender's option at closing, the owner of the collateral and the Borrower shall be a newly formed single-purpose "bankruptcy remote" limited liability company or limited partnership acceptable to Lender. The Borrower's organizational documents shall contain provisions satisfactory to Lender. These provisions may not be amended in any material respect during the term of the Loan without Lender's consent. The sole business activity of the Borrower shall be the ownership and

operation of the Mortgage Property. The Borrower shall have no debt other than the Loan at closing. The Borrower shall be prohibited from incurring additional debt other than the Loan throughout the Loan term, including without limitation, partnership debt. Any advances made to Borrower from any partner, member of Borrower or shareholder shall be in the form of equity not debt.

11. **Validity of Loan:** The Loan and the closing thereof shall in all respects be legal and not violate any applicable law or other requirements of any governmental authority. The Borrower will submit to the Lender at closing a current written opinion by the Borrower's legal Counsel, satisfactory to Lender, to the effect, among other things, that all Loan Documents are valid and binding upon the Borrower and any other mortgagor and are enforceable in accordance with their terms and are legal and do not violate any local, state or federal laws including, but not limited to, all usury laws. Once the Loan is closed and funded by the Lender, the Loan shall be governed and construed pursuant to the laws of the State of New Jersey. Borrower understands that KFI has entered into this Commitment expecting to receive a return on the Loan as set forth in this Loan Commitment. In the event that the jurisdiction in which the Collateral is located and/or from which payment is made requires the payment of a tax, assessment, or other charges in connection with the Loan by Lender, Borrower will be responsible for the payment of such tax, assessment or charge and shall reimburse Lender for any payment required to be made by the Lender.

12. **Governing Law:** This Commitment and the other Loan Documents (except the Mortgage which shall be construed in accordance with the law of the situs of the realty), shall be governed by and construed in accordance with the internal substantive laws of the State of New Jersey, without regard to the choice of law principles of such state.

13. **Usury:** It is expressly understood and acknowledged by the Borrower that KFI may not be familiar with the usury statutes in the Collateral's jurisdiction and relies on counsel opinions delivered at closing. This commitment is subject to the express condition that at no time shall the Borrower be obligated or required to pay interest at a rate which could subject KFI or the Co-Lenders to either civil or criminal liability as a result of being in excess of the maximum rate which the Borrower is permitted by law to contract or agree to pay. If by the terms of this commitment or the note the Borrower is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder and/or under the note shall be deemed to be immediately reduced to such maximum rate and interest payable shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of principal balance or, if the Loan has not closed shall be void, and if KFI deems it a hardship to close the Loan under the usury statutes, all fees paid to KFI shall be refunded and this commitment shall be null and void

14. **Choice of Forum:** Borrower and Guarantor(s) consent to the jurisdiction of any state or federal court sitting in the State of New Jersey for adjudication of any dispute between the Borrower and Guarantor(s), their agents, servants and/or employees and KFI under any theory of law in connection with, out of, or otherwise relating to this Commitment and any related transactions and that venue shall be proper in any such court to the exclusion of the courts in any other state or country. The Borrower further agrees that such designated forum is proper and convenient. By executing this commitment, Borrower and Guarantor(s) authorize KFI to obtain credit information on Borrower and Guarantor.

15. **WAIVER OF TRIAL BY JURY: Borrower and Lender each hereby unconditionally and irrevocably waive any and all right to trial by jury in any suit, counterclaim, or cross-claim arising in connection with, out of, or otherwise relating to this Commitment, the other Loan Documents, the Obligation, the Collateral, or any related transaction.**

16. **No Oral Modifications:** Notwithstanding any course of dealing between the parties, no amendment, modification, rescission, waiver, or release of any provision of this Commitment shall be effective unless the same shall be in writing and signed by the Borrower and Lender.

17. **Complete Agreement:** This Commitment, together with the other Loan Documents, constitutes the entire agreement and understanding among the parties relating to the subject matter of this Mortgage Loan, and supersedes all prior proposals, negotiations, agreements, and understanding relating to such subject matter. In entering into this agreement, Borrower acknowledges that it is relying on no statement, representation or agent of the Lender, except for the agreements of Lender set forth herein.

18. **Survival of Commitment:** Borrower and Lender hereby acknowledge and agree that this commitment shall not survive closing. Furthermore, notwithstanding the provisions of paragraph 16 above, the parties specifically acknowledge and agree that the terms and conditions of this Loan may be modified by mutual agreement at any time up to and including the date of closing and that any such modifications shall be incorporated directly into the Loan Documents without the need to amend this Commitment.

19. **Execution.** This Loan Commitment may be executed in any number of counterparts, each in which shall be considered an original. Delivery of an executed copy by one party to the other, via facsimile, shall constitute a valid delivery

South Causeway LLC
Loan Commitment
February 4, 2009

The undersigned does hereby accept this Commitment and does hereby agree to keep and perform each and every item and condition herein before set forth and do acknowledge that the performance of such terms and conditions are obligations of the undersigned. The undersigned acknowledges and agrees that Lender requires satisfaction of the conditions herein (and in the Loan Documents) at least 48 hours prior to the closing and funding of the Loan. The attorney for the Borrower has reviewed this commitment and has explained all of its terms and ramifications to the Borrower and the Guarantor.

ACCEPTED:
SOUTH CAUSEWAY LLC

BY: _____
Peggy Wheeler-Cribb, Managing Member

_____
Peggy Wheeler-Cribb, Individually and as Guarantor

DATE: _____

sg\com\South.Wheeler-Cribb.Executed2

FSB-SC 01974

South Causeway LLC
Loan Commitment
February 4, 2009

SCHEDULE "C"
(COLLATERAL / PROJECT DESCRIPTION)
PROVIDED BY BORROWER

A first lien on 2 residential lots located on Myrtle Avenue in Pawley's Island, SC 29585.

Lot 3 is .75 acres
Lot 4 is 22,764 sq. ft.

PROMISSORY NOTE

$960,000 April 30, 2009

FOR VALUE RECEIVED, the undersigned, **PAWLEYS ISLAND NORTH, LLC**, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 (the "Borrower"), promises to pay to the order of **KENNEDY FUNDING, INC.** ("Agent"), with an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent for the lenders identified on Schedule A annexed hereto (Agent and the lenders identified on Schedule A are hereinafter collectively referred to as "Lender"), the principal sum of **NINE HUNDRED SIXTY THOUSAND and 00/100 ($960,000) DOLLARS**, or so much thereof as may be advanced by Lender to Borrower from time to time (the "Principal Amount"), together with interest on the unpaid Principal Amount thereof computed from the date advanced (the "Commencement Date"), at the rates provided herein until April 29, 2012 or such earlier date on which the Principal Amount becomes due and payable as provided herein (the "Maturity Date"); provided, however, that from and after (i) the Maturity Date, whether upon stated maturity, acceleration or otherwise, or (ii) the date on which the interest rate hereunder is increased to the Default Rate (as hereinafter defined) as provided herein, such additional interest shall be computed at the Default Rate.

As used herein, the term "Default Rate" shall mean a rate of interest of twenty-five percent (25.0%) per annum, but in no event shall the Default Rate be in excess of the Maximum Rate (as hereinafter defined).

If any payment of interest is not paid on or before the due date for such payment, a late charge equal to the lesser of ten percent (10%) of such overdue payment or the maximum amount permitted by applicable law shall automatically become due to the holder of this promissory note (as may be amended, restated or modified from time to time, the "Note"), subject, however, to the limitation that late charges may be assessed only once on each overdue payment. Said late charges do not constitute interest and shall constitute compensation to the holder of this Note for collection and co-lender administration costs incurred hereunder. In addition, if any payment of principal or interest is not paid when due, the holder of this Note shall have the right, upon notice to Borrower, to increase the rate of interest per annum on all amounts outstanding to the Default Rate and, upon said notice, such rate increase shall be effective retroactively as of the date from which the interest component of such overdue payment began to accrue and shall remain in force and effect for so long as such default shall continue. This paragraph shall not be construed as an agreement or privilege to extend the due date of any payment, nor as a waiver of any other right or remedy accruing to the holder of this Note by reason of any default.

Principal and interest hereunder shall be payable as follows:

EXHIBIT P-2 3-11-11 tb

21392/0000 5408885v4

FSB SC003291

(a) Interest only at the rate per annum equal to the greater of: (i) Twelve (12.0%) percent and (ii) the One (1) Month Libor Rate (as hereinafter defined), as adjusted from time to time, plus Eleven (11.0%) percent on the Principal Amount outstanding hereof shall accrue from the Commencement Date through and including April 29, 2010.

(b) Interest only at the rate per annum equal to the greater of: (i) Eighteen (18.0%) percent and (ii) the One (1) Month Libor Rate, adjusted from time to time, plus Seventeen (17.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2010 through and including April 29, 2011.

(c) Interest only at the rate per annum equal to the greater of (i) Twenty One (21.0%) percent and (ii) the One (1) Month Libor Rate, as adjusted from time to time, plus Twenty (20.0%) percent on the Principal Amount outstanding hereof shall accrue from April 30, 2011 through and including the Maturity Date.

(d) All interest payments payable to Lender hereunder shall be paid monthly in arrears, in an amount, as determined by Lender, commencing on June 1, 2009 and continuing on the first day of each month thereafter through and including the Maturity Date.

(e) All principal, interest and other sums due hereunder shall be due and payable in full on the Maturity Date.

As used herein, the term "One (1) Month Libor Rate" shall mean (a) the posted rate for one-month deposits in United States Dollars appearing on Telerate page 3750, or a successor page, as of 11:00 a.m. (London time) on such day, or (b) if no such rate appears on Telerate page 3750, or a successor page, at such time and day, then the One (1) Month Libor Rate shall be determined by the Agent selecting an equivalent publication that published the One (1) Month Libor Rate, and if such One (1) Month Libor Rate is no longer generally published or is limited, regulated or administered by a governmental or quasi-governmental body, then Agent shall select a comparable interest rate index. If interest on this Note is calculated at the One (1) Month Libor Rate as provided herein, then the interest rate will be adjusted on May 1, 2009 and on the first day of each month thereafter (each an "Adjustment Date") following any change in the One (1) Month Libor Rate.

(f) Prepaid Interest (as defined in the Loan and Security Agreement of even date herewith, as may be amended, restated or modified from time to time, hereinafter, the "Loan Agreement"), if any, shall be utilized in accordance with the terms of the Loan Agreement.

Each payment hereunder shall be credited first to Lender's collection expenses, next to late charges, next to unpaid interest, and the balance, if any, to the reduction of

the Principal Amount. The interest on this Note shall be calculated on the basis of a 30-day month and a 360-day year.

This Note may be prepaid in whole or in part at any time, without penalty or premium, it being understood and agreed that, except as expressly provided herein, Borrower shall not be entitled, by virtue of any prepayment or otherwise, to a refund of the Fee (as defined in the Loan Agreement), interest, any other fees, points, charges and the like paid by Borrower to Lender in connection with the loan hereunder (the "Loan") and for fees and expenses incurred by Lender in making the Loan, all of which payments shall be retained by Lender from and after the date each such payment is made hereunder.

Borrower and each surety, endorser and guarantor hereof hereby waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, demand for payment, protest, notice of protest and notice of dishonor, to the extent permitted by law. Borrower further waives trial by jury. No extension of time for payment of this Note or any installment hereof, no alteration, amendment or waiver of any provision of this Note and no release or substitution of any collateral securing Borrower's obligations hereunder shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower under this Note.

Any forbearance by the holder of this Note in exercising any right or remedy hereunder or under any other agreement or instrument in connection with the Loan or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy by the holder of this Note. The acceptance by the holder of this Note of payment of any sum payable hereunder after the due date of such payment shall not be a waiver of the right of the holder of this Note to require prompt payment when due of all other sums payable hereunder or to declare a default for failure to make prompt payment.

If this Note is placed in the hands of an attorney for collection, Borrower shall pay all costs incurred and reasonable attorneys' fees for legal services in the collection effort, whether or not suit be brought.

At the election of the holder of this Note, all payments due hereunder may be accelerated, and this Note shall become immediately due and payable without notice or demand, upon the occurrence of any of the following events (each an "Event of Default"): (1) Borrower fails to pay on or before the date due, any amount payable hereunder; (2) Borrower fails to perform or observe any other term or provision of this Note with respect to payment; (3) Borrower fails to perform or observe any other term or provision of this Note; or (4) there exists a default under the Mortgage (as hereinafter defined), a default under any Guaranty (as hereinafter defined) or a default under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor (as hereinafter defined) in connection with the Loan, which default is not cured within any grace period expressly provided therefor in such document. In

addition to the rights and remedies provided herein, the holder of this Note may exercise any other right or remedy in any other document, instrument or agreement evidencing, securing or otherwise relating to the indebtedness evidenced hereby in accordance with the terms thereof, or under applicable law, all of which rights and remedies shall be cumulative.

If this Note is transferred in any manner, the right, option or other provisions herein shall apply with equal effect in favor of any subsequent holder hereof.

Notwithstanding anything to the contrary contained herein, under no circumstances shall the aggregate amount paid or agreed to be paid hereunder exceed the highest lawful rate permitted under applicable usury law (the "Maximum Rate") and the payment obligations of Borrower under this Note are hereby limited accordingly. If under any circumstances, whether by reason of advancement or acceleration of the maturity of the unpaid principal balance hereof or otherwise, the aggregate amounts paid on this Note shall include amounts which by law are deemed interest and which would exceed the Maximum Rate, Borrower stipulates that payment and collection of such excess amounts shall have been and will be deemed to have been the result of a mistake on the part of both Borrower and the holder of this Note, and the party receiving such excess payments shall promptly credit such excess (to the extent only of such payments in excess of the Maximum Rate) against the unpaid principal balance hereof and any portion of such excess payments not capable of being so credited shall be refunded to Borrower.

This Note is secured by, among other things, that certain Mortgage and Security Agreement (as may be amended, restated or modified from time to time, the "Mortgage"), an Assignment of Leases and Rents (as may be amended, restated or modified from time to time, the "Assignment"), an Assignment of Licenses, Contracts, Plans, Specifications, Surveys, Drawings and Reports (as may be amended, restated or modified from time to time, the "Assignment of Licenses"), all of the foregoing being of even date herewith and a first lien on the certain real estate collateral (the "Collateral") identified in the Mortgage, and is entitled to the benefits and security thereof. Reference is made to the Mortgage, Assignment and Assignment of Licenses for descriptions of the respective rights and obligations of the Borrower and Lender thereunder. This Note is guaranteed by the separate Guaranty of even date herewith (as may be amended, restated or modified from time to time, the "Guaranty") of Will Darwin Wheeler and Peggy Wheeler-Cribb (jointly and severally, the "Guarantor") and reference is made to the Guaranty for the respective rights of the parties thereunder. Borrower hereby agrees to indemnify, defend and hold harmless Lender from and against any and all claims, loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) which may be incurred by Lender in connection with or as a result of any default (following notice and the opportunity to cure provided for in such document) by Borrower or Guarantor under the Mortgage, Assignment, or Assignment of Licenses, or by the

Guarantor (following notice and the opportunity to cure provided for in such document) under the Guaranty, or a default (following notice and the opportunity to cure provided for in such document) under or misrepresentation contained in any other agreement, document or certificate of Borrower or any Guarantor executed or delivered in connection with the Loan (collectively, the "Loan Documents").

By its acceptance of Lender's funds and execution of this Note, Borrower acknowledges, agrees and confirms that it has no defense, offset or counterclaim for any occurrence in relation to this Loan and Borrower acknowledges that Lender has complied with all of its obligations under the Loan Documents as of the date hereof.

All payments of principal and interest hereunder are payable in lawful money of the United States of America and shall be made by wire transfer to the account of Agent or Brookline Financing SPV, LLC, as instructed, at Valley National Bank, pursuant to wiring instructions to be provided to Borrower at the closing of the Loan or to such other accounts as may be instructed by Agent.

Borrower is hereby prohibited from exercising against Lender (as a group) or Agent, any right or remedy which it might otherwise be entitled to exercise against any one or more (but less than all) of the parties constituting Lender, including, without limitation, any right of setoff or any defense. Any other claim that Borrower may have, arising from or related to the transaction evidenced by this Note and the other Loan Documents shall be asserted only against the Agent and not against any of the individual parties constituting Lender.

In the event that an action to enforce this Note or the other Loan Documents results in the entry of a judgment (in foreclosure or otherwise) against the Borrower and/or any Guarantor, interest on the judgment shall continue to accrue at the Default Rate through the date of satisfaction of the judgment debt in full, and not at the statutory post-judgment rate of interest. Borrower waives any right and/or claim to have the post-judgment interest accrue at the statutory rate.

This Note shall be binding on the parties hereto and their respective heirs, legal representatives, executors, successors and assigns.

This Note shall be construed without any regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted.

This Note shall be governed by the laws of the State of New Jersey without regard to choice of law consideration. Borrower hereby irrevocably consents to the jurisdiction of the courts of the State of New Jersey and of any federal court located in such State in connection with any action or proceeding arising out of or relating to this Note or the other Loan Documents. Borrower and Guarantor hereby designate Corporation Service

Company, located at 830 Bear Tavern Road, Suite 305, West Trenton, New Jersey 08628-1020, as their duly appointed agent to accept service of process within the State of New Jersey on their behalf.

This Note may not be changed or terminated orally.

A determination that any portion of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision to the extent legally permissible and otherwise as it may apply to other persons or circumstances.

Notwithstanding anything contained herein to the contrary, if there is more than one Borrower, each Borrower shall be jointly and severally liable for a breach of any and all covenants, representations, warranties, obligations and liabilities under this Note.

JURY TRIAL WAIVER. BORROWER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BORROWER OR THE HOLDER OF THIS NOTE ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. BORROWER ACKNOWLEDGES AND AGREES THAT AS OF THE DATE HEREOF THERE ARE NO DEFENSES OR OFFSETS TO ANY AMOUNTS DUE IN CONNECTION WITH THE LOAN. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS NOTE.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has executed this Note on the date set forth above.

WITNESS:

Name: Robert H. Gwin, III

BORROWER:

PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company

By: Peggy Wheeler-Cribb
Name: Peggy Wheeler-Cribb
Title: Manager

STATE OF SC)
): ss.:
COUNTY OF Horry)

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

(a) made the attached instrument; and

(b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

NOTARY PUBLIC

SCHEDULE A

LENDERS

Brookline Financing SPV, LLC

MGSS Fund

Instrument 2009000218047 Book 1225 Page 109

Lot 254
2008 [illegible]
T:17.20

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE, made as of this 8th day of April, 2009, by **PAWLEYS ISLAND NORTH, LLC**, a South Carolina limited liability company, having an address at 334 Myrtle Avenue, Pawleys Island, South Carolina 29585 ("Mortgagor"), and **KENNEDY FUNDING, INC.**, a New Jersey corporation, having an office at Two University Plaza, Suite 402, Hackensack, New Jersey 07601, as agent ("Agent") for the lenders identified in Schedule A of the Note (as hereinafter defined) (Agent and the said lenders are hereinafter collectively referred to as "Mortgagee").

WITNESSETH

WHEREAS, Mortgagee has agreed to lend and Mortgagor has agreed to borrow the principal sum of **NINE HUNDRED SIXTY THOUSAND and 00/100 ($960,000) DOLLARS** ("Loan"), on the terms and conditions provided herein and in the Loan Documents (as hereinafter defined);

WHEREAS, Mortgagor has executed and delivered to Mortgagee, among other things, that certain Loan and Security Agreement (as same may be amended, restated or modified from time to time, "Loan Agreement") and that certain Promissory Note (as same may be amended, restated or modified from time to time, "Note") both of even date herewith, evidencing the Loan; and

WHEREAS, Mortgagor expects to derive benefit from the Loan and has agreed to secure the Loan by, among other things, the grant of this Mortgage to Mortgagee.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in order to secure Mortgagor's obligations under the Loan Documents, including the payment of principal and interest, late fees, attorneys' fees, costs and disbursements, the full and prompt payment and performance of all of the indebtedness, obligations, covenants, agreements and liabilities of Mortgagor to Mortgagee, together with all interest and other charges thereon, whether direct or indirect, existing, contingent or otherwise, due or to become due, under or arising out of or in connection with the Loan Agreement and any future modifications thereof and any other instruments or documents delivered in connection herewith or therewith and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor has mortgaged, granted, bargained, sold, conveyed, aliened, released, transferred, warranted and confirmed, and does hereby mortgage, grant, bargain, sell, convey, alien, release, transfer, warrant and confirm unto Mortgagee, and to all its successors and assigns forever, the following described property (collectively, the "Property"):

A. The real estate located in County of Georgetown, State of South Carolina (the "State") more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right,

EXHIBIT P-3 3-11-11 tb

FSB-SC003300

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement as of the date first above written.

WITNESSES:

Witness #1

Signature: _____
Name: [illegible]

Witness #2/Notary Public

Signature: _____
Name: [illegible]

MORTGAGOR:

PAWLEYS ISLAND NORTH, LLC, a South Carolina limited liability company

By: _____
Name: Peggy Wheeler-Cribb
Title: Manager

STATE OF SC)
): ss.:
COUNTY OF Horry)

ACKNOWLEDGMENT

I certify that on April 28, 2009, Peggy Wheeler-Cribb came before me in person and stated to my satisfaction that she:

(a) made the attached instrument; and

(b) was authorized to and did execute this instrument on behalf of and as the Manager of Pawleys Island North, LLC, a South Carolina limited liability company (the "Company"), the entity named in this instrument, as the free act and deed of the Company, by virtue of the authority granted by its Operating Agreement and its members.

_____
NOTARY PUBLIC

Print Name: [illegible]
My Commission Expires: 10-30-2013

[SEAL]

[illegible]

49

FSB-SC003301

Instrument 2009000028047 Book Page 1225 158

EXHIBIT "A"
PROPERTY DESCRIPTION

LOT 3

ALL THAT CERTAIN piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as **LOT 3** on a plat prepared by The Earthworks Group, dated July 9, 2006 and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April 28, 2009 and recorded in Mortgage Book 1225 at page 103 of the public records of Horry County, South Carolina. Record

LOT 4

ALL THAT CERTAIN, piece, parcel or lot of land lying, being and situate on Pawleys Island, Georgetown County, State of South Carolina, being that certain lot of land designated as **LOT 4** on a plat prepared by The Earthworks Group Dated July 9, 2006 and recorded in the Office of the Clerk of court for Georgetown County, South Carolina in Plat Slide 625 at page 10.

Being the same lands and premises as were conveyed to Pawleys Island North, LLC by Quitclaim Deed from Will D. Wheeler dated April 28, 2009 and recorded in Mortgage Book 1225 at page 103 of the public records of Horry County, South Carolina. Record

Instrument 2009060225047 Book Page 1225 160

84aai Guun

2009060225047
Filed for Record in
GEORGETOWN SC
GWENDA FREWATTE
05-05-2009 At 11:54 am.
RECORDING 58.00
STATE TAX .00
COUNTY TAX .29
Book 1225 Page 107 - 160

FSB-SC003303

TYLER, CASSELL, JACKSON, PEACE & SILVER, L.L.P.
ATTORNEYS AND COUNSELORS AT LAW
SUITE 300
1331 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

DONALD W. TYLER
HERBERT C. CASSELL, JR.
THOMAS B. JACKSON III
H. ALAN PEACE
JEFFREY L. SILVER

DONALD W. (D.J.) TYLER, JR.

MAILING ADDRESS:
POST OFFICE BOX 11656
COLUMBIA, SOUTH CAROLINA 29211-1656

TELEPHONE (803) 779-4597
TELECOPIER (803) 765-2468
TELECOPIER (803) 733-2712

April 8, 2009

VIA ELECTRONIC MAIL
AND NEXT DAY AIR

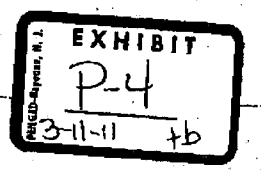
Robert H. Gwin, III, Esquire
2105 Cromley Circle, Suite B
Myrtle Beach, SC 29577
Rgwin1@sc.rr.com

Re: Real Estate Mortgage (the "Mortgage") from Will Darwin Wheeler, as mortgagor, to First South Bank ("Bank"), as mortgagee, given to secure a loan (the "Loan") of Bank to South Causeway, LLC (the "Borrower") in the original principal amount of $6,500,000.00.
Our File No. 1862.22059

Dear Bob:

As you are aware we represent the Bank with respect to the above-referenced matter. This letter will confirm our telephone conversation of April 8, 2009. The Bank has at the request of your clients, the Borrower, Peggy Wheeler Cribb and Will Darwin Wheeler, agreed to enter into an Agreement (the "Agreement") two copies of which, executed by the Bank, are enclosed, and pursuant to the Agreement, to execute and deliver a satisfaction and cancellation of the Mortgage, for and in return for payment of $300,000.00 by your clients to the Bank to be used for the purposes and disbursed in accordance with the provisions of the Agreement.

Accordingly, in accordance with the Agreement and our conversation, the satisfied Mortgage is also enclosed and delivered to you in trust, to held by you unless and until you obtain (i) execution of the Agreement (all the pages of which are initialed by Peggy Wheeler Cribb and Will Darwin Wheeler) by the Borrower, and by Peggy Wheeler-Cribb and Will Darwin Wheeler, as guarantors of the Loan, and not less than $300,000.00 in collected funds from your clients. Upon your receipt of these items you are authorized to release the satisfied Mortgage from escrow and record the same provided you immediately and forthwith wire to the Bank, in accordance with the wiring instructions included with this letter, the sum of $300,000.00 and return one fully executed and initialed copy of the Agreement by overnight to me. If you do not within 30 days from the date of this letter receive the executed Agreement and the $300,000.00 and are not prepared to immediately disperse them in the manner set forth above, you are to return the satisfied Mortgage to me without recording the same.



FSB-SC003279

Please understand that the Bank has agreed to enter and has entered into the Agreement upon the express understanding that any loan transaction with respect to which the Mortgage is being satisfied and released will not cause a violation, default or Event of Default by the Borrower with respect to the Loan, that the Borrower is not and will not be a party to any such loan transaction, and that no property of the Borrower will be encumbered in order to secure in whole or in part any such loan.

I am mailing the original of this letter to you, but I am also sending a copy to you by email. For my files, I would greatly appreciate if you would sign at the bottom to indicate your agreement to act as Escrow Agent as provided in the Agreement, and to the terms of escrow contained this letter with respect to the satisfied Mortgage and the release of the same, and send a copy of this letter so signed by you, to me by e-mail or fax. We will in the interim, as you and I discussed, be sending the original of this letter, the satisfied Mortgage, two executed copies of the Agreement and the wiring instructions to you, by overnight. With kindest regards, I am

Sincerely Yours,

TYLER, CASSELL, JACKSON
PEACE & SILVER, L.L.P.

Donald W. Tyler

DWT/jw
Enclosure

Cc: Wayne Lovelace
W. C. Lyerly, III

I agree to act as Escrow Agent as provided and defined in the Agreement, and to receive the satisfied Mortgage in trust and release and record, or return, the same solely in accordance with the provisions of the Agreement and the above letter.

Robert H. Gwin, III

AGREEMENT

This Agreement (this "Agreement") made and entered into as of the 10th day of April, 2009 (the "Effective Date"), by First South Bank ("Bank") on the one hand, and South Causeway, LLC ("Borrower"), Peggy Wheeler-Cribb and Will Darwin Wheeler (individually each a "Guarantor" and collectively "Guarantors") on the other hand.

PRELIMINARY STATEMENT

HERETOFORE on or about June 25, 2008, Bank made a loan (the "Loan") unto Borrower, a South Carolina limited liability company, in the original principal amount of Six Million Five Hundred Thousand and No/100 ($6,500,000.00) Dollars pursuant to a Loan Agreement (the "Loan Agreement") dated June 25, 2008 and entered between Bank and Borrower. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement unless the context hereof requires otherwise. Bank has advanced, and there is currently outstanding, Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths ($4,769,725.23) Dollars (the "Outstanding Balance") in principal upon the Loan. The obligation of Borrower to repay the Loan are evidenced by the Note executed by the Borrower. Timely payment and performance of the Note is guaranteed by a Guaranty executed by each Guarantor and dated June 25, 2008. Payment and performance of Borrower's obligations with respect to the Loan are secured in part by a first mortgage lien evidenced by the Borrower Mortgage given by the Guarantor Will Darwin Wheeler and encumbering and comprising a first mortgage lien upon certain unimproved real property (the "Guarantor Parcel") having an address of 334 Myrtle Avenue, Pawleys Island, Georgetown County, South Carolina, having TMS No. 42-1670-42.3 and designated as Lot 4 on a plat prepared by The Earthworks Group dated July 9, 2006. The Borrower Mortgage was recorded in the ROD Office for Georgetown County, South Carolina on June 25, 2008, in Book 990at Page 265.

Borrower has failed to pay timely 2008 Georgetown County, South Carolina, property taxes (the "2008 Taxes") which were due January 15, 2009, upon the Project Property (encumbered by the Borrower Mortgage), and such 2008 Taxes are currently past due and owing.

Borrower and Guarantors have requested that Bank satisfy and cancel the Guarantor Mortgage and accordingly release the Guarantor Parcel from the Collateral such that Bank will no longer have a lien thereupon. Bank is agreeable to so doing upon the following express conditions and provided that Borrower and Guarantors: (i) release Bank from any, every and all claims which Borrower and each Guarantor might have or consider against Bank, (ii) simultaneously with the satisfaction and release by Bank of the Guarantor Mortgage deliver to Bank the sum of Three Hundred Thousand and No/100ths ($300,000.00) Dollars which funds shall be disbursed by Bank to pay (a) all costs incurred by Bank, including Bank's attorneys' fees (including, without limitation, Bank's attorneys' fees not heretofore paid), in connection with the Loan and with respect to this Agreement and the preparation hereof (collectively, without limitation, "Bank's Costs"), and (b) the 2008 Taxes (which includes all penalties and interest charged by the taxing authority with respect

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EXHIBIT
P-5
3-11-11 tb

FSB-SC 02052

thereto), and the balance thereof shall be deposited by the Bank into the Interest Reserve Account and disbursed by Bank, together with funds already on deposit therein, to pay interest upon the Note as the same shall accrue and be due and payable, pay Georgetown County, South Carolina, property taxes due for the calendar year 2009 (the "2009 Taxes"), when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described in the Loan Agreement (with any funds remaining therein, if any, to be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan in full), (iii) acknowledge and agree that Bank shall not, nor shall Bank have any obligation to, make any Advance upon the Loan in excess of the Outstanding Balance, and (iv) agree and acknowledge with Bank the amendment and modification of the Loan Agreement, the Note, the Security Documents and the Guaranties (together with all other instruments, made, given, executed or delivered by Borrower or Guarantors in connection with the Loan the "Loan Documents"), to reduce the term of the Loan such that the Note and all obligations of the Borrower with respect to the Loan shall be due and payable not on July 5, 2011, but on July 5, 2010. Borrower and Guarantors are agreeable to these said terms and conditions imposed by Bank as are hereinabove and hereinafter set forth and accordingly the parties have entered this Agreement.

TEXT OF AGREEMENT AND RELEASE

NOW THEREFORE, for and in consideration of these premises and the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The factual recitals set forth in the Preliminary Statement are hereby incorporated as part hereof, and Borrower and each Guarantor, by execution hereof, hereby confirms the truth and accuracy thereof.

2. The terms and provisions hereof shall be deemed to and shall modify and amend the terms and provisions of the Loan Agreement, the Note, the Security Documents and each of the Guaranties, but shall not otherwise modify or amend the terms of any Loan Documents. Other than as expressly set forth herein each and every term, provision and condition of each and every Loan Document remains in full effect, and as modified and amended hereby, is hereby ratified and affirmed.

3. Borrower and each Guarantor hereby, and by these presents does, on its, his and her behalf, respectively, and on behalf of its, his and her respective legal representatives, heirs, successors and assigns, remise, release and forever discharge Bank, its successors, assigns, officers, directors, shareholders, employees, attorneys, agents and servants (collectively and individually the "Released Parties"), of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands, whatsoever,

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both at law and in equity, which against the said Released Parties and any of them, Borrower and each Guarantor ever had, now has or which Borrower, each Guarantor, or its, his or her respective personal representatives, heirs, successors and assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour and minute of the execution of these presents, including, without limitation, with respect to the Loan, and any matter or thing whatever arising out of the same, either known or unknown at this time, apparent or not apparent, and both present and future.

4. Bank, Borrower and Guarantors agree that as of the date hereof the Outstanding Balance of the Loan is Four Million Seven Hundred Sixty-Nine Thousand Seven Hundred Twenty-Five and 23/100ths ($4,769,725.23) Dollars. Borrower and each Guarantor further acknowledges and agrees that Bank shall not be obligated to make, and neither Borrower nor either Guarantor shall have any right to demand, request or otherwise require or seek to have Bank to make any further Advance upon the Loan, nor shall Bank be otherwise obligated or required in any fashion to loan or make available for borrowing any funds of the Loan in addition to the Outstanding Balance.

5. Bank has simultaneously with the entering hereof, delivered, in trust, unto the Borrower's and Guarantors' attorney, Robert Gwin, Esquire (the "Escrow Agent"), the Guarantor Mortgage, duly satisfied and cancelled (the "Satisfied Mortgage"). Escrow Agent shall release the Satisfied Mortgage from escrow for recording in the Georgetown County, South Carolina, ROD Office, upon, but only upon, receipt by Escrow Agent of the sum of Three Hundred Thousand and No/100ths ($300,000.00) Dollars, all of which funds shall promptly be delivered by federal funds wire transfer or such other commercially reasonable method as Bank shall select, by Escrow Agent unto Bank, and disbursed by Bank to (i) pay the 2008 taxes, (ii) pay Bank's Costs, and (iii) deposit the balance in the Interest Reserve Account to be disbursed by Bank to pay interest payments due upon the Note as and when due, to pay the 2009 Taxes when due, and for such other purposes (including, without limitation, Bank's future attorneys' fees and costs hereafter incurred in connection with the Loan or the modification or recovery thereof) as are described or permitted in the Loan Agreement and the Security Documents; any funds thereafter remaining in the Interest Reserve Account, if any, shall be paid over to the Borrower upon payment and satisfaction of the Note and all Borrower's other obligations with respect to the Loan, in full. With respect to the foregoing disbursements from the Interest Reserve Account, Borrower and Guarantors acknowledge and agree that Bank has made no representation or warranty whatsoever that the funds on deposit in the Interest Reserve Account are or will be sufficient to pay the items described above as and when due, and that nothing contained herein or in any of the Loan Documents relieves or reduces, or is intended to relieve or reduce, the absolute and unfettered obligation of Borrower and of each Guarantor to timely pay all indebtedness and other obligations (including, without limitation, 2009 taxes and all interest payments due upon the Note) as provided and required by the Loan Documents and each of them.

6. Bank and Borrower do hereby amend and modify the Note and each of the other Loan Documents as applicable, such that the term of the Note shall be reduced and all indebtedness under and with respect to the Note and Borrower's other obligations with respect to the Loan shall be due

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FSB-SC 02055

and payable in full July 5, 2010.

7. TIME IS OF THE ESSENCE in the performance of each, every and all of the terms, provisions and conditions hereof.

8. Borrower and each Guarantor by execution hereof does hereby represent and warrant that other than the failure to pay timely pay 2008 Taxes, Borrower and Guarantors are and will remain throughout completion of the performance of the transactions contemplated by this Agreement in full and complete compliance with all the terms, conditions, provisions and requirements of the Loan Agreement, the Note, the Guaranties and the other Loan Documents, and that other than failure to timely pay 2008 Taxes no default, event of default or Event of Default, or event or circumstance which but for the passage of time, the giving of notice, or both, would constitute a default, event of default or Event of Default, with respect to the Note, each of the Loan Documents and the Guaranty, exists.

9. All notices and communications provided for hereunder shall be in writing, delivered by hand or sent by first-class or certified mail, postage prepaid to the addresses of the parties hereto set forth in the respective Loan Documents. Bank, Borrower or either Guarantor may change address for notice purposes by notice to the other parties in the manner provided herein. All notices, demands, consents or other communications hereunder shall be deemed effective when delivered personally or by delivery service, or 3 days after mailing when sent by registered or certified mail, first class postage prepaid, addressed to each party to receive such notice at the address for such party as set forth above, or at such other address as such party may specify in a notice previously given to the other parties in the manner herein.

10. The Note and each other Loan Document as, but only to the extent, modified and amended hereby, is hereby approved, ratified, confirmed and affirmed by the Borrower and each respective Guarantor. Each Guarantor does further hereby acknowledge, agree and affirm that his and her respective Guaranty applies to, and guaranties timely payment and performance by Borrower of, all obligations of Borrower with respect to the Loan, and each of the Note and of the Security Documents, respectively.

11. The terms of this Agreement may be varied only by written agreement signed by the Bank, the Borrower and each of the Guarantors.

12. If any clause or provision of this Agreement is found to be invalid or is incapable of being enforced by any rule of law or public policy, all other clauses and provisions shall nevertheless shall remain in full force and effect.

13. This Agreement is binding upon the parties hereto and their respective heirs, successors, assigns and personal representatives.

Remainder of this page intentionally left blank.

 Initial: _____ _____

FWL

14. This Agreement may be executed in one or more counterparts, all of which shall collectively comprise one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement UNDER SEAL as of the Effective Date.

WITNESSES:

SOUTH CAUSEWAY, LLC

By: _____ (SEAL)
Its: Member

_____ (SEAL)
Peggy Wheeler-Cribb

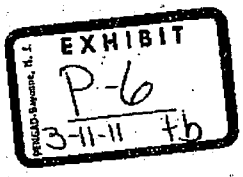
_____ (SEAL)
Will Darwin Wheeler

FIRST SOUTH BANK

By: _____
Its: Senior Vice President

Initial: _____ . _____

FWW



Instrument 200800011836 Book 990 Page 265

CANCELLED AND SATISFIED
this 10TH day of APRIL, 2009
FIRST SOUTH BANK
Witness by Maryann Fowler
SENIOR VICE PRESIDENT

This document was prepared by (name, address, phone):
FIRST SOUTH BANK - COLUMBIA
1333 MAIN STREET
COLUMBIA, SC 29201
(803) 343-3436

Lot 4 lease on Pawleys Island

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 08-25-2008 and the parties and their addresses are as follows:

MORTGAGOR: WILL DARWIN WHEELER
334 MYRTLE AVENUE
PAWLEYS ISLAND, SC 29585

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

LENDER: FIRST SOUTH BANK - COLUMBIA
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA
1333 MAIN STREET
COLUMBIA, SC 29201

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 EXHIBIT A**********

IMAGED
Scanned Style is Verified

The property is located in GEORGETOWN (County) at LOT #41 334 MYRTLE AVENUE (Address), PAWLEYS ISLAND (City), South Carolina 29585 (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.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN

2010-CP-22-01233

FIRST SOUTH BANK,

Plaintiff,

vs. Case No. 2010-CP-22-1233

SOUTH CAUSEWAY, LLC,

Defendant.

CERTIFIED COPY

D E P O S I T I O N

WITNESS: DON S. THOMAS

DATE: Thursday, March 31st, 2011

TIME: 11:00 a.m.

LOCATION: Richardson Plowden
2103 Farlow Street, Suite B
Myrtle Beach, South Carolina

TAKEN BY: Attorneys for Defendants

REPORTED BY: TERESA J. F. BAUTZ
Registered Professional Reporter

- -

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1-888-988-0086
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familiar with this e-mail at all?

A No.

Q Okay, okay. I mean, is this consistent generally with what you understood was going on at the time?

A Yes.

Q Okay.

MR. TYLER: Let's mark this as the next exhibit.

- - -

(Whereupon, Exhibit No. Thomas-9, Answer and Counterclaim, was marked for identification.)

- - -

BY MR. TYLER:

Q Mr. Thomas, what I've handed you has been marked as Exhibit No. 9, and I'll represent to you that this is the answer and counterclaim filed on behalf of South Causeway against First South Bank.

A Yes.

MR. TYLER: And Audra, I just copied certain pages. I didn't copy, don't have the 24 pages, I just got excerpts from the counterclaim.

BY MR. TYLER:

Q Can you look over on the second page which is actually page 10.

A Yes.

Q Look at paragraph 60 which continues from there onto the next page, please.

A Yes.

Q And read that. Starts off: The auction was scheduled to take place June 2010.

That appears to be correct; would you agree?

A Yes.

Q Okay. 18 days before the auction Lovelace contacted the company's broker agent, informed them the status of the South Causeway loan and told them it would not be renewed.

Does that seem to be generally consistent with what you believe, you know, what you believe happened?

A It was just contacted me would be the only difference.

Q Okay. The next sentence says: Thus the auction officials had no choice but to disclose to potential purchasers what Lovelace had communicated to them.

Do you believe that's correct or not

correct?

A I believe that's not correct.

Q Why do you believe that?

A Because to my knowledge was not communicated to anybody.

Q Okay. And to your knowledge, would you have been required to communicate that information?

A No.

MS. BYRD: Object to the form of the question.

BY MR. TYLER:

Q Okay. And in fact would have been in fact required not to disclose that information; would you believe that to be the case?

MS. BYRD: Object to the form of the question.

THE WITNESS: Yes.

BY MR. TYLER:

Q Okay. Then last sentence says: In addition, Lovelace told the agent and broker that the property could not be subdivided and sold in lots thereby limiting the options of the auctioning company and potential purchasers. Is that correct?

A Well, that's what he did tell us.

Q He did tell you that, but did it limit your options at the auction?

A No.

Q And why not?

A Because we proceeded to offer the lots in a subdivided -- as subdivided possibilities at the auction.

Q Okay. Look over on the next page in your exhibit which is actually page 21.

A Yes.

Q Look at paragraph 116. And we'll go through that the same way. I'm just going to go ahead and read it, and then we'll try and walk through it.

A Okay.

Q Okay. You ready to go?

A Yeah.

Q The first sentence says: By deliberately inducing Christie's Auction coming not to fully form its contract with South Causeway. My question for you is, did you guys fully perform your contract?

MS. BYRD: Object to the form of the question.

THE WITNESS: I believe we did.
BY MR. TYLER:
Q Okay.
A And I will mention to you that we are not Christie's Auction Company.
Q Okay.
A We are Vintage Estates Realty. The company Christie's is not who we work for, it is not our company. We are affiliation with them.
Q Okay. Because your Vintage?
A That's correct.
Q Okay, okay. But let's talk about then Vintage. Do you believe that Vintage as the contracting party fully performed on the contract?
MS. BYRD: Object to the form of the question.
THE WITNESS: I believe so.
BY MR. TYLER:
Q Okay. Then the second sentence says: Under its contact with South Causeway -- and I'm going to insert Vintage instead of Christie's -- Vintage was obligated to use its best professional judgment to structure the auction of the South Causeway property in the manner that

would produce the highest sales price.

Do you believe that Vintage used your best professional judgment or did not use your best professional judgment?

MS. BYRD: Object to the form of the question.

THE WITNESS: I believe we did.

BY MR. TYLER:

Q On paragraph 117, it says, and again, I'm going to insert Vintage, it says: Vintage could not subdivide the property in the auction into subdivided lots, which was clearly the most commercially favorable manner to auction the property. Is that correct or not correct?

MS. BYRD: Object to the form of the question.

THE WITNESS: I think it's obviously not correct since that's what we did.

BY MR. TYLER:

Q Okay. Let's go down to paragraph 124, which is on the bottom of that page. It says: Based upon representations of various potential purchasers, there existed a reasonable probability that a contract to purchase South Causeway property would have been realized at

the -- again I'll insert -- Vintage auction.

A Okay.

Q Now, do you think that's correct, do you think there's a reasonable probability that it will be -- the property would have sold at the auction?

MS. BYRD: Object to the form of the question.

THE WITNESS: Let me kind of comprehend this. Based on the various representations of potential purchasers, there existed a reasonable probability -- I guess I don't really understand what that's saying, so I can't really say if that's correct or not.

BY MR. TYLER:

Q Okay, well, I'll rephrase. Do you think there was a reasonable probability that the property -- okay, let's say that you never spoke with anybody at First South Bank, okay, never spoke with Wayne Lovelace.

A Okay.

Q Do you think there was a reasonable probability that the property -- do you want to take a break?

MR. TYLER: Off the record a second.

- - -

(Whereupon, there was a recess in the proceedings.)

- - -

BY MR. TYLER:

Q Mr. Thomas, we're back on the record.

A Okay.

Q Let's say that no one with Vintage had ever spoke with anybody at First South Bank.

A Right.

Q Do you think there was a reasonable probability that the South Causeway property would have sold at the auction?

MS. BYRD: Object to the form of the question.

THE WITNESS: I have no idea.

BY MR. TYLER:

Q Okay. Now, do you think that the probability of the property selling changed at all as a result of the conversation you had with First South Bank?

MS. BYRD: Object to the form of the question.

THE WITNESS: Not to my knowledge.

BY MR. TYLER:

Q Okay. Do you know if anyone else with Vintage had any discussions with First South Bank?

A Not to my knowledge.

Q Okay.

A Well, prior to the auction?

Q Prior to the auction.

A Yeah, prior to the auction.

Q Okay. Let's look at; I think we've been over that, look at paragraph 126 for me, please. And we're still on the same Exhibit 9, I guess.

A Okay.

Q And it says: First South Bank knew that the auction officials would be required to disclose to potential purchasers materially adverse financial information regarding South Causeway.

I'm not asking you about what First South, what they knew or did not know. But I just want to confirm, and I believe we've been over this a couple times, that in fact the auction officials, which would be Vintage, did not disclose any materially adverse financial information regarding South Causeway. Is that correct?

A Correct.

MS. BYRD: Object to the form of the question.

BY MR. TYLER:

Q Okay. Do you know, commercial property, do you know how often commercial property is sold for sale by owner?

A I do not.

Q Do you think it would be difficult to do for sale by owner on commercial property, what about the South Causeway property?

A So we're talking specifically as to the South Causeway property?

Q Yeah.

A Well, of course being a realtor, I'm always a little biased that we help sell the property. But given the fact that it did have a high visibility, there would probably be a more likely possibility than property that wasn't on a highly traveled road.

Q Okay, okay. And I'm getting close to the end, I promise.

A Sure.

Q I just want to clarify, Vintage had a auction agreement with South Causeway; correct?

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GEORGETOWN)	Civil Action Number: 2010-CP-22-01233
FIRST SOUTH BANK,)	
)	
Plaintiff,)	
)	
vs.)	**NOTICE OF FILING**
)	
SOUTH CAUSEWAY, LLC)	
)	
Defendant.)	
)	

COME NOWS Defendant South Causeway, LLC, by and through its undersigned counsel, and in opposition to the Motion for Summary Judgment filed by the plaintiff, hereby files the attached documents with the Clerk of Court for Georgetown County:

1. Excerpts from the deposition transcript of F. Wayne Lovelace, a true and accurate copy of which is attached as **Exhibit A**, including pages:

- 12 – 19;
- 33 – 36;
- 41 – 44;
- 47 – 48;
- 51;
- 61 – 65;
- 70 – 71;
- 81 – 83;
- 92 – 93;
- 97 – 98;
- 101 – 117;

FILED
GEORGETOWN COUNTY, S.C.
2011 NOV 17 AM 9:12
ALMA Y. WHITE
CLERK OF COURT

- 126 – 128;
- 131 – 132; and
- 137 – 140.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: _____

R. Wayne Byrd (S.C. Bar #1068)
Audra M. Byrd (S.C. Bar #76719)
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR SOUTH CAUSEWAY, LLC

NOVEMBER 17, 2011

Exhibit A

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)	
FIRST SOUTH BANK,)	C/A NO.:2010-CP-22-01233
PLAINTIFF,)	
)	DEPOSITION
VS.)	
)	OF
SOUTH CAUSEWAY, LLC,)	
)	F. WAYNE LOVELACE
DEFENDANT.)	

Deposition of F. Wayne Lovelace, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 9:57 a.m., Friday, September 16th, 2011, at Turner, Padget, Graham & Laney, P.A., 1901 Main Street, 17th Floor, Columbia, South Carolina.

Reported by

Cheri B. Williams, CVR

Appearances

For the Plaintiff:
Donald W. Tyler, Esquire
Tyler, Cassell, Jackson, Peace & Silver, L.L.P.
1331 Elmwood Avenue
Suite 300
Post Office Box 11656
Columbia, SC 29211

For the Defendant:
Audra M. Byrd, Esquire
Turner, Padget, Graham & Laney, P.A.
Founders Centre, Suite 301
2411 North Oak Street
Post Office Box 2116
Myrtle Beach, SC 29578

Reported By:
Cheri B. Williams, CVR

Also Present:
W.C. "Chip" Lyerly, III
Peggy Wheeler-Cribb
Will Darwin Wheeler

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Direct Examination by Ms. Byrd 5
Cross-examination by Mr. Tyler 141
Re-examination by Ms. Byrd 144
Certificate 150

Q Anne Green, what is her position?
A She's a -- I can't remember her exact title, but she's -- she's not a bank officer. She's a -- Deborah Masolwa is a branch officer and Carson Chitty is an administrative assistant.
Q How about Julie Cason?
A She is the executive assistant to Mr. Lyerly. Executive assistant to the President.
Q Have you ever been disciplined or terminated from employment for cause?
A No.
Q And I don't want you to take offense. We ask this to every witness. Have you ever been charged with a crime?
A No.
Q Could you briefly tell me about your background with the Wheelers, Ms. Wheeler Cribb or Will Darwin Wheeler. How did you come to meet them?
A I think I recall it was pretty much by happenstance. It was when I was working with First Palmetto Savings Bank. As I recall, Ms. Cribb made a call to the bank and it was referred to me and she made an inquiry as to whether we were making loans and in particular loans along the coast. And -- but prior to that time, I didn't know Ms. Cribb.

Q And as a result of her phone call, did First Palmetto make a loan to Ms. Cribb?

A We did after a period of time. After a due diligence period, we made a loan to her in 2000 and I believe six. Might have been 2005. I just don't recall right off exactly.

Q Sure. And what was the purpose of that 2006 loan?

A I think the first loan we made was to facilitate the purchase of a piece of property at 334 Myrtle Avenue in Pawleys Island, South Carolina.

Q And subsequent to the 2006 loan for 334 Myrtle, did First Palmetto make any other loans?

A We did. There were several that we made. I can't recall exactly the timing nor the amounts, but the largest -- the initial loan was the one I just mentioned to you, though. And then we made the one that -- to South Causeway. Actually, it was not South Causeway at the time. It was to her individually.

Q I'm sorry. I'm going to go back just a minute. Before your deposition today, did you review any documents to prepare?

A I did.

Q What documents did you review?

A Well, both what we had in terms of email, our loan

documents and what we were provided through discovery.

Q And by that you mean the documents that Ms. Wheeler has produced to the bank?

A That's correct.

Q Okay. I'm going to go back to the First Palmetto Savings Bank loans. The initial loan in 2006, that was not related to the South Causeway property; is that right?

A That's correct. It was not. And 2006 may not have been the correct date. It might have been 2005.

Q Sure. Were you the primary point of contact for the Wheelers during the time that they had their loans with First Palmetto?

A I was.

Q When you left First Palmetto, did you have to sign any type of non-compete agreement?

A No.

Q Now, can you tell me how it came to be that when you left First Palmetto and joined First South Bank that you came back into contact with the Wheelers?

A It was through just a normal business solicitation effort on my part. I called Ms. Wheeler -- Ms. Cribb and told her that I had changed banks and that if there's anything we could do for her, then

we'd be glad to entertain an application or an opportunity to do so.

Q During the time that you were with First Palmetto, was Ms. Cribb and Mr. Wheeler, were they current on their loans that were with First Palmetto?

A They were.

Q And were those performing loans? Were they performing well?

A They were.

Q Do you recall when it was that you -- once you left First Palmetto and joined First South, do you remember when it was that you solicited Ms. Cribb?

A I can't be exact. I think we had some maybe general conversation. Maybe I had telephoned her to let her know that I had changed banks, but I think I went to work at First South roughly the middle of July 2007, so it would have been shortly thereafter or some time within 30 days or so.

Q And the substance of your conversations with Ms. Cribb, was it just sort of advising her that you had left the bank or were you requesting that she move the loan to First South? What was the substance of the conversation?

A Well, it was I called to let her know that I had moved and that -- she had been involved in a number

of projects or deals in and around the Pawleys Island area and I thought maybe there was one or two that we might could handle for her from a refinance basis or whatnot. But that was all it was. It was just a general business solicitation on my part.

Q And did there come a time when you and Mr. Lyerly met with Ms. Cribb and Mr. Wheeler in Pawleys Island?

A There was.

Q Do you recall about when that meeting took place?

A It was April, roughly mid-April, of 2008.

Q And what was the purpose of that meeting?

A To go down and just have lunch with she and Mr. Wheeler and to let them know who -- just get reacquainted, I guess you might say. To let them know who Mr. Lyerly was and that we were interested in talking with them about possible business opportunities if any came along.

Q And so was your conversation just a general conversation about business opportunities or was it specifically related to the South Causeway property?

A It was a little bit of both. We -- I knew that there were several things that she had going

personally and I also knew of the fact that this South Causeway was hopefully going to come on board and it might be something we could be a part of. And we told her that we would be interested in hearing what her proposal was and we would try to work with her in making it come about.

Q And when you say making it come about, you mean transitioning the loan from First Palmetto to First South?

A Well, we -- that was part of it. I mean, we wanted to know a little bit more about who the -- what their total idea was, whether it was going to be a -- we felt like -- we were led to believe it was going to be a development anchored by a grocery store. There were several that had expressed an interest in being the anchor tenant. It looked like at the time that she had began the core list around one or two anchor tenants and we just wanted to nail that down before we got involved. But, no, we thought it was potentially a real good project and we wanted to be a part of it.

Q And did you have from your work with Ms. Cribb while you were at First Palmetto, is that where you sort of garnered that initial information about the development and that there was going to be an

anchor tenant, that type of information that you just discussed?

A Well, we knew -- you know, I knew personally about the property as did a lot of people and we knew that her intentions were to develop it commercially and there were people that expressed -- there were a number of interests expressed in out lots and that sort of thing. And they were beginning to sort of nail down certain people to come in and be either -- I think the primary use was to do ground leases, but the genesis of the -- of what we talked about was when I went back to First Palmetto. Going back to the days I was employed with First Palmetto, I knew about the project. I knew generally what they wanted to do. We just needed to know a little bit more about who the tenants or who are the potential players in the deal were.

Q Okay. When -- were you aware of the status of the loan from First Palmetto for the South Causeway property?

A I was.

Q And were you aware of when that loan was set to mature?

A I can't be exact. I mean, I couldn't give you an exact date or anything like that.

Q Sure. And what I'm asking really is during your meeting in April of 2008, were you aware of generally when the loan with First Palmetto for the First -- for the South Causeway property was to mature?

A I seem to recall that it was maturing sometime within the following three to six months. And I can't be more exact than that.

Q Were you privy while employed with First Palmetto Savings Bank to whether or not there had been a decision by that bank to renew or modify that loan on -- that was secured by the South Causeway property?

A I was not.

Q And after your April of 2008 meeting with Ms. Cribb and Mr. Wheeler and Mr. Lyerly, what happened next with regard to this loan?

A Well, we -- as I recall, we asked that as things became more concrete that she keep us apprized of what was going on. We asked for, you know, the standard information that we would in putting together and opening a file; financial information, tax returns. You know, what had been done up until that point in terms of studies or getting the property ready for the project she intended to see

to be complied with and provides a framework, if you will, for the transaction itself.

Q And did you write this letter?

A I had input in it.

Q Who else had input in it?

A Our legal counsel.

Q Anyone else?

A Mr. Lyerly, I believe. And that was about it.

Q But this is -- is that your signature on the last page? Just for the record -- well, I'm sorry. The next to the last page. For the record, this is documents Bates labeled South Causeway 00082 through 00094.

A Are you asking me if that's my signature?

Q Yes, sir.

A I'd stipulate that it is.

Q And can you tell me if in this document there is any provision for the release, the conditions under which Lot Four would be released from this loan?

A We had a document that spelled out what needed to be complied with for release of Lot Four to be released from our collateral package, which was given to Ms. Cribb at closing.

Q Why was that not included in this commitment letter?

A Again, we weren't sure at the time what the -- what the appraisal was going to be. We didn't have an appraisal of the land at the time this commitment was issued. We had ordered one. And the -- and it turned out the appraisal itself for the land came back shortly after, as I recall, the issuance and acceptance of this letter.

Q And there's a separate document that you gave at closing that outlined the conditions under which Lot Four would be released?

A That's correct.

Q And between that time -- the closing date was June 25, 2008.

A That's about right, yeah.

Q And the date of this letter is May 30, 2008. What changed such that you could then outline the conditions under which the lot would be released?

A Well, we -- I put in writing for the benefit of Ms. Cribb what conditions needed to be met. Again, at the time, all we -- the appraisal that we got only was for the land itself. It didn't represent the total completed project. Once the project was completed, we would have to have a supplemental appraisal that would indicate that the project with the completed improvements was sufficient to meet

the loan to value requirements that we had to comply with in the eyes of the regulatory authorities. But, you know, we just -- it was just -- it was an attempt to give her some assurance, if you will, that if one of three things happened, then -- if the project was completed according to plans and specifications, if the -- I forget the other two. Then we would be agreeable to release -- if the project appraised for an amount of at least a certain amount, which is outlined in the letter, we would agree to release that particular lot.

Q So had Ms. Cribb expressed some concern to you about having this property essentially cross-collateralized for this large loan?

A She sent an email about the same time, I believe, as the commitment was sent, but it was also sent to her attorney as well and she had a right to accept it or not accept it.

Q Okay. But my question is did she express some concern to you about this Lot Four being cross-collateralized with this large loan?

A She did. I mean, it was in an email and I responded to that email by telling her that the absence of not knowing what the value of that land

would be, we had to keep that Lot Four until such time as we could show that our loan to values were in line with what the banking authorities said they had to be.

Q Did you ever tell Ms. Cribb that having this Lot Four serve as collateral was just a formality?

A I don't know -- I don't recall. I mean, it would -- having Lot Four as collateral was necessary until such time as the -- we have the appraisal that indicated the higher value or what the value of the project would actually be. And if she could -- if she inferred from that that it was just a matter -- just a convenience factor or whatever -- however you want to express it, then maybe she did understand it be that. But that was -- we had to have that property in order to maintain the values that we had to operate under.

Q When you guys were negotiating this loan and even at closing, did you anticipate that the loan to value ratio would be sufficient with only the South Causeway property?

A I don't recall. I mean, there were numerous -- that property had been valued or the expectation of the value of that property was up and down and so, I mean, it was -- so I don't -- we really didn't

fee of one percent, and that was $65,000. So that was based on the entire amount of the loan; is that right?

A That's correct. That's correct.

Q And 810 is the bank's attorney's fees of $9,322.50?

A That's correct.

Q And that was for your attorney's service in drafting the loan agreement or --

A All of his services. Generally advising the bank, drafting documents, just talking and discussing the transaction with Mr. Hinds and various and sundry things.

Q Do you need anything to drink?

A No, thank you. I'm fine.

Exhibit No. 4, Letter dated 6/25/08 to Mr. Wheeler and Ms. Cribb; two pages.

Q I'm going to show you what's been marked as Exhibit Four. Do you recognize that document?

A I do.

Q Can you tell me what that is?

A This is a letter that I delivered to Ms. Cribb at closing indicating our agreement and what -- to release the Lot Four at 334 Myrtle Avenue and under what conditions that we would do so.

Q And there's a notation at the top of that document

that it was hand delivered at closing.

A That's right. That's right.

Q Why was this not emailed or delivered in some other manner?

A Well, I was going to be at the closing and I just felt it just as appropriate to hand deliver it as send it by mail.

Q And is this document a part of the loan agreement?

A I don't believe it's a -- I mean, it's a document, but it's a -- I don't think it's so stated in the loan agreement itself as being. But it's a -- it's a letter making her aware what we would require in terms of releasing the Lot Four.

Q And if you'll look at the second page, number three, the appraised value. It states the appraised value of the property and proposed improvements reflects a value of, not less than, $9,500,000. Is that right? Did I read that correctly?

A That's correct.

Q And that $9,500,000, where did that number come from?

A That was an estimated value that we came up based on what we were -- what was represented to us was going to take -- what was going to take to complete

the project based on their conceptual plans and specifications for the project, while keeping in mind the loan to value that we had to operate under. Once the completed project was finalized, I think our loan to value at that time, we were operating under a maximum of 75 percent LTV.

Q And just so I'm clear, did the bank have an appraisal done prior to closing on the South Causeway property?

A Just on the land. Not on the land and the value of the improvements that were going in.

Q And an appraisal that would take into consideration the improvements, that would only be done once the improvements are there, right?

A That's right. We would have an as-built survey -- excuse me -- an as-built appraisal done indicating what the project would have been worth in a completed state.

Q Okay. And is that one of the documents that you were talking about earlier and that you didn't get that would have been a part of a normal development package? An as-built survey?

A No. We're not talking about an as-built survey. We're talking about an appraisal. What we got was just an appraisal based on the land itself.

Nothing more, nothing less. And that was -- I think it came back at 7.1 or 7.2 million. No. Excuse me. I'm sorry. About 8.1 or 8.2 million, as I recall. And it had been represented to us in some documents that Steve Strickland, who is a principal in an entity called Earth Works, an engineering firm, that the -- they estimated that the cost to put the improvements in along with some peripheral work would take about a million -- and plus a small contingency would take about a $1,400,000. And so if that were the case, then we -- in order to maintain that 75 percent loan to value that we were looking at given 65 percent, then we would have needed, I believe, $9,500,000 to be the value of the property.

Q At any time prior to or during the closing, did Mrs. Cribb make any statements about her concern that the Myrtle Avenue property was being required as collateral?

A She did prior to. I think she had gone through the commitment letter that we sent on or about May 30th or thereabouts, I believe. Well, actually, her email came before that and I tried to respond as, I said earlier, that the -- that we were -- we were governed by a specific loan to value on unimproved

was there any discussion of whether or not the South Causeway property would stand alone and serve as collateral for the loan by itself?

A I don't recall any -- I don't recall that we talked about anything connected with just that property alone.

Q Do you recall any conversations by -- statements by Ms. Cribb or Mr. Wheeler that they had worked to uncross-collateralize these properties and they wanted to keep it that way?

A She made -- she made reference to that, but I don't recall anything prior -- I don't recall anything prior of any consequence that would lead me to believe that was an ongoing thing or that was something she didn't want to do. As I said, when I got this email, I tried to address the concerns as I thought they were being brought up generally for the first time. I just don't recall that Lot Four was not -- we already had Lot Four as collateral on the December 2007 loan. And then, like I said, in the absence of not having that appraisal at that point in time indicating what the value of that land was, the 19.22 acres, the bank felt like that it was incumbent that we keep that until such time as we could determine the true value of that

property. And then that's the reason I hand delivered that letter at closing to indicate under what conditions we would agree to release Lot Four.

Q Okay. And so even as late as the day of the closing, Lot Four being collateral was an issue?

A I don't -- again, I don't recall it being an issue other than it being mentioned one time in this email. The commitment letter that we issued was sent to her and also sent to her attorney. And if it were a major item that could not be overcome, then they didn't have -- I mean, the decision to sign the commitment letter was solely theirs. They didn't have to accept it.

Q But you'll agree with me that on the day of the closing you hand delivered a letter that dealt with Lot Four that was serving as collateral for this loan?

A I did only as a -- to -- as a means of comforting her to let her know that it was not our intention to -- to keep this for the long-term, only insofar as we could determine what the value, the completed value, of that project was.

Q Okay. But that's not the only way that this would have been released, this property would have been released from the mortgage, right? Because in your

strong a lease from someone like Lowe's Foods is going to be a much -- it's going to carry more weight in -- it's a little bit more complicated than I can -- a loan value is based on how much -- I think that's an answer that would need to be given by someone who's more qualified in leases than I am.

Q After this loan was closed in June of 2008, there came a time where the bank made a decision that it would essentially freeze the loan; is that right?

A That's correct.

Q And what was the basis for that decision?

A Well, we had some concern after no work had been started for some time after the loan closed. The interest reserve was being decreased -- going -- about $800 a day was being taken from the interest reserve and there was no evidence of any work being done. And there was no -- so we wanted to find out exactly where things stood, if Lowe's intended on completing -- actually signing a lease and becoming the anchor tenant. So that was primarily the concern we had after the loan closed was the exhaustion of the interest reserve.

Q And did you not expect that the interest reserve would be exhausted? I mean, what changed such that

Causeway Document Bates label 00443. Do you recognize that document?

A I do.

Q It appears to be an email from Ms. Wheeler-Cribb to you with a copy to an email address that appears to be that of Mr. Wheeler.

A Right.

Q And it's dated September 30, 2008. The second paragraph, the first sentence of this email says, "Is there anything we aren't doing in compliance with our loan agreement? If so, please advise us immediately." Did you ever respond to this email?

A I don't know whether I responded to that, but we never -- it was not our place to respond to something that -- we didn't want to inject our -- the bank into their business. I mean, it was their responsibility to provide this with us because the documents plainly said it was their -- they had signed the documents at closing and I believe probably it was part of the post-closing agreement that we -- it might have been part of the post-closing agreement. I don't know. But I don't believe that's our responsibility to tell them. They should have known that themselves.

Q So your testimony is that it's not the bank's

responsibility to answer whether or not a borrower is in compliance with their loan agreement?

A That's not -- I'm saying that they knew what -- we had made previous efforts to and we had put them on notice that we needed this as part of the loan documents in order for us to fund additional monies to build the roads and water and sewer. We couldn't do that until such time as we had the construction contracts. This is three months into -- three, maybe four months into the loan. We had had -- they should have known that they were not in compliance.

Q You just told me that y'all made repeated -- gave them repeated notices that you needed these documents. Can you show me where you ever did that? Can you show me where you ever wrote to them and told them that you needed these documents?

A I can't put my hands on it, no.

Q Were you asked to give to your lawyer any emails or correspondence related to this loan in response to our discovery requests to you, the bank?

A Ask me that again.

Q Did you go through your emails and give them to your attorney?

A We did.

Q Okay. So if you had responded to this email or if you had emailed Ms. Cribb about we need these notices -- I mean, we need these contracts, we need these documents, it would be in those emails, right?

A I would think so, right.

Q Okay. So if it's not there, does that mean you didn't send it by email?

A If it's not there, I don't know why it's not there. I'd be -- I can't answer that, so ...

Q Okay. So as we sit here today, you don't have any documents --

A We had -- well, no. We had -- I can't point to a document. We had numerous telephone calls that were handled back and forth. But -- but I can't point to a particular document that ...

Q When were these telephone calls made?

A I can't -- I don't know.

Q And what was the substance of the calls?

A Well, we -- obviously we wanted to know about is the contract any closer to being lent. Then we need to know, you know, how soon it would be before a contract could be given to us for review. Like I said, we were concerned that time was passing pretty quickly and that the burn rate, so to speak,

on this interest reserve was about $800 a day and there was nothing being done on the property to evidence that any work was being done at all.

Q And who were the telephone calls to?

A I generally -- the telephone calls I made were generally to Ms. Cribb. I can't think of it time that I called Mr. Cribb since she was my point of contact.

Q And what was Ms. Cribb's response?

A Well, there is a document that I recall that they were trying to move slowly on this. They wanted to make sure they got the best deal and the best contractor that they could. And they didn't want -- they were not trying to hurry into this deal and it was just yes, we're looking into it. Just general responses that you would expect over concerns that we had. I mean, it ...

Q And after the bank decided to freeze the loan, was that fact communicated to Ms. Cribb or Mr. Wheeler?

A I'm sure it was. Again, I can't point to a specific document or date, but ...

Q Who would have communicated that to them?

A I would have probably been the one.

Q What was their response?

A Well, I think they were concerned that we weren't

honoring our agreement to carry the project through as they described it and -- but there was no project it appeared to us at that time when we decided to do that since Lowe's had backed out of the deal. We hadn't been furnished any of the construction documents that we required and so the project was for all intents and purposes dead at that point in time.

Q Okay. I think now would be a good time for break if that's okay with you.

A Sure.

Ms. Byrd: Let's take five minutes or so.

(Off the record from 11:37 a.m. until 11:46 a.m.)

Examination continues

By Ms. Byrd:

Q Mr. Lovelace, we're back on the record. We left off at the loan -- the decision by the bank --

A Uh-huh.

Q -- to not advance any more funds under the loans. And now I want to talk to you about after that time, did you become aware of Ms. Cribb or Mr. Wheeler's need for additional funds?

A She brought it to our attention she had wanted to -- I think she -- I think the request asked -- she

balance on the interest reserve was enough to service the loan we had. We weren't as concerned about Kennedy Funding. They were -- that was a loan that we had no -- we wanted to be aware of the terms and conditions, but we had no say so in what they did or what collateral they took other than the fact that our documents prohibited a second mortgage or a junior lien on the 19.22 acres, the South Causeway property. But we just wanted to be understanding of the transaction itself and then we would make a determination as far as whether to release the Lot Four or not.

Q Okay. And then once you got an understanding of what the loan was with Kennedy, --

A Uh-huh.

Q -- then what did the bank do with regard to this transaction?

A We said -- we agreed to release Lot Four upon payment to us of $300,000, which would be used for her benefit. It was not in any way used as a lot release. The proceeds to us were used to refund our interest reserve, to carry it to a point that -- to a modified maturity date to pay back taxes that were due, to pay -- to escrow for future taxes and to pay attorney fees for drawing up a document

that would allow for this transaction to happen. And that was pretty much it.

Q And my question is really what did the bank -- what process -- who did you go to? Who made the decision? How was the decision made by First South that okay, we'll agree to release this?

A Mr. Lyerly and our credit administration department and I made the -- we looked at the situation and made the determination that if certain things could be handled in a beneficial way to the bank and in conjunction with a document drawn by our legal counsel, then we would be agreeable to releasing Lot Four.

Q Did you ever discuss the terms of the Kennedy Funding loan with Ms. Wheeler-Cribb?

A Wasn't our place to do so. I mean, that was something that she elected to do on her own with, I assume, the advice of her counsel and we had no part -- no role to play in that.

Q So your answer is that you did not communicate with Ms. Wheeler-Cribb about the terms of the Kennedy Funding loan?

A We didn't tell her whether it was a good deal or a bad deal. I mean, it wasn't our place.

Q My question is did you communicate with Ms.

a loan made to South Causeway LLC, are you not?

A I am.

Q And you are aware that South Causeway LLC was not involved in the Kennedy Funding loan at all, are you not?

A That's my opinion. I mean, that's my feeling, right.

Q And do you understand that Bob Gwin represented the entity that was the recipient of the Kennedy Funding loan?

A In that transaction, you're right. I mean, but we were led to believe that he was also going to be representing her in this transaction as well.

Q And how were you led to believe that?

A Well, we had numerous -- our counsel had several conversations with him and at no time did he ever divulge to us that he was not representing her in that capacity. And ...

Q I'm sorry. Did --

A We had no reason to believe he wasn't. I think he could have easily said I'm not representing her in the South -- in this transaction and then we would have pursued it another way, I guess. But we were advised that he would be the one handling the transaction.

Exhibit No. 10, Letter dated 4/8/09 from Donald W. Tyler to Robert H. Gwin; two pages.

Q I'm going to show you what's been marked as your deposition Exhibit Number Ten. For the record, it is First South Bank document Bates Number 2001 through 2002. Do you recognize that document?

A I've seen -- I've seen the document before, right.

Q And it shows on the second page that you were copied with this letter; is that right?

A That's right.

Q I'll just give you a moment to review the letter.

A Okay.

Q Do you see down at the bottom of the page, of the second page, I agree to act as escrow agent as provided and defined in the agreement and to receive the satisfied mortgage in trust.

A I do.

Q Based on this letter, do you understand that Mr. Gwin's role with regard to First South's release of the mortgage was limited to that of an escrow agent?

A I don't know the -- based on this, you're right, I guess, but I don't know the definition of -- or the distinction to be drawn between escrow agent and making sure the documents were signed in the

presence of legal counsel. I mean, I don't know what -- I'm not qualified to make that distinction.

Q Sure. And I'm not asking you to do that. I just want to make sure that I understand the basis for your testimony earlier --

A Uh-huh.

Q -- that Mr. Gwin represented South Causeway with regard to this agreement with First South. Is that -- your testimony to that effect, is that just your assumption?

A We were told that the attorney -- as I recall, we were told that the attorney representing Ms. Cribb would be Robert Gwin. And her -- and in accordance with that, we sent the documents to Mr. Gwin to make sure they were monitored -- they were properly signed, executed and so forth. And above and beyond that, you know, I don't know how to respond to your question other than as best I can determine he did everything that we asked him or we expected him to do.

Q Okay. And in terms of the April 2009 agreement with First South, required that a $300,000 payment be made to First South; is that right?

A That's correct.

Q And the purpose for that $300,000, you told me

A I believe it was about $9300, as I recall.
Q Okay. On the settlement statement --
A On the settlement statement, right.
Q -- that we looked at you recall that it was 9300?
A I think it was -- I think it was 9300.
Q Whatever it is -- it was --
A Right. Right.
Q It was. Okay. In the final paragraph it says, "Finally, please keep in mind that we are being asked for an accommodation (releasing the lot) for which we are not receiving any direct compensation or benefit." Is that your position, the bank did not receive any benefit from this transaction?
A We didn't receive any kind of pay down on the loan or we didn't have an opportunity to modify the interest rate, as the next sentence suggests. We were giving up something and not getting anything in exchange other than things that actually benefitted her, allowed her to continue to carry the loan for a period of time so hopefully she'd have some additional time to market the property or maybe find a buyer for it. And we weren't getting any kind of additional collateral in substitute for Lot Four, so that's what that means right there.
Q But you got $300,000, right?

A But it went for her benefit is what I'm saying. Nothing came to the bank other than it paid her taxes and it paid her interest. But nothing came to the bank in the form of tangible pay down on the loan or -- we released the lot basically for the $300,000, which went for her -- to allow her to continue in the same manner she had been up until that time.

Q So there was no consideration for this agreement from the bank's standpoint?

A We never got -- I'm saying -- that's what I'm saying. We never got a fee or any kind for releasing it. We never got any collateral substitution. We never got an opportunity to adjust the interest rate, which was beginning to trend downward at that point in time certainly. The monies that we got went into her interest reserve account, went to pay the taxes on her property; both, again, what was due and what projected to be due. And that was pretty much it other than the attorney fees that we talked about earlier.

Q During this time, were you aware that the efforts by Ms. Cribb and Mr. Wheeler to sell this property were ramped up?

said that he -- I think he said something to the effect that he was with the auction company that was going to be conducting the auction, and I was just mainly interested in was, in fact, the auction going to take place and, if so, what date.

Q Did Ms. Cribb give you permission to call her Realtor?

A You mean this Don Thomas?

Q Or any Realtor?

A Well, we had a number of emails that she had sent to us indicating that she was going to list the property with this Realtor or that Realtor. Her grandson or someone sent us a YouTube video that showed the property and disclosed that the property -- the auction was going to take place and the website where you could go and do due diligence on it or get information. So it all originated from some source other than the bank.

Q Right. And I understand that Ms. Cribb, through the emails, --

A Uh-huh.

Q -- has kept you advised --

A Uh-huh.

Q -- of where she is with the selling process. However, my question is did Ms. Cribb give you

permission to call this Realtor regarding her loan with your bank?

A You're talking about this Thomas fellow?

Q Yes.

A No. I didn't think it was necessary. I just -- because it was -- it was an auction that was being -- it was an event being marketed to the general public at large, and I just called the number that was listed to ask if, in fact, the auction was going to take place.

Q During that conversation, what information about this loan did you disclose?

A The only thing that I can recall telling Mr. Thomas was that -- that we would not accept partial payments and that -- that was pretty much it. That we wanted to be paid in full.

Q Do you recall telling Mr. Thomas the amount of the principal owed on the loan?

A No.

Q Do you recall telling him that the loan would not be renewed?

A No.

Q And I've asked you if you recall that. Do you dispute that? Do you dispute that you told Mr. Thomas that the loan would not be renewed?

say that we do it three times a month or ten times a month or whatever. But in this particular example, it was -- it just happened to be that way. I mean, I don't as a routine call Realtors and say that we're going to accept only this or that. Given the size of this transaction or how much money was owed, I just -- I felt that he needed to know that we weren't going to accept anything less than full payment.

Q And I guess I'm trying to understand. If that's the bank's position, I understand it. But why would you call the Realtor rather than your borrower?

A Well, they were the one conducting the auction. I mean, I was -- you know, the marketing information we had said that they were going to conduct this auction on this particular date. We had been led to believe that there was going to be some auctions on some other dates that just didn't transpire. And so I just called to see if, in fact, it was a definite go for this thing and the conversation turned to making sure that he was aware that -- that we weren't going to accept anything less than full payment.

Q And did you tell him what full payment was?

A That was -- I may have told him that he needed to -- - I may have told him that. But other than that, I didn't tell him any other terms or anything like that.

Q Do you understand how disclosure of the remaining principal balance on the loan could be harmful when someone is trying to sell the property secured by that loan? In other words, if I'm trying to sell my house and I bought it ten years ago, --

A Uh-huh.

Q -- and I took a million dollar mortgage for it and I've paid it down and so that I only owe the bank $400,000, the public records are going to show the original amount and not what's owed.

A Uh-huh. That's right.

Q Okay. So this is not a matter of public record. Do you understand that people that may want to purchase my house, their offers are going to be affected by what they know I owe to pay it off?

A That might be debatable, but I understand what you're saying. But I wanted to make sure that -- I just wanted to make sure that he understood that the bank was not going to be -- was not going to be willing to accept anything less than just the full payment.

Q Earlier you responded to one of my questions and said we don't want to interfere in their business or something to that effect and it's not our place to --

A That's right.

Q -- to tell them if they're in compliance with their loan agreement. Why in this case did you feel that it was the bank's place to go to the Realtor directly and say we're not taking anything less than total payment?

A Well, if he had -- if he had sold the property for less -- I don't know.

Q I mean, practically the property could not be sold unless the bank signed off on it anyway. It couldn't be titled, isn't that right?

A That's right.

Q So what purpose other than limiting --

A Just for information purposes is the only thing I can think of. I mean, it ...

Q So you weren't trying to interfere or dictate the manner in which this auction was conducted?

A Not in the least. Not in the least.

Q During this same time period, were you approached by a third party about purchasing the loan?

A We were.

Q And who was that?
A At the time -- well, at the time we were under a confidentiality agreement and it was not disclosable. I assume that since the transaction did not take place, we can divulge that. Is that a -- that was -- I would think that that might be attorney-client privilege.

Mr. Tyler: Tell her.

A All right. It was Lincoln Harris in Charlotte and a related entity of theirs. I don't recall the exact name. It was a -- but it was initiated solely by them. We -- we did not contact them, but they contacted us.
Q Okay. Lincoln Harris out of Charlotte contacted who?
A I believe Mr. Lyerly.
Q And how did you become aware of that?
A Through conversation with Mr. Lyerly.
Q And what did Mr. Lyerly tell you about his conversation with Lincoln Harris?
A Other than -- nothing other than the fact that a bank customer had been approached by an officer from Lincoln Harris as to if he knew anybody -- asking if he knew anybody that was associated with our bank and he said yes, that's the bank I'm

banking with. And the bank customer asked -- approached Mr. Lyerly and me about if we could provide an entre into maybe setting up a meeting with Ms. Cribb just to talk about the possibility of -- of buying the property.

Q The bank customer that you referenced, is that Charles McCullum?

A McCallum.

Q McCallum. And you just told me that they approached the bank to try to set up a meeting to purchase the property?

A Let me correct that. The gentleman from Lincoln Harris and Charles McCallum are next door neighbors with each other. And apparently the people from Lincoln Harris determined that we had a mortgage on the property and during a casual conversation he asked Mr. McCallum if he knew anyone at First South Bank and he said that happens to be the bank I do some business with. And that's when McCallum approached us. I'm sorry. I want to correct what I said. McCallum approached us on behalf of Lincoln Harris.

Q And what did he approach you -- what was the purpose of approaching you?

A Just to see if he could -- if we could arrange an

opportunity for him to meet Ms. Cribb and to talk about the possibility of -- of arranging the sale or whatever of the property.

Q A sale of the property or the note?

A The note.

Q So he wouldn't need to meet with Ms. Cribb to talk about --

A All right. Let me back up. I'm getting my time line confused here. We were approached -- let me think how the time line --

Q Maybe if I give you a document it will help you get the dates.

A All right. All right. The letter that --

Q We may be talking about different documents. Did you send a letter to Ms. Cribb -- is that the one you're talking about, a letter to Ms. Cribb?

A Right. Right. It was just a document alerting her to the fact that we had been approached from a third party about the possibility of buying our note. And at the time, we had -- we didn't know whether the -- it was going to -- the transaction would close, whether they would make an offer or whatever. But we had been asked if we'd be interested in selling our note. And that was the gist of the letter that we sent as a courtesy to

Ms. Cribb to let her know that that had taken place.

Exhibit No. 13, Email dated 3/16/10 and attachment; two pages.

Q I'll show you what's been marked as Exhibit 13. And for the record, this is First South Bank Bates Number 00013 through -- I'm sorry. I attached First South Bank 01986, which appears to be the attachment and you can tell me if I'm wrong.

A That's right. That's right. This is Lincoln Harris that we were referring to. And they approached us about the possibility of buying our note. As a courtesy to Ms. Cribb -- and I think I copied Mr. Wheeler on it -- we let them know that this independent party had approached the bank and that we didn't know whether the transaction would go forward or exactly what would happen and that the negotiations were preliminary and so forth just like the letter states.

Q Okay. So just for the record so we're clear, this is an email dated March 18, 2010 from you to Ms. Cribb and Mr. Wheeler where you are attaching a letter on the bank's --

A That's right.

Q -- stationary.

A That's correct.

Q And in this email you write that we have been approached by an independent third party to determine our bank's interest in selling the South Causeway LLC note and mortgage. So in March of 2010, the bank was approached by Lincoln Harris --

A That's right.

Q -- through its agent Charles McCallum?

A No. They -- I believe -- I don't recall. I think that -- I believe they did approach us through Charles McCallum, now that I think about it.

Q And Mr. McCallum -- that direct point of contact was with Mr. Lyerly?

A He put -- he informed Mr. Lyerly of the interest in Lincoln Harris of their -- of possibly purchasing this note or looking at the terms and conditions and so forth and under what circumstances we might be willing to sell the note, if they had an interest in buying it after reviewing the documents. And that's -- that's where the -- the Lincoln Harris came into the bank.

Q Did you have any discussions with Mr. McCallum about buying the note or anyone as a representative of Lincoln Harris about buying this note and mortgage?

A Did I?
Q Yes.
A I met with Mr. -- Mr. Lyerly and I met with representatives from Lincoln Harris in Spartanburg to review some loan documents and that was essentially it.
Q When was that meeting?
A I don't recall the exact date, but I'm guessing sometime in March or sometime in April of 2010.
Q And what did you understand the purpose of the purchase of this note to be? Was the ultimate goal to get title to the property?
A I assume that they had their own reasons for doing it, but I think you could -- I think they thought that the property might be a good site for whatever they wanted -- however they wanted to develop it, either now or sometime in the future. I mean, I don't know.
Q So my question is did you understand the purpose of Lincoln Harris acquiring the note to be the noteholder or to be the landholder?
A I don't know what motivated them.
Q They didn't tell you any details?
A No. They just -- they were aware of the property. They felt it had potential either now or in the

future and they -- they asked if we would be interested in selling our note upon performing due diligence satisfactory to them. And that's the gist of it.

Q What were the terms of their proposed purchase of the note?

A It never got that far.

Q How far did it get?

A They just reviewed the documents and that was it.

Q What documents did they review?

A Just our standard loan documents. The note, the mortgage, title insurance, the loan agreement. And that was it.

Q Did you all discuss with them the balance at that time owed on the note?

A I can't say that we did. I mean, it was just -- they wanted to review, make sure that it had a perfected lien on the property. And I can't say one way or another whether anything of that nature came up or not.

Q Are you aware of any other times that First South has negotiated or sold a loan to a third party like this, like Lincoln Harris, a smaller third party, as opposed to a Fannie or Freddie or another bank?

A I'm sure there's -- I'm almost sure there are

instances where we've sold loans and bought loans.

Q Okay. Can you tell me about --

A I can't -- I just know through hearing conversations that we have -- we've participated in loans, but I can't cite specific examples. But I do know that that's a common practice in banks everywhere.

Q And I appreciate that banks sell notes and mortgages.

A Uh-huh.

Q However, my question is are you aware of any specific loans that have been sold to a third party such as Lincoln Harris?

A None -- if you're asking me specifically, no, I'm not aware of anything.

Q How about during the time you worked for First Palmetto, are you aware that that ever happened there?

A No.

Q How about when you worked for First Citizens?

A I can't -- that's so far I can't --

Q You can't recall any times?

A I can't recall anything.

Q Does the fact that these loan sale negotiations, the fact that they were occurring in March or April

of 2010, just about three months before the purported maturity date, does that seem strange to you?

A **Not necessarily, no. I mean, ...**

Q When banks sell notes or mortgages, do they not generally do that immediately?

A **If you're talking about residential loans, yes, probably. But this is not a residential loan. And this was a commercial real estate transaction. And so the timing of it, I mean, is -- it could happen pretty much anytime.**

Q Are you aware that shortly after this time where apparently you were negotiating the sale of the note, that Mr. McCallum made an offer to purchase the property?

A **I do know that I contacted Ms. Cribb about the possibility of meeting with Mr. McCallum to discuss a client that he had and the possibility of maybe selling the property or developing the property in some way, but that's the extent of it. I don't know anything more than that.**

Q Are you aware that Lincoln Harris had made a offer to purchase this property in 2008?

A **I'm aware there were a number of people that did -- that had interest in the property that -- based on**

information that Ms. Cribb furnished us or came through discovery. But any specific proposal or whatever that Lincoln Harris did is -- I don't necessarily -- I don't think I recall that.

Exhibit No. 14, Email dated 7/2/08 and attachments; five pages.

Q I'll show you what's been marked as Deposition Exhibit Number 14. And for the record, this is First South Bank document Bates Number 01123 through 01127. Do you recognize that document?

A It's a -- it's an email. I'm not -- I can't say I'm familiar with this. In fact, -- I can't say I'm familiar with this.

Q Okay. It appears to be a email to you from Ms. Cribb dated July 2, 2008 --

A Uh-huh.

Q -- forwarding a letter of intent to purchase real property on Lincoln Harris stationary that was apparently sent to Ms. Cribb by John Draughn at Chicora. That's what it appears to be.

A Uh-huh.

Q But you're just not familiar -- you just don't recall --

A I'm not familiar with it. I notice it's headed by Carson Chitty, who is an employee of the bank. I

don't know what her name's doing on it, but I just -- I don't recall ever seeing this.

Q Okay. Well, do you recall that -- do you recall an offer by Lincoln Harris to purchase the property in 2008?

A I don't recall. I mean, I -- they may have expressed an interest in the property to Ms. Cribb or -- right off the top of my head, I just don't recall them being a part of this. I do -- I am familiar with this gentleman, John Draughn. I remember Ms. Cribb sending some stuff -- informing me that they were thinking about listing it with his firm or the firm he represented. But I don't -- I just don't recall seeing this email.

Q Do you -- are you aware that subsequent to your discussions in April or March of 2010 with Lincoln Harris in Spartanburg that Mr. McCallum made an offer to purchase this property in July of 2010?

A I don't recall ever hearing that. I do know that he met -- I believe he met with Ms. Cribb, but after that, I don't recall any -- I just don't recall.

Mr. Tyler: You may want to get that stapled before it gets apart.

Ms. Byrd: I think we broke it. I broke

it, I think.

Mr. Tyler: Off the record.

(Off the record from 1:07 p.m. to 1:09 p.m.)

Exhibit No. 15, Letter dated 7/2/10 to Peggy Wheeler-Cribb from Charles McCallum; one page.

Examination continues

By Ms. Byrd:

Q I'm going to show you what's been marked as Exhibit Number 15, which is South Causeway document Bates stamped as 00482. Do you recognize that document?

A I've seen this, right.

Q This appears to be an offer to purchase real estate dated July 2, 2010.

A Uh-huh.

Q It's submitted by Charles McCallum to Ms. Peggy Wheeler-Cribb and it has two different options; one for $400,000 or a participating purchase amount of 300 -- I'm sorry. Four million dollars or a participating --

A You said 400,000.

Q I said 400,000.

A Yeah. Might have been four million.

Q Not good. Or a participating purchase of three million.

A I have seen this, but it just didn't register to me

that a specific offer had been made. I mean, ...

Q So -- and I'm going to -- if you'll keep these over here in your stack so I don't take home any of her documents. Is it common for a potential purchaser of real estate to contact you about purchasing the mortgage?

A Is it common to --

Q Has that ever happened to you before?

A I can't say that it has.

Q And in reviewing the two offers that Mr. McCallum submitted, the 2008 offer is substantially more than the second offer in 2010. Could that be a result --

Mr. Tyler: I'm going to object to the form of the question. You've presented the second page of the Lincoln Harris attachment on Number 14 as an offer and what it says it's a letter of intent. It's not an offer. Object to the form of the question.

Q Could that be the result of Mr. McCallum's information that he received during his meeting with you in Spartanburg?

A Mr. McCallum didn't meet with us in Spartanburg.

Q Lincoln Harris. I'm sorry.

A Right. I have no way of knowing. Again, I guess

it could be due to a number of factors, not the least of which is that real estate in general -- the value of real estate, commercial real estate, has declined considerably since 2008 till this offer, to 2010.

Q You mentioned that it wasn't Mr. McCallum that met with you in Spartanburg. Who was present in the meeting?

A There were two people from Lincoln Harris met with Mr. Lyerly and I. I can only remember one person's name. A fellow named Greg Cury, C-u-r-y. The other gentleman, I can't remember his name.

Q And you mentioned a confidentiality agreement. Who drafted that agreement?

A I think our counsel did.

Q And are you aware of whether that agreement has been produced in this litigation?

A I'm not aware one way or the other. I mean, I don't -- I just don't know.

Q What were the terms of the confidentiality order? I mean, agreement?

A That we wouldn't divulge any specific -- well, I don't know. I can't recall the exact terms, but it was that we wouldn't divulge the identify of the people involved. I can't -- I can't answer that

closing attorney. I felt like he would have a copy of it and thinking it was more -- she could easily get one from him than I could have gotten one. She could have gotten one quicker from him than I could have gotten it for her.

Q Didn't you just tell me you could pull it up from your computer?

A It would not have been a true and original copy, though. It would had to go through -- come from our Spartanburg office, if that's what she was looking for. But ...

Q Do you have a written policy about your procedure about providing appraisals to your customers? Is there a written policy about that?

A We have -- if a person requests a copy of an appraisal, then we give them one. But it was -- I think it's the -- it primarily deals with appraisals that were used in deciding whether to make or not make a loan.

Exhibit No. 17, Risk Rating Form; one page.

Q I'm going to show you what's been marked as Deposition Exhibit 17. For the record, this is First South Bank document Bates number 02212.

A Uh-huh.

Q Can you tell me what that document is?

A This is a risk rating form.
Q And who completes this form?
A It's -- there's a number of different people that are involved. It originates at the local level and credit administration or an officer, credit officer, reviews it and approves it or doesn't approve the regrading of the loan depending on certain factors that may be prevalent in the loan now that weren't prevalent at the time the loan was made.
Q How often do you prepare these reports?
A Could be once a month, once a week. Depends on how quickly a loan is deteriorating or improving.
Q And the actual comments, who puts those in?
A It's a -- it's, again, a collective decision based on the originating officer's view of the credit in conjunction with the credit administration's view of the credit.
Q This particular risk rating report shows you as the account officer.
A That's right.
Q And it appears to be dated August 2, 2010.
A That's correct.
Q If you'll look in that first text box, the last sentence. "Borrower is currently in negotiation

with two buyers and FSB believes foreclosure action will motivate buyer to accept and close on one of those offers."

A Well, that might have been the way we viewed it at the time.

Q Viewed it that if you filed a foreclosure action, then they would be forced to accept a offer to purchase the property?

A We would have not -- I don't know what the offers would have been at that -- or whether they -- how bonafide they were. But to make a comment in a vacuum, I'd have to look and see if we were made aware of what the offers were. Ms. Cribb wanted -- in an email dated July 24th, I believe, sent us saying that she was negotiating with two developers, both of which could close quickly, and that she hoped that the -- that would -- basically we'd take that into account with regard to any legal action we were doing, we were contemplating at that time. So she had represented to us that she was negotiating and was -- I think she even used -- that there was a ten day possible closing date.

Q Did the bank -- did you have a general sense that Ms. Cribb was not using good business judgment in

A From the examiners or --
Q Yes.
A No. They -- I don't specifically recall them saying that you need to get this loan paid out because we were diligently working to, you know, bring it -- about some resolution to it. We just didn't want to see the loan continue to be nothing but a so-called land carry loan, where it would just -- but, no, to answer your question, there was no specific, that I'm aware of, directive from the FDIC to get this loan paid off.
Q And we talked about not wanting to see this loan being a land carry loan, but it was the bank's decision, right, to make this a land carry loan, right? I mean, you made -- the bank made the decision to freeze the development funds, right?
A That's right. But only because the rest of the loan that was contemplated -- the rest of the improvements that were contemplated to be made to this property weren't forthcoming.
Q Do you recall during your -- and I'm going to jump backwards -- meeting with Ms. Cribb before this loan was transferred from First Palmetto to First South, do you recall telling Ms. Cribb and Mr. Wheeler that First South Bank would be with them

through the development of this property?

A We certainly wanted to let them know that we were capable of handling the loan if it were presented to us as they were representing the loan to us, but a material change happened -- the deal changed materially when Lowe's backed out and there was no equivalent type of lease or letter of intent from another party to serve as an anchor tenant were presented. And so the original deal was not the same as the deal was -- or the deal at the time we froze the loan was not the original deal that we were presented or it was represented to be at the time we talked to her.

Q So it's more accurate to say we'll see you through the development unless something materially changes?

A I'd probably say that's accurate.

Q Do you recall during a conversation with Don Thomas any discussion about Mr. Wheeler?

A The only thing I said that -- that this was a -- I told him that South Causeway, LLC was a single member LLC and that if any properties were sold or a contract needed to be signed, make sure that the proper person was -- that was designated by South Causeway, LLC to sign the contracts was in fact the

requesting my signature and Frank Callison, who was -- who's our Chief Credit Officer for the bank.

Q Okay.

Exhibit No. 20, Email dated 6/9/10; one page.

Q I'm going to show you what's been marked as Exhibit Number 20. For the record, it's First South Bank Number 01981. Do you recognize that document?

A I do.

Q It appears to be an email from you to Mr. Lyerly dated June 9, 2010; is that right?

A That's right.

Q And it appears that you are discussing a call you received from a real estate developer named George --

A Maloomian.

Q -- Maloomian, and you're talking about a call that you got from him about the South Causeway property. Can you tell me about what type of conversation you had with --

A This guy called out of the blue and the only thing I know is maybe he got our name as being the mortgage holder, public record. And he was just sort of -- just like the email says, he indicated that he was familiar with the property. He had put together development deals for the companies

involved here. He never called back.

Q And did he tell you that he offered a bid on the property at the auction?

A No. What -- I just relayed this information to Mr. Lyerly, and if he entered a bid, I mean, it was -- but as I said in the last sentence of the second paragraph, I didn't identify borrower or guarantors. But he said he knew it was around five millions dollars. Now, how he knew that, I don't know. But I never called him back and he never called me.

Q Okay. But in this email you state, "He said he -- " -- "He said that he was at the auction last week and offered a bid on the property(s), but apparently for an amount that did not draw any attention."

A That's what he said. I mean, I don't know.

Q And that's all I'm asking is that's what he told you?

A Yeah. I have no idea whether he was there or not.

Q And he said that he understood that we may have or will be in the near future obtain title to the property by a deed or through a foreclosure action and, if so, they would like to talk to us.

A As I said, he seemed to know more than the average

person. I mean, I don't know how he got his information, but it didn't come from me. It was just a -- I was just passing along to Mr. Lyerly. But he might have had some conversation with another Realtor down there or somebody.

Q But you did tell him to call you back in 30 to 45 days --

A Right.

Q -- and we might have more information that we could share.

A That's right. But we didn't. I mean, he never called back and I never called him.

Q What would happen in 30 to 45 days such that you would have more information to share?

A Well, the auction was to take place, for one thing. I was going to tell -- I think that was June 9th. Maybe the auction already -- the auction had already taken place. I just told him to call back. I can't tell you what we would have talked about.

Q Did you mean that a foreclosure might be filed by then?

A No. He seemed to know that himself.

Q But once a foreclosure is filed and it is a public record, --

A I understand that.

Q -- right?
A **But -- but a foreclosure at that point in time had not been filed.**
Q Right. But you told him to call back in 30 to 45 days?
A **I just told him -- yeah, I just told him maybe we'll have some more information for him in 30 to 45 days about what the status of the property was. I didn't know -- I didn't know myself in 30 or 45 days what was going to happen.**
Q Are there any questions that I've asked you that you've not understood or are there any answers that you've given that upon reflection you feel like you should give me some additional information or clarifying what you were trying to say?
A **You know, I can't answer that in the space of 60 seconds. But, you know, we've gone over all this stuff. You know, I maybe -- and I guess maybe if I sat down and looked at some of the testimony I could clarify something, but at this point in time I don't know what it would be.**
Q I just like to ask that because sometimes when you get up from a deposition --
A **Right.**
Q -- and you think oh, I shouldn't -- I didn't mean

to -- so I just wanted to give you that opportunity. I'm not insinuating that you needed to clarify anything.

Ms. Byrd: But that's all the questions I have for you and I appreciate your time today.

Cross-examination

By Mr. Tyler:

Q Just a couple questions. I'm going to hand you what's been marked as Deposition Exhibit 7. That's the loan agreement. And ask you to turn to page six of the loan agreement, Section 4.2. When this agreement was signed, had any -- were any advances made at the time of the closing?

A We had made a small advance -- No. At the time of closing, no. Let me think.

Q Did the bank advance funds to pay off the First Palmetto loan and other purposes at closing?

A We -- we -- we advanced some money for some land clearing, if that's what you're talking about.

Q Right. Was any advance made after that initial advance was made at the closing?

A No.

Q Okay. Does Section 4.2 spell out the requirements for any advance after that initial advance? Is that what that section does, to your knowledge?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	Civil Action Number: 2010-CP-22-01233
FIRST SOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
SOUTH CAUSEWAY, LLC	)	
	)	
Defendant.	)	

I hereby certify that on this 17th day of November, 2011, the foregoing **NOTICE OF FILING (WITH EXHIBIT A)** has been served upon counsel of record, by depositing a copy of it in the United States mail, postage prepaid and properly addressed as follows:

Donald W. Tyler, Esquire
Donald W. Tyler, Jr., Esquire
Tyler Cassell Jackson Peace & Silver, LLP
Post Office Box 11656
Columbia, SC 29211

I further certify that copies of the foregoing documents were also emailed to counsel on the date shown above.

Audra M. Byrd

STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN First South Bank Plaintiff, vs. South Causeway, LLC Defendant.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2010 -CP-22-01233 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: **See attached Certificate**** Donald W. Tyler, Jr., Esq. Address: Tyler Cassell Jackson Peace & Silver, LLP Post Office Box 11656 Columbia, SC 29211 Phone: (803) 779-4997Fax (803) 733-2712 E-mail: dtyler@tcjps.comOther: ____	Defendant's Attorney: R. Wayne Byrd, Esq. and Audra M. Byrd, Esq. Address: Turner Padget Graham & Laney P.A. Post Office Box 216 Myrtle Beach, SC 29578 Phone: (843) 213-5500 Fax(843) 213-5555 E-mail: AByrd@TurnerPadget.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Defendant's Post-Trial Motions and Supporting Brief
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — October 5, 2012 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Court Reporter: ____
☐ Other: ____

FILED
GEORGETOWN COUNTY, S.C.
2012 OCT -5 AM 10:47
ALMA Y. WHITE
CLERK OF COURT

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: 10/5/12
☐ MOTION FEE COLLECTED: $ 25
☐ CONTESTED – AMOUNT DUE: $ ____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	Civil Action Number: 2010-CP-26-01233
	)	
FIRST SOUTH BANK,	)	
	)	
PLAINTIFF,	)	**DEFENDANT'S POST-TRIAL MOTIONS AND SUPPORTING BRIEF**
	)	
vs.	)	
	)	
SOUTH CAUSEWAY, LLC,	)	
	)	
DEFENDANT.	)	
	)	

FILED
GEORGETOWN COUNTY, S.C.
2012 OCT -5 AM 10:
ALMA Y. WHITE
CLERK OF COURT

Defendant South Causeway, LLC ("South Causeway"), by and through its undersigned attorneys, hereby moves the Court pursuant to Rule 50(b), SCRCP, for an order granting judgment notwithstanding the verdict in favor of South Causeway on its counterclaims or, in the alternative, pursuant to the thirteenth juror doctrine, for a new trial on the grounds stated below. Further, South Causeway moves the Court pursuant to Rule 59(a), SCRCP, for an amended judgment on First South Bank's foreclosure claim. In addition to the grounds set forth below, South Causeway incorporates by reference all grounds previously raised in its arguments made at trial, any memoranda to be filed in advance of a hearing, the governing procedural and substantive law of South Carolina, and any oral argument the Court may permit in support of this motion.

I.

Judgment Notwithstanding the Verdict

A. Breach of Contract

South Causeway is entitled to judgment notwithstanding the verdict ("JNOV") pursuant to Rule 50(b), SCRCP, on its breach of contract cause of action. A trial court may grant a JNOV motion when no reasonable jury could have reached the disputed verdict. *Burns v. Universal*

Health Servs., 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004). When no evidence supports the jury's verdict, the granting of a JNOV motion is proper. *See id.*

Here, First South Bank's commitment letter to Peggy Wheeler-Cribb and Will Darwin Wheeler dated May 30, 2008, states that "$550,000 of the proceeds of the Loan shall be disbursed by Bank into the [Interest Reserve] Account to fund monthly interest payments due upon the Loan upon the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan closing." It is undisputed that this did not occur. First South Bank, however, contended that the phrase, "the earlier to occur of completion of the Infrastructure and six (6) months from the date of Loan closing," means that the infrastructure must be completed *and* six months must pass before those funds were required to be deposited.

This reading ignores the words "the earlier to occur of." Construed properly, this provision clearly requires that only one of the two conditions had to occur before the interest reserve funds were due for deposit. Even if the Court disagrees with South Causeway's interpretation, though, the wording in this provision must be considered to be ambiguous. Any ambiguity in a contract "should be construed most strongly against the drafters." *Myrtle Beach Lumber Co. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981). Although this provision was included in the commitment letter and not the loan agreement itself, the commitment letter stated that its terms were to "survive the loan closing" and to be incorporated into the loan agreement by reference. Thus, this clause was part of the loan contract, and the jury's decision not to return a verdict for South Causeway on the breach of contract counterclaim evinces the jury's failure to construe the ambiguity against First South Bank and in favor of South Causeway.

The evidence at trial also established that First South Bank breached the loan agreement

by terminating the loan — that is, by reducing the amount of available principal. This violated the express terms of the contract. Further, First South Bank breached the implied duty of good faith and fair dealing that is present in every contract by disclosing confidential information to Christie's Auction Company and to Lincoln Harris. All of these actions constituted breaches of contract.

In sum, no reasonable jury could have returned a verdict in favor of First South Bank on South Causeway's breach of contract counterclaim. The only reasonable inferences to be drawn from the evidence were that First South Bank committed multiple breaches of contract, as outlined above. Thus, the Court should grant JNOV in South Causeway's favor as to this counterclaim.

B. Tortious Interference with Contractual Relations

The Court should also grant JNOV on South Causeway's counterclaim for tortious interference with contractual relations. In South Carolina, the elements for a tortious interference cause of action are: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Eldeco v. Charleston Cnty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

At trial, the parties did not dispute that South Causeway had a valid contract with Christie's Auction Company ("Christie's") or that First South Bank acquired knowledge of the contract. Further, the evidence established that First South Bank, without justification, contacted Christie's and induced it to change the auction structure and pricing, thereby breaching its agreement with South Causeway. As a result, the property did not sell at the auction and South Causeway was unable to satisfy its debt to First South Bank and enjoy any residual proceeds. Not only did First South Bank lack justification for its interference, but had it not interfered, and

had the property sold for the prices initially prepared by Christie's, South Causeway would have received sufficient funds to pay its mortgage loan in full. Thus, the evidence presented at trial allowed only the inferences discussed above, and no reasonable jury could have returned a verdict for First South Bank on the tortious interference counterclaim.

C. Violation of the South Carolina Unfair Trade Practices Act

The Court should also grant JNOV on South Causeway's counterclaim for a violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). SCUTPA provides that "[a]ny person who suffers any ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive method, act or practice . . . may bring an action . . . to recover actual damages." S.C. Code Ann. § 39-5-140(a). "Plaintiffs must allege and prove that the defendant's actions adversely affected the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition." *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citations omitted). "The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts." *Id.* (citations omitted).

First South Bank revealed confidential information about South Causeway's loan to Christie's and to Lincoln Harris. As previously explained, revealing the confidential information to Christie's proximately caused harm to South Causeway. In the case of Lincoln Harris, First South Bank knew Lincoln Harris had previously made an offer to purchase the property from South Causeway, but the bank still allowed Lincoln Harris to inspect the loan documents. After doing so, Lincoln Harris made a purchase offer to South Causeway that was approximately $8

million less than its previous offer. South Causeway was damaged by the reduction in the offer amount, which was proximately caused by First South Bank's decision to reveal the confidential customer information to Lincoln Harris. First South Bank's actions were unfair and have the potential for repetition. Both First South Bank's and South Causeway's banking experts opined that the disclosure of the confidential private information did not follow standard banking practices and the disclosures were improper. Further, the evidence established that First South Bank lacked a policy for protecting this confidential information. Thus, no reasonable jury could have returned a verdict for First South Bank on the SCUTPA counterclaim because no evidence supported that verdict. Therefore, South Causeway is entitled to a JNOV on this counterclaim.

II.

New Trial

In the alternative, South Causeway asks the Court to grant a new trial on its counterclaims pursuant to the thirteenth juror doctrine because the jury's verdict is not justified by the evidence. "South Carolina's thirteenth juror doctrine is well established as the standard for granting a new trial in state law actions." *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 477, 567 S.E.2d 851, 854 (2002). "South Carolina's thirteenth juror doctrine is so named because it entitles the trial judge to sit, in essence, as the thirteenth juror when he finds the evidence does not justify the verdict, and then to grant a new trial based solely upon the facts." *Id.* at 478, 567 S.E.2d at 854 (internal quotation marks omitted). "The effect is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror 'hangs' the jury. When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990).

If the Court decides not to grant the JNOV motion, South Causeway requests the Court

grant a new trial for the reasons outlined in the preceding section — i.e., that no evidence supports the jury's verdict for First South Bank on South Causeway's counterclaims. Thus, the Court should order a new trial on South Causeway's three counterclaims pursuant to the broad authority afforded it under the thirteenth juror doctrine.

South Causeway also asks the Court to reconsider its decision to grant First South Bank's directed verdict motions on the counterclaims of fraud, breach of fiduciary duty, and breach of contract accompanied by fraudulent act. South Causeway incorporates by reference all the arguments it made during trial on these causes of action and asks the Court to grant it a new trial on these claims so that they may be litigated to a jury verdict.

III.

Amendment of Judgment

South Causeway respectfully requests the Court to amend its judgment on First South Bank's foreclosure claim. Rule 59(a), SCRCP, provides that in a nonjury trial, the Court "may open the judgment if one has been entered, . . . amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."

South Causeway specifically requests that the Court reconsider South Causeway's defense of duress and accordingly enter judgment in South Causeway's favor. "Duress is a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or form a contract not of his own volition." *Holler v. Holler*, 364 S.C. 256, 266, 612 S.E.2d 469, 474 (Ct. App. 2005). "Whether or not duress exists in a particular case is a question of fact to be determined according to the circumstances of each case, such as the age, sex, and capacity of the party influenced." *Id.* at 267, 612 S.E.2d at 475. Mrs. Wheeler-Cribb is an elderly woman who testified that she felt she

was forced by Wayne Lovelace to move forward with the closing of the loan despite her request to postpone the closing. Ms. Wheeler-Cribb also testified she did not feel she was represented by counsel in regard to the alleged modification agreement for the South Causeway loan. Further, she had already paid a $50,000 in earnest money to Kennedy Funding based on First South Bank's prior representations. She testified that she felt she had no other choice but to go forward with the modification agreement because she could not afford to lose the $50,000. Thus, she was under duress when she signed the modification agreement, and the Court should amend its findings to reflect that this defense bars First South Bank from prevailing on its foreclosure claim.

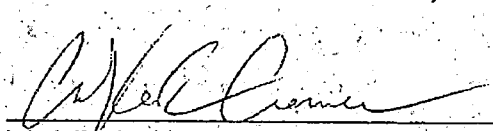
Further, the Court should reconsider its finding that First South Bank adequately proved damages in its foreclosure claim. The bank's records custodian testified that a computer system calculated the interest amount due on the loan. However, no witness testified about how that system operated. Also, through the testimony of the records custodian, First South Bank failed to show how the principal amount of the loan was calculated. The records custodian had no explanation why the principal amount of the loan differed from the Settlement Statement from the closing to the payoff presented at trial. Therefore, South Causeway asks the Court to enter judgment in favor of South Causeway on the bank's claim for foreclosure.

Conclusion

For all of these reasons, as well as the grounds set forth during trial, the Court should grant South Causeway's JNOV motion or, alternatively, its new trial motion on its counterclaims. South Causeway further asks the Court to amend its judgment on First South Bank's foreclosure claim.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

By: 

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ATTORNEYS FOR DEFENDANT

October 5, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of October, 2012, the foregoing document Defendant South Causeway, LLC's Post-Trial Motions and Supporting Brief has been served upon counsel of record, by depositing a true and accurate copy of it in the United States mail, postage prepaid and properly addressed as follows:

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FILED
GEORGETOWN COUNTY, S.C.
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ALMA Y. WHITE
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TURNER PADGET GRAHAM & LANEY P.A.

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October 5, 2012

VIA HAND DELIVERY

The Honorable Alma Y. White
Clerk of Court for Georgetown County
PO Box 479
Georgetown, SC 29442

Re: **First South Bank v. South Causeway, LLC**
Civil Action Number: 2010-CP-22-01233
Court of Common Pleas for Georgetown County, South Carolina
Our File Number: 10748.00101

Dear Madam Clerk: :

Enclosed for filing please find the original and one copy of Defendant's Post-Trial Motions and Supporting Brief, along with Certificate of Mailing in the above referenced matter. You will also find enclosed our check for $25.00 to cover filing costs. After filing is complete, please return the file stamped copy to our courier.

As evidenced by the enclosed Certificate of Mailing, a copy of the above documents is being served on all counsel of record. If you have any questions, please feel free to contact me.

As always, thank you for your kind assistance in this matter.

With best regards, I am

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

Mark B. Goddard

MBG: bk
Enclosures

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Payee: Georgetown County Clerk of Court Check #: 217233

Vendor ID: 2210 *Kitelinger, nda, R.* Request Number: 857 Check Date: Oct 05/12

Invoice Num	Invoice Date	Reference	Invoice Amount	Amount Paid	Discount Taken	Payment Amt
FISTSOUTHBANK	Oct 05/12	10748.101	$25.00	$25.00	$0.00	$25.00
		Totals:	$25.00	$25.00	$0.00	$25.00

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

Appellate Case No. 2012-213524

First South Bank,

Respondent,

v.

South Causeway, LLC,

Appellant,

CERTIFICATE OF COUNSEL

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

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Attorney for Appellant

November 19, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

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First South Bank,

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v.

South Causeway, LLC,

Appellant,

PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant South Causeway, LLC, do hereby certify that I have served a copy of the foregoing **Record on Appeal**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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Columbia, South Carolina
November 19, 2013