

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,

**RECORD ON APPEAL
VOLUME IV**

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-22-01233

2 COUNTY OF GEORGETOWN

3
4
5 FIRST SOUTH BANK,)

6)
7 -vs-)

8)
9 SOUTH CAUSEWAY, LLC,)

10 Defendant.)

September 18-25, 2012

11
12 B E F O R E:

13 HONORABLE THOMAS A. RUSSO, SR.

14
15 A P P E A R A N C E S:

16 JOEL W. COLLINS, JR., Esquire
17 JAMES LEON FLOYD, Esquire
DONALD W. TYLER, JR., Esquire
Attorney for the Plaintiff

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19 MARK B. GODDARD, Esquire
Attorney for the Defendant

20
21 Henry P. Young
Court Reporter

22
23 VOLUME V of VI
September 24, 2012

1 (Reconvened 9:05 a.m., September 24, 2012).

2 THE COURT: All right. I believe you all
3 have some matters we need to take up?

4 MR. COLLINS: Yes, Your Honor. We would like
5 to publish an exchange of three or four questions
6 in Peggy Wheeler-Cribb's deposition. We conferred
7 with opposing counsel, they oppose the publishing
8 of this. We believe under the rules we can publish
9 an adverse party's deposition. I have done it many
10 times with the party sitting right in the
11 courtroom. If Your Honor decides that can't be
12 done we will just recall Miss Cribb.

13 THE COURT: How is that objectionable?

14 MS. BYRD: Your Honor, I think it provides
15 unnecessary focus on the deposition transcript when
16 they could have simply asked those questions of
17 Miss Peggy during her deposition and given her an
18 opportunity to respond, and now attempting to
19 introduce a deposition transcript does not provide
20 her an opportunity to respond and we believe, Your
21 Honor, if they want to get that in evidence then
22 they need to call Miss Peggy.

23 THE COURT: All right. It does, Mr. Collins,
24 it does prevent the deponent in this case from
25 being able to respond.

1 MR. COLLINS: Judge, here are the questions.
2 I submit there is no reasons to respond. It is
3 just a short exchange.

4 "QUESTION: You had talked earlier about
5 having offers made on the property by other people
6 and was not this in fact, I think you mentioned in
7 particular an offer from Lincoln-Harris," and it
8 goes on, "Offer of Lincoln-Harris I think you
9 mentioned earlier?"

10 ANSWER: I did not mention them but this is
11 an offer from them.

12 QUESTION: Okay. And this is one you sent to
13 Mr. Lovelace, right?

14 ANSWER: Yes.

15 QUESTION: Did he interfere in any fashion
16 with this?

17 ANSWER: Not to my knowledge.

18 QUESTION: Okay, this was sent to him on July
19 2nd, 2008, correct?

20 ANSWER: Yes."

21 What explanation do you need for that, Judge?

22 THE COURT: I don't know, there could be one.
23 I don't know what it would be.

24 MR. COLLINS: Okay, we'll just recall her.

25 THE COURT: You may need to.

1 Anything else we need to take up?

2 MR. TYLER: Your Honor, the only other issue
3 would be we just a request to publish the requests
4 to admit of South Causeway being represented by
5 counsel.

6 MR. COLLINS: That has been referenced many
7 times but we don't think it has been presented to
8 the jury.

9 THE COURT: I thought that issue was --

10 MR. TYLER: Your Honor, if you are going to
11 instruct she wasn't under duress, I think --

12 THE COURT: The duress defense is gone so I'm
13 not sure how it is still applicable.

14 MR. COLLINS: Because she said she wasn't
15 represented. Didn't she say she wasn't
16 represented? Her testimony was that this lawyer
17 who was there was just an escrow agent working for
18 the bank and we requested an admission that he was
19 there representing South Causeway and they admitted
20 it. Do you recall that? We think the jury is
21 entitled to have that request to admit published to
22 them. It has been mentioned many times in
23 arguments to Your Honor but it has not been
24 presented to the jury. And, Judge, it goes to the
25 element of fraud, having to do with the right to

1 rely on a misrepresentation.

2 THE COURT: Does the defendant have a
3 position on that?

4 MS. BYRD: Your Honor, we don't deny that can
5 come in as evidence, Your Honor, however I think
6 that the foundation has to be laid through Peggy.
7 Since they are going to call her anyway, they can
8 lay it then.

9 THE COURT: I think it comes in. I don't
10 know there needs to be a foundation laid.

11 Anything else before we bring them out?

12 MR. COLLINS: No, Your Honor.

13 THE COURT: Anything from the defense before
14 we bring the jury out?

15 MS. BYRD: No, sir, Your Honor.

16 THE COURT: You all remember now, we only
17 have 13, we're only going to have 13, Miss Johnson
18 was --

19 MR. COLLINS: Yes, sir.

20 THE COURT: The only one not here is Miss
21 Johnson.

22 MR. COLLINS: Yes.

23 THE COURT: All right. Now, let me say this.
24 When they come out I'm going to need to address her
25 absence but all I'm going to let them know is that

1 it was necessary for her to be excused.

2 I tell you what, while the jury -- I will do
3 it in a minute.

4 (The jury returned to the courtroom).

5 THE COURT: Good morning, ladies and
6 gentlemen. I hope everyone had a good weekend. If
7 you have a particular like toward our two major
8 universities in this state, some of you will be
9 happy, some of you will be sad. I hope everyone
10 had a good weekend, regardless of that.

11 Now, you will notice that we're missing one
12 of your colleagues. I spoke with Miss Johnson, she
13 had an issue in her family that required her to be
14 excused so I granted that request.

15 So, we'll proceed with the 13 of you and at
16 the close of Friday Miss Byrd had rested on behalf
17 of the defense and now Mr. Collins is going to be
18 recognized for any reply witnesses they have with
19 regard to their case.

20 Mr. Collins.

21 MR. COLLINS: Thank you, Your Honor. Judge,
22 permit me to say with regard to your comments about
23 football, that some of us believe in the 80/20
24 rule. Have you heard about that?

25 THE COURT: I have not.

1 MR. COLLINS: Don't let 80 20 year olds ruin
2 your weekend.

3 THE COURT: That's excellent, I have to
4 remember that.

5 MR. COLLINS: Your Honor, at this time we
6 call Miss Cribb to the stand briefly.

7 THE COURT: Miss Cribb, if you would please
8 come around. And, ma'am, you are still under oath.
9 Okay?

10 THE WITNESS: Yes, sir.

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1 PEGGY WHEELER-CRIBB, having been previously sworn,
2 testified as follows:

3 THE COURT: All right.

4 MR. COLLINS: Thank you.

5 DIRECT EXAMINATION BY MR. COLLINS:

6 Q Miss Cribb, isn't it true, ma'am, that you
7 have admitted that Wayne Lovelace of First South
8 Bank in fact did not interfere with your offer
9 received from Lincoln-Harris in 2008 to purchase
10 the South Causeway property for approximately
11 \$12,000,000?

12 A He did not to my knowledge but he interfered
13 with Robbie Buice and I think pretty well everyone
14 else so there is no reason to believe they didn't.

15 Q Miss Cribb, I'm going to hand you a copy of
16 the transcript of your deposition. I will ask you
17 to turn to page 133. Look at line 22. Would you
18 please read to the jury the question that was put
19 to you starting on line 22 of page 133 at your
20 deposition?

21 A "You asked earlier about having --"

22 Q The word is talked.

23 A Beg pardon?

24 Q Go ahead, I think the word was talked instead
25 of asked.

1 A Oh, excuse me. "You had talked earlier about
2 having offers made on the property by other people
3 and was not this in fact, I think you mentioned in
4 particular an offer from Lincoln-Harris."

5 Q Continue on to the next page.

6 A "Is this the offer by Lincoln-Harris that I
7 think you had mentioned earlier?"

8 A "I did not mention them --"

9 Q This is your answer coming up, right?

10 A Yes, sir.

11 Q Go ahead.

12 A "I did not mention them but this is an offer
13 from them."

14 And you asked, "Okay, this is the one you
15 sent to Mr. Lovelace, right?" And I said yes. You
16 asked, "Did you interfere, did he interfere in any
17 fashion with him --"

18 Q Wait a minute, read that, not him, read the
19 question on line eight, please, did he?

20 A "Did he interfere in any fashion with this,"
21 and I answered, "Not to my knowledge."

22 I just said that, not to my knowledge, but
23 he did interfere with Robbie Buice and pretty well
24 everybody that I talked to told me that they had to
25 answer to the bank.

1 Q And you didn't call Robbie Buice as a witness
2 in this case, did you?

3 A No, but I can.

4 Q Miss Cribb --

5 A I mean, it is plain that he answered, that
6 Robbie Buice had to send him everything.

7 Q Miss Cribb, isn't it true that you clearly
8 under oath admitted that Wayne Lovelace did not
9 interfere with your offer that you received from
10 Lincoln-Harris --

11 A I said --

12 Q To sell your property for the \$12,000,000 in
13 2008?

14 A I said not to my knowledge and after, then I
15 found a lot of evidence where they interfered with
16 a lot of contracts.

17 Q And you are not going to present any of that
18 evidence that you're claiming?

19 A I think it has been presented, I think it's
20 been presented.

21 MR. COLLINS: That's all. Thank you, ma'am.

22 MS. BYRD: No questions, Your Honor.

23 THE COURT: Thank you very much, ma'am, you
24 may step down.

25 (Witness excused).

1 THE COURT: All right, you may call your next
2 witness.

3 MR. TYLER: Thank you, Your Honor. The
4 plaintiff calls Mr. Lyerly back to the stand.

5 THE COURT: All right, Mr. Lyerly, if you
6 would please come and take the stand, sir -- I
7 apologize, you're trying to do something and I took
8 your attempts away, sorry.

9 MR. TYLER: Your Honor, could we have a
10 napkin or something?

11 THE COURT: We'll get that cleaned up. Here
12 you go.

13 Remember, sir, you are still under oath.

14 THE WITNESS: Yes.

15 MR. TYLER: I think we're good.

16 THE COURT: All right.

17 MR. TYLER: Thank you.

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1 WILLIAM LYERLY, having been previously sworn,
2 testified as follows:

3 DIRECT EXAMINATION BY MR. TYLER:

4 Q Mr. Lyerly, could you tell the jury a little
5 bit about yourself, where you're from?

6 A Yes. I grew up in Horry County, North Myrtle
7 Beach, to be exact, went to high school there,
8 grammar school through high school. Went off to
9 Winthrop College two years and transferred to South
10 Carolina where I finished in 1972 with a degree in
11 history.

12 Q Mr. Lyerly --

13 A And I have lived in Columbia since then.

14 Q Mr. Lyerly, could you tell the jury about
15 your banking experience, please?

16 A Yes. I started in 1973, spent over 18 years
17 with NBSC and moved to South Trust Bank where I
18 spent 12, 13 years as senior commercial lender for
19 the Columbia office, went to a small community bank
20 after that, spent 14 months at the Bank of
21 Ridgeway, which is part of a four bank holding
22 company out of Orangeburg, and then in 2005 I
23 joined First South Bank as banking group president.
24 I was promoted to president September of 2009.
25 That is the title I currently hold.

1 Q What type of school education did you have
2 later?

3 A I have been to just about all the banking
4 schools there are. I started with the South
5 Carolina Bankers School, which that was I think in
6 the late seventies, it's a three year program, one
7 week during the summer. I went to the National
8 Commercial Lending School in Norman, Oklahoma for
9 one two week session, and I'm a graduate of Stonier
10 School of Banking at Rutgers, that is the same one
11 Mr. Barksdale mentioned he is a graduate. That is
12 a two week per summer with a lot of homework in
13 between.

14 Q What type of loans do you primarily or have
15 you primarily done in your career?

16 A Obviously starting out as a young banker you
17 do a lot of consumer loans and then in the late
18 seventies I was made a commercial lender at NBSC
19 and I have been primarily focused in the commercial
20 lending since that time.

21 Q Can you tell the jury what the difference is
22 between a consumer loan and a commercial loan?

23 A Yes. Consumer loans are typically
24 individuals, for general personal notes. It could
25 be a home equity, could be a car loan, a loan to

1 send the kids to school, a variety of things, debt
2 consolidation and so forth. A commercial loan has
3 a business purpose to it. It may also be to an
4 individual but for business purposes and obviously
5 a loan to a business or LLC, South Causeway is
6 considered a commercial loan. Commercial loans do
7 not fall under the same regulatory guidelines as
8 consumer loans do. They have much less regulation
9 to them.

10 Q Explain to the jury, Mr. Lyerly, if you
11 could, whether or not you have been fired from any
12 of those positions?

13 A I have not.

14 Q All right. What about have you prior to this
15 lawsuit ever been accused of fraud, Mr. Lyerly?

16 A No, I have not.

17 Q Can you tell me a little bit about First
18 South Bank? When was it formed?

19 A First South Bank was formed in Spartanburg,
20 South Carolina where the headquarters is. We
21 opened in, I was not in the bank at that time, but
22 in 1996 and first was a community bank. The
23 purpose was a community bank, served basically the
24 small business needs of clients where we don't go
25 after the same client that obviously the Bank of

1 Americas and BB&T and Wells Fargo go after. We're
2 the small mom and pop lender, small law firms,
3 professional groups, stuff like that.

4 Q How many offices does First South Bank have?

5 A We have two in Spartanburg, one in
6 Greenville, one in Bluffton and one in Columbia.

7 Q Where or what areas of the State does First
8 South Bank make loans?

9 A We really make them in all areas of the
10 State. We have a number of loans -- well, we have
11 had a number of loans in Georgetown County. We
12 have had loans all over, you know, from the coast,
13 down to Beaufort County, Jasper County, Charleston
14 County, you know, all in the midlands, Orangeburg
15 County, Richland, Lexington, Newberry, and then the
16 upstate, all counties, so we're not confined to,
17 even though we only have offices -- the thing about
18 commercial lending is you can, as opposed to, say,
19 retail banking being retail banking you need a
20 branch on about every corner to be effective and we
21 don't have, with the exception of Spartanburg, but
22 one location because commercial lending you
23 basically take the product to the client rather
24 than the client comes to you and so you can be very
25 cost effective and cover a large territory with

1 really one office, you know, and a number of good
2 seasoned lenders.

3 Q How many employees does First South Bank
4 have?

5 A I believe we average, say average, because we
6 have very little turnover, about 68 full time
7 equivalent, and full-time equivalent is if one
8 person works 20 hours and another person works 20
9 hours that is considered one employee, you know,
10 even though there are two. We have a number of
11 people who work, like in teller positions, that may
12 work, you know, half time, they have children and
13 so they work in the morning and vice versa, we have
14 somebody that comes in and takes their place.

15 There is not many of those, probably about five
16 people that do not work full time for us and we
17 accommodate their schedule.

18 Q Can you tell the jury what TARP money was,
19 what bail out money was? Would you just generally
20 explain that?

21 A Yes. When the, when all the banks crashed
22 and started going down in 2007 and really did
23 spiral in 2008, just kept going down, the federal
24 government in order to keep the banking industry
25 from collapsing came up with this thing called

1 TARP, I can't remember what it stood for but it is
2 an acronym standing for something, I think the
3 first is Treasury, but they made it available
4 basically to all banks and mandatory for your big
5 money center banks like Bank of America. In fact
6 all the money center banks, Wells Fargo, Wachovia,
7 basically was told they had to take the money.

8 In our case as well as most community banks
9 it was made available. Based on your size you're
10 eligible to receive up to, I believe the amount
11 they said for us was \$13,000,000. We decided
12 because there were a lot of strings attached to it
13 that we would not take it. We actually never
14 applied for it but every bank was told you're
15 eligible for up to a certain amount, depending on
16 your size, and so we elected, because of all the
17 strings attached to it, not to take it.

18 Excluding the big banks in South Carolina
19 that are headquartered elsewhere, like Bank of
20 America, for example, about fifteen community banks
21 took this and there is only one bank in South
22 Carolina that has actually been able to pay it back
23 as agreed, and that is SCB&T. The rest of the
24 banks have not been able to pay it back because of
25 the strings attached. You have to go raise capital

1 in order to pay it back and it is still hard to
2 raise in this market.

3 Q Mr. Lyerly, would TARP stand for Troubled
4 Assest Recovery Plan?

5 A Thank you. I thought it was Treasury
6 something, it was administered by the Treasury.

7 Q Mr. Lyerly, what experience do you have with
8 auctions?

9 A Very limited. I have had clients over the
10 years talk about an auction but after they think
11 through and realize, you know, that is not a good
12 way, that is the, that is the way, I guess the
13 marketing of last resort would be an auction.
14 Generally we get low bids. I know there has been a
15 lot of auctions, some banks have even had auctions
16 to get rid of their OREO or other real estate
17 owned. We have not done that in our OREO portfolio
18 because we just felt like you get pennies on the
19 dollar.

20 Q Okay. Now moving on to the South Causeway
21 loan. What collateral did First South Bank rely on
22 in making the \$550,000 loan to South Causeway, or
23 actually Peggy Wheeler-Cribb and Will Darwin
24 Wheeler?

25 A That was just a lot, building lot sitting

1 behind their home, which was oceanfront Pawley's
2 Island and it would be what is known as a flag lot.
3 In other words, it has access from the street and
4 actually access, it has no frontage on the ocean
5 but has a right of way, you know, like a 10 foot,
6 15 foot right of way to walk down beside their
7 house to get to the ocean, so it would not have an
8 ocean view but you're still considered first row.

9 Q At the time the loan was made do you know
10 what the value of the beach property was?

11 A On lot 4?

12 Q Lot 4.

13 A I believe, and I did not check this recently
14 but I believe we had an appraisal for 1.4 million
15 dollars.

16 Q What collateral did First South Bank rely on
17 in making the bigger loan?

18 A Well, we retained the lot 4 and we, when we
19 paid off First Palmetto we got first mortgage on
20 the 19 acres which is known as South Causeway.

21 Q What qualifications did First South Bank rely
22 on in making the loans to South Causeway, the big
23 loan to South Causeway?

24 A Well, the source of repayment on that loan
25 was to be from the sale or lease of developed lots.

1 There was, conceptually there was an anchor tenant
2 which was going to be in this case Lowe's Grocery
3 Store. Having an anchor tenant and a credit tenant
4 such as Lowe's Foods would attract other credit
5 tenants like your Walgreens, CVS, possibly a bank,
6 any number of types of retail to that market, and I
7 believe Miss Cribb, they were going to sell some of
8 the lots, developed lots, not as raw land, but
9 developed lots and maybe possibly do ground leases
10 with others, and that would have been the source,
11 that would have been the primary source of
12 repayment on our loan.

13 Q Okay. You mentioned a possible lease with
14 Lowe's Foods. Did First South take any position
15 with regard to the terms of that lease?

16 A Not really. We were provided copies and
17 asked for comments. I believe when the thing, when
18 Miss Cribb and her son started negotiating with
19 Lowe's, which was before we were in the deal, that
20 they were still with First Palmetto at that time,
21 they were talking about doing a ground lease, in
22 other words, South Causeway would put in all the
23 infrastructure and lease a pad. I'm just going to
24 say for sake of argument, just say a one acre tract
25 which would encompass the footprint of the building

1 and then the parking would be shared parking, you
2 know, it is kind of in the middle and then parking
3 would be all around it and the other retail
4 properties could also use the same parking.

5 Q What terms, if any, in the lease would have
6 been important for First South to review?

7 A Well, obviously what the income stream would
8 be would be very important because that would then
9 be the source of repaying our loan. The same way,
10 whether it would be a build and Miss Cribb build
11 the building and lease it back to them or just
12 lease them the ground and Lowe's would put the
13 building on there themselves and bear that cost.
14 Either way there would be significant income stream
15 over a real long period of time, generally 25 years
16 with a lot of options.

17 Q Mr. Lyerly, I'm going to hand you what has
18 been marked as Plaintiff's Exhibit 1 which is the
19 commitment letter.

20 A Okay.

21 Q Could you turn over to page 2 for me, Mr.
22 Lyerly?

23 A Okay.

24 Q Would you look under loan purpose, F?

25 A Yes.

1 Q Which deals with the second funding, the
2 second interest reserve funding.

3 A Right.

4 Q Could you tell me what that means?

5 A Okay. I may not have made this clear the
6 first time. Let me read it first. "An additional
7 \$550,000 in proceeds of the loan shall be disbursed
8 by the bank into an account to fund interest
9 payments due on the loan upon the earlier to occur,
10 completion of the infrastructure and six months
11 from the date of closing."

12 Now, it was anticipated certainly by the bank
13 that once this loan closed that they would begin
14 construction immediately because the interest on
15 the loan just on the amount that was funded at
16 closing was running at the time about \$800 a day,
17 so it would have, it was eating into this initial
18 \$300,000 pretty rapidly.

19 And so there were certain conditions to be
20 met, such as signing a contract with, with a
21 general contractor. We know their engineering
22 firm, Earth Works, which is down here, had been
23 negotiating; they had certainly given the bank a
24 preliminary budget for all the construction. That
25 is where we came up with the number of a million

1 four which was part of that next funding, would be
2 a million four for the actual hard cost of
3 construction and once that is finished, within six
4 months, because the estimation I believe was
5 probably four to six months to build it all, then
6 they would be eligible for the next bucket of
7 interest reserve.

8 I hope I have explained it good. I mean, two
9 things had to happen. One, the infrastructure had
10 to go in, and it had to be at least six months from
11 the date of the original closing. The reason why
12 we didn't fund all the \$850,000 at closing is the
13 same reason we didn't fund the million four at
14 closing and stick that over in an account they
15 couldn't touch is because they would begin paying
16 interest immediately on it and if they didn't have
17 use of the proceeds, then it wouldn't have been
18 fair to have charged them interest on it, so
19 therefore that is the way these loans are typically
20 structured.

21 Q You mentioned Earth Works. Who are they?

22 A Earth Works is a local but very reputable
23 civil engineering firm in Georgetown County. I
24 don't remember if they are in Pawleys Island or
25 Garden City or just where they are located but it

1 is a reputable civil engineering firm that had done
2 all the design work on this 19 acres, had gone
3 through the Zoning, the Planning Commission with
4 Miss Cribb and Mr. Wheeler and, you know, basically
5 would be supervising the construction of the
6 project.

7 Q Can you explain to the jury whether or not
8 Earth Works' involvement was important to the bank?

9 A Absolutely. I mean, you could not undertake
10 a project like this without a company such as Earth
11 Works. There are others similar but, I mean, a
12 large civil engineering firm would be typically who
13 would design the roads, the water, the sewer, help
14 procuring all the permitting needed from both the
15 town and Georgetown County, DHEC, so forth.

16 So, it is typical in any, whether it is
17 residential or a commercial development as this
18 happens to be, that you have an engineering firm
19 that knows, you know, from a technical standpoint
20 what needs, how everything needs to be designed,
21 how drainage needs to be, storm water runoff, you
22 know, detention ponds, stuff that even an
23 experienced developer, you know, would hire an
24 engineering firm, not attempt to try to do any of
25 that by themselves. In fact they couldn't, the

1 county nor the city would, you know, they want
2 certification from a licensed engineer.

3 Q Mr. Lyerly, can you explain to the jury
4 whether or not First South Bank ever sent flowers
5 to Miss Cribb?

6 A No, we did not and we still to this day don't
7 know where that came from, why she's claiming that.

8 Q How do you know that?

9 A Well, because quite frankly since I have been
10 with the bank the only time we have sent flowers is
11 really for people who have died, passed away. We
12 don't, you know, don't send people flowers on their
13 birthday or anything. Like I said, it would have
14 to be a real close relationship for us to even send
15 flowers, you know, upon somebody's death. We send
16 a lot of cards and stuff like that but not flowers,
17 and so I don't have a clue to where the flower
18 thing came in.

19 Q Mr. Lyerly, I'm going to hand you what is
20 marked as Plaintiff's Exhibit 13.

21 A Okay.

22 Q Can you identify that document for me,
23 please?

24 A Yes. This is a payoff document that my
25 assistant Julie Cason who was here and testified

1 earlier in the week prepared back in June.

2 Q Okay. Can you tell me why there would be a
3 difference on that document and the amount shown as
4 principal due versus whatever had originally been
5 advanced?

6 A Yes. There was some money that was in a
7 collateral secure account that when the loan
8 matured and went into default this money that was
9 pledged, just like the real estate was, was taken
10 and applied as principal payment on the loan.

11 Q Now, were there any additions to the
12 principal amount, to your knowledge?

13 A You mean did we advance any or paid out?

14 Q Were there any other expenses that could have
15 been added to the principal?

16 A Quite frankly, every expense we have had on
17 this by the terms of the note and the mortgage we
18 could add back to this but we did not add back from
19 that standpoint but if we had added it back we
20 could charge interest on that larger amount. For
21 instance, this number says 378,000 in interest,
22 property taxes we paid, let's see, you know, over
23 100, about 130,000 in property taxes that Miss
24 Cribb did not pay and so we had a right to add that
25 to the loan and actually charge interest on that

1 but we did not, we have added it to the loan, we
2 have not charged interest on that.

3 Q Okay. Can you explain how the per diem is
4 calculated?

5 A Sure. You take in this case just the
6 principal balance times the interest rate, okay,
7 and the interest rate is prime plus one, Wall
8 Street Journal prime plus one, Wall Street Journal
9 prime is 3.25 percent and it has been that interest
10 rate since December of 2008, so the interest rate
11 has not changed on this loan. While it's a
12 floating rate, it hasn't moved because the Wall
13 Street Journal prime has not moved, so it has been
14 in a sense a fixed rate since then, even though it
15 is floating, so it is the, you know, \$4,747,112.73
16 times 4.25 percent divided by 360 equals the per
17 diem.

18 Q Can you tell me what the default rate
19 currently is?

20 A Well, the default rate on the loan, on the
21 note, it says it is the same interest rate as the
22 note rate. In other words, it is the same. Now,
23 quite frankly in our commitment letter it said that
24 we could charge four percentage points above the
25 current interest rate if the loan goes into default

1 and we decided not to do that.

2 Q Do you know if you have or do you have the
3 right to charge interest up to 14 percent as a
4 default rate?

5 A Well, I think in this case, since, if we --
6 you know, we had several options. One, we could do
7 like we said in the commitment letter, if it goes
8 into default your default rate will be four
9 percentage points higher than the note rate
10 beginning at the time of default. We could have
11 said your default rate will be the maximum
12 permitted by state law, which I believe is 14
13 percent. Or you can do what we did on the note and
14 just leave it at the same interest rate, and that is
15 what we did, and obviously that benefits them
16 because it is accruing less interest than a loan in
17 default.

18 Q Mr. Lyerly, with regard to lot 4, when lot 4
19 was released what did South Causeway pay back for
20 that release?

21 A The bank received a wire for \$300,000 from
22 their attorney Robert Gwin who closed it. Of that
23 money they were past due the previous year's
24 property taxes which would have been the '08
25 property taxes, and they were, this was in April,

1 the property taxes everybody knows is due in
2 January, and then you have penalties for the next
3 couple months and I think then you max out. So,
4 they were in default of that. That is a technical
5 default on the loan, we could have called the loan
6 then but we elected not to. We wanted to give them
7 a chance to sell the property.

8 So, out of the money there was 2008 property
9 taxes and then we escrowed for 2009 because, after
10 all, it was April, you know, new taxes would be
11 coming up the following January, and there was, I
12 want to say \$6,000 in attorney fees based on our
13 attorney drafting the modification agreement and
14 other things involving these previous discussions
15 with their attorney over the Lowe's lease, and the
16 rest of it which I believe was around \$156,000 went
17 into the interest reserve account to carry them to
18 the new maturity we put in as July 5th, 2010.

19 As has been stated before here, we gave them
20 two options and they elected to pay us the smaller
21 amount and shorten the maturity by one year. If
22 they paid us the larger amount, 500,000, then it
23 would still cover the same itemization, things I
24 have said, but it would have given another year's
25 worth of interest which they decided they did not

1 want to do that.

2 Q Mr. Lyerly, given that the lot 4 was valued
3 at 1.4 million, could First South have demanded
4 more consideration?

5 A Absolutely. We could have, we could have
6 demanded, you know, a larger amount. We were
7 trying to work with them and hoped they would have
8 more time to sell the property and take one of
9 these good offers that had been, you know, that
10 they had been receiving.

11 MR. TYLER: Nothing further, Your Honor.

12 MR. COLLINS: Hold on.

13 MR. TYLER: I'm sorry.

14 BY MR. TYLER:

15 Q Mr. Lyerly, how much money would First South
16 have required to receive to pay off the note?

17 A At what point?

18 Q Currently.

19 A Well, again this is from June and I have not
20 done the calculation but the payoff on June the
21 11th was \$5,274,772.66. You're accruing at \$563.61
22 per day, this was approximately more than 90 days
23 ago, times \$563, so it would be about another
24 \$50,000 in interest that's accrued.

25 Q Could First South Bank ever require more than

1 what is owed in order to satisfy the note?

2 A No.

3 Q Does First South Bank interfere with owners
4 and borrowers seeking to sell property?

5 A No.

6 Q Did First South Bank interfere with South
7 Causeway in this case?

8 A Not at all.

9 MR. TYLER: Your Honor, I have nothing
10 further.

11 THE COURT: Thank you, sir.

12 MS. BYRD: If it please the Court.

13 THE COURT: Miss Byrd.

14 MS. BYRD: Thank you, Your Honor.

15 CROSS EXAMINATION BY MS. BYRD:

16 Q Mr. Lyerly, you have testified that First
17 South Bank is a community bank, is that correct?

18 A Yes, ma'am.

19 Q And even though you may consider yourself a
20 community bank you are still required to follow
21 federal and state law, is that correct?

22 A Yes, ma'am.

23 Q And state law includes an obligation to treat
24 your customers with good faith and to deal with
25 them fairly, correct?

1 A Yes, ma'am, and we certainly do.

2 Q You testified earlier that there was much
3 less regulation in the commercial lending section,
4 is that correct?

5 A Yes, ma'am.

6 Q But in this case you were actually aware that
7 South Causeway, LLC, only had one member and that
8 was Miss Peggy Wheeler-Cribb, correct?

9 A I am, but that doesn't matter, it's a
10 commercial loan.

11 Q I would like to ask you about the
12 Lincoln-Harris loan sale. When Lincoln-Harris
13 approached you about purchasing the loan agreement
14 from your bank and asked to review the file of
15 South Causeway, LLC, you were aware at that time
16 that Lincoln-Harris was a development company,
17 weren't you?

18 A Yes, I was, and you said purchase the loan
19 agreement, you mean purchase the loan?

20 Q I'm sorry, purchase the loan, the note, the
21 mortgage?

22 A Right.

23 Q The guaranties and everything that went with
24 it?

25 A Yes. I mean, I did not know who

1 Lincoln-Harris was until that time and they
2 explained who they were and what they had done and
3 so forth.

4 Q But before you showed them the file of South
5 Causeway, LLC, the bank file, you knew that they
6 were a development company, didn't you?

7 A Yes, ma'am.

8 Q Prior to the auction Lincoln-Harris, and I
9 mean the auction that Miss Peggy attempted to
10 conduct in June of 2010, prior to the auction you
11 were aware, were you not, that Lincoln-Harris was
12 consulting zoning officials about this property?

13 A I mean, to be honest with you, I don't know
14 that I was aware. I mean, I don't know they told
15 me that. They may have. Subsequent to our meeting
16 in Spartanburg, I don't know when they would have
17 met with zoning officials. We obviously wouldn't
18 have anything to do with that.

19 Q You were aware, weren't you, prior to the
20 auction, that Lincoln-Harris was seeking
21 commitments for tenants and anchor tenants. Is
22 that correct?

23 A That was my understanding, they were seeking
24 to see what interest there would be in the
25 property.

1 Q So you were aware that at the same time South
2 Causeway and Miss Peggy were attempting to conduct
3 an auction, that Lincoln-Harris was actually out
4 trying to develop and market the property?

5 A Well, I don't know they were out trying to
6 develop. They obviously didn't develop the
7 property because they didn't own it or buy it but
8 it is not unusual for prospective developers of
9 property to talk with some of their prior, you
10 know, contacts, tenants, to see if there would be
11 interest. I have never been a developer but that
12 is my understanding of how, you know, typically
13 these things work.

14 Q So you knew then that Lincoln-Harris' intent
15 was not to buy the note, but develop the property?

16 A Well, they were going to buy the note and
17 what they did after that would have been between
18 them and Miss Wheeler-Cribb.

19 Q You testified earlier about the interest
20 reserve account and you said it wouldn't be fair to
21 charge them interest on amounts that you had not
22 advanced, is that correct?

23 A Certainly.

24 Q Would it be fair, then, for a bank to take
25 the origination fee on the entire 6.5 million

1 dollars when you hadn't advanced that?

2 A That is the way it is done in the industry,
3 yes, ma'am, it is.

4 Q Going back to the commitment letter, do you
5 still have that exhibit?

6 A No, I don't.

7 MS. BYRD: May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. BYRD: Thank you.

10 BY MS. BYRD:

11 Q I refer you back to the interest reserve
12 paragraph that you were discussing.

13 A Paragraph F.

14 Q Okay. And again that provides upon the
15 earlier, does it not?

16 A That is the way you're reading it. That is
17 not the intent and that was, and it was very clear
18 to everybody, including their attorneys, how this
19 read. It didn't mean in six months you don't do
20 anything and we put another bucket of money out
21 there for you.

22 Q Mr. Lyerly, my question --

23 A You have to have the infrastructure in.

24 Q My question is does it say that, upon the
25 earlier?

1 A It's saying upon the earlier to occur,
2 completion of the infrastructure and six months and
3 I thought I explained a while ago it was estimated
4 that it would probably take 120 days but due to
5 possible weather delays, stuff like that, let's
6 make sure we have a fudge factor in there, give
7 them six months to put in all the infrastructure.
8 It could possibly be done in 90 days but it was,
9 the next bucket of interest reserve will not be due
10 until, one, they either have the infrastructure in,
11 or six months from the day once they have had the
12 infrastructure in. In other words, once they
13 finished they could have gotten it then but let's
14 say they are well into the project and, you know,
15 they don't have the last piece of grassing done and
16 the detention pond, then they would have been
17 eligible for it at that time. But the fact they
18 never started means that they were not eligible.

19 One other point I want to make and it has not
20 been brought up, is they were going to run out of
21 interest in the initial interest reserve --

22 MS. BYRD: Your Honor, I would object and
23 move to strike. This is not responsive to my
24 question.

25 THE COURT: Sustained.

1 Q Mr. Lyerly, the term upon the earlier of,
2 does that have no meaning in that sentence?

3 A Well, I think all words have meaning but it
4 was, they had to put the infrastructure in.

5 MS. BYRD: No more questions. Thank you,
6 Your Honor.

7 THE COURT: Any redirect?

8 MR. TYLER: Yes, Your Honor, briefly.

9 CROSS EXAMINATION BY MR. TYLER:

10 Q Mr. Lyerly, you were getting ready to explain
11 about South Causeway running out of interest
12 reserve. Do you want to go ahead and finish your
13 answer?

14 A Yes. Had the money from Kennedy Funding not
15 been borrowed and we received the 300,000 that I
16 have already explained how it was divided up,
17 156,000 to interest reserve, this loan would have
18 gone into default sometime in July or August
19 because they would have exhausted all of the
20 original interest reserve in the loan, so they had
21 to replenish it. We were not going to pay this and
22 add to it and keep the loan going. They would have
23 defaulted much earlier than they did, so instead of
24 defaulting in July of 2010, they would have
25 defaulted in July or August of 2011 because they

1 would have been out of the initial interest
2 reserve.

3 Q When did the note mature?

4 A The actual note matured, after it was
5 modified, I believe it was July 5th, 2010.

6 Q Can you look on page three of the commitment,
7 please?

8 A Okay.

9 Q Does it provide for a nonrefundable loan fee?
10 Do you see that provision?

11 A Yes, it does.

12 Q How much does it state in the commitment?

13 A It says nonrefundable loan fee of 65,000,
14 parenthesis, one percent of loan amount, shall be
15 due and payable upon the acceptance of this
16 commitment and shall be paid at closing provided,
17 however, such loan fee shall be, so long as the
18 bank shall proceed in good faith in making the
19 loan, fully earned and due in full regardless of
20 whether any or all proceeds of loan are advanced.

21 MR. TYLER: Thank you. Nothing further, Your
22 Honor.

23 THE COURT: Anything else?

24 MS. BYRD: No, sir.

25 THE COURT: Thank you sir. You may step

1 down.

2 (Witness excused).

3 THE COURT: Call your next witness.

4 MR. FLOYD: Thank you, Your Honor. At this
5 time First South Bank calls Mr. Stan Ashburne.

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1 WILLIAM STANLEY ASHBURNE, after being first duly
2 sworn, testified as follows:

3 THE CLERK: Thank you. Please be seated,
4 state your name for the record and spell your last
5 name.

6 THE WITNESS: Certainly. My full name is
7 William Stanley Ashburne, I generally go by the
8 name of Stan. The last name is spelled
9 A-s-h-b-u-r-n-e.

10 DIRECT EXAMINATION BY MR. FLOYD:

11 Q Mr. Ashburne, would you introduce yourself to
12 the jury, please?

13 A How are you all doing this evening, this
14 morning. I hope you all had a great weekend.

15 Q Could you tell the jury a little bit about
16 your education?

17 A Certainly. Do you want any background
18 information?

19 Q That's fine.

20 A Okay. I was born in 1948, Lexington,
21 Virginia. My dad was in service for twenty years,
22 moved to South Carolina in '64, Charleston, excuse
23 me, '62, he retired in '64. I finished high school
24 in 1966, graduated from Hanahan High School, I
25 entered the United States Navy shortly after

1 graduation, I completed four years of military
2 service, was honorably discharged in August of
3 1970. I entered the College of Charleston, I
4 decided that since I had had my military and was
5 four years older I decided to go straight through
6 college in three years, and graduated from the
7 College of Charleston with a degree in business
8 administration in 1973.

9 Q Could you please tell the jury a little bit
10 about your work experience?

11 A Certainly. In 1973 when I graduated I
12 started interviewing with several of the banks. I
13 can recall being asked why I wanted to go in
14 banking and I don't remember what I said but I
15 remember what I thought, it was that banks can pay
16 every two weeks, don't they? But I ended up going
17 to work for First National Bank of South Carolina.
18 My wife and I moved to Columbia, we went through a
19 nine month training program, or I went through a
20 nine month training program.

21 Once completing that training program I was
22 reassigned to Spartanburg. I stayed in Spartanburg
23 for approximately five years, I was sort of a
24 junior person in credit administration at that
25 time. I also served as a commercial lender in that

1 capacity as well on an as needed basis.

2 In 1978 I was asked to come back to Columbia,
3 South Carolina, served in credit administration in
4 Columbia. Once I got to Columbia my job
5 responsibilities were primarily on the commercial
6 side. I was assigned various offices around the
7 State and I worked with the people that were the
8 CEO's of those offices and their commercial lenders
9 to help them structure and to approve loans over
10 their lending limit.

11 I also performed a lot of credit analysis on
12 loans during that six year period of time. I did
13 all kind of write-ups, spreads on the businesses
14 and did a lot of analytical work to determine
15 whether or not those businesses had the ability to
16 repay the debt.

17 Q Did your work in commercial banking include
18 any experience with dealing with auctions?

19 A Yes. I haven't finished the banking part of
20 it yet, but if you want me to go through that, then
21 I will talk about the auctions. In 1984 I went to
22 South Carolina Federal, I was there for eight and a
23 half years. South Carolina Federal was bought by
24 First Union, that was in 1993. I stayed with First
25 Union for two years, I was in special assets, they

1 decided to do an assets liquidation sale and
2 transfer the remaining assets to Charlotte.

3 There were eleven people in that department
4 and because of discontinuing the department I was
5 given a severance package and I was also considered
6 to be a good employee at First Union and I had the
7 right to apply for positions with First Union
8 elsewhere to go to work and in that regard I was
9 offered a job with First Union in Tampa, Florida.

10 My wife and I discussed it, we had two
11 teenage daughters that we wanted to see, they
12 wanted to stay here to go to college and we decided
13 we were not going to move that far away from them.
14 I ended up taking a job with South Trust Bank and
15 in March of 1995 I went to work for South Trust. I
16 stayed with South Trust for eight and a half years,
17 they were bought, excuse me, nine and a half years,
18 they were bought by Wachovia.

19 I was on the state management team for South
20 Trust, I knew I would not be retained. I did have
21 a contract with South Trust at that time, Wachovia
22 was very good to me. Once the merger took place in
23 December they asked me to stay for six months to
24 help with the transition, at which point I left
25 banking for about two months but during that two

1 months I had agreed to go to work for a new bank
2 that was being orginaized. I was actually one of
3 the organizers of the bank, the CEO for the
4 Charleston market I worked with for a number of
5 years, the chief financial officer for the state of
6 South Carolina.

7 I worked for a number years, the three of us
8 started this bank in August with the official date
9 August 1st, we opened up as Charleston New Bank,
10 LLC, we really didn't know what we wanted to call
11 our bank, and the bank opened its doors in February
12 of 2006 under the name of Harbor National Bank.

13 MR. GODDARD: Your Honor, in the interest of
14 time the plaintiff stipulates to Mr. Ashburne's
15 qualifications.

16 THE COURT: Certainly.

17 MR. FLOYD: Thank you.

18 THE WITNESS: You asked the question about
19 auctions.

20 BY MR. FLOYD:

21 Q Yes.

22 A I have had some experience with auctions. I
23 heard Mr. Lyerly state that he has had limited
24 experience. That is my case as well, too. I have
25 gone through two actions, one at South Carolina

1 Federal regarding residential lots, the second one
2 I had gone through at South Trust we had to go
3 through an auction or we were asked to allow an
4 auction to sell automobiles from a car museum that
5 was in Charleston and during both of those
6 auctions, I think they were handled very
7 professionally, the borrower in both cases came to
8 the bank, we had meetings between the borrowers,
9 the auctioneers, the bank had attorney
10 representation, the customer had attorney
11 representation, and we, after going through those
12 meetings with the auctioneers and the auction
13 companies we became comfortable with the auctions
14 that they were going to go through with and, you
15 know, we decided to set, on the auction we had for
16 the residential lots we set a reserve amount for
17 each one of the lots. The bank used it also as an
18 opportunity to set up a tent at the auction site
19 and anybody buying those residential lots we had
20 made an agreement that we could check their credit
21 right there on the spot. Once they made the
22 appropriate downpayment, the bank would consider
23 financing those lots for them. That auction was
24 very successful. I don't believe that all the lots
25 were sold but it certainly sold enough to pay the

1 loan down substantially to where the borrower had
2 the capacity to continue making payments on the
3 loan.

4 The second auction was handled in a very
5 similar manner. I believe the auction company was
6 Crews International, which is out of Chicago, they
7 have got a lot of experience handling auctions.
8 There were several banks that had loans on the
9 automobiles that were in this museum, they met with
10 those banks, we had our attorneys present, the
11 borrower at that point was actually the wife of the
12 deceased borrower and she wanted to liquidate the
13 car inventory and the museum and sell the
14 buildings, and we were told by the auction company
15 they, like I said, everybody was in agreement,
16 everyone met, there were other banks involved, too,
17 as well.

18 All the money from the sale of the action was
19 put into a reserve account and the banks were the
20 first one to be paid because we had the liens on
21 the automobiles and to my knowledge all three banks
22 were paid in full. It was a very successful
23 auction, they brought in people from all over the
24 country, these were very, very high end
25 automobiles, we had celebrities there from

1 California, we had professional baseball athletes
2 there, or professionals at least, period, there.
3 We also had owners of some of the professional
4 teams there that were bidding on these and there
5 were a lot of business people in the country, too,
6 that had been there too, as well.

7 MR. FLOYD: Your Honor, at this time First
8 South Bank hereby tenders Stan Ashburne as an
9 expert witness in the field of commercial banking
10 standards, practices and procedures pursuant to
11 Rule 703.

12 THE COURT: All right.

13 MR. GODDARD: No objection, Your Honor.

14 THE COURT: Without objection.

15 BY MR. FLOYD:

16 Q Mr. Ashburne, have you had a chance to review
17 the documents, we referred to them kind of
18 generally as the loan documents related to the loan
19 First South Bank made to South Causeway?

20 A Yes, I have. I have reviewed the commitment
21 letter, I have reviewed the loan agreement, I have
22 reviewed the note, the mortgage, the guaranty
23 agreements and the closing certificate by the Hinds
24 law firm and I have also reviewed the demand letter
25 and the payoff letter.

1 Q Did you have another chance to review those
2 documents during the Power Point presentation that
3 took place last Tuesday?

4 A Yes, sir, I did.

5 Q And have you been present and heard the
6 testimony and evidence presented thus far during
7 this trial?

8 A Yes, I have.

9 Q Have you been here today?

10 A I have been here every day.

11 Q Paying attention?

12 A Paying as much attention as I possibly could.

13 Q And in reviewing these documents and hearing
14 the testimony have you formed any expert opinions
15 to a reasonable degree of banking certainty?

16 A Yes, I have. After reviewing all of these
17 documents, and I have looked at them a couple
18 different occasions, I don't see anything wrong
19 with the documents as they were presented to the
20 Court. These are, they all conform and comply with
21 all the federal and state regulations and
22 everything looks like it's in very good order, to
23 me.

24 Q Mr. Ashburne, do you have an expert opinion
25 regarding whether the terms and conditions set

1 forth in the loan agreement are normal or comply
2 with I guess what you would consider standard in
3 the banking industry?

4 A The commitment letter and the loan agreement
5 together, yes, there is no problems there. I can
6 go into a little bit of detail if you would like.

7 Q Please give us an overview and give the jury
8 an overview of the basic conditions and
9 requirements in these type loans.

10 A Certainly. Initially, I know this loan was
11 not introduced as evidence but there apparently was
12 an outstanding loan that was secured by lot 4 for
13 \$550,000. The bank was looking at making a land
14 loan, taking out First Palmetto Bank. They issued
15 a commitment letter dated May 30, 2008. In that
16 commitment letter there were basically several
17 parts to the loan that were being considered. The
18 first part was going to be continued as a land
19 carry loan.

20 Now, typically in banking we have to go by
21 federal regulations which cover those types of
22 transactions and because the regulators view a land
23 carry loan with a higher risk there is generally a
24 lower loan to value that is permitted by the
25 federal regulators on that type transaction. So,

1 while this loan was a land carry loan they were
2 limited to a 65 percent loan to value, meaning
3 basically that the loan amount could not exceed 65
4 percent of the value of the property.

5 There was some comment made earlier that the
6 defendant in this particular case had ordered
7 appraisals that had a higher value. The law
8 requires, federal banking laws require the banks
9 order the appraisals. We can't allow the customers
10 to order them and the reason for that is we have to
11 have the appraisals completed in a format and
12 understanding that basically goes over the
13 conditions of the loan and how it is going to
14 progress through that process.

15 I do not know what the value was presented at
16 the time, the appraisal is not part of or not been
17 presented as part of the evidence in this case, but
18 typically you would want to stay within that 65
19 percent loan to value.

20 The loan itself, the initial loan itself was,
21 excuse me one second while I turn to the page just
22 to make sure I get the dollar amounts correctly
23 here.

24 Q Would you please let us know what document
25 you're referring to when you do get there?

1 A Yes. This is the commitment letter. The
2 commitment letter, page two of the commitment
3 letter, the loan purpose, up to 3.6 million dollars
4 was used to pay off the existing loan at First
5 Palmetto Bank, then there was \$550,000 which was
6 used to pay off the existing note at First South
7 Bank which was secured by the lot 4, 334 Myrtle
8 Avenue. There was \$100,000 of proceeds which was
9 used to pay the \$65,000 commitment fee and to pay
10 the attorney's closing costs for closing the loan
11 and any other costs that may have been involved,
12 the ordering of appraisals or whatever else was
13 needed. And then there was \$300,000 which was used
14 to put into a reserve account which was
15 specifically to cover interest.

16 Then the loan would have entered into the
17 second phase if it had gone to that point, which is
18 also accounted for in the loan itself. They could
19 advance up to 1.4 million dollars which is
20 considered to be the infrastructure loan. This
21 particular loan would have been used when the
22 property was going to be developed, you would have
23 had the curb cuts, you would have had an engineer
24 that would review the property itself and come up
25 with a site plan, work with the county to determine

1 where the curb cuts would be. You want to make
2 sure of those curb cuts because you have a four
3 lane highway, you've got a lot of cutoffs and
4 turns, you've got to make sure those curb cuts do
5 not interfere with any of the moving of traffic and
6 cause any type of an accident hazard.

7 Once that is done, then you will go through
8 typically and put in the remaining improvements.
9 You've got water, sewer, you've got power lines,
10 you've got gas lines. I don't believe gas is
11 permitted here on the coast, but you've got all of
12 these things that have to be put in plus you have
13 land clearing, determining where the wetlands might
14 be, putting in the drainage ditches, everything.

15 So, that was what that money was to be used
16 for. Once you got to that phase it was realized it
17 was going to take time to get people in there to
18 develop the property, to build it out, and that is
19 what the \$550,000 interest reserve was to be used
20 for. It was not funded at the initial part of the
21 loan, there was no sense in funding that amount of
22 money because it wasn't really designed for the
23 initial part of the loan, you were only funding
24 300,000 until you get to that point.

25 But once you do get to that infrastructure

1 loan the government says, or the regulators
2 basically say there is a little bit less risk so
3 you can go to a 75 percent loan to value once you
4 hit that development loan stage. Then after you go
5 through the development loan, if you are doing
6 loans on the individual parcels, you're relying on
7 lease tenants, you are going to have either a
8 Publix Grocery Store perhaps, or a Lowe's,
9 Walgreens, CVS, McDonalds restaurant, you might
10 even have a local bank there or perhaps a national
11 bank with those type tenants, and then the loan is
12 going to be based on income to service that debt
13 and when you get to that point the regulators feel
14 there is even less risk and they will allow the
15 bank to lend up to 85 percent at that point.

16 But it is important to remember we never got
17 out of the land portion of this loan. The bank was
18 always restricted to the 65 percent loan value.

19 Q Mr. Ashburne, you used the term regulators a
20 couple times. For the jury and myself, can you
21 please describe what that, what you are using that
22 term to refer to?

23 a Certainly. Banking is a very highly
24 regulated industry and there are four regulators
25 actually. There is the Federal Deposit Insurance

1 Company which we all know as the FDIC. And the
2 Federal Deposit Insurance Company has the right to
3 come in and to do a review on the bank at anytime
4 that they so desire.

5 The second regulator is the Federal Reserve
6 Bank, and the Federal Reserve Bank is actually
7 headed by a gentleman by the name of Ben Bernacke.
8 Ben Bernacke was actually raised in Mullins, South
9 Carolina, and so it is a very prestigious, very
10 high position to hold in this country and in my
11 opinion he has done a very good job.

12 But the Federal Reserve Bank can also come in
13 and review the bank at anytime. You have to be a
14 member of the Federal Reserve. They are the ones
15 that handle all of the processing of payments
16 through all the banks, you have got to have their
17 routing numbers in order to effect the transition,
18 plus he also sets policy and one of the important
19 policies he is responsible for is interest rate,
20 especially regarding the prime rate.

21 There is a rate that he sets which banks can
22 borrow at and right now that rate is set at
23 one-quarter of a percent. In the history of my
24 banking years, 38 years in banking I have never
25 known the rate to be that low but it has been that

1 low since December of 2008 and I think there was an
2 article last week after his meeting that he had
3 that basically stated that he did not see any
4 increase in that rate for the next three years.
5 So, that rate has been very low.

6 The prime rate, which is generally tied to
7 that discount rate, is usually three percent over,
8 so the prime rate since December, 2008, has been
9 3.25 percent and that rate, even though it is an
10 adjustable rate, can move up, can move down. It
11 has not moved during that period of time nor is it
12 likely to go up. The loan itself was based at one
13 percent, I think the commitment letter says a
14 hundred basis points, which is a one percent above
15 prime rate, so the rate on the loan as it exists
16 since December, 2008, is four and a quarter
17 percent.

18 Then there is also the Controller of the
19 Currency. This bank is a state bank. Usually the
20 national banks will be governed by the Controller
21 of the Currency, but the Controller of the Currency
22 does have the right to overrule any state
23 regulators. They can come in and look at a bank
24 and as a matter of fact if a bank were to fail they
25 would be the ones that would come in and actually

1 either sell the bank or liquidate the bank.

2 And then the final regulator you have got in
3 this case, which is the state regulators, and First
4 South Bank is a state bank and that is generally
5 who comes in and conducts the audits on their
6 banks..

7 I would also like to point out that
8 historically the regulators came in twice every
9 three years, about every eighteen months. Since
10 2008 and the down turn in the banking market we
11 have had over 800 bank closures during that time
12 because of the down turn in commercial real estate.
13 In addition to that, yesterday was the fourth
14 anniversary of Lehman Brothers' failure. It has
15 not been a very good time in the banking industry
16 and a lot of you probably saw Wachovia signs up and
17 down the Grand Strand for years, Wachovia was the
18 fourth largest bank in this country, they had to
19 have a forced sale for that bank because of
20 problems they were having and that bank was sold to
21 Wells Fargo, so you are now seeing their stage
22 coaches all over this area.

23 Q Based on your review of the documents, the
24 testimony, everything else you have seen in
25 relation to this loan, do you have any expert

1 opinion as to whether First South Bank complied
2 with the regulators and the different applicable
3 regulations in this situation?

4 A That is an affirmative, yes, they have done
5 everything that has been required of them and I
6 don't see anything that the bank has done wrong in
7 this particular transaction.

8 Q We talked a lot about the interest reserve
9 account, the different ways that money was going to
10 be structured with regard to a second part of the
11 loan, I believe a development time part for
12 infrastructure. In as basic terms as you can give
13 us, can you kind of explain the importance of the
14 infrastructure portion?

15 A Well, as I have already stated, it is
16 certainly to improve the saleability of the
17 property once you get to that point. As I
18 mentioned, the regulators, all the regulators
19 basically state that a land carry loan has a higher
20 risk to it because nobody really knows what the
21 exact use of that property is going to be. You
22 have got to go through all the planning and
23 permitting process with the counties and nobody
24 knows what you're going to encounter when that
25 happens.

1 I can give you an example of a situation that
2 I had on a loan that we made within the past five
3 years. We made a loan on a piece of property and
4 we found out after the loan was made and they were
5 getting ready to develop the property they learned
6 there was an indian burial ground on the property
7 which legally prohibited what the overall use of
8 the property could be and that wasn't discovered
9 until after the person had purchased the property.
10 So, there is a lot of risk that can be associated
11 with a land carry loan. I'm not saying that has
12 happened in this particular case but there can be
13 something that comes up.

14 I know another case a bank had a loan on a
15 piece of property --

16 THE COURT: I'm sorry, I don't mean to
17 interrupt, but you all step up.

18 (Unrecorded bench conference).

19 BY MR. FLOYD:

20 Q Mr. Ashburne, there has been some testimony,
21 actually a lot of testimony concerning when
22 Lincoln-Harris, I believe it was, approached First
23 South Bank about potential purchase of the loan at
24 issue here. Have you reviewed the documents and
25 listened to the testimony concerning that issue?

1 A Yes, I have.

2 Q Do you have an expert opinion to a reasonable
3 degree of banking certainty as to whether First
4 South Bank did anything improper with regard to
5 that transaction?

6 A I have reviewed the documents, it is a
7 negotiable instrument and First South Bank had
8 every right to sell the note to whomever they so
9 desired.

10 Q Please briefly explain to the jury what a
11 negotiable instrument means.

12 A A negotiable instrument and what makes it
13 negotiable is that on the face of the note it says
14 pay to the orders of. It does not say pay to the
15 bank, but it says pay to the order of.

16 Q Have you seen anything in the loan documents
17 that would prohibit or otherwise limit whether
18 First South Bank could sell the note and mortgage?

19 A No, I have not.

20 Q Do they need any authorization beyond the
21 loan documents to decide whether or not to sell or
22 entertain an offer on the loan documents?

23 A No.

24 Q Is that standard in the commercial banking
25 industry?

1 A Yes, it is.

2 Q Following their meeting with Lincoln-Harris,
3 I believe there has been a lot of testimony and
4 issue made as to the contacts by Mr. Lovelace with
5 I believe Vintage Auction Company. Do you know
6 what I'm referring to?

7 A Yes, I do.

8 Q Have you any opinions to a resonable degree
9 of banking certainty as to whether First South Bank
10 did anything improper with regard to contacting the
11 auction company?

12 A In regards to contacting the auction company,
13 they had a mortgage on the seventeen and a half
14 acres and they had every right to contact that
15 auction company since they were concerned about
16 what was happening to collateral securing their
17 loan.

18 Q Is that concern normal whenever there is an
19 issue arising as to collateral?

20 A You need to stay involved in anything that is
21 going on with that property itself, so they do have
22 that right to protect it. If the property taxes
23 are not paid, if insurance is not paid it can be a
24 detriment to the bank as well and they have the
25 right to protect that, their position in the

1 collateral.

2 Q And I know there are a lot of regulations and
3 laws and we heard Mr. Barksdale testify concerning
4 that as to disclosure of information. Do you have
5 any opinion or expert opinion as to whether any
6 laws or regulations prohibited disclosure of the
7 information Mr. Lovelace gave to Vintage Realty?

8 A I was involved in an assets liquidation sale
9 at First Union, we sold off approximately
10 \$80,000,000 in loans during that point in time. I
11 don't see anything different, anything different
12 than what was happening with this transaction, that
13 happened with the transaction that I was involved
14 in.

15 Q Is there any law --

16 A The answer to your question is they had every
17 right to sell this note.

18 Q And contacting the auction company, is there
19 any law or privacy regulation or anything to that
20 effect that you're aware of prohibiting disclosure
21 of the information?

22 A I have reviewed the Fair Credit Reporting Act
23 which only governs consumer transactions and since
24 reviewing that report there is nothing that I can
25 find that prohibits them from having the

1 conversation with the auction company.

2 Q Is there anything in the loan documents, in
3 your opinion, that prohibits them from contacting
4 the auction company and disclosing that
5 information?

6 A No.

7 Q In your expert opinion is there anything
8 problematic with disclosing that information to the
9 auction company?

10 A I cannot see or find anything that would have
11 been cause for concern by contacting them, no.

12 Q Is it normal, or excuse me, in your
13 experience would a commercial lender want to take
14 the property back or have a performing loan?

15 A We would much prefer to have a performing
16 loan. I have spent time in special assets working
17 out problem loans and quite frankly I could count
18 on one hand how many properties have actually sold
19 for more than what the balance of the note is. You
20 know, in my estimation, probably 99 percent of the
21 transactions where a bank has to go through a
22 foreclosure process the property deteriorates,
23 people don't maintain it, people in the community
24 understand and realize since it is a matter of
25 public notice that it is going through that

1 process, you generally lose money in a foreclosure
2 situation.

3 Q Do you have any opinion, based on your review
4 and experience in this case, whether that same
5 reasoning holds true here?

6 A I believe with what was happening in the
7 market place since 2008, substantial declines in
8 commercial real estate values, I believe that could
9 very well possibly happen here too as well.

10 Q Do you have any expert opinions to a
11 reasonable degree of banking certainty as to
12 whether First South Bank may enforce its rights as
13 set forth in the loan document --

14 MR. GODDARD: Object to form, Your Honor, it
15 calls for a legal conclusion.

16 THE COURT: Repeat the question.

17 MR. FLOYD: Actually I can just ask him if he
18 has any expert opinion as to whether First South
19 Bank could enforce its rights under the loan
20 document.

21 THE COURT: Sustained, that is a legal
22 conclusion.

23 BY MR. FLOYD:

24 Q Mr. Ashburne, do you have any expert opinion
25 to a reasonable degree of banking certainty as to

1 whether First South Bank did or did not do anything
2 that violates or goes awry of standard banking
3 practices and procedures?

4 A In my opinion First South Bank acted
5 appropriately in regards to foreclosing on this
6 transaction and I can't see where they have done
7 anything incorrect.

8 Q Do you take any issue with the soliciting of
9 this loan?

10 A I may have to ask you in what regard are you
11 referring to? Are you talking about somebody
12 wanting to buy the transaction?

13 Q In the solicitation between, I believe the
14 testimony was between Mr. Lovelace leaving First
15 Palmetto and going to First South Bank?

16 A Oh, excuse me, all right, I understand what
17 you're talking about now. No, there is nothing --
18 is the mike still on? There is nothing wrong with
19 what Mr. Lovelace did in contacting the customer.
20 He had been their loan officer, he knew them and
21 certainly, you know, that is why banks hire
22 commercial lenders from other banks, is they are
23 hoping when they hire them that they are going to
24 bring business along with them.

25 MR. FLOYD: Your Honor, if I may have one

1 moment.

2 THE COURT: Yes, sir.

3 Q Mr. Ashburne, after your extensive review of
4 this file, and the testimony of last week, do you
5 have any other expert opinions to a reasonable
6 degree of banking certainty relevant to this
7 matter?

8 A Like I said, everything in this transaction
9 looks like it is in order to me and they certainly
10 had the right to do, right to go through with the
11 foreclosure.

12 MR. FLOYD: Thank you very much.

13 Nothing further, Your Honor.

14 THE COURT: All right, Mr. Goddard.

15 MR. GODDARD: If it please the Court.

16 THE COURT: Yes, sir. I tell you what,
17 before you begin why don't we take a short break.
18 We have been out here about an hour and a half.
19 Let's just take a short break.

20 Ladies and gentlemen, have no conversation
21 about the case, we'll start back in just a few
22 minutes.

23 (The jury was excused from the courtroom).

24 THE COURT: All right, we'll be in recess for
25 a little bit.

1 MS. BYRD: Your Honor, would you give Mr.
2 Ashburne instructions?

3 THE COURT: Yes. Mr. Ashburne, have no
4 conversation with anybody about your testimony
5 during the break.

6 MS. BYRD: Thank you, Your Honor.

7 (Recessed at 10:35 a.m.).

8 (Resumed at 10:55 a.m.).

9 THE COURT: Thank you, ladies and gentlemen,
10 please have a seat.

11 All right, anything before we bring the jury
12 back out, from the plaintiff?

13 MR. COLLINS: No, sir.

14 THE COURT: Anything from the defense?

15 MR. GODDARD: Nothing further.

16 THE COURT: All right, let's ask the jury to
17 come in.

18 (The jury returned to the courtroom).

19 THE COURT: All right, ladies and gentlemen.

20 Come on back up, sir, and take the stand.

21 You are still under oath.

22 Mr. Goddard, I think we're ready for your
23 cross examination.

24 MR. GODDARD: May it please the Court.

25 THE COURT: Yes, sir.

1 CROSS EXAMINATION BY MR. GODDARD:

2 Q Are you ready?

3 A Yes.

4 Q Mr. Ashburne, it is not generally an accepted
5 banking practice for a bank to get involved in the
6 day to day operations of its customers, is it?

7 A No, it's not.

8 Q And more specifically, it is not a generally
9 accepted banking practice for a bank or its
10 attorneys to be involved in negotiation or drafting
11 of its customers' leases, is it?

12 A No, it is not.

13 Q And it is also not a generally accepted
14 banking practice for a bank to be telling their
15 customer whether a particular offer on a commercial
16 property is a good deal or not, is it?

17 A No, it is not.

18 Q Now, you would agree with me, Mr. Ashburne,
19 that a note contains certain financial information
20 that would not be publically available, is that
21 correct?

22 A Generally speaking, yes, but in the context
23 that you're talking about, which is when they
24 talked with the realtor from the auction company, I
25 think the bank had a right to protect its

1 collateral at that point.

2 Q I understand that's your opinion on that, Mr.
3 Ashburne, we'll get to that, but I just want to be
4 clear that the exact amount owing on a note is not
5 public information, is that correct?

6 A Once again I will give you the same answer.
7 Under normal circumstances, no, the bank would not
8 disclose that information but in this particular
9 case I believe they had the right to do so.

10 Q Okay. Mr. Ashburne, I appreciate your
11 wanting to tell your opinion but if you would just
12 listen to the question and just answer the question
13 that's being raised. Is the exact amount of the
14 note public information?

15 A It is not public information but there is no
16 law that says they can't disclose it.

17 Q Okay. And the maturity date on a note is not
18 public information, correct?

19 A There is a possibility that it could be if
20 the terms and conditions of the note are disclosed
21 in the mortgage and the mortgage were filed at the
22 courthouse as a matter of public record.

23 Q But in this specific case the maturity date
24 in the modification agreement certainly would not
25 be public record, would it?

1 A The maturity date, I don't believe was stated
2 in the mortgage, no.

3 Q Okay. So, that would not be public
4 information, correct?

5 A Generally that would not be public
6 information but there again, I believe the bank had
7 the right to disclose it only to the people they
8 were talking to, that they were planning to sell
9 the collateral to.

10 Q And, Mr. Ashburne, would you agree with me
11 that the bank's decision whether or not they are
12 going to renew the loan, that is not public
13 information either, is it?

14 A Once again that's correct.

15 Q Okay. And you have testified that there are
16 no privacy laws or anything like that you're aware
17 of that prohibit the exchange of this information
18 to third parties. Is that correct?

19 A That is correct.

20 Q Okay. But you would agree with me that the
21 standard practice in the commercial banking
22 industry is to treat this private information as
23 confidential, is that correct?

24 A Once again I will respond that in the normal
25 circumstances you are correct but these were not

1 normal circumstances. We had someone that was
2 about to go forward, sell collateral, and I believe
3 that the rights of the bank to call that auction
4 company and discuss it with them to prevent an
5 embarrassing situation for the auction company, I
6 might add, warranted their disclosing that
7 information.

8 Q But the answer to my question is generally
9 that information is not shared under standard
10 banking practices, is that correct?

11 A As long as we use the term generally, yes.

12 Q Okay. Let's talk a little bit about the
13 auction company. Do you remember testifying at
14 your deposition that in your, I believe you said 38
15 years as a banker that you have never affirmatively
16 called somebody and released the confidential
17 information we're talking about today?

18 A I do recall that but you've got to remember I
19 was a credit administrator, I wasn't the loan
20 officer, so generally I would not have been talking
21 to the customers of the bank.

22 Q Well, you have already testified to this
23 jury, Mr. Ashburne, that you were directly involved
24 with two other auctions, correct?

25 A That is correct.

1 Q And in those two auctions you didn't call and
2 affirmatively state the confidential banking
3 information of your customers without their
4 permission, did you?

5 A Once again I was a credit administrator
6 during both of those auctions, I was not the
7 contact officer. I did have meetings with those
8 people. There was no need to call those people
9 because they came forward with their attorneys, all
10 of the information regarding the notes were already
11 disclosed to them, so why would I need to have that
12 conversation with them?

13 Q My question is, and you are welcome to
14 explain, again, but please answer the question
15 first. In your 38 years as either a credit officer
16 or a loan officer or an employee of the bank did
17 you ever make any affirmative calls to an auction
18 company and release this confidential financial
19 information?

20 A I did not.

21 Q And you have testified today that you did not
22 find anything wrong with the bank's interaction
23 with the auction company. I think you said over
24 and over they had the right to do that. Is that
25 correct?

1 A That is correct.

2 Q Mr. Ashburne, that is not what you testified
3 to at your deposition, is it?

4 A You will have to remind me.

5 Q Okay.

6 MR. GODDARD: Your Honor, may I approach?

7 THE COURT: Yes.

8 MR. GODDARD: This is the deposition of Stan
9 Ashburne taken July 1, 2012, at our offices in
10 Columbia.

11 Thank you, Your Honor.

12 BY MR. GODDARD:

13 Q I'm going to bring you a copy of this and I'm
14 going to let you hold onto this for a second, okay?
15 I'm going to direct you, please look at page 100 of
16 that deposition and I'm going to direct you down to
17 line 19 of that deposition. I'm going to read this
18 and I want you just to tell me whether I'm reading
19 this correctly, okay?

20 My question is, "Regardless of your thoughts
21 as to the credibility of the auction company, what
22 regulation, what privacy regulation --"

23 Your answer, "They should not -- Wait, let
24 me finish my question. Go ahead. What privacy
25 regulation allows you to disclose those aspects,

1 the balance of the note and the terms, that you're
2 not going to renew the note? We're talking
3 hypothetical here. I see nothing in writing.
4 Hypothetically?"

5 I'm sorry. My question, "Hypothetically,"
6 and the answer, "The bank should not disclose that,
7 no. Okay, if they did disclose that and I think
8 you said earlier in your opinion that the borrower
9 should release that information but if they didn't,
10 what allows, what regulation allows the bank to
11 release that information?" The answer,
12 "Hypothetically we have no knowledge that anybody
13 in the bank released that information but they
14 should not release that information without
15 discussing it with the borrower first."

16 Did I read that correctly, Mr. Ashburne?

17 A That is correct.

18 Q And then I ask you to turn to page 2.

19 A Page 2?

20 Q Yes. And ask you to refer to page, line six
21 of page, I'm sorry, 102, I apologize. That is my
22 fault, 102.

23 A Okay.

24 Q I'm going to start on line 6 and please let
25 me know if I read this correctly. My question, "I

1 was going to get to that. What discussions, have
2 you in your experience in 38 years as a bank
3 expert, banking officer and credit officer, ever
4 disclosed to an auction company that the property
5 and underlying note is not going to be renewed?
6 No. Would any of those disclosures follow normally
7 accepted banking practices? There again," your
8 answer, "There again we're talking hypothetical
9 because I don't know what transpired.
10 Hypothetically? Yes. All right. No."

11 Now I'm going to ask you to move to page 104.
12 I'm sorry, did I read that last part correctly?

13 A Yes, you did.

14 Q Move to page 104. Move down to line 10 and
15 you see in the middle of that -- well, I will read
16 the whole thing. Move up a to line eight so there
17 is no confusion and I can give the full question.
18 Please let me know if I read this correctly. "I
19 don't have to answer the question, the difference
20 in your hypothetical the auction company makes the
21 call. In this case in my hypothetical or the facts
22 of the case, as we want to say, Wayne Lovelace made
23 the call, and there is a clear difference there,
24 isn't there?" Your answer, "There is nothing
25 wrong, if he finds out that the property is being

1 auctioned I think he's got every right to find out
2 what's going to happen with the property he's got a
3 note on. He can certainly call, he can certainly
4 call and ask what is going on. But you have
5 already stated that even that call, he can't
6 release confidential information? I don't know
7 that he released confidential information. But if
8 he did would it be improper? I have already said
9 that, hypothetically, if he released confidential
10 information, yes, that would be improper."

11 Did I read that correctly?

12 A Yes, you did.

13 Q Mr. Ashburne, you have also given this jury
14 some opinions as to whether the interactions of
15 First South Bank with Lincoln-Harris and their
16 purchasing this note was proper. I believe you
17 said you did not find or you testified that you did
18 not find any of their interaction with
19 Lincoln-Harris improper because it was a negotiable
20 instrument. Is that correct?

21 A Yes.

22 Q But that again is not what you testified to
23 at your deposition, is it?

24 A There again would you like to point me to
25 where my deposition was --

1 Q Well, first I would like to ask you the
2 question. To your knowledge --

3 A I don't recall saying anything about it not
4 being proper.

5 Q Well, I'm going to now ask you to turn to
6 page 83 of your deposition. I'm going to move you
7 to line 9 of that page and I'm going to ask you if
8 I read this correctly, okay? "Do you think under
9 normally accepted banking practices that a bank
10 that has direct knowledge of a purchaser, of an
11 entity's attempt to purchase the property within a
12 short time span prior to approaching the bank to
13 purchase the note, does the bank have any duty
14 under normally expected," it should be accepted but
15 it says expected, "banking practices to inform the
16 borrower that we're about to disclose confidential
17 information to this individual that was attempting
18 to purchase the property," and you answered, "As I
19 stated before, it is a negotiable instrument. The
20 bank has the right and the authority to sell that
21 note if somebody approaches them, if they want, if
22 they so desire. But --" and I said, "Sorry, go
23 ahead. What you're wanting to know is did they
24 give them any confidential information. I don't
25 know. I don't know whether they gave any

1 confidential information or not. Well, they gave
2 them, or for the sake of argument today let's say
3 they did give them confidential information,
4 including the amount of the note. So you're
5 telling me that they did give them the
6 confidential, I didn't, that is the way you're
7 wording the question." And my question was, "I
8 said hypothetically," and the answer was,
9 "Hypothetically," and my question was, my exact
10 word, "Okay." Finally got to the question, "If
11 they did give them confidential information would
12 that have been proper?" And your answer, "If they
13 gave them, hypothetically, that information, no,
14 that would not have been proper."

15 Did I read that correctly?

16 A Yes, you did.

17 Q Okay. I'm going to now ask you to move to
18 page 85, line 12. Please let me know if I read
19 this properly. "Let me ask this. If they also
20 gave confidential information that, not just the
21 amount of the note, but whether the note was going
22 to be renewed, would that be confidential
23 information?" Your answer. "That's, that's
24 hearsay or hypothetical information, and no, it
25 would not be acceptable but we have no written

1 evidence that was done, to my knowledge. To your
2 knowledge you have seen no written evidence or no
3 evidence in this case that Lincoln-Harris was told
4 that First South Bank was not going to renew this
5 loan? I have not seen anything in that regard. If
6 they made that knowledge, hypothetically, there
7 again we're hypothetically, hypothetically that
8 would have been improper?" And your answer, "That
9 would not have been right."

10 Did I read that correctly?

11 A Yes, you did.

12 Q Okay. And finally I would like to ask you to
13 turn to page, one more time, 87, line 16.

14 A Which one, excuse me?

15 Q Page 87, line 16.

16 A Okay.

17 Q And I will move up to 14 so I read the whole
18 question. "I don't have to agree or disagree but
19 I'm saying for the stake of argument it's a
20 negotiable instrument. I understand. However, to
21 say that is a negotiable instrument doesn't change
22 the normal accepted banking practice of releasing
23 confidential information? Hypothetically if that
24 is what was done, no, but we have no proof. I have
25 not seen any written evidence of that and I have

1 already stated that to you. And hypothetically
2 although they have the right to sell the note, if
3 they did give this confidential information as to
4 the term and as to the amount of the loan, you can
5 see the negative aspect that would have had on the
6 borrower? Hypothetically, like I said, that is
7 hearsay. I have not seen anything in writing that
8 happened, and you are correct."

9 Did I read that correctly?

10 A Yes.

11 Q Mr. Ashburne, from hearing all that
12 deposition testimony it is clear that if the facts,
13 at the time you gave the deposition you didn't have
14 all the facts, you didn't have all the facts of the
15 case, is that correct?

16 A At that point I did not have those facts
17 before me, that's correct.

18 Q Okay, but you agree with me, as you sat here
19 for now going on almost a week, you have heard
20 evidence that Mr. Wayne Lovelace did affirmatively
21 make a call to the auction company, correct?

22 A Yes.

23 Q And he did release confidential information.
24 Correct?

25 A That's correct.

1 Q And you would agree with me that in Mr.
2 Lyerly's interaction with Lincoln-Harris he did
3 release that, he did release some confidential
4 information on the note, is that correct?

5 A Correct. Would you like a further response?

6 Q No. Mr. Ashburne, just like Mr. Barksdale,
7 you are being paid for your testimony today, is
8 that correct?

9 A Yes.

10 Q Okay, and you, and you're actually a personal
11 friend of Mr. Lyerly, aren't you?

12 A Yes, I am.

13 Q Okay. And Mr. Lyerly actually assisted you
14 in getting your job with South Trust, is that
15 correct?

16 A He did so, yes.

17 Q And, Mr. Ashburne, you have actually only
18 been asked to serve as an expert witness in one
19 other case, is that correct?

20 A Actually two other cases.

21 Q Okay. At the time of your deposition it was
22 only one other case, is that correct?

23 A I believe that's correct.

24 Q And at the time of your deposition in June
25 of, I'm sorry, August of this year, or I said that

1 wrong, let me make sure I'm correct on that, on
2 July of this year, I apologize, July 11th, at that
3 time the only other client you have ever been asked
4 to serve as an expert witness for was also First
5 South Bank, is that correct?

6 A That is correct.

7 MR. GODDARD: I beg the Court's indulgence
8 just a second.

9 THE COURT: Yes, sir.

10 MR. GODDARD: Mr. Ashburne, thank you very
11 much for your time. I have no further questions.

12 THE COURT: Anything on redirect?

13 MR. FLOYD: If it pleases Your Honor.

14 REDIRECT EXAMINATION BY MR. FLOYD:

15 Q Mr. Ashburne.

16 A Yes.

17 Q Did anything Mr. Lovelace told the auction
18 company cause any harm or loss to South Causeway,
19 that you're aware of?

20 MR. GODDARD: Object to the form. It is also
21 a legal conclusion.

22 THE COURT: Overruled. I don't think it's a
23 legal conclusion.

24 Q Go ahead and answer the question.

25 A Ask the question one more time.

1 Q Yes. Did anything Mr. Lovelace told the
2 auction company, that you're aware of, cause any
3 harm or loss to South Causeway?

4 A No, it did not.

5 Q Could you please explain your answer to the
6 jury, please?

7 A The questions that I was being asked by Mr.
8 Goddard in regards to improper does not mean it was
9 illegal. They did have the right to do so, there
10 was no law prohibiting them from giving that
11 information, so perhaps the term improper does not
12 mean they could not disclose that information. I
13 don't know of anything that, that Wayne Lovelace
14 did that was improper when he was talking, excuse
15 me, not the word improper, that was against the law
16 by disclosing that information and once again he
17 had the right to protect the bank's collateral
18 position.

19 Q And we have heard a bunch of portions of your
20 deposition that were read earlier. Those portions
21 you were asked about, do you have a different
22 opinion now about banking practices and procedures
23 concerning commercial loans and information?

24 A Since that time I have visited with the bank
25 I worked for, I met with the compliance officer and

1 the secretary of my compliance committee. I cannot
2 find any banking regulation or law that prohibits
3 them from disclosing that information. When I was
4 discussing that with him I was referring to the
5 Fair Credit Reporting Act. I have reviewed the
6 Fair Credit Reporting Act, and the Fair Credit
7 Reporting Act only deals with consumer information,
8 it has no regard to commercial loan transactions
9 whatsoever.

10 Q So, the portions that were read earlier,
11 those answers that you were giving assumed the Fair
12 Credit Reporting Act applied?

13 A That is correct.

14 Q Are those conclusions here different today
15 because you found that it does not apply?

16 A Yes, they do, yes, that's correct.

17 Q In discussing the hypotheticals, during your
18 deposition you were asked some hypothetical
19 questions that seem to assume that confidential
20 information was disclosed. In your expert opinion
21 now here today was there anything confidential
22 about the information concerning the South Causeway
23 loan?

24 A In regards to the fact that the bank was
25 protecting the collateral, they certainly had the

1 legal right to do that, to talk with that
2 auctioneer and I believe that the information that
3 they gave was also legal and I don't believe it was
4 harmful to the overall auction.

5 Q Do you have any opinion as to whether or not
6 it was harmful to South Causeway?

7 A Excuse me, harmful to the borrower South
8 Causeway, correct.

9 Q And you performed additional research about
10 the facts of this case and the law by sitting
11 through this trial. Did you obtain more
12 information about the facts?

13 A Yes, I did, excuse me.

14 Q By sitting through this trial you obtained
15 more information?

16 A Yes, I did.

17 Q Do you feel like you have a more complete
18 picture now than you did when you gave your
19 deposition?

20 A That is correct. I have reviewed a lot more
21 documentation since becoming part of the trial,
22 that is correct.

23 Q How much are you charging for your testimony
24 here today, Mr. Ashburne?

25 A My testimony today is at \$75 an hour, it was

1 \$75 an hour for appearing on the witness stand, for
2 depositions, and \$30 an hour for review of
3 documents.

4 Q And do you plan on submitting a bill to Mr.
5 Lyerly at First South Bank?

6 A I plan on submitting a bill to the law firm.

7 Q Okay.

8 A That's who hired me.

9 MR. FLOYD: The Court's indulgence, please.
10 Nothing further, Your Honor, thank you.

11 THE COURT: All right, anything further?

12 MR. GODDARD: Briefly, Your Honor.

13 RECROSS EXAMINATION BY MR. GODDARD:

14 Q Mr. Ashburne, I just want to be clear. Your
15 testimony appears to say unless the bank does
16 something criminal they can do whatever they want
17 in releasing that information. Is that what you're
18 trying to testify here today?

19 A I never said that, sir.

20 Q Well, if there is not a violation of the law
21 they can release it to whoever they want as long as
22 they are trying to protect their collateral?

23 A I don't think in the normal course of
24 business that they are out giving that kind of
25 information out. There was a definite need here.

1 We're talking about someone selling bank collateral
2 that they have a lien against, through other than
3 normal processes of selling real estate and I see
4 nothing wrong with what the bank has done in this
5 particular position. I don't know what more I can
6 state in that regard.

7 Q Okay. Mr. Ashburne, you stated here that
8 when you gave your deposition you didn't have all
9 the facts. Is that correct?

10 A That is correct.

11 Q But you would agree with me that on that
12 deposition you swore to tell the truth, is that
13 correct?

14 A I did.

15 Q Just like you did here today, is that
16 correct?

17 A That is correct.

18 Q And at that time you came right out and said,
19 and I think I have read it, that if they were to
20 release this private confidential information to
21 the auction company that would be improper?

22 MR. FLOYD: Your Honor, there has been no
23 statement it is confidential information, private
24 information but not confidential. Assuming facts
25 not in evidence.

1 THE COURT: All right. Sustained as to that
2 issue. You can reask the question.

3 Q Just to be clear, you stated that it would
4 have been improper, and please correct me if I'm
5 misstating your deposition testimony, improper for
6 Wayne Lovelace to disclose the amount of the note.
7 Is that correct?

8 A I said it was improper, I did not say it was
9 illegal.

10 Q Okay. And it was improper to --

11 A That was in my deposition, yes.

12 Q It was improper to tell whether they are
13 going to renew the note, is that correct?

14 A That is correct.

15 Q And it was improper to disclose the maturity
16 date on that note, is that correct?

17 A It was improper, yes, but it was not illegal.

18 MR. GODDARD: I don't have any further
19 questions. Thank you.

20 THE COURT: Thank you, sir. You may step
21 down.

22 (Witness excused).

23 THE COURT: Call your next witness.

24 MR. TYLER: Your Honor, may it please the
25 Court?

1 THE COURT: Yes, sir.

2 MR. TYLER: Your Honor, one final offer. We
3 would just like to publish to the jury the response
4 to request to admit number 13.

5 THE COURT: All right, sir.

6 MR. TYLER: I will begin reading on page 1.
7 These are the responses to plaintiff's request to
8 admit on behalf of defendant South Causeway, LLC.
9 Defendant South Causeway, LLC, by and through its
10 undersigning counsel makes response to request to
11 admit of plaintiffs pursuant to and in accordance
12 with Rule 26 and 36, South Carolina Rules of Civil
13 Procedure as follows. Question 13. Please admit
14 that Peggy Wheeler-Cribb on behalf of the defendant
15 executed the agreement dated April 10th, 2009, in
16 the presence of and after opportunity to confer
17 with its counsel, a true copy of which is attached
18 as Exhibit G. Response. Admitted.

19 Your Honor, we have nothing further.

20 THE COURT: All right, thank you, sir.

21 MR. TYLER: Your Honor, the only thing, if we
22 could maybe recess a minute to make sure we have
23 all our exhibits.

24 THE COURT: I'm going to send the ladies and
25 gentlemen, I'm going to get you to step back into

1 the jury room, there are matters of law I need to
2 take up, the parties are going to confer as to
3 their, what their position is. Please have no
4 conversation about the case.

5 MR. COLLINS: Judge, would you confirm to the
6 jury that you have excused me to go back to
7 Columbia for a matter I have to take care of?

8 THE COURT: Sure. I will address that in
9 just a little bit but right now I need you all to
10 step back to the jury room, and please have no
11 conversation about the case.

12 (The jury was excused from the courtroom).

13 THE COURT: Anything further?

14 MR. TYLER: We just need to make sure we have
15 all our documents in evidence, Your Honor.

16 THE COURT: All right.

17 I'm sorry, do you have something?

18 MR. COLLINS: May I be excused, Your Honor?

19 THE COURT: Yes, sir.

20 MR. COLLINS: Thank you.

21 THE COURT: And I anticipate starting back at
22 9:00 o'clock in the morning.

23 MR. COLLINS: Yes, sir, I'll be here.

24 THE COURT: Yes, all right.

25 MR. TYLER: We just want to make sure

1 everything is in.

2 THE COURT: That is what I was going to ask
3 you, if both sides would get with Henry and let's
4 just look, go over and make sure everything that is
5 supposed to be there is there and if there is
6 anything that was left out here, that is not in
7 evidence, that we remove it, okay?

8 MS. BYRD: Yes, Your Honor.

9 THE COURT: We'll be at ease while you all do
10 that.

11 MR. FLOYD: Thank you, Your Honor.

12 (Recessed at 11:30 a.m.).

13 (Resumed at 11:41 a.m.).

14 THE COURT: Here is what I think we need to
15 do. Bring the jury back out, I will explain to
16 them the situation that we have to go over the
17 matters of law at the end of the case, then we have
18 to go over jury charge and things of that nature.
19 Mr. Collins had that previous commitment. And so
20 I'm going to send them home with the understanding
21 and let them know when they come back tomorrow the
22 end is in sight, that tomorrow will be basically
23 argue and charge, they will get the case tomorrow
24 for their consideration, then I'm going to let them
25 go.

1 We'll take up the matters of law at the close
2 of all the evidence, then we'll probably break and
3 take, not a longer lunch like we did when we have
4 the jury, but we'll take lunch and we'll come back
5 and go over the charge and verdict form and all
6 that stuff.

7 Okay?

8 MS. BYRD: Yes, sir.

9 MR. FLOYD: Yes, Your Honor. I think before
10 we bring the jury back, we were going to move to
11 ask that some of the blowups be put in evidence
12 since they have been referred to rather heavily and
13 used.

14 THE COURT: Are they blowups of stuff already
15 in evidence?

16 MS. BYRD: Yes, sir.

17 MR. FLOYD: Yes, Your Honor. We wouldn't put
18 anything that's not already in.

19 THE COURT: I know that. I didn't know if
20 any of them were in evidence.

21 MR. FLOYD: I understand.

22 THE COURT: Standing on their own.

23 MR. TYLER: The emails, they are all in
24 evidence and those are just the blowups of what is
25 already in evidence.

1 THE COURT: They are clearly going to object
2 to that.

3 MS. BYRD: Yes.

4 THE COURT: I sustain their objection.

5 All right, let's bring the jury out, please.

6 (The jury returned to the courtroom).

7 THE COURT: All right, ladies and gentlemen,
8 I will kind of fill you in on what we've got going
9 on so you will obviously be aware.

10 You heard Mr. Collins mention and you see he
11 is not here right now, you heard him mention before
12 I excused you about his previous commitment. He
13 had a previous commitment. Of course we all,
14 everyone hopes that a trial will end as soon as it
15 can possibly end, and we anticipated, we thought it
16 would possibly end last week, he had that
17 commitment, we knew he had that commitment but
18 through no one's fault it is just that the trial
19 went a little bit longer than expected or had
20 hoped, so I told him last week that we understood
21 he had that commitment and that I would not allow
22 this to interfere with that because that was a
23 commitment he had. So, it is not going to be a
24 waste of court time and I hope you don't consider
25 it a waste of yours. I still have the matters of

1 law that I have to take up with the attorneys at
2 the close of the case.

3 And by the way, just on the record; the
4 plaintiff rests, is that correct?

5 MR. TYLER: Yes, Your Honor, the plaintiff
6 rests.

7 THE COURT: Okay. So, I still have the
8 matters of law that I have to take up at the close
9 of all the evidence and then I have to sit down
10 with the attorneys and talk about the charge, the
11 jury charge that I'm going to give you on the law
12 and the form of verdict, the verdict form that will
13 be used in this case. So, there is a fair amount
14 of work, a few hours left of work that we have to
15 do and I'm not going to have you sit here and waste
16 your time, and so here is what we're going to do.
17 I'm going to excuse you for the balance of today
18 and ask you to be back at 9:00 o'clock in the
19 morning, and here is what you can anticipate
20 tomorrow:

21 When you come back tomorrow morning the
22 attorneys will have an opportunity to address you
23 with their closing arguments. They will make their
24 final remarks and then I'm going to give you the
25 law that's applicable to this case and then when

1 that's completed the case will then be turned over
2 to you and you will begin your process of
3 deliberating and deciding this case. Okay?

4 So, as I excuse you this afternoon please ask
5 your friends, family or loved ones who are curious
6 about what's going on, let them know that more than
7 likely you are going to be able to let them know
8 all they want to hear about this case at some point
9 tomorrow but that for purposes of your role in this
10 case right now you still are not allowed to talk
11 about it. If you want to give your employer some
12 idea on what your situation is, again I hate to say
13 things with definite certainty because I can't
14 predict tomorrow, I can't predict how long it will
15 take you all to deliberate, I can't predict
16 anything, but barring anything unforeseen I would
17 anticipate that you will be excused from your jury
18 service at some point tomorrow, so you will go back
19 to your normal lives after that.

20 So, I hope you understand the situation we
21 have here and that it is not, and I'm not going to
22 say it is not an inconvenience because jury service
23 is not a convenient thing but the end is near and,
24 like I say, it should resolve tomorrow. So, we're
25 going to remain and continue to work, I'm going to

1 excuse you and ask you to be back in your jury room
2 at 9:00 o'clock in the morning and that is when you
3 should hear closing arguments and I will give you
4 the law. Okay?

5 So, everyone remain seated and, ladies and
6 gentlemen, we'll see you tomorrow morning at 9:00.

7 (The jury was excused from the courtroom).

8 THE COURT: All right. At this time, then, I
9 will take up any motions at the close of the
10 evidence.

11 MR. FLOYD: Your Honor, at this time First
12 South Bank renews its prior motion, and makes a new
13 motion for a directed verdict on the counter-claims
14 filed by South Causeway, LLC, which remain, which
15 by my calculation would include the counter-claim
16 for breach of contract, the counter-claim for
17 breach of contract accompanied by fraudulent act,
18 violation of the South Carolina Unfair Trade
19 Practices Act, fraud, constructive fraud,
20 misrepresentation, and tortuous interference with
21 contract. I believe that is correct, Your Honor,
22 and I would request the Court inform me if I am
23 wrong so that I can address everything in turn.

24 I also have another copy of the amended
25 answer and counter-claim if it would help the Court

1 in deciding these motions.

2 THE COURT: I've got it here. I've got the
3 copy you all sent to me.

4 MR. FLOYD: Okay. May it please the Court,
5 Your Honor, as an initial matter I would just like
6 to go through them in order to re-address and ask
7 the Court reconsider and also grant this new motion
8 for a directed verdict by First South Bank.

9 THE COURT: Let me, just so we can make the
10 record clear, you have filed a motion for
11 reconsideration?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: On the Court's rulings as it
14 relates to the fraud claim, the fraud related
15 claims and the claims and defenses based on acts
16 that occurred prior to the April 10, 2009 release?

17 MR. FLOYD: Yes, Your Honor, we did file a
18 motion to reconsider yesterday afternoon, I
19 believe.

20 THE COURT: All right.

21 MR. FLOYD: And so the record is also clear,
22 at this time First South Bank is also making a new
23 motion for a directed verdict at the close of all
24 the evidence.

25 THE COURT: Yes, okay.

1 MR. FLOYD: I believe they are somewhat
2 intertwined but at the same time I would like to
3 first go through the remaining counter-claims, if I
4 may.

5 As to the breach of contract claim, First
6 South Bank submits that there has been no evidence
7 of any breach of any obligation under the loan
8 documents which was triggered by the facts and
9 circumstances that we know. What we do know from
10 all the testimony is that the second interest
11 reserve deposit was to take place after the
12 infrastructure development began and subject to
13 certain conditions within the loan documents which
14 I believe speak for themselves and have been
15 acknowledged as speaking for themselves in the
16 answer or, excuse me, admitted answer by South
17 Causeway.

18 Under South Carolina law, for there to arise
19 a breach of contract action the party that is to be
20 held accountable for the breach must have had a
21 duty to perform and breach that duty. Generally
22 speaking, Your Honor, whenever the other party, in
23 this case South Causeway, to the contract has an
24 obligation to perform to give rise to the
25 obligations that are complained of as breached and

1 they don't perform their obligations there is no
2 duty to perform under the contract.

3 Our position, First South Bank's position is
4 it did what was called for under the loan document
5 and commitment letter and then it was none of the
6 actions necessary to give rise to the second step
7 in funding. I believe the testimony, First South
8 Bank would submit the testimony has been clear this
9 is a two part process, the acquisition to pay off
10 the pre-existing liens and acquire the property,
11 and then the second step was to actually develop
12 the infrastructure.

13 The actual development of the infrastructure
14 required certain conditions be met before either
15 the interest reserve, the additional interest
16 reserve deposit would be made or any advance be
17 made to pay for the costs. Neither of those
18 conditions happened here. First South Bank submits
19 there has been no evidence which could permit the
20 jury, a reasonable juror to find that those
21 conditions have been met and First South Bank had
22 an obligation to perform which it did not meet.

23 The second counter-claim, Your Honor --

24 THE COURT: I'm going to attack this a little
25 bit differently this time around.

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: Okay, that is the cause of
3 auction regarding breach of contract?

4 MR. FLOYD: Yes, Your Honor.

5 THE COURT: I'm going to allow the defense to
6 respond to that so that we don't end up with like
7 you making six arguments and then them coming back
8 and making six arguments.

9 MR. FLOYD: Yes, Your Honor, however the
10 Court would like to proceed.

11 THE COURT: That is the way we'll handle it,
12 so I will be back to you, Mr. Floyd.

13 MR. FLOYD: That's fine, Your Honor, Miss
14 Byrd can go ahead.

15 THE COURT: Anyway, Mr. Floyd, I will be back
16 with you in a minute and we'll just go back and
17 forth and take care of it, okay?

18 MR. FLOYD: Thank you, Your Honor.

19 MS. BYRD: Your Honor, South Causeway has
20 established the required element for breach of
21 contract, specifically with regard to the interest
22 reserve accounts as communicated in the loan
23 commitment letter and the loan agreement. It
24 provides that an interest reserve account would be
25 funded upon either the earlier to occur of

1 completion of the infrastructure and six months
2 and, Your Honor, we think that if that is
3 ambiguous, which that is what they claim, that is
4 not, I read it to be very clear.

5 THE COURT: Tell me how that's clear.

6 MS. BYRD: Well --

7 THE COURT: The earlier of, and then it gives
8 the connector and.

9 MS. BYRD: Okay.

10 THE COURT: How is that clear?

11 MS. BYRD: I think, "You can sit down the
12 earlier of ten minutes or when you're done
13 talking," that is clear to me.

14 THE COURT: You said or, this says and. You
15 see, it is not clear because it says the earlier of
16 completion of the infrastructure and six months.

17 MS. BYRD: Since we can agree, then, it is
18 not clear --

19 THE COURT: We --

20 MS. BYRD: -- it is a question for the jury.
21 I just wanted to --

22 THE COURT: It is not clear?

23 MS. BYRD: It is not clear, and ambiguities
24 should be resolved against the party that drafted
25 them, so I think that is a question for the jury.

1 The second is we have through our expert,
2 their expert, their testimony, our testimony
3 established that there was a breach of contract
4 based on the implied covenant of fair dealing.

5 Thank you, Your Honor.

6 THE COURT: You're welcome. I'm going to
7 respectfully deny your motion, Mr. Floyd, and this
8 is what kind of confused me a little bit last week.
9 We kept talking about two different things, two
10 different advancements, a reserve advancement
11 versus an advance to continue with the development
12 but that they were both, the confusion I had last
13 week was I thought you all were trying to say that
14 there was no conditions based on the reserve but
15 the truth is that both of these accounts being
16 funded were based upon the condition of the earlier
17 of the completion of the infrastructure and six
18 months, that is confusing. Had it said or, I
19 realize that is a small scrivener's situation,
20 however it does make it confusing and it could be
21 read the completion of the infrastructure and they
22 completed the infrastrucuter in two months, then you
23 go ahead and you fund it but if it took longer,
24 even if it didn't get completed at six months it
25 would be funded. It could be read that way even

1 though I don't think that was the intention. It
2 doesn't matter what I think, it is a question of
3 fact for the jury and so therefore I will
4 respectfully deny your motion as to breach of
5 contract.

6 Now, I don't know if you were about to
7 address the breach of contract with fraudulent
8 intent or whatever. Is that your next one?

9 MR. FLOYD: Yes, Your Honor. I would also
10 like to just note for the record that as an
11 additional ground on the breach of contract, we can
12 talk about the commitment letter, I believe that is
13 where the ambiguity is that you referenced, or
14 purported ambiguity.

15 THE COURT: I thought it was in --

16 MR. FLOYD: It is in the commitment letter, I
17 believe, and --

18 THE COURT: What does the contract say?

19 MR. FLOYD: The loan agreement I think is
20 clear as to the funding of the interest reserve
21 accounts and it contains a clause in it which, the
22 commitment letter as well, that says that the loan
23 agreement document controls over any others.

24 THE COURT: All right, then may I say show me
25 the agreement, then, because here is, this is the

1 basis of my ruling, because the ambiguity, and I'm
2 sitting here thinking that that language is in the
3 contract, not the commitment letter, but the
4 contract.

5 MR. TYLER: Your Honor, may I approach with
6 the agreement?

7 THE COURT: Yes, sir.

8 All right. Now, you all know I'm not going
9 to sit here and read this contract, so you need to
10 point me to a page and paragraph number.

11 MR. TYLER: Your Honor, may it please the
12 Court, may I? Section 4.1, which is on page three,
13 it provides --

14 MS. BYRD: Your Honor --

15 THE COURT: I can look on --

16 MR. TYLER: It deals with bank shall, it
17 deals with the first advance.

18 MS. BYRD: Your Honor, that is a totally
19 different issue. I think there is one, there may
20 be one in there but I haven't seen it, that deals
21 with the reserve account. We don't deny there are
22 conditions precedent to getting additional
23 advances, we can't deny that.

24 MR. TYLER: Your Honor, that is the way --

25 THE COURT: Well, if I may, then, Miss Byrd,

1 where in this contract does it separate out reserve
2 advancements versus development advances?

3 MS. BYRD: Well, it's in the commitment
4 letter and, Your Honor, and the note provides that
5 this is controlled by the commitment letter, the
6 loan agreement and the note and if there is
7 anything that is contradictory to it, then the loan
8 agreement would prevail. But there is nothing in
9 here that contradicts the requirement that interest
10 reserve fund be funded in either the event of six
11 months or the infrastructure, Your Honor, and it
12 would be a material change that was represented to
13 them and there has been no testimony that the loan
14 agreement somehow provides that they don't have to
15 comply with the terms of the commitment letter. In
16 other words, they have testified it should be
17 absolutely consistent, and if it is not consistent,
18 then there is a problem. Both experts said that,
19 and they can be read in a way that they are
20 consistent.

21 MR. TYLER: Your Honor, again I would argue
22 that under 4.1 it provides for the initial advances
23 and clearly the \$550,000 was a subsequent advance,
24 Section 4.2. It says each subsequent advance and
25 then goes through the construction requirements,

1 making it clear all those have to be met, and the
2 document does say the loan agreement controls over
3 all other documents.

4 MS. BYRD: It says at the beginning of that
5 article, Your Honor --

6 THE COURT: 4.2.

7 MS. BYRD: Well, the beginning of Article 4,
8 the obligation of bank.

9 THE COURT: What page are you on?

10 MS. BYRD: I'm sorry, page 3, Your Honor.

11 MS. BYRD: It specifically references the
12 commitment letter in that, the conditions as set
13 forth in the commitment letter.

14 MR. TYLER: Your Honor, I just assert this
15 clarifies any ambiguity that may be present in the
16 commitment letter as to how funding is supposed to
17 proceed.

18 THE COURT: Where? Show me the paragraph
19 where it says that if there is a conflict or an
20 inconsistency, that the loan document controls.

21 MR. TYLER: 9.10, Your Honor.

22 THE COURT: All right.

23 MR. TYLER: Page 18.

24 MS. BYRD: Your Honor, the note that forms
25 the basis of this action says the conditions for

1 future advances are terms and conditions of
2 commitment letter dated May 30, 2008, and of loan
3 agreement between borrower and lender of even date
4 herewith and are incorporated herein and made a
5 part hereof.

6 Again, at the bottom of this note it says
7 additional terms, terms and conditions of
8 commitment letter dated May 30, 2008, and of loan
9 agreement. This is the note that forms the basis
10 of their foreclosure action.

11 THE COURT: All right.

12 MR. FLOYD: The initial advance, Your Honor
13 Section 4.4.

14 MR. GODDARD: Page 7 and page 8, it doesn't
15 reference --

16 THE COURT: It's a factual issue for the jury
17 to decide.

18 MR. FLOYD: Okay. Thank you, Your Honor.

19 THE COURT: All right, the next one, breach
20 of contract.

21 MR. FLOYD: Accompanied by fraudulent act.

22 THE COURT: Accompanied by fraudulent act.

23 MR. FLOYD: Yes, Your Honor. May it please
24 the Court, Lee Floyd again for First South Bank.

25 Your Honor, this cause of action requires the

1 nine elements of fraud and I believe that in my
2 initial directed verdict motion I read through the
3 elements and I would like to read through all the
4 elements of fraud, if I may. It requires clear and
5 convincing evidence of each of the following.

6 A representation, falsity, materiality,
7 either knowledge of its falsity or reckless
8 disregard of its truth or falsity, intent the
9 representation be acted upon, the hearer's
10 ignorance of its falsity, the hearer's reliance on
11 its truth, the hearer's reliance, to rely thereon,
12 and the hearer's proximate injury. That is what it
13 takes for fraud and for the fraudulent act to
14 accompany a breach of contract is required for this
15 cause of action.

16 There must be some evidence that a reasonable
17 juror could find is clear and convincing evidence
18 of a fraudulent act on the part of First South
19 Bank. There is no evidence to support this and if
20 I may, I will quote from Turner versus Milliman,
21 which is a 2011 South Carolina Supreme Court case,
22 392 SC 116. "Evidence of mere nonperformance or
23 promise is not sufficient to establish either fraud
24 or a lack of intent to perform."

25 Your Honor, there must be clear evidence to

1 support a fraudulent act for both this cause of
2 action and also the fraud, constructive fraud and
3 misrepresentation.

4 THE COURT: Let's stay on this right now.

5 MR. FLOYD: Yes, Your honor. I'm just
6 referencing that generally. And it must accompany
7 the breach, it cannot go to the making of the
8 contract, that is not permitted under South
9 Carolina law. This must accompany any breach of
10 the contract which I believe, based on what we just
11 addressed, will concern the interest reserve
12 account.

13 Your Honor, there is no evidence of any
14 fraudulent acts by First South Bank to accompany
15 any kind of purported failure to fund the second
16 tranche, I believe it has been called, or injection
17 of interest reserve account funds. It cannot be
18 solely the breach of the contract, and First South
19 Bank submits there has been no evidence, much less
20 enough to allow, clear and convincing evidence for
21 a reasonable juror to find such is the case.

22 THE COURT: All right, Miss Byrd.

23 MS. BYRD: Yes, sir, Your Honor. We have
24 presented, we believe we have presented evidence of
25 breach of contract accompanied by fraud related to

1 the interest reserve account. The testimony of Mr.
2 Lyerly, Mr. Lovelace and their expert was that the
3 interest reserve account, the additional \$550,000
4 was never going to be funded until the
5 infrastructure was completed, that was their intent
6 at the time, it was not to fund it until the
7 infrastructure was completed and what was conveyed
8 to their customer was that it would be funded after
9 six months or when the infrastructure was
10 completed.

11 THE COURT: That is not what was conveyed.

12 MS. BYRD: Your Honor, it says, and it is
13 helpful maybe if I hand it to you so you can read
14 it.

15 THE COURT: That would be nice, it's your
16 motion, not mine.

17 MS. BYRD: Well, it's his.

18 THE COURT: I mean, you all have to provide
19 me with information I need to make decisions.

20 MS. BYRD: Yes, sir, Your Honor, I apologize
21 for that. And it is in paragraph F and all through
22 it -- I will stop and allow you to read it.

23 THE COURT: All right.

24 MS. BYRD: Your Honor, what that --

25 THE COURT: I know you read it, you read it

1 to say what it should have said.

2 MS. BYRD: Yes.

3 THE COURT: You're not reading it with what
4 it says.

5 MS. BYRD: I think it says upon the earlier
6 of X and Y.

7 THE COURT: Right.

8 MS. BYRD: Your Honor, if it meant that both
9 were required, then you wouldn't need the term upon
10 the earlier of.

11 THE COURT: I agree with you.

12 MS. BYRD: Okay. So we believe and our
13 position is and the evidence that has been
14 presented to the Court, that First South Bank did
15 not intend to fund that account until the
16 infrastructure was completed, and it is material to
17 the contract, it would have carried the loan for
18 three years.

19 And that leads to the next issue of fraud,
20 was that in January or February when she was
21 negotiating for the release of collateral they
22 represented to her that that was necessary to carry
23 the loan because the interest reserve account
24 wouldn't be sufficient, Your Honor, and our
25 position is if they had done that, then it would

1 have been sufficient and so what they told her,
2 that it was insufficient, that was false and it was
3 material to her agreement.

4 THE COURT: So, you are trying to say that
5 the breach is the fraudulent act?

6 MS. BYRD: No, Your Honor. The breach is --
7 well, we have two breaches. We've got the failure
8 to fund and the second is implied covenant of good
9 faith and fair dealing, which we have established
10 with all of Lincoln-Harris and all the auction
11 company, and all that conduct goes to their good
12 faith and fair dealing.

13 THE COURT: We're talking fraud right now.

14 MS. BYRD: I know but you asked me if the
15 breach was the same as the fraud, and so --

16 THE COURT: No, I'm saying, you're saying
17 that the fraudulent act is their breach by not
18 funding the reserve fund.

19 MS. BYRD: Well, and their intent to not do
20 so and their representation that in 2009 it was
21 necessary for her to pay them another 300 to be
22 applied to an interest reserve account.

23 THE COURT: You keep referring to their
24 intent, intent not to do so, okay? I'm sure their
25 position is that this condition F wasn't met, which

1 is why they didn't fund the reserve fund. I know
2 you all disagree with that but how is that a
3 fraudulent act? You have to show that when they
4 entered into this they had no intention of funding
5 that reserve fund.

6 MS. BYRD: And that is exactly what we
7 believe the testimony has been, is that they didn't
8 plan to fund this until the infrastructure was in.

9 THE COURT: Correct, correct. You see, you
10 gloss over that like that is not important. If
11 their position is that this contract means that
12 before there is any further funding the
13 infrastructure must be completed, then that is not
14 a fraudulent act. It has to be, a fraudulent act
15 has to be with the intent to defraud, "We went into
16 this because we were going to set her up to fail,
17 we were not, we knew we weren't going to fund it
18 and even if she had completed the infrastructure we
19 weren't going to fund it."

20 MS. BYRD: Well, Your Honor, not necessarily
21 but what I think that the issue is, that was what
22 was represented to Miss Peggy, that it would carry
23 the loan for three years and through other evidence
24 we have introduced that that 1.5 that they are
25 saying was for infrastructure was held back because

1 we didn't meet our condition. It was actually the
2 amount they couldn't sell through a participation
3 agreement. So, Your Honor, we do think we have met
4 our burden establishing fraud and again not just in
5 that instance but later down the line they
6 represented it was necessary to put this in the
7 interest reserve when it clearly wasn't.

8 THE COURT: It was if their position was that
9 that account is not funded because of the earlier
10 failure to meet the conditions.

11 MS. BYRD: I think, again, Your Honor, it is
12 a factual question. We have presented evidence.

13 THE COURT: All right.

14 MR. FLOYD: Your Honor, if I may briefly?

15 THE COURT: Yes, sir.

16 MR. FLOYD: I think you have hit the nail on
17 the head. I believe that the facts from their
18 point of view showed that our, First South Bank
19 didn't fund the second portion of the interest
20 reserve account, there is a disagreement obviously
21 over the documents, but there were conditions for
22 both parties and First South Bank has never, no one
23 that I have heard testify says we have not funded
24 the interest reserve account if those two acts had
25 occurred.

1 THE COURT: Miss Byrd, I've got to ask you.
2 You threw me a little bit when you made that
3 comment. I don't recall hearing testimony from
4 anyone from the plaintiff's witnesses that said
5 they never intended to fund that reserve account.

6 MS. BYRD: Oh, no, I'm sorry if that was the
7 impression that I gave the Court. What I was
8 trying to say is that they testified that it was
9 never their intent to fund that interest reserve
10 account until the infrastructure was completed.

11 THE COURT: All right, I've got you.

12 MS. BYRD: Also, Your Honor, I just want to
13 point out that the other instance of fraud we'll
14 argue, if the Court allows us, is that the bank
15 terminated the loan, and Mr. Lovelace testified,
16 "We never froze the loan." We impeached him with
17 his own testimony where he said it numerous times
18 and so, Your Honor, we believe we have presented
19 evidence of that, Miss Peggy's own testimony
20 establishes they did in fact terminate the loan.

21 MR. FLOYD: Your Honor, the second portion of
22 it is all I have ever heard testimony regarding
23 termination. I don't think anyone is going to
24 argue they didn't fund the initial loan as far as
25 the acquisition of the property and to pay off the

1 First Palmetto note and the prior lien they had on
2 lot 4. I would hope that is beyond dispute.

3 THE COURT: All right. I'm going to direct a
4 verdict with regards to the breach of contract
5 accompanied by fraudulent intent. I don't see
6 fraud in that issue and so I'm going to grant your
7 motion regarding that issue.

8 MR. FLOYD: Thank you, Your Honor. I assume
9 we're moving kind of in a chronological order.

10 The next counter-claim is for violation of
11 the South Carolina Unfair Trade Practices Act.
12 Your Honor, we continue, First South Bank continues
13 to submit to the Court there has been no evidence
14 of an unfair and deceptive act or practice
15 affecting the public interest beyond this
16 transaction. That is not enough in this commercial
17 development transaction to allow a juror, a
18 reasonable juror to find any violation of the Act.

19 Also, Your Honor, South Carolina law, there
20 is no violation of the South Carolina Unfair Trade
21 Practices Act where a party does what it is legally
22 permitted to do. First South Bank has not, and
23 there has been no evidence to the contrary, done
24 any act or commission which it was not permitted by
25 law to do. We heard testimony from their expert

1 Mr. Barksdale, while they may take issue about what
2 information was provided to the auction company,
3 there has been no evidence of any act or admission
4 or disclosure how of how they violated applicable
5 law. Mr. Ashburne was able to clarify his
6 testimony. It was based open incorrect assumption
7 as to this residential loan, I believe Fair Credit
8 Reporting Act, which does not apply. And it is
9 called the regulatory, there is also the regulatory
10 exception which we would submit we fall within as a
11 bank that is authorized to do commercial
12 development loans.

13 And a second part of the directed verdict
14 motion is for the Court to direct a verdict on this
15 claim for treble damages which requires some
16 evidence or sufficient evidence in support of a
17 finding by the jury of an intent to violate the
18 Act, and there has certainly been no testimony that
19 they intended to do anything that would
20 intentionally be an unfair and deceptive trade
21 practice.

22 THE COURT: Miss Byrd?

23 MS. BYRD: Yes, sir, Your Honor. We believe
24 we have submitted sufficient evidence of violation
25 of the Unfair Trade Practices Act. We have

1 submitted substantial testimony about the
2 disclosures made to the auction company, and their
3 own expert testified that that was improper. Our
4 expert testified that it was improper, Mr. Lyerly
5 and Mr. Lovelace both testified that was
6 confidential information that shouldn't have been
7 revealed.

8 Your Honor, the evidence also establishes
9 through Mr. Lyerly that they allowed Lincoln-Harris
10 to come and review the confidential bank file.
11 They were aware Lincoln-Harris was a development
12 company, they were aware Lincoln-Harris was out
13 seeking zoning, I'm not sure about that, but he did
14 say he was aware that they were out meeting with
15 anchor, proposed anchor tenants and that all that
16 was happening at the same time as the auction, Your
17 Honor, and we believe that is an unfair, deceptive
18 act under the Unfair Trade Practices Act.

19 MR. FLOYD: Your Honor, if I may?

20 MS. BYRD: And there is no requirement under
21 the Act of fraud or criminal conduct, Your Honor,
22 and the effect of the public interest is proved by
23 the fact that it happened twice just in this case
24 and that they have no policy or procedure with
25 regard to disclosure of information to third

1 parties.

2 THE COURT: What, now? Mr. Floyd, you
3 mentioned the Act says you've got to show that they
4 have done something they were not legally permitted
5 to do.

6 MR. FLOYD: Yes, Your Honor.

7 THE COURT: All right, where did you get that
8 language?

9 MR. FLOYD: It rises in Calcaterra versus
10 City of Columbia, 315 SC 196. It is a case that
11 addressed both a purported breach of the implied
12 covenant of good faith and also a purported
13 violation of the UTPA, on the charge of water
14 rates, different amounts, I believe residents
15 versus nonresidents, and it is stated there, Your
16 Honor, the Court went into the fact that the City
17 of Columbia was permitted to charge certain rates
18 and there was no prohibition against it, I believe,
19 and I believe no prohibition against charging
20 higher rates for nonresidents, so it was permitted
21 activity. I can re-read the cite again if it would
22 help the Court.

23 THE COURT: I've got the cite. I can't
24 operate this computer. Well, I can but I don't
25 have my password to WestLaw.

1 MR. FLOYD: While you are looking at this,
2 Your Honor, as I understand it, the claim is a
3 violation, it concerns the disclosure and potential
4 marketing of the property by a third-party
5 developer Lincoln-Harris. One of the things every
6 one of these causes of action, including the UPTA
7 claim, required is a showing of some evidence
8 showing a finding of proximate cause between the
9 act complained of, the alleged violation and the
10 injuries. There has been no testimony, no evidence
11 at all as to some link between what Lincoln-Harris
12 was at least purportedly doing in soliciting the
13 interest of other tenants, and the damages that
14 we're here about, which I don't completely
15 understand but nonetheless, as to the disclosure
16 there and the discussions with Lincoln-Harris, I
17 don't see any testimony of proximate cause as far
18 as an unfair practice and some type of damages.

19 I believe it is also important to keep the
20 mind, Your Honor, these are two commercial parties
21 in an arms length transaction without a fiduciary
22 duty, as the Court has already found.

23 MS. BYRD: Are we still on Unfair Trade
24 Practices Act?

25 MR. FLOYD: I believe so, I have not left it.

1 THE COURT: All right, Miss Byrd.

2 MS. BYRD: Yes, sir. With regard to
3 Calcaterra versus City of Columbia, that case, we
4 argue it doesn't even apply. That is dealing with
5 a state regulated body but additionally what that
6 case says is there can't be a violation of the Act
7 if they are doing something they are legally
8 permitted to do but it doesn't follow that just
9 because it is not illegal or prohibited that you
10 are permitted do it, Your Honor.

11 In fact what the, what the Act says, it is
12 not necessary there be fraud or criminal activity,
13 Your Honor. The case says under the Unfair Trade
14 Practices Act nothing in the state Unfair Trade
15 Practices Act shall apply to actions or
16 transactions permitted under law, administered by
17 any regulatory body or officer acting under
18 statutory authority of this state or the United
19 States or actions or transactions permitted by any
20 other South Carolina state law.

21 So, they have said there is no law on point
22 and then argued that this case applies, so there is
23 no law that would permit them to do this but yet
24 they are arguing that this case applies and that
25 the acts we complained of can't form the basis of

1 an Unfair Trade Practices Act claim, Your Honor.
2 They can't have it both ways.

3 THE COURT: All right.

4 MR. FLOYD: If I may briefly, Your Honor,
5 cite, this is from Noak Interprises versus County
6 Coroner, 290 SC 475, "An unfair deceptive act or
7 practice that affects only the party to a trade or
8 a commercial transaction," and that is the end of
9 the quote. Your Honor, we submit that it is not
10 sufficient to find a violation of the SCUTPA. This
11 is, I think, by all accounts a fairly unique loan
12 and it is specific to the terms and conditions that
13 happened here. This is not your standard SCUTPA
14 complaint among consumers and multiple transactions
15 and there has been no evidence to support a finding
16 to that effect.

17 MS. BYRD: Your Honor, one brief note. Their
18 testimony is they are a bank that has regularly
19 transacted business in all the counties of our
20 state, so I think it is clear that their practices
21 and policies do impact the public, or lack thereof,
22 I'm sorry.

23 THE COURT: All right. I'm going to
24 respectfully deny your motion as to the Unfair
25 Trade Practices Act.

1 MR. FLOYD: Thank you, Your Honor. to
2 clarify and make sure it is clear to ourselves and
3 on the record, are you denying our motion also as
4 to the claim for a willful and knowing violation by
5 First South Bank, which is a necessary precursor to
6 any kind of treble damages?

7 THE COURT: I don't think it could be
8 anything but that. This wasn't a situation where
9 that information was accidentally disclosed. I
10 mean, they made the phone call, they disclosed the
11 information. It may be that there is nothing wrong
12 with that but I think that is a question the jury
13 has to answer but I think, how could it not --

14 MR. FLOYD: Your Honor, I believe the willful
15 and knowing finding requires that there be some
16 evidence of clear and convincing evidence, I would
17 submit, that First South Bank knew what it was
18 doing was unfair trade practice and then
19 intentionally did it.

20 THE COURT: Yes.

21 MR. FLOYD: Not the fact that they intended
22 what they did. I would submit that there is a
23 second part to that.

24 THE COURT: You're right.

25 All right, Miss Byrd?

1 MS. BYRD: Your Honor, with regard to that, I
2 think you're correct, it could not be anything else
3 but willful and knowing. The bank by their open
4 testimony had been in the banking industry for 38,
5 44 years, Your Honor, they knew that they were not
6 allowed to disclose this information, that it was
7 confidential information and it shouldn't be
8 disclosed, and even the single instance of
9 deceptive practice is sufficient.

10 THE COURT: All right. I'm going to deny
11 your motion as to the Unfair Trade Practices Act.

12 MR. FLOYD: Thank you, Your Honor.

13 THE COURT: Next?

14 MR. FLOYD: I think, Your Honor, the fifth
15 counter-claim concerns the allegation of fraud,
16 constructive fraud and misrepresentation. It is
17 also the subject of our motion to reconsider which
18 we filed and served yesterday.

19 Your Honor, in this case we have already had
20 a finding there is no evidence of duress and no
21 fraudulent acts sufficient to be breach of contract
22 accompanied by a fraudulent act. I believe it is
23 very important that we remember the nine elements
24 that are necessary to establish fraud which I read
25 earlier. Based on the facts and evidence it is

1 undisputed that South Causeway was represented by
2 counsel at every important turn in this matter as
3 it concerns the loan documents, the actual loan
4 agreement and then the modification agreement.

5 As it relates to anything before then, and we
6 addressed this in the very beginning of the case,
7 any type of oral statement outside of those
8 documents, there had to be evidence of fraud in the
9 inducement. Fraud requires that the listener, the
10 person that is the purported victim of the fraud
11 have ignorance of its falsity, rely on its truth
12 and the right to rely thereon. Those are three
13 very important elements and in your normal
14 transaction they still must be established. But
15 whenever a party is represented by counsel and
16 everything that has been complained of as to the
17 ambiguity of the funding, versus the documents and
18 then the disclosure which post dates those
19 documents, we would submit that there can be no
20 fraud before then because everything was
21 ascertainable from the documents. We submit they
22 were clear.

23 We understand the Court's position on that.
24 There has been no duress that was the subject or
25 the result of anything First South Bank did and we

1 have talked about it at length. Any purported
2 breach wasn't a fraudulent act, it was just, "Our
3 position is that they didn't do what they needed to
4 to get that, to invoke the second stage of the
5 contract."

6 A failure of a future promise alone is not
7 enough to establish fraud. It is a very high
8 standard, it is much more than you just didn't tell
9 the truth to me, and especially in these
10 circumstances does it become clear why parties to
11 complex transactions that involve millions of
12 dollars and the developing of a substantial piece
13 of property avail themselves of counsel. Whether
14 or not she talked with her attorney about these
15 things or its attorney about these issues that they
16 now complain of is well beyond the scope of our
17 knowledge and definitely not in evidence.

18 THE COURT: All right.

19 Miss Byrd.

20 MR. GODDARD: Briefly, Your Honor.

21 THE COURT: Mr. Goddard.

22 MR. GODDARD: Your Honor, we think we have
23 shown sufficient evidence of fraud on several
24 different grounds. We feel that there were
25 misrepresentations made to Miss Peggy Wheeler-Cribb

1 that were fraudulent at the time they were made and
2 they showed the bank's present intentions. It was
3 their present intention, although the
4 misrepresentation was made, that they would see her
5 through the loan, that was fraud, that would appear
6 to be, that was not their intention at that time.
7 That was a future promise, it was not followed
8 through and they knew from their own testimony that
9 that was not going to be followed. They knew when
10 they approached her and said, "We're going to fund
11 a three year interest reserve account," they knew
12 at that time that was not their intention.

13 They knew when they went to her and said,
14 "We're terminating this loan for something you
15 did," that was not true. There was no evidence
16 presented to them throughout this whole time, and I
17 think this is important, Your Honor, as to the loan
18 documents, they tried to come up with some theory
19 of the abandonment of construction or some other
20 theory. There is, first of all no where is that
21 defined but more importantly if there was
22 abandonment in construction, per their own argument
23 the construction had not started and could not
24 start per their own agreement and what they did is,
25 Your Honor, what our position is, they, they

1 induced her to do this and when the Lowe's fell
2 through they said, "Let's find a reason to
3 terminate this loan," and they have said she asked
4 for this, Your Honor, they have said that
5 repeatedly, "She asked for this," but the only
6 evidence they showed shows that's not true at all.

7 What they really showed was they approached
8 her, and the email directly shows, "If that is what
9 you want to do, then fine." It is clear from Peggy
10 Wheeler-Cribb's testimony that she had no
11 intention, until they came up to tell her they were
12 going to freeze the loan, that she had no intention
13 to no longer develop the property. She said, she
14 even testified she was still looking for other
15 tenants and what they said to her is, "We have to
16 terminate your loan."

17 In December they voided their loan, that was
18 their intention, at that time that was their
19 intention. When they came to tell her they were
20 terminating their loan that was fraud. They didn't
21 have to terminate their loan. There is nothing in
22 the loan agreement that ever put any time limit on
23 Miss Cribb. Miss Cribb should have been allowed to
24 try to develop this property two years and six
25 months, in the time there would have been, but what

1 they said, "No, you haven't done it so therefore
2 we're terminating this loan."

3 And I believe, Your Honor, that was their
4 intent there and that was fraudulent, because
5 that's what these documents say and they knew it
6 wasn't her intention to do so and I think we have
7 shown significant evidence to that regard.

8 MR. FLOYD: Your Honor, if I may very
9 briefly. I have listed all the purported
10 representations that relate or somehow establish
11 fraud in this case. Every last one of them
12 predates both, well, most of them predate both the
13 loan agreement and the modification agreement but
14 none of them are after the modification agreement.
15 All the things complained of, seeing her through
16 the end of the development and through the end of
17 time with endless amounts of money is not in the
18 loan agreement, not in the commitment letter, not
19 in the modification. She would know what First
20 South Bank was obligated to do and South Causeway
21 should know based on those documents and I will
22 hand up for the Court, with the Court's permission,
23 this is page 3 of the modification agreement.

24 May I approach, Your Honor?

25 THE COURT: Yes, sir.

1 MR. FLOYD: That specifically sets forth what
2 the proceeds of the \$300,000 are going to. It
3 specifically lists the interest reserve account and
4 funding. Regardless of the dispute over whether or
5 not the money should have gone in the interest
6 reserve account, there can be no claim she had the
7 right to rely on an idea that it wasn't going
8 there. It is going there, it has to go there under
9 the agreement that was reviewed in front of counsel
10 by South Causeway and signed. We just get back to
11 this whole situation where any purported fraud
12 which still has to be clear and convincing
13 evidence, not just greater than, it all predates
14 these events and once it wasn't complained of is
15 not supported in the document.

16 THE COURT: All right.

17 MS. BYRD: Briefly, Your Honor, I want to be
18 clear we're on this same point. We never said the
19 documents don't say that but what the fraud was,
20 they came in and said, "First of all we're going to
21 terminate this loan but second of all you have to
22 re-up your interest reserve account because we
23 didn't fund it," and that, we said that is improper
24 and was fraudulent. They knew they were supposed
25 to fund it from the beginning and they didn't.

1 That is our position throughout the whole time,
2 they knew and it was their intent never to do so.

3 THE COURT: All right. Here is the thing.
4 First of all let me just address this comment about
5 we'll see you through to the end of the loan,
6 something like that. That is pure puffrey. That
7 doesn't rise to the level of fraud, that is no
8 different than if you go to a car dealership and
9 they say you buy your car from us, you will never
10 have to buy another car or worry again, we're going
11 to be here for you at every turn. Everybody says
12 that, that is nothing you can rely on, that is not,
13 that's puffrey.

14 Here is the thing I'm really struggling with.
15 This is a commercial loan transaction, it is, both
16 parties represented by counsel, both parties fairly
17 astute in this type, these types of dealings, not
18 the first time at the table for these parties.
19 Whether it is or not, they are all represented by
20 attorneys, by counsel. The documentation is what
21 it is. Fraud is you go into this with the
22 intention of defrauding.

23 Here is the situation that I believe I have
24 heard throughout this trial. This was one party
25 that had property and had plans to develop it,

1 obviously needed assistance financially, which is
2 what all developers do, so they go to a financial
3 institution. This is an institution that courted
4 this loan, they wanted this business. They met,
5 both sides, I believe, with the intention of
6 profiting from this relationship.

7 They entered into this relationship, maybe
8 prematurely, I don't know, but the bottom line was
9 once these, this relationship was entered into
10 contracts were drawn up, there is talk about cross
11 collateralization, they didn't want to do that,
12 didn't want to include lot 4, ended up having to
13 include lot 4, all these things. All of this is
14 all prior negotiating and dealing with it, so they
15 come to the table on that fateful day, whatever day
16 that was.

17 And here it is, I said this earlier, I said
18 this last week when we dealt with other motions,
19 here it is, here is the writings, whether you came
20 into this meeting believing this to be the case or
21 whether you didn't, this is it, "We've committed it
22 to writing, this is what we are willing to do." I
23 don't know if they were read or not but based on
24 Miss Cribb's testimony I don't believe she read
25 them, she was telling, her testimony was, "As they

1 were coming on the fax I was signing them, as they
2 were coming in on the fax I was signing then."

3 You know what, I did the exact same thing
4 when I bought my house. We all tend to do that but
5 that doesn't excuse us, the law requires that when
6 we enter into an arms length agreement and we sign
7 contracts, that we are purporting to know what is
8 in those contracts and we're agreeing to the
9 content of those documents.

10 This is a situation that both sides entered
11 into and for whatever reason it didn't go well, it
12 went south, lawsuit. Whoever bailed out, it
13 changes the whole complexity of it. Whether or not
14 the bank did anything wrong during the process once
15 it went south and they breached the contract or
16 didn't breach the contract or whether they
17 interfered tortuously with another contract or they
18 didn't, whether they violated the UTPA or whether
19 they didn't, those are all issues, no question
20 about it, but we're talking about fraud here, we're
21 talking about evidence that they entered into this
22 agreement with this party with the intent to
23 defraud her, and I don't think there is any
24 evidence to that, I don't think the evidence in
25 this case supports that. Clearly it doesn't

1 support it to the standard of clear and convincing
2 evidence and so I'm going to grant your motion with
3 regard to the fraud elements.

4 Next?

5 MR. FLOYD: Thank you, Your Honor. I believe
6 we have one last counter-claim remaining and this
7 is the claim for tortuous interference with
8 contract, which is to be distinguished from the
9 claim for tortuous interference with prospective
10 contract. This claim concerns and requires the
11 existence of a contract to be interfered with. It
12 requires a contract be breached, that the tortuous
13 interference actually caused the breach.

14 First South Bank submits there has been no
15 evidence or testimony that Vintage Auctions
16 breached its contract to conduct this auction.
17 There was no guarantee the property would be sold,
18 there was no disclosure as to any reserve amounts
19 outside of the company. They performed the
20 auction. He performed, "I believe we performed
21 under the contract," I believe, and don't hold me
22 to that quote exactly, but they believed they
23 fulfilled the terms of the contract. There has
24 been no testimony, no evidence showing that, or can
25 support a reasonable finding that Vintage Realty

1 didn't go through with its terms of the auction
2 agreement as owed to South Causeway and in that
3 regard, Your Honor, the unfair claim fails as a
4 matter of law and a verdict should be directed in
5 favor of First South Bank.

6 THE COURT: Miss Byrd.

7 MS. BYRD: Your Honor, we believe we have
8 addressed this sufficiently yesterday. There has
9 been no evidence that would change anything but
10 we'll argue it again. The point is she hired, she
11 had a binding and valid auction contract with this
12 company, which is in evidence. After interference,
13 direct interference and direction from Mr. Lovelace
14 beforehand, before that call they had all worked
15 together. He testified he used his professional
16 judgment, he worked with the borrower and they set
17 the reserve prices.

18 The original contract is in evidence. The
19 jury members will be able to see the prices were
20 then changed to reflect 4.8 million dollars for
21 each parcel, Your Honor, and when asked whether or
22 not he believed that he had breached the contract
23 he said, "I hope not." And, Your Honor, we would
24 allege there is a breach, if you don't use your
25 professional judgment, and there is no doubt about

1 it, that that didn't make sense to Mr. Thomas, that
2 is what he testified to, it didn't make sense to
3 Miss Peggy and, Your Honor, we do believe we have
4 established the tortuous interference with contract
5 sufficiently.

6 MR. FLOYD: Your Honor, if I may briefly,
7 again it goes to proximate cause. He also
8 testified that he received no bids. Reserve amount
9 which he testified, I believe was not disclosed to
10 anyone. There has still got to be a proximate
11 cause between the alleged tortuous conduct and some
12 damages. They went forward with the auction.
13 Regardless of whether or not they agreed with the
14 reserve price, none of the bidders knew it.

15 THE COURT: Let me ask, Miss Byrd, the
16 reserve prices that were talked about --

17 MS. BYRD: Yes, sir.

18 THE COURT: -- are those, those aren't
19 public, in other words, as the general public would
20 arrive at the auction, are those reserves known to
21 them as far as their entering their bid?

22 MS. BYRD: No sir, Your Honor, but you will
23 recall when I asked Mr. Thomas because, we fleshed
24 this out in the deposition but I wanted to make it
25 concise to the jury, it does in fact set where the

1 auctioneer can start the bidding, I asked him, I
2 said, "Does that affect where the auctioneer
3 starts? " If you have a reserve price of 4.8 you
4 wouldn't start below it.

5 MR. FLOYD: He also could start at zero. So,
6 there is also --

7 MS. BYRD: Excuse me. It was also testified
8 and is evidence in the record there has been bids
9 made before auction but it didn't receive any
10 attention, that is what the evidence says.

11 MR. FLOYD: Your Honor, there is no testimony
12 as to how it changed the approach of the actual
13 auction and the bidding. The only testimony has
14 been that the bids, potential offers received was
15 zero because there were no bids. That was the end
16 game at the end of it all.

17 THE COURT: Is there evidence in this record,
18 Miss Byrd, that Miss Cribb entered into this
19 agreement with the auction company and prior to the
20 allegations made against the bank, prior to the
21 bank getting involved at all, you said they had
22 arrived at some figures?

23 MS. BYRD: Yes, sir.

24 THE COURT: All right. Was there any, any
25 testimony or evidence as to what those figures

1 were? What was the entry level offer prior to the
2 agreement being offered?

3 MS. BYRD: 1.1 million.

4 THE COURT: So, they were going to start the
5 bidding at 1.1?

6 MS. BYRD: Yes, sir.

7 THE COURT: All right. I'm going to
8 respectfully deny the motion, there is a jury
9 question, there is a factual question.

10 Now, I know what you're saying, there were no
11 bids, there is no damages, there wasn't a breach of
12 the contract, the contract went forward. I
13 understand your argument there but I think it is a
14 question of fact for the jury to decide on whether
15 or not that alteration had an effect that
16 tortuously interfered with the contract, so I will
17 respectfully deny the motion.

18 MR. FLOYD: Thank you, Your Honor. I believe
19 there are two additional matters for the Court to
20 take up, one being based on the finding today and
21 what we, First South Bank has argued all along is
22 that the absence of any fraud makes the release and
23 modification agreement which I brought up valid and
24 enforceable between the parties in an arms length
25 transaction. In that regard we would ask you to

1 direct a verdict on this claim or action premised
2 on conduct before the modification agreement on
3 April 10th, 2009. I believe you remember it was
4 since the beginning of time, I think is the
5 language. We believe that that provision is valid
6 and enforceable as a matter of law and --

7 THE COURT: Could I see that? Is it in
8 evidence?

9 MR. FLOYD: Yes, Your Honor, it's in the
10 modification agreement.

11 If I may approach?

12 THE COURT: Is that the one you handed me
13 here?

14 MR. FLOYD: Yes, Your Honor. I would have to
15 find the specific provision but it is part of the
16 consideration. If I may, Your Honor, if I may
17 approach again, it is page two, paragraph three.

18 THE COURT: All right.

19 Miss Byrd?

20 MS. BYRD: Your Honor, in addition to the
21 fraudulent inducement claims, the direct claim,
22 which we understand that, which the Court just
23 heard, we also assert a cross-claim of unclean
24 hands, estoppel and unconscionability and waiver.
25 If I understand, we still have defenses to the

1 enforceability of that modification agreement, Your
2 Honor; so just because the fraud claim or breach of
3 a contract accompanied by fraud has been dismissed,
4 if the jury finds in our favor on unfair trade
5 practices that would certainly invalidate that
6 agreement under the doctrine of unclean hands.

7 MR. FLOYD: I'm confused, this is not the
8 first time, but under the SCUTPA that allows
9 damages, there has been no request to rescind any
10 of these agreements, it is not an affirmative
11 defense to a mortgage foreclosure action, it is a
12 matter for the Court to decide. These are
13 counter-claims, we ask the Court to rule on a
14 directed verdict on the enforceability of the
15 release which precludes the jury from awarding any
16 damages or finding in favor of South Causeway on
17 any cause of action on conduct prior to the
18 execution of the agreement which was done in the
19 presence of counsel and after the opportunity to
20 confer, which we have gone through the fraud claim
21 and the breach of contract accompanied by
22 fraudulent act that are crucial to this. All the
23 acts before the date that South Causeway executed
24 that agreement are irrelevant.

25 THE COURT: What acts, if any, postdate this

1 agreement?

2 MR. FLOYD: Your Honor, the meeting with
3 Lincoln-Harris.

4 THE COURT: Tortuous interference?

5 MR. FLOYD: Tortuous interference, Your
6 Honor.

7 THE COURT: UTPA, that's post.

8 MR. FLOYD: As long as the UTPA claim is
9 limited to the discussions with Lincoln-Harris.

10 THE COURT: That is what it is all about,
11 isn't it, that was where all the disclosure
12 occurred?

13 MS. BYRD: And the auction company.

14 THE COURT: And the auction company.

15 MR. FLOYD: Our position is as long as all
16 the theories that are going to be submitted to the
17 jury to decide post date that and are based on
18 things after, that's fine.

19 THE COURT: Here is, I guess I'm getting a
20 little confused, I'm looking at what is remaining
21 and everything that is remaining postdates this
22 agreement.

23 MR. FLOYD: Except for breach of contract,
24 Your Honor, if that is premised on the failure to
25 fund the interest reserve account the second time

1 that definitely predates the execution of that
2 agreement.

3 THE COURT: I thought there was a second
4 breach.

5 MS. BYRD: That's true, the unfair dealing,
6 Your Honor.

7 THE COURT: With regard to --

8 MS. BYRD: The Lincoln-Harris.

9 THE COURT: The Lincoln-Harris?

10 MR. FLOYD: Your Honor, we just had a lot of
11 talk about the interest reserve account and the
12 second funding and the --

13 THE COURT: I understand what you're saying.
14 Their claim for breach of contract on the original
15 documents.

16 MR. FLOYD: Yes, Your Honor.

17 THE COURT: Your position is based upon this,
18 that that would --

19 MR. FLOYD: Release.

20 THE COURT: -- release any claims regarding
21 that?

22 MR. FLOYD: Yes, Your Honor.

23 THE COURT: That is your position?

24 MR. FLOYD: Yes, Your Honor. The jury
25 shouldn't consider that when determining whether or

1 not --

2 MS. BYRD: Your Honor, he is asking you to
3 rule on a matter of law as to the enforceability of
4 that contract and I don't think a directed verdict
5 motion is proper. Number one, I think the Court
6 has already clearly established it will allow the
7 jury to make the findings of fact and will be bound
8 by those findings and then determine the
9 foreclosure action, and so that issue should be
10 decided based on the jurors' findings.

11 MR. FLOYD: Your Honor, our position, it
12 takes it out of their hands. They haven't
13 established, they have to establish that contract
14 is unenforceable, which is the evidence we have
15 gone over and over again, the jury should be bound
16 by the contractual agreement of the parties, that
17 it is a directed verdict.

18 THE COURT: Miss Byrd, is there an attack on
19 the enforceability of this contract?

20 MS. BYRD: Yes. I mean, there is, unclean
21 hands defense goes to that. In order to prevail on
22 the mortgage foreclosure they have to establish
23 they come to the court with clean hands and if the
24 jury comes back and finds they violated the Unfair
25 Trade Practices Act, that they breached the

1 contract, that they wrongfully terminated the loan
2 balance, that they would not be entitled to enforce
3 that agreement or the first agreement, Your Honor.

4 MR. FLOYD: Your Honor, those are issues you
5 will decide.

6 MS. BYRD: He is asking you to decide it
7 right now, Your Honor.

8 MR. FLOYD: Because I'm just asking that the
9 jury not consider its findings on facts that
10 predated the release. There was no breach of
11 contract before the release.

12 THE COURT: Hear me out. What you're asking,
13 what you're saying is that the legal issues have to
14 be decided first and that the Court is bound by the
15 legal issues.

16 MS. BYRD: The factual issues, Your Honor.

17 THE COURT: The factual issues?

18 MS. BYRD: Yes, sir.

19 THE COURT: Now, I'm not aware that this, I'm
20 not quite aware -- you have to ask the jury to
21 consider all the things that occurred, that
22 predated this to determine whether this is valid.
23 I'm not aware of anything in the evidence where the
24 validity of this agreement has been attacked.

25 MS. BYRD: Your Honor, we think --

1 THE COURT: Other than you all's position is
2 that as a whole they are not nice guys and anything
3 they did in relation to this thing should be
4 tossed.

5 MS. BYRD: Which, Your Honor, is the defense
6 of unclean hands, coming to this Court when it has
7 acted with unclean hands in the transaction itself
8 and, Your Honor, if they believe us and find for us
9 that is unclean hands and therefore that agreement
10 would be invalid. We have not sought a rescission,
11 that agreement would be invalid. They are here in
12 an equitable action, Your Honor, we have asserted
13 an equitable defense, which is for Your Honor to
14 decide based on the findings of the jury.

15 MR. FLOYD: The findings are as to the
16 counter-claims, Your Honor.

17 THE COURT: That is as to counter-claims, not
18 as to equitable claims.

19 MS. BYRD: Well, if we had bifurcated this,
20 Your Honor, but we have tried both claims --

21 THE COURT: The jury only decides issues that
22 are common to both.

23 MS. BYRD: Exactly, and we believe that our
24 Unfair Trade Practices Act claims, our breach of
25 contract claims all go to the unclean lands

1 defense, Your Honor, so once they make a finding,
2 then the Court will decide.

3 MR. FLOYD: Not a finding as to an equitable
4 defense, Your Honor, that is for you.

5 MS. BYRD: That is what I just said.

6 MR. FLOYD: No, beyond the relief, it is
7 enforceable, which is what we have gone through
8 here right now, is that they get to consider the
9 Lincoln-Harris disclosure, the auction, and that is
10 fine, I'm not taking issue with the Court's ruling
11 but that is enforceability, they shouldn't be able
12 to consider any evidence of conduct by First South
13 Bank predating that.

14 If Your Honor were to find unclean hands as
15 to the equitable defense and equitable action, she
16 stated it better than I can, that is for you to
17 decide, they shouldn't consider those facts, they
18 have no right to come back beyond that agreement.

19 THE COURT: Miss Byrd, I may be wrong, okay,
20 but you seem to be confusing the equitable defenses
21 that are the Court's call with the things that the
22 jury needs to consider.

23 MS. BYRD: No, I think -- well, I may be not
24 articulating it well but I think I understand it
25 very well, that the factual issues that make up our

1 equitable defense which we know is your decision,
2 Your Honor, we don't deny that, but the factual
3 issues that are common to the unclean lands defense
4 should be decided by the jury and you take those
5 findings and you apply them and determine whether
6 or not that agreement is enforceable because of our
7 equitable defense.

8 THE COURT: So, what you are saying is the
9 breach of contract claim goes to the jury?

10 MS. BYRD: Yes.

11 THE COURT: If the jury finds that there was
12 a breach of the original agreement, then any
13 subsequent agreement would also be invalid?

14 MS. BYRD: Correct, there would be nothing to
15 modify.

16 THE COURT: Mr. Floyd, the law is pretty
17 clear that when a case is tried with equitable and
18 legal issues that the legal issues are decided
19 first by the jury, the Court then decides the
20 equitable issues, and in deciding equitable issues
21 the common facts that the jury finds, the Court is
22 bound by that finding of facts in deciding the
23 equitable issues. So I think, if I'm reading, if
24 I'm understanding that correctly, they have a legal
25 claim for breach of contract. That goes to the

1 jury, for the jury to decide the legal issues with
2 regard to that breach. The jury decides that if
3 there was in fact a breach of that contract, then
4 that finding would be what the Court would consider
5 in determining the validity of any equitable
6 position.

7 MR. FLOYD: Your Honor, what we have gone
8 through today in this exercise in the directed
9 verdict motion and what leads up to this is the
10 fact that there is no issue of fact for them to
11 decide as to the fraud, to get around the
12 documents, and the breach of contract happened
13 before that document was signed --

14 THE COURT: They are alleging more, they are
15 alleging breach of contract. Would you agree that
16 if you and I entered into a contract and the jury
17 decides I have breached that contract, then if we
18 enter into subsequent contracts that are related,
19 that those, the originals go away and those go
20 away, too?

21 MR. FLOYD: No, Your Honor, I would not agree
22 with that necessarily. I believe that contract in
23 front of you --

24 THE COURT: Stands on its own?

25 MR. FLOYD: -- stands on its own.

1 THE COURT: It's a modification of an
2 existing contract.

3 MR. FLOYD: Your Honor, just --

4 THE COURT: How can it stand on its own?

5 MR. FLOYD: Just because it modifies a prior
6 contract doesn't make that agreement unenforceable
7 on its own. There is consideration, exchange
8 between the parties. Regardless of whether or not
9 they think it is proper, there is a meeting of the
10 minds as to the terms of it. It's a contract and
11 it actually contains, I believe it is a new
12 agreement, it's its own contract. We released lot
13 4, that is in evidence, satisfaction of the
14 mortgage. In exchange we funded, we got \$300,000
15 to fund the interest account further. There is
16 exchange and consideration. Mutual promises, we
17 agreed to release the lot, pay the taxes, which was
18 worked out after the fact, and they agreed to
19 release us. It is enforceable. Otherwise, as long
20 as you had, as long as the initial contract before
21 was breached, then you couldn't ever release a
22 breach of contract, in my opinion, Your Honor, and
23 First South Bank submits that because that is a
24 valid enforceable contract, it stands on its own
25 terms.

1 THE COURT: Why doesn't it stand on its own
2 terms?

3 MS. BYRD: Well, Your Honor --

4 THE COURT: Miss Byrd?

5 MS. BYRD: First of all, if we establish that
6 the original contract which is the loan agreement
7 and the note has been breached, then that is
8 entirely moot because they can't foreclose, so it
9 does stand on its own but, Your Honor, again I want
10 to go back to a more fundamental issue. I'm not
11 clear what, under what rule, what basis is he
12 making this motion. He is not asking for a
13 verdict, he is asking you to make a decision right
14 now as a matter of law, which I'm not sure what
15 rule that is permitted under. And, Your Honor, I
16 think that we have gone through this and we have
17 beat this thing to death, we know that the jury is
18 to determine the issues of fact that are common and
19 then the Court will apply it. I'm not even, I'm
20 not sure this is proper and I don't think it is
21 supported in fact or law, if it is.

22 THE COURT: All right. I'm going to submit
23 to the jury the legal issues of the surviving
24 counter-claims, allow the jury to make the decision
25 and any facts that are common to those issues and

1 to the equitable issues, I will be bound by. Those
2 facts that are not common, I will make the
3 decision.

4 MR. FLOYD: Thank you, Your Honor.

5 THE COURT: All right.

6 MR. FLOYD: One last matter, Your Honor, just
7 to clarify from the other day because I do not
8 believe we received Your Honor's decision but with
9 regard to the directed verdict motion as to
10 punitive damages, there is no evidence that comes
11 out, clear and convincing evidence of willful,
12 wanton or intentional misconduct. Breach of
13 contract alone is not sufficient to support award
14 of punitive damages. I mean, that is the only
15 counter-claim left as to that. There is no
16 evidence of any willful or wanton conduct. So, no
17 punitive damages are available beyond what the
18 statute permits, which would control.

19 THE COURT: Are there punitive damages
20 affiliated with tortuous interference of contract?

21 MS. BYRD: Yes.

22 MR. FLOYD: We submit, Your Honor, there is
23 no evidence, reasonable finding of clear and
24 convincing evidence of intentional or willful and
25 wanton conduct.

1 THE COURT: I deny your motion.

2 MR. FLOYD: Thank you, Your Honor.

3 MR. COLLINS: Thank you, sir. Good try,
4 though.

5 MR. GODDARD: Your Honor, I just want to
6 protect the record, we would ask you to reconsider
7 your ruling as to the fraud claim.

8 THE COURT: All right. I have spent many
9 hours this weekend on that issue and I'm not saying
10 I'm right, I'm saying I believe I am. I don't need
11 to reconsider it any further but I certainly will
12 note your motion for the record.

13 MR. GODDARD: Thank you, Your Honor.

14 THE COURT: Now. So we know what we have
15 here, let's break for lunch and then when we come
16 back, guys, I anticipate that this is, this is my
17 thought process regarding what we're going to do
18 this afternoon, it is going to be informal, off the
19 record and hammer out the charges and everything
20 and then once we get there we clearly will then go
21 on the record and put if there are any objections
22 or exceptions based on your requests that you
23 submitted. Okay?

24 MR. FLOYD: Yes, Your Honor. I believe that
25 will be fine, it is fine with First South Bank. We

1 would ask that Mr. Chip Lyerly, the president and
2 representative of First South Bank be able to
3 attend. He does not need to have an active role
4 the issues of law but he would like to know what is
5 going on and be able to sit in on the conference.

6 THE COURT: Anybody in the courtroom is
7 welcome to join us.

8 MR. FLOYD: I just wanted to make sure.

9 THE COURT: That's fine. I got your
10 requests, you submitted requests, I'm going to sit
11 down with you and we're going to talk about it.

12 MR. GODDARD: I was just going to ask Your
13 Honor did you get our responses last night?

14 THE COURT: I think I did. Let's see, from
15 defense counsel I have 22 requested charges, is
16 that right?

17 MS. BYRD: Yes, sir.

18 THE COURT: And then plaintiff's counsel I
19 have 29. Is that correct? And I realize that, you
20 know, based on my rulings some of those will be
21 gone, so I make sure that I've got everything else
22 also, you all submitted 29, Mr. Floyd, is that
23 correct?

24 MR. FLOYD: Yes, Your Honor, I believe so,
25 and obviously with the developments today,

1 hopefully we will be able to all discuss it and
2 figure out what we need.

3 THE COURT: Sure. That is what we'll do. I
4 just want to make sure that you submitted 29 and
5 you submitted 22, I've got those.

6 MR. FLOYD: We may need to add some.

7 THE COURT: You may need to add some, who
8 knows, but we'll hammer it out.

9 I have 10 minutes after 1:00, how about 2:15?

10 MR. FLOYD: Fine for us, Your Honor.

11 THE COURT: And we'll reconvene.

12 MR. GODDARD: Reconvene back in the
13 courtroom.

14 THE COURT: We'll see whoever wants to
15 participate, wherever we're going to do it.

16 MR. FLOYD: Thank you, Your Honor.

17 (Recessed at 1:12 p.m., September 24, 2012).
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3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Georgetown County,
11 South Carolina, on the 24th day of September, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 March 17, 2013

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16
17
18 Henry P. Young
19 Court Reporter
20
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22
23
24
25

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-22-01233

2 COUNTY OF GEORGETOWN

3
4
5 FIRST SOUTH BANK,

6 -vs-

7
8 SOUTH CAUSEWAY, LLC,

9 Defendant.

September 18-25, 2012

10
11 B E F O R E:

12 HONORABLE THOMAS A. RUSSO, SR.

13
14 A P P E A R A N C E S:

15 JOEL W. COLLINS, JR., Esquire
16 JAMES LEON FLOYD, Esquire
17 DONALD W. TYLER, JR., Esquire
Attorney for the Plaintiff

18 AUDRA M. BYRD, Esquire
19 MARK B. GODDARD, Esquire
Attorney for the Defendant

20
21 Henry P. Young
22 Court Reporter

23 VOLUME VI OF VI
24 September 25, 2012
25

1 (Reconvened 9:50 a.m., September 25, 2012).

2 THE COURT: It took me some time to get the
3 charge squared away. I appreciate what you all
4 sent to me but I made mention of this before. When
5 you use Judge Anderson's charges you've got to read
6 them critically, not for the law because he's dead
7 on the law, but I said this before and I love him
8 to death, he is one of my favorite people, but if I
9 take five words to say what you say in 200, and
10 your charges you submitted are incredibly
11 repetitive, over and over and over again saying the
12 same thing, saying it just a little bit differently
13 so I cut a bunch of that out. I don't think I cut
14 out anything of substance that you asked for. I
15 think everything you wanted is in there but I tried
16 to make it not as wordy. I believe in simplicity,
17 I think the jurors appreciate simplicity and there
18 are some things you can only make so simple because
19 you have to cover everything, so the charge is
20 lengthy because there is a lot of information but I
21 tried to pare it down and make it simple.

22 I'm going to get a copy of the charge and get
23 them to print it out but because I'm somewhat
24 behind, and I read the charge, I make it in like a
25 sixteen point font, all capital letters and double

1 spaced, so it takes 37 pages. If it was in regular
2 type obviously it would be a fraction of that but
3 because it does take 37 pages I'm not going to have
4 them print out a copy for everybody but I will let
5 you all look at the copy that she prints out and
6 compare it to what you've got.

7 The verdict form, your verdict forms were
8 essentially the same although you all did want to
9 play that game of putting one name in front of the
10 other name, which I do plaintiff and defendant, I
11 don't mess with reversing names, I don't think that
12 has any importance at all.

13 Another thing I did in the charge you will
14 notice is you have got two corporations here, you
15 don't have people, per se, but you have two
16 corporations here, so throughout the charge I think
17 for me it got confusing. I mean, if this was your
18 standard case of just plaintiff, defendant I would
19 have left those terms plaintiff, defendant, but it
20 is a little different when you think in terms,
21 because with regard to your counter-claims, to use
22 the term defendant would seem confusing, so I just
23 did First South Bank and South Causeway, LLC, so
24 that the jury would know who we're talking about.

25 MR. GODDARD: On the verdict form the order

1 really wasn't important to me, I had the same
2 thought that it could be confusing to them as
3 defendant, plaintiff, as to that, so --

4 THE COURT: Yes.

5 MR. GODDARD: So, I don't care about the
6 order, if it goes plaintiff, defendant, but I think
7 using the word plaintiff, defendant has the same
8 potential for confusion.

9 THE COURT: I don't mind using plaintiff,
10 defendant along with the name, like if you say
11 plaintiff First South Bank and defendant South
12 Causeway, LLC, I don't mind that because that
13 clears it up, but simply to use the term plaintiff
14 and defendant, which normally is done, I thought it
15 out to be a little more clearer in this case.

16 MR. FLOYD: We agree wholeheartedly.

17 THE COURT: This is going to be printed out.
18 If you all would, you can come over to this table
19 and I have only got the one copy so like one of you
20 can start to look it over and just pass the sheets
21 over and the other one can start looking it over.

22 It pretty much is what you have asked for, I
23 just took a lot of repetitive stuff out. I added a
24 couple things from my charge regarding contract and
25 breach of contract I just thought were more simple

1 and a little less confusing but anyway, you look at
2 it and if we need to discuss it we'll certainly do
3 that. You can let me know if there are any
4 exceptions or anything. Okay?

5 MR. COLLINS: The only exception the
6 plaintiff has will be that plaintiff had requested
7 and defendant had agreed to a charge on the
8 standard for clear and convincing evidence, Your
9 Honor, and it may have been in here but I didn't
10 see it, but charge number three says clear and
11 convincing evidence is required to be credible, we
12 couldn't find where that was actually a charge.

13 THE COURT: I may have missed it. I
14 certainly have no problem with that.

15 MR. GODDARD: We have no objection to adding
16 it.

17 THE COURT: Let me look at.

18 MR. TYLER: It wasn't on the front.

19 MR. GODDARD: It does not fall with where it
20 talks about the other burden of proof.

21 MR. TYLER: And I looked for it up here in
22 the damages section, Your Honor.

23 THE COURT: Actuality it is under punitive
24 damages.

25 All right, he is sending that over to be

1 printed and then he will email it to you, so you
2 should have it. Let's talk about the verdict form.

3 MR. COLLINS: Judge, we have no objection to
4 the verdict form.

5 THE COURT: All right.

6 MR. GODDARD: Your Honor.

7 THE COURT: Mr. Goddard.

8 MR. GODDARD: Just briefly, and as to the
9 form, the wording on number one, as to the breach
10 of contract we think, we would like it to read not
11 depositing the \$550,000 into the interest reserve
12 account six months after the date of the loan
13 closing, whether that is a breach or not --

14 THE COURT: Here is the problem. I have with
15 that. That is the very language in the contract
16 that, as to whether the infrastructure and six
17 months, infrastructure and six months, they have to
18 decide that, but I think the alleged breach, if the
19 jury finds that by not depositing money that was a
20 breach, I think that is what they have to answer
21 because as we talked about it off the record
22 yesterday when we were talking about the jury
23 charge, you know, let's say that Miss Cribb put the
24 infrastructure in place two months after the
25 contract was signed, the bank would have been

1 obligated under the contract to put that money in
2 then and not wait six months, so that is the only
3 reason that I took that out, because I thought that
4 was a comment on the facts that I think they have
5 to determine.

6 MR. GODDARD: Your Honor, then more
7 specifically as to two, I think the verdict form as
8 it reads now mischaracterizes what our claim is.
9 The way that reads, to me, is we went to them and
10 said please make this advance and they did not.
11 Our claim is they came to us and said, "You cannot
12 come to us and make any additional advancement, you
13 cannot come to us and request any additional
14 advancement." They terminated the loan or brought
15 the loan down.

16 THE COURT: Again, that is the way you all
17 characterize it.

18 MR. GODDARD: And I think the way, and I
19 think there has to be some compromise on this
20 issue, Your Honor, because I think the way this
21 reads is exactly how they feel it is, they feel
22 that we never came to them and therefore they had
23 no, no duty to do this. What we're saying, it has
24 nothing to with whether we actually requested them,
25 it was our ability to request, and I think that is

1 the difference. It is not, there is no
2 allegations, I don't think any facts in evidence
3 that Miss Peggy said, "Here is the construction
4 contract, please do this," and they didn't. But
5 what is in evidence is they came to her and said,
6 it is our position, I think the facts show, that
7 they came to her and said, "You cannot, you can no
8 longer move forward with the construction
9 contract." Mr. Lyerly's testimony is they moved
10 the loan down to 5.1 million dollars, they cannot
11 make a request to move it forward. I understand
12 your position, you don't want to suggest facts, but
13 I think number two mischaracterizes what our claim
14 is.

15 THE COURT: Well, your allegations were they
16 breached the loan, they breached the contract by
17 not depositing the first one, not depositing the
18 amount of money in the interest reserve account,
19 all right?

20 MR. GODDARD: Correct.

21 THE COURT: And the testimony during the
22 trial was that there were supposed to be two
23 deposits done, there was the deposit for the
24 reserve account that didn't get done and then there
25 was a deposit for the development account which of

1 course wasn't done because their position was that
2 you breached the contract by not providing the
3 infrastructure and therefore you haven't met the
4 conditions, that is their position.

5 MR. GODDARD: Correct.

6 THE COURT: Your position is what you just
7 stated.

8 MR. GODDARD: I don't think that is
9 necessarily correct, Your Honor. Number two, from
10 our position, has nothing to do with the interest
11 reserve account.

12 THE COURT: And it doesn't say that.

13 MR. GODDARD: I understand.

14 THE COURT: It says advance additional
15 amounts under the commercial development portion of
16 the loan.

17 MR. GODDARD: But what I think the breach is
18 in this case and what we showed is the opportunity
19 for us to go solicit development, that is what they
20 breached. They came in and said, it is our
21 position, I know it is their position that Miss
22 Peggy made this decision and it is a fact question,
23 but the question is whether they, if they believe
24 our position, whether they breached by lowering the
25 6.5 amount down to the 5.1 amount, that our ability

1 to ever request that 1.4 million dollars if we meet
2 the other terms of the loan, and what they did is,
3 his own testimony is they lowered the amount, they
4 terminated the development portion of the loan.
5 We're not saying we ever came to them and said here
6 is the construction contracts. What we're saying
7 is they eliminated our opportunity to ever even try
8 to do that.

9 MR. FLOYD: I think you've got it right.

10 THE COURT: Well, of course you do, of course
11 you do, that is what you asked for.

12 MR. FLOYD: Because the issue is whether or
13 not they breached the terms of the contract. The
14 whole trial has been about whether or not we
15 performed or they performed under it and the
16 initial advancement, my understanding was the
17 issue, and --

18 THE COURT: Let me, here is the problem, Mr.
19 Goddard, is that, because I don't have it right in
20 front of me but I believe the way you wanted it
21 termed was that First South Bank breached the
22 contract with South Causeway, LLC, by terminating
23 any further advancement under the contract.

24 MR. GODDARD: Terminating the available
25 balance, available, unapplied loan, yes, Your

1 Honor, that was agreed to.

2 THE COURT: Here is the problem. By using
3 that terminology I'm putting facts into this
4 verdict form that they have to decide because they
5 may decide they didn't terminate it, she violated
6 the contract.

7 MR. GODDARD: I understand that but there has
8 to be something in it, but what two says is not
9 that decision. What two is asking them to say is
10 they violated by us coming in and saying we want X,
11 you can't get X.

12 THE COURT: Listen to me. Look at the
13 contract, not from the standpoint of your client or
14 this party, just look at the contract. The
15 contract requires -- what does it require of the
16 lender? That you initially, there was the initial
17 funding but then upon an event the interest reserve
18 account would have an additional deposit made into
19 it and upon another event or whatever conditions
20 are met, then additional monies would be deposited,
21 that is the obligation under the contract.

22 MR. GODDARD: Correct, that is part of the
23 obligation, but this is the point, the contract
24 also says and what the evidence shows and what Miss
25 Byrd directly asked Mr. Lyerly, show us in the

1 contract that they are allowed to unilaterally stop
2 our ability to ever go request that money, and
3 there is nothing in the contract that allows them
4 to do that.

5 THE COURT: Right, and what this says is that
6 by not advancing the additional amounts that you
7 were entitled to that is a breach.

8 MR. GODDARD: But we're not saying, it is
9 kind of the chicken before the egg, Your Honor, our
10 position is we can't make, we can't make these
11 requests because they took our opportunity away,
12 they have already told us the money is gone.

13 THE COURT: I understand what you're saying
14 but the breach is you were supposed to make, you
15 were supposed to make that deposit and you didn't
16 do it.

17 MR. GODDARD: I would disagree, Your Honor,
18 and I would like to do it on the record. I think
19 the breach is them unilaterally making this
20 decision outside the scope of the contract.

21 THE COURT: I can't put that in the verdict
22 form because that's an issue of fact that the jury
23 has to decide, whether they did that or not, so
24 what we can do is we can take two out altogether.

25 MR. GODDARD: Can we make it specific

1 questions, ask as to the facts, Your Honor?

2 THE COURT: Submit them, then. That is what
3 I have asked you all to do. This case has gone on
4 for over two years and now we have a jury sitting
5 back there again for an hour and a half twiddling
6 their thumbs because I didn't get this stuff until
7 after 10:30 last night and at 9:15 this morning.

8 MR. GODDARD: I submitted mine to him to talk
9 about at 7:15, Your Honor, I think.

10 THE COURT: All I'm saying is submit a
11 proposed one but I'm not going to do your proposal,
12 I'm not going to tell the jury what the facts are
13 in the case.

14 MR. GODDARD: My question is, Your Honor, can
15 we do a proposal which says did you find that First
16 South Bank terminated the loan and if you did, then
17 do you find that as a breach, a two part question?

18 THE COURT: You can --

19 MR. FLOYD: Terminate is a term of art. I
20 think that is what this question asks. He can make
21 all these arguments in his closing, or her closing.

22 THE COURT: I understand that but I've got to
23 have a verdict form that says whether or not --
24 here is the thing. This question deals with the
25 breach of contract and the allegations. One of the

1 allegations they are making is that they
2 unilaterally terminated the contract. Maybe that
3 is the terminology that needs to be used, did South
4 Bank, did First South Bank breach the contract with
5 South Causeway, LLC, by unilaterally terminating
6 the contract. I don't know.

7 MR. FLOYD: I would say --

8 THE COURT: Prior to the conditions being
9 met, yes or no.

10 MR. GODDARD: By reducing the potential
11 amount available.

12 MR. COLLINS: Judge, could the jury come in
13 and we start closing argument?

14 MR. FLOYD: I think Miss Byrd is going to do
15 the argument. I just think the jury is being --

16 THE COURT: I agree. What I anticipate is
17 allowing you all to do your closings and then give
18 the jury a short break before I give them the
19 charge and during that short break have before me a
20 proposed --

21 MR. GODDARD: I think we can agree to that,
22 Your Honor, to the extent there is some instruction
23 from Miss Byrd, this issue is going to be worded in
24 a way that discusses the issue we're arguing.

25 MS. BYRD: And I can't close without knowing

1 what this form is going to say because part of my
2 argument --

3 THE COURT: Then you should have submitted it
4 to me before now because what you submitted to me
5 was a comment on the facts and I wasn't able to use
6 it.

7 MS. BYRD: Your Honor, we did submit --

8 THE COURT: Yes, you submitted did they
9 terminate the loan, improperly terminate the loan.

10 MR. GODDARD: All I would ask is you go to a
11 two part question, then, a finding of fact from
12 them whether they feel they terminated the loan and
13 if they did, do they find that as a breach of the
14 agreement, a finding of them that says do you feel
15 that First South Bank's actions terminated the
16 unfunded development loan, and second question, do
17 you feel that would breach the contract.

18 THE COURT: You're not going to agree about
19 anything. You submitted what you have got here and
20 if I don't do this you're not going to agree and
21 that's not going to work either.

22 MR. FLOYD: I'm trying to think of a way to
23 phrase it to make sense. It is all aimed at the
24 breach, did First South Bank --

25 THE COURT: And their claim is that First

1 South Bank prematurely terminated the --

2 MR. GODDARD: That may be the wording right
3 there, Your Honor, unilaterally.

4 MR. FLOYD: Termination is a term of art.

5 THE COURT: I'm not using termination.

6 MR. FLOYD: You're not? I'm sorry.

7 THE COURT: Prematurely.

8 MR. FLOYD: Prematurely reduced the available
9 amount?

10 THE COURT: Prematurely reduce.

11 MR. FLOYD: Reduce, because it is available,
12 it is not like it was out there.

13 MR. GODDARD: I think we have said froze,
14 they have said terminate.

15 MR. FLOYD: We haven't said either. If you
16 all want to take issue with that, we haven't said
17 either, we just agree to disagree.

18 THE COURT: Or I can just tell you all to
19 take a long walk and I'm going to put whatever I
20 want to put on there.

21 MR. COLLINS: That's right.

22 MR. FLOYD: That's fine, Your Honor.

23 THE COURT: That is what is going to happen.

24 MR. FLOYD: Thank you, Your Honor.

25 THE COURT: You can argue about them, your

1 position is they didn't make those monies available
2 and it was improper to do that and that constituted
3 a breach, however you want to argue it, I don't
4 care how you argue it, but this jury has got to
5 come out -- well, what else on here?

6 MR. GODDARD: Your Honor, I don't think we
7 have any other exceptions.

8 THE COURT: Because I'm going to work on
9 number two unless you tell me there is something
10 else on here.

11 MR. GODDARD: The only other question I had
12 is the damages. I don't think, if they find, I
13 don't think it is necessary for another question to
14 them, I haven't typically seen that on verdict
15 forms that they have to answer another question and
16 then give their amount of damages but certainly it
17 is not -- that is our position.

18 THE COURT: That's fine.

19 MR. GODDARD: Judge, before you bring the
20 jury, they indicated they have some demonstrative
21 evidence which is a cartoon they are planning to
22 show.

23 MR. COLLINS: That is not evidence.

24 MR. GODDARD: Demonstrative evidence you're
25 going to show the jury, whether it goes back with

1 them or not, we believe it is improper and
2 prejudicial to our client and it is done solely to
3 inflame the jury.

4 MR. COLLINS: I have used it several times,
5 Judge, it is just an argument, it is just a little,
6 just a little illustration.

7 THE COURT: All right, I'm going to note your
8 exception and overrule it.

9 MR. GODDARD: Thank you, Your Honor.

10 THE COURT: I used demonstrative pieces, I
11 built stuff and brought it in before and used it in
12 closing argument.

13 Now, Miss Byrd, do you have any -- I'm going
14 to reword number two in a way that deals with, you
15 know, and no disrespect to either side but you all
16 couldn't come to an agreement so I'm going to do
17 it, but it is going to be worded in a way where
18 your allegation is they failed to make available
19 the additional funding. Is that correct?

20 MS. BYRD: Yes, sir.

21 THE COURT: And did that in fact constitute a
22 breach, did they do that, yes or no, does that
23 constitute a breach, yes or no.

24 MR. COLLINS: Judge, I understand --

25 THE COURT: Mr. Collins, do you understand

1 that?

2 MR. COLLINS: Yes, sir. We trust your
3 ability to phrase a question in number two that --

4 THE COURT: And I will show it to you during
5 that short break after you argue and we bring the
6 jury back out so we can still tweak it but you
7 needed to know something for your argument.

8 MR. COLLINS: Your Honor, I wasn't here
9 yesterday afternoon but I understand you instructed
10 us that I should make a full opening and then they
11 argue and then I can make a reply, is that right?

12 THE COURT: Yes, sir, I think that's the way
13 it operates.

14 MR. COLLINS: I wanted to make sure.

15 THE COURT: Sure.

16 Okay. Anything else?

17 Let's bring the jury in, please. Oh, I'm
18 sorry, yes, email them the jury charge. That
19 should be coming.

20 MR. FLOYD: Thank you, Your Honor.

21 THE COURT: It should be coming to you
22 shortly.

23 All right, let's bring them in.

24 (The jury returned to the courtroom).

25 THE COURT: Ladies and gentlemen, welcome

1 back. I'm sorry for keeping you back there. Let
2 me say this before we go on further. I want you to
3 first off understand this, that these delays that
4 we run into and stuff, they are in no way the fault
5 of or related to either party in this case. A lot
6 of it has to do with the Court sitting up here.
7 There are just things I have to do and I try to do,
8 I try to estimate the time but sometimes it just
9 takes longer, so I apologize to you for you to just
10 have to sit back there. But we are ready to
11 proceed.

12 If you recall, yesterday both parties had
13 rested their cases and when the parties rest that
14 essentially is a door closing and what it does,
15 what that door closes on is the evidence. The
16 evidence is over. It is what you heard.

17 Both parties made an opening statement and as
18 I told you earlier, that was not evidence. The
19 evidence began with that first witness and it ended
20 yesterday with that last witness. So, the evidence
21 is closed and we have reached the point of the
22 trial where the attorneys are going to have an
23 opportunity now to argue to you what they believe
24 the evidence in this case has shown. It is merely
25 their belief, it is not evidence but it is

1 important that you listen carefully to what they
2 have to say.

3 You are the jury and you are going to decide
4 the facts of this case and you are going to apply
5 the law as I give it to you but this is their
6 opportunity to at least convey to you what they
7 believe the evidence in this case has shown. Once
8 they have concluded their remarks I will then give
9 you the law that is applicable to this case and
10 once you have that you will then be in a position
11 to decide the case.

12 Okay. So, having said that, please give the
13 attorneys your undivided attention as they address
14 you with their closing remarks, and let me just
15 explain to you briefly what you're going to see.
16 Mr. Collins will have an opportunity to give his
17 closing remarks, Miss Byrd will then have an
18 opportunity to give hers, and then Mr. Collins will
19 have an opportunity to give a short reply at the
20 end. Then when they're concluded I will have the
21 opportunity to charge on the law. Okay?

22 So, Mr. Collins.

23 MR. COLLINS: Thank you, Your Honor, may it
24 please the Court.

25 THE COURT: Yes, sir.

1 MR. COLLINS: The first thing I need to do is
2 thank you, Your Honor, for the courtesy and
3 patience that you have shown and thank you to my
4 able assistants here and my clients and folks who
5 have helped so much. It has been a lot of work
6 done here and and now you get to do your work.

7 You are sitting where you are, ladies and
8 gentlemen, because of the Bill of Rights, the
9 Seventh Amendment to the United States
10 Constitution. A lot of people don't know about the
11 Seventh Amendment, it is not as famous as the First
12 and the Fifth and some others, but the Seventh
13 Amendment is a guarantee of a jury trial, a civil
14 jury trial. It is where civil disputes are to be
15 tried before a jury. Only in the United States is
16 that the case. Even England abandoned that many
17 years ago in large part. In England you only get a
18 civil jury if you are trying a case for slander or
19 libel.

20 Yesterday around lunchtime I left and went
21 back to Columbia to teach my class at the South
22 Carolina Honors College, it is a class on the
23 Constitution. We talked about the Bill of Rights
24 yesterday, we talked about the Seventh Amendment.
25 That is where I got the idea to maybe mention that

1 to you.

2 The United States Constitution impowers the
3 people, we the people are sovereign and we the
4 people exercise our power in our government usually
5 in two ways, by the ballot box, by casting your
6 vote in the elections we have and in the jury box
7 where you sit right now. The two most important
8 places where American citizens are empowered to
9 influence their society, the rules, the rule of
10 law.

11 And this is an important case, ladies and
12 gentlemen. A lot of banks, a lot of landowners are
13 watching this case. This is a precedent setting
14 case. What you decide in this case today is going
15 to have big ripples, big effects throughout the
16 banking industry and our economy.

17 The over arching issue here is the economy.
18 That is what happened, we're the victim of the
19 economy going down, banks are struggling. Property
20 owners are victims of the economy. This property
21 is not listed for sale with a real estate company,
22 there is nobody out there clamoring to buy it.
23 The real estate market is very depressed and that
24 hasn't been talked about near enough. Enough said.

25 What we have here is a lawsuit where First

1 South Bank filed its foreclosure over two years
2 ago, they sent a notice, they sent a letter, they
3 advised the borrower. The loan came due in July,
4 they initiated the foreclosure in August of 2010,
5 here we are well over a year after that. South
6 Causeway has had the opportunity to sell this land
7 throughout that entire process. All during that
8 two year period they could have sold this land but
9 they can't sell it for enough to pay off the debt.
10 That is where we are, you see.

11 And when we foreclose what does South Causeway
12 do? They said, "We can buy time, we can calculate
13 and demand a jury trial," and of course as you
14 know, procedurally First South Bank took the
15 position that there shouldn't be a jury trial.
16 Foreclosure actions normally are not. There is a
17 waiver of jury trial in that loan agreement, you
18 saw it, it is in evidence.

19 We moved for summary judgment, saying that
20 there weren't any genuine issues of material fact
21 but Miss Cribb submitted an affidavit under oath
22 where she tried to create issues of fact and we
23 have evolved through those issues. I'm going to
24 summarize them for you in a minute.

25 But as I was thinking about it driving back

1 last night down here I thought, you know, this
2 reminds me of that game you have at the state fair
3 called wackamo. My grandchildren love to play
4 wackamo, you know what that is, you pop this one
5 down, another one pops up, knock this one down,
6 another one pops up. This is a case that sounds
7 like and acts like wackamo. It started off with
8 Miss Cribb, "They tricked us, they made us pledge
9 as additional collateral for this loan, lot 4 down
10 there by the beach."

11 Where is that plat? Is it up here?

12 Lot 4 is that tract of land, first row, right
13 here, just those, worth 1.4 million dollars. "They
14 tricked us," she said, "by making us have to pledge
15 that as additional collateral." It was already
16 pledged as collateral for the initial \$550,000 loan
17 they had obtained from First South Bank but she
18 said, "We were tricked."

19 Here is her affidavit, it's in evidence. She
20 says, "During the closing June 25th my son and I
21 discovered Lovelace had not corrected the note and
22 in order to close my son had to agree to mortgage
23 his individual property as security for the loan."
24 Absolutely not so. Absolutely not true.

25 Here is her email to Mr. Lovelace well

1 before, weeks before the closing. She says, "In
2 speaking with you I understood you were using lot 4
3 as extra collateral until final lease is worked out
4 with Lowe's which may be around six months." He
5 responded and made reference to, "We're going to
6 have to have lot 4 because the appraisal doesn't
7 give us enough loan to value. We have a statutory
8 requirement of 65 percent loan to value." All that
9 was discussed, all that was understood, clearly
10 worked out.

11 But this email, you see, is found and relied
12 upon later on. At the time she submitted this
13 affidavit the judge who hears that, he doesn't have
14 any way to sort it all out. All he says is, "It
15 looks like a genuine issue of material fact to me,
16 if she discovered at the closing that they had
17 tricked her into putting some additional collateral
18 in, that doesn't sound like it's fair." But what
19 do we know? Totally, totally false.

20 The next thing she says is, "They tricked us
21 again." Wackamo, wham, you get that one down, the
22 next one pops up. "You made us shorten the loan,
23 you shortened," and this agreement was signed in
24 2009, April 10, 2009, where they released lot 4, by
25 the way. She says, "You tricked us again, you

1 shortened the loan." But then we see that a month
2 before that thing is signed, March the 9th, we have
3 an email exchange where Wayne Lovelace of the bank
4 tells Miss Cribb that she has two options about the
5 release of lot 4 so they can borrow more money from
6 Kennedy Funding, "You can give us 515,000," not us,
7 "you apply out of that roughly \$980,000 loan 65,000
8 to pay the past due taxes, 65,000 for this year's
9 taxes, attorney fees, and then here is what goes in
10 the interest reserve account, 375,000."

11 His option two was, "Pay your taxes currently
12 overdue and due for this year, same amount of
13 attorney fees and 460,000 will go in the interest
14 reserve account but with option two we've got a new
15 maturity date of 7/5/10," notice that, new maturity
16 date, he emphasizes this in his last paragraph.
17 "As you will note, option two requires a shortening
18 of maturity date of the loan by one year."

19 And what does Miss Cribb decide? Two days
20 later, this is March 9th, March the 10th Miss Cribb
21 writes back and says, "Wayne, Darwin and I have
22 decided to go with option two." There it is,
23 staring you in the face, clear as a bell.

24 But what does Miss Cribb say in 2011 when she
25 is trying to create a genuine issue of fact and

1 avoid a summary judgment so we can have this thing
2 drag out and have a big old long trial with you?
3 She says, "At the closing, after the \$50,000 had
4 been paid," that would be the Kennedy Funding, "we
5 discovered," look at that word, "we discovered that
6 in addition to the \$300,000 payment First South
7 Bank was taking back a year and demanding
8 acceleration of the maturity date."

9 Outrageous you get to come to court and do
10 that. Get to come to court and make up stuff in an
11 affidavit and a jury of people drawn in off the
12 street who have nothing to do with the matter, they
13 expect you to overlook that and say, "Oh, well,
14 that is no big deal." It is a big deal, ladies and
15 gentlemen. In a court of law we need for people to
16 be honest, we need for people to do their duty, we
17 need for people to stand up, responsible people.
18 Our society falls apart when people come to court
19 and don't tell the truth.

20 Have you noticed that everybody has to take
21 an oath? The judge was sworn in, he took an oath.
22 When we lawyers are sworn in as members of the Bar
23 we take an oath. When witnesses come, there is
24 that Bible, they have to take an oath. When you
25 were impaneled the first thing the judge did was

1 make you stand and take your oath. These oaths
2 bind us, they hold us together, they make
3 consequences real, they create duties and
4 obligations and if you can't come to court and
5 expect jurors like you to enforce those it all
6 falls apart, our society falls apart, we don't have
7 any rules anymore. That's wackamo, "You know what
8 they did, those dirty bankers, they told the
9 auction company that we weren't going to renew the
10 loan, we weren't going to give partial releases and
11 told them how much was owed." This is the auction
12 company had already been hired as the agent for
13 Miss Cribb and Wayne Lovelace finds out they are
14 going to have an auction, which the bank says that
15 is not a good way to sell your property, everybody
16 agreed, every expert agreed, everybody you heard
17 testify agreed auctions are not how you get your
18 value out of property but she decided to go forward
19 with an auction and Wayne Lovelace wants to be sure
20 that there is not a big train wreck so he calls up
21 the guy and says let's be sure everybody knows, and
22 what did Mr. Barksdale say, their expert, he said
23 the auction company needed to know that, Peggy
24 Cribb should have told the auction company. This
25 wasn't some outrageous disclosure of private

1 information.

2 There are no privacy rules or regulations or
3 laws in commercial lending. You heard the experts
4 agree that this consumer loan statute only applies
5 to individual loans, when people come to the bank
6 to borrow money on their house or their car.
7 Commercial loans have no such statute, no such
8 regulation but they make a big deal out of this
9 disclosure and, ladies and gentlemen, what
10 difference does it make?

11 Another concept of the law that you are going
12 to hear His Honor explain to you is the law of
13 proximate causation. In order for there to be a
14 jury verdict on behalf of anybody who comes to
15 court they must show a breach of a duty which
16 proximately causes damages. You know, an issue in
17 a wreck case frequently is whether or not the wreck
18 really caused the injury, the illness, the symptoms
19 that the plaintiff is complaining about. There is
20 a little minor wreck and the plaintiff sometimes
21 says, "I've got a bulging disc in my back," and the
22 doctors come in and say, "No way in the world this
23 wreck caused that bulging disc in the back," and we
24 go back and find medical records where this patient
25 has complained about a back problem and an xray

1 shows a bulging disc before the wreck, you see.
2 Does the bulging disc appear, is it real? Yes,
3 it's real but it wasn't proximately caused by that
4 automobile accident. That is a typical issue we
5 see in the courtrooms all the time.

6 Here proximate causation works this way. Did
7 the bank by disclosing that information to the
8 auction company proximately cause a loss to South
9 Causeway? Well, no, because guess what, nobody
10 made a bid.

11 Another important thing is this. Mr. Thomas,
12 the man to whom Wayne Lovelace gave that
13 information, testified, remember him, he said, "I
14 didn't tell anybody. That didn't get outside our
15 company, nobody knew." Did they call a bidder, did
16 they call a prospective bidder who said, "You know,
17 I was real interested in that property until I
18 found out the bank wasn't going to renew the loan."
19 That doesn't make any sense. Everybody expects
20 there is a mortgage on property like that.
21 Interest in buying that land does not depend on any
22 state of the loan with First South Bank, it depends
23 on the value of that land and if that land was
24 worth a lot of money like it was at one time there
25 would be people out there interested in buying it.

1 There are a lot people who got rich buying and
2 developing land along the South Carolina coast.
3 Who doesn't know that?

4 So, then, here is another thing. After the
5 auction didn't work the land was still there, the
6 land was still for sale, the land could have been
7 sold to anybody. Miss Cribb could have contacted
8 some of these companies who made offers, you have
9 seen them, "I really need to sell my land down
10 here, if you people are interested I can give you a
11 better price than I did back in the old days." She
12 has got the ability to do that or hire a good real
13 estate agent to do that for her. It hadn't been
14 done. Why not? Because the market is depressed
15 and everybody knows there is nobody out there
16 looking to buy a big tract of land along Highway 17
17 right now. Maybe some day they will but not right
18 now. Whack that one down, what else pops up?

19 Well, here is another one we've got to deal
20 with. South Causeway says, "You know what you did,
21 you really did us wrong when you allowed the loan
22 documents to be viewed by Lincoln-Harris
23 representatives." Lincoln-Harris indicates to
24 First South Bank they might be interested in buying
25 this loan. Banks do sell loans. Well, the experts

1 agree it is a negotiable instrument that can be
2 sold. There are people who make their living going
3 around buying loans, especially distressed loans.
4 That is what they do, they are smart enough to turn
5 that into a profit, that is how they make their
6 living.

7 Banks like to get rid of nonperforming,
8 troubled loans, and by the way, as you heard them
9 say, the last thing a bank wants to do is foreclose
10 and get the property back in their own hands, they
11 don't want that, that is not a good thing. The
12 thrust of what they say in their complaint is that
13 the bank wanted to foreclose on this property so
14 they could steer it into the hands of one of their
15 favorite customers, it is in here, I will just read
16 it. Here it is. "The bank concocted a scheme
17 whereby First South Bank would accelerate the
18 maturity date and foreclose on the property and
19 sell it to another customer of the bank at a
20 reduced price."

21 That is just a concocted tale. And did you
22 hear that customer come and testify, did you hear
23 any corroboration for this unsubstantiated
24 concocted claim? No, you didn't. It is absolutely
25 not true because the last thing the bank would want

1 to do is hustle up a foreclosure. They don't want
2 to foreclose.

3 So, then we get to this disclosure to
4 Lincoln-Harris, Lincoln-Harris made an offer to buy
5 the land, you saw it, that is the best offer she
6 got. She got one for 9.5, one for 10, one for 12.
7 All right. Lincoln-Harris's offer was rejected,
8 wasn't it? In fact two days after she got it Miss
9 Cribb wrote to Mr. Lovelace and said, "We would not
10 be interested." She didn't say, "Oh, let's see
11 what we can do to work something out with
12 Lincoln-Harris, maybe they will do something a
13 little bit different."

14 She told you on the stand, "Oh, they didn't
15 give us any earnest money," but then I showed her
16 the contract, proposed contract, it says \$25,000
17 earnest money. So, you see, every time she makes a
18 claim and every time something is shown to prove it
19 is not true she just runs off the other way.

20 We confronted her yesterday, you recall, we
21 recalled her to the stand and published in her
22 deposition where she admitted in her deposition
23 that Mr. Lovelace didn't do anything to interfere
24 with the Lincoln-Harris offer, and what did she
25 say? "Oh, well, he did, too, he interfered by

1 getting in touch with Robbie Buice. " So, where is
2 Mr. Buice to come in here and testify and
3 corroborate that made up claim? You didn't hear
4 anything from him.

5 So then Lincoln-Harris shows up, Mr. Lyerly
6 doesn't realize that they had offered more on
7 buying the land, they didn't choose to disclose
8 that. If that was so wrong why didn't they sue
9 Lincoln-Harris, how about that? If Lincoln-Harris
10 is such a dirty crowd why aren't they the ones she
11 sued instead of the bank? They showed them
12 pursuant to a confidentiality agreement the loan
13 documents, okay? No personal financial statements,
14 no tax returns. They made an offer to buy that
15 loan but it was too low, the bank didn't accept it.

16 Thereafter they made another offer to Miss
17 Cribb to buy the property for around \$4,000,000 and
18 she didn't accept it. Well, of course she owed
19 more than that on it at the time but that is the
20 way the value of the property had plummeted. Did
21 Lincoln-Harris do anything wrong? I say no,
22 probably no but if they did something wrong it sure
23 didn't do it because First South Bank put them up
24 to it. First South Bank had perfect right to sell
25 that note, they had the perfect right to foreclose

1 on this mortgage. First South Bank had the right
2 to do what they have done.

3 You're going to hear a claim that First South
4 Bank didn't fund the interest reserve account like
5 they should. Well, you heard testimony from Mr.
6 Barksdale saying they had an obligation to come
7 forward to the bank and show a construction
8 contract that proves that they would be doing the
9 infrastructure, putting in the water and sewer
10 lines, doing the curbing, creating a drainage
11 system, a collection pond if necessary.

12 All these things have to be done
13 infrastructure wise before a shopping center can be
14 built. They didn't do that. They never came
15 forward, they never tried to qualify for the
16 remaining portion of the loan. That was the second
17 phase. Remember there was A and B, acquisition and
18 then development. They acquired the property, paid
19 off the pre-existing loan at First Palmetto, they
20 never went forward with the construction aspect of
21 it. In fact Miss Cribb sent an email to Mr. Wayne
22 Lovelace September 30, 2008, this is not long after
23 she refinancing, the loan closed June 25, 2008, so
24 September 30, just a few months later she says, "We
25 decided with the economy as it is we would like to

1 sell the land." Okay, and they say, "If you want
2 or need to do away with the construction part of
3 the loan that is fine."

4 This is Exhibit 13, I think it is Defense
5 Exhibit 13, "If you want or need to do away with
6 the construction part of the loan that's fine but
7 we fully expect you to honor your commitment you
8 made to us at the restaurant in Pawley's."

9 Let's talk about that. A big controversy in
10 this case is whether or not Mr. Lovelace and Mr.
11 Lyerly told Miss Cribb and her son, "We'll finance
12 you as long as you need it, you will never run out
13 of money, we'll be here for you as long as it
14 takes, as much as you need as long as it takes."
15 And what did the experts say? Banks don't do that,
16 no bank does that, no bank will give you an open
17 ended loan with no maturity date and let a borrower
18 have as much as they want, never happens, but she
19 says that is the way it was.

20 Now, I have to tell you this. At an earlier
21 time in this case we took the position with the
22 Court that that shouldn't even be evidence because
23 as you will recall when Miss Cribb and the bank
24 entered into this modification agreement that is in
25 evidence as Plaintiff's Exhibit 11, this is the day

1 they borrowed this large amount of money from
2 Kennedy Funding, get a release on that lot 4 at the
3 beach and enter into an agreement, commonly
4 referred to as a modification agreement.

5 In the modification agreement, paragraph
6 three, is a broadly worded release where the bank
7 is released by South Causeway for anything and
8 everything. Remember that enormous, I mean, it has
9 got words for release I have never seen, duly
10 hereby release, release and forever discharge the
11 bank and successors, assigns, directors,
12 shareholders, a very broad release, broadly worded
13 release.

14 Well, we said, "Judge, if we've got a release
15 that is valid as a matter of law she shouldn't be
16 able to come in here and relate her claims by deals
17 which aren't allowed to start by the loan
18 agreement." The loan agreement she signed and which
19 is in evidence has a clause in it that says neither
20 this agreement nor any provision hereof may be
21 changed, waived, discharged or terminated except by
22 an instrument in writing signed by the party
23 against whom enforcement of the change, waiver or
24 discharge or termination is sought.

25 You've got to reduce it to writing. That's

1 the law even if it is not in the contract, because
2 the law in South Carolina is if a bank enters into
3 a transaction of \$50,000 or more everything has to
4 be documented in writing. We lawyers call that the
5 Statute of Frauds, it has been around for
6 centuries. Why reduce your agreement to writing
7 and have everybody sign it if all you have to do is
8 walk in and say, "Oh, by the way, you know what he
9 told me at the restaurant that day we had lunch?"
10 If all you got to do is come in and say that when
11 no corroboration exists for it and you get around
12 this type language and you get around that release,
13 then why should anybody ever reduce anything to
14 writing? What good is it ever going to do you?

15 So, our position was that it never was
16 reduced to writing, there was a clearly worded
17 release, you shouldn't even get to hear evidence
18 about alleged oral modification but I guess in an
19 abundance of fairness to Miss Cribb and South
20 Causeway the Court elected to let that in evidence,
21 so it is in your lap now, it is for you to decide
22 if you're going to enforce that contractual
23 provision about everything being in writing, are
24 you going to enforce that waiver, I mean that
25 release or not. And bear in mind, ladies and

1 gentlemen, this alleged promise that Miss Cribb
2 talked about and which Mr. Lovelace flatly denies,
3 Mr. Lyerly flatly denies, is uncorroborated
4 completely, it flies in the face of logic and
5 reason, it flies in the face of the way things
6 operate but somehow they think you're going to buy
7 it, somehow they think you don't have enough
8 sophistication and awareness, decency, whatever it
9 takes, to sort through all that.

10 Burden of proof. First South Bank had the
11 burden of proving that their mortgage was valid and
12 they were entitled to foreclose on it. Because
13 they refused to acknowledge the authenticity at
14 those documents, Mr. Floyd had to come in and bring
15 Miss Julie Cason and walk her through all those
16 documents to show you all those provisions. He
17 said, "Gosh, I hate to have to be so boring and
18 take up so much time with the jury to do this," but
19 he had to do it.

20 Remember what Miss Cason said? She's the
21 custodian of the records, she said, "This is the
22 first time I have ever testified in court." What
23 does that tell you? They put us through a lot of
24 trouble to prove the very obvious. We had the
25 burden of proving our note and mortgage were valid

1 and everybody, even both the experts said
2 absolutely this was a properly executed and
3 enforceable note and mortgage, we're entitled to
4 foreclose because the due date came and went
5 without us being paid off. What is the bank to do
6 under those circumstances except foreclose?

7 There are a lot of foreclosures going on in
8 South Carolina, have been for a long time, a lot of
9 them, folks, and that is why this case is so
10 important, because if the word goes out from
11 Georgetown file a counter-claim and a jury trial
12 will buy you two years at least, that's going to
13 affect the way people do business.

14 Let's talk about credibility. I think I
15 mentioned this at opening statement. You're good
16 at this, you're good at figuring out the truth, you
17 have been doing it all your life. You have been
18 gauging people, you have been sizing them up and
19 you have been figuring out who is honest and can be
20 trusted and who is shaky or outright dishonest.
21 You're good at this. Individually you're good at
22 it. Put twelve of you together and you're great at
23 it, you're great at seeing through allegations or
24 claims that don't hold water.

25 Let's consider Mrs. Cribb's credibility. Was

1 she polite and courteous? Was she responsive to
2 questions put to her? Or was she nasty, irritable,
3 unresponsive, did she run off at the mouth when
4 asked, did she volunteer information, making
5 speeches when a simple yes or no would do? Did the
6 judge have to instruct her several times to answer
7 the question and not run off at the mouth? He did,
8 didn't he? That's part of your assessment of
9 credibility.

10 How about Mr. Lovelace and Mr. Lyerly? They
11 were polite, they were decent, they were
12 respectful. I submit to you that you can easily
13 decide this issue of credibility which it boils
14 down to in large part with regard to several of the
15 claims that they have made.

16 I want to talk about somebody else for a
17 minute. I want to talk about this guy back here on
18 the third row up against the wall, that is Darwin
19 Wheeler. He didn't testify, he didn't get called.
20 You see his name all over these emails, you see
21 where Miss Cribb sent an email to Mr. Lovelace,
22 "Darwin and I have decided to go with option two."
23 You know that Darwin Wheeler had a lot to do with
24 this loan, he guaranteed it, he put up his million,
25 1.4 million dollar lot on the first row at the

1 beach as additional collateral. Well, why didn't
2 they call him? Is it because he wasn't available?
3 That can't be it, he was in the courtroom every day
4 throughout the trial. Did they not call him
5 because he wasn't involved in this transaction and
6 all that went on? Clearly he was, you see his name
7 all over the documents. He signed all the closing
8 documents, he was at the closing.

9 He is not knowledgeable? Well, surely he is.
10 He is not interested, does he not want to help his
11 mother? That doesn't make any sense either, does
12 it?

13 When you testify at a trial you put your
14 credibility at issue. A party can attack your
15 credibility by bringing forth evidence to impeach
16 your credibility. Could it be that Darwin Wheeler
17 wasn't called as a witness because he could be
18 impeached? Consider that.

19 Let's consider other failures of proof by
20 this party who has the burden of proof. You have
21 the uncorroborated story of Miss Cribb in large
22 part for many of the allegations made in the case.
23 Did she call a bidder, did she call a potential
24 bidder to say that there had been some interference
25 caused by Mr. Lovelace when he called Mr. Thomas at

1 the auction company? No, you didn't see, you
2 didn't hear from anybody like that. The simple
3 reason is there isn't anybody. Mr. Thomas didn't
4 disclose that information and even if he had it
5 wouldn't have made any difference, it just is an
6 empty issue, it doesn't get you anywhere.

7 How about the auctioneer himself, Mr. Thomas
8 was the auctioneer, he was just the man who worked
9 in the same company, but the auctioneer could have
10 come in and testified. Did you hear him come and
11 say, "You know, we had a good shot on this, I felt
12 like we were going to sell this land, and what
13 happens, Mr. Lovelace comes along and talks to my
14 partner and all interest in this property
15 disappeared." That's preposterous and you know it
16 and the auctioneer wasn't going to help them but
17 you didn't hear from him.

18 How about a real estate appraiser, did we
19 hear a real estate appraiser come in and give you
20 any testimony that would corroborate her? No.

21 How about a damages expert, did you hear an
22 expert come in and adopt this concocted notion that
23 she had lost \$8,000,000 because of First South
24 Bank? You didn't hear anybody like that. And we
25 heard, we all heard for the first time when she

1 said it that she felt like her damages were the
2 difference between the earlier \$12,000,000 offer
3 and the later \$4,000,000 offer from Lincoln-Harris.
4 That is concocted and crazy.

5 Ladies and gentlemen, remember, anybody in
6 the world can go and buy that land. It doesn't
7 have to be Lincoln-Harris, it can be anybody in the
8 world and if that property had value right now it
9 could be sold in an amount that would pay off the
10 mortgage but Miss Cribb still thinks she is going
11 to hit the jackpot and she is here today playing
12 the litigation lottery to see if she can hit the
13 jackpot.

14 Did you hear from Robbie Buice who she
15 mentioned several times, the man to whom, by the
16 way, she told, "We owe \$5,000,000 to the bank,"
17 this deep dark secret about how much the payoff was
18 they volunteered and told Mr. Buice who wasn't even
19 their agent at the time.

20 Did you hear Mr. Charles McCollum, the man
21 who they called the preferred customer of the bank,
22 did they call him? No.

23 How about this? Did you hear Miss Cribb say,
24 "I had a telephone conversation with Mr. Charles
25 McCollum and I tape recorded it." Well, did you

1 hear that? No. She wants you to infer there is
2 some sinister plot going on. There wasn't.

3 How about these two attorneys that
4 represented her? Let's talk about the two
5 attorneys, Doug Hinds and Bob Gwin. Doug Hinds is
6 the man who closed the loan from First South Bank.
7 Now, Miss Cribb at one time said, you know, "I had
8 no choice at this closing, I had to, I had to go
9 ahead, we felt we had no other options, no other
10 choice since First Palmetto Bank's loan was coming
11 due."

12 It had about four months left to go. If she
13 and her attorney really discovered for the first
14 time this beach lot had to be collateral they could
15 have said, he could have said, "You know, Miss
16 Cribb, you don't have to do this today. If you're
17 uncomfortable you still have a loan in place, you
18 have four months to go, we can work on this and get
19 this sorted out somehow." That is what lawyers do,
20 they help, they advise their clients.

21 Mr. Hinds didn't come in here and say she
22 discovered all this at the day of the closing, he
23 didn't do that. She had a good lawyer, she paid
24 him, he did his job. This is a concocted claim
25 about her discovering something and Mr. Hinds would

1 not corroborate her, he would contradict her with
2 regard to what happened at the closing and what her
3 options were.

4 Remember she claimed duress, she said that
5 she was under duress and had no other choice?
6 Well, you know, folks, a lot of people who sign a
7 mortgage with a bank do so with a lot of
8 trepidation and nervousness. I went through that
9 process when I bought my house, probably some of
10 you did, too. I didn't want to be on the line for
11 all that money but I needed a place for my family
12 to live. You mean to tell me I can come back later
13 on and say, you know, "I was under duress that day,
14 I signed that mortgage under duress and I don't owe
15 that money and if I have to I will take this matter
16 to court and I will get a jury to tell everybody in
17 the world that I don't owe this money." That is
18 not the way it works, that's crazy.

19 Bob Gwin, he's the lawyer who closed the
20 Kennedy Funding loan, he is the lawyer who helped
21 with this modification agreement that got the
22 release of lot 4 so it could be used as collateral
23 on the loan from Kennedy Funding. Did he say she
24 was under duress, did he say she was tricked, did
25 he say there was anything at all illegal or

1 improper, that she was under duress? No. Bob Gwin
2 wouldn't come in here and corroborate Miss Cribb,
3 he would come in here and contradict Miss Cribb,
4 that is why you didn't hear from him.

5 And you saw the request to admit that was
6 published I think yesterday, one of the last things
7 we did, Mr. Tyler stood up and published for you a
8 request to admit and what it says is, "We want you
9 to admit that Miss Cribb and her company were
10 represented by an attorney on the occasion of the
11 execution of this agreement on April the 10th,
12 2009. Admitted." That means that issue is out,
13 they admitted it.

14 I need to talk about the experts a little
15 bit. They are going to get up here in their
16 closing argument and say, "Oh, man, we won this
17 case when we got Mr. Stan Ashburne to agree that it
18 was inappropriate to release information to the
19 auction company. He said he wouldn't have done it
20 and Mr. Barksdale said I would have handled it
21 differently, I would have probably had Miss Cribb
22 completely in the loop, make sure she knew about
23 it, I would do things a little differently."

24 They essentially told you the same thing.
25 "That is not the way I would have done it." When

1 you say something is inappropriate, that doesn't
2 mean it's wrong, that it's barred by contract,
3 rule, regulation, statute or anything else. And
4 they might argue that, "Oh, this admission by him
5 means that it is illegal, it's a crime." No, it
6 isn't. It's a judgment call, it is not even an
7 important judgment call in this case, ladies and
8 gentlemen, because it didn't lead to anything, it
9 didn't proximately cause anything.

10 You know, Miss Cribb could have sold her land
11 at some lower rate and come in and said, you know,
12 "I was forced to do that by something the bank
13 did." She hadn't sold that land, she still owns
14 it. She can still do whatever she wants to do with
15 it, she just has a mortgage on it that has to be
16 paid and that was always the deal.

17 But this case doesn't really turn on what an
18 expert says. This is not the kind of case, really,
19 where you need an expert. Now, I have tried cases
20 where experts were right. For example, I had a
21 case against Honda Motor Company alleging that the
22 seatbelt was defective. We had an engineer come in
23 and testify about how seatbelts work, how they
24 operate, how they can be activated by a sudden
25 deceleration of the car, how they can be tightened

1 up, you know. If you lean forward your seatbelt
2 well allow you to reach over in the glove
3 compartment but if you do it real fast it snaps and
4 contracts. All that needs to be explained. That
5 is an expert witness type case, how do you properly
6 design a safe operating seatbelt.

7 The same for a medical device. I had a case
8 one time against the Posey Company, have you ever
9 heard of Posey products they use in nursing homes,
10 we had Mr. Posey himself to come and testify about
11 that. We had a case with General Motors involving
12 braking systems and truck transmissions and whether
13 they could be designed more safely by the inclusion
14 of something called the Rebok device. That took
15 expert testimony, everybody in the courtroom was
16 depending upon a good explanation of things from
17 the expert.

18 This case isn't, this case isn't like that.
19 Whether or not it was a good idea to call the
20 auction company and disclose that information, that
21 is not really an expert witness call, that can be
22 your call. Was it common sense to do that, was it
23 fair, was it reasonable, that is your call, we
24 don't need an expert to tell us about that.

25 The auction company was entitled to know the

1 payoff amount and the fact that there weren't going
2 to be any partial releases. We talked about this a
3 little bit earlier. You have got a strip of land,
4 you've got 19 acres of land along Highway 17. You
5 sell off a parcel, okay? What if the person buying
6 that parcel puts in a biker bar? What is that
7 going to do to the value of the remaining land?
8 What if they put in some kind of sleazy
9 establishment most people don't want to have in
10 their back yard, you know, that can affect the
11 value of their land.

12 Banks don't want to be stuck with undesirable
13 portions left, left over portions of a tract of
14 land. A partial release is an appropriate thing to
15 do maybe in a real estate subdivision where you
16 have got hundreds of lots and you partially release
17 each lot as they are sold. Not on a strip like
18 this along a busy highway. And it was their choice
19 to do that, they were not obligated by any
20 contractual terms to give partial releases.

21 There is an argument made here that the bank
22 proceeded without warning to foreclose, somewhere
23 in the complaint. Well, a demand letter was sent.
24 They said, "You only sent one demand letter." You
25 don't have to send a demand letter but they did

1 send a demand letter, that was about a month before
2 the foreclosure was filed, routine practice,
3 lawful, reasonable practice, nothing wrong with
4 that.

5 And I think I need to say a word or two more
6 about Lincoln-Harris, if disclosures to
7 Lincoln-Harris were made pursuant to a
8 confidentiality agreement. Peggy Cribb called up
9 the bank and said, "I want to know who you have
10 shown documents to relating to my loan, whoever it
11 is is trying, attempting or is interested in buying
12 my loan," and one of her claims is that, "They
13 wouldn't tell me who." You know why? Because of a
14 confidentiality agreement says essentially we're
15 not going to tell about this. Look at the records,
16 we're not going to tell anybody." Banks are not
17 obligated to tell the borrower who they are
18 contemplating selling the loan to, who they have
19 sold the loan to, not required.

20 Miss Cribb also talks out both sides of her
21 mouth when it comes to this proposed contract by
22 Lincoln-Harris. She says it wasn't a signed
23 contract, didn't have any earnest money, wasn't
24 even a valid offer, so didn't count. But then for
25 the interest of calculating her damages she says,

1 "I have a firm contract for \$12,000,000 from
2 Lincoln-Harris." You see, she characterizes it
3 whichever way she wants, however it suits her claim
4 she's bringing at the time.

5 I told you in my opening statement that banks
6 make dreams come true. It has happened for me when
7 I started my law firm in 1982, a young banker who
8 Chip Lyerly knows, Mr. Bob Phillips is his name,
9 loaned me \$20,000 to start my law firm. If he
10 hadn't done that I don't know what I would do.

11 I borrowed money to buy my house, I borrowed
12 money on other occasions, borrowed money to go to
13 law school, borrowed money from the Methodist
14 Church to go to law school. I paid back my loans
15 but these loans have helped my dreams come true. I
16 bet some of you can tell the same stories.

17 But if a bank can't come to court and enforce
18 its rights under a note and mortgage and when a
19 bank gets tied up into a two year long extensive
20 struggle in order to enforce the rights that it has
21 under its note and mortgage that's a dark day,
22 folks, that's a dark day with huge implications.

23 The remaining claims in this case, ladies and
24 gentlemen, are breach of contract, unfair trade
25 practice and tortuous interference with contractual

1 rights. I think I have talked about all those
2 except unfair trade practices.

3 The unfair trade practices statute was passed
4 years ago to protect consumers, once again,
5 individuals. We argued it doesn't relate to a
6 commercial real estate transaction but we didn't
7 win on that. It is therefore your call, but if a
8 bank or let's say a furniture store runs a bait and
9 switch, you know, complete bedroom \$599, somebody
10 comes in and says, "I would like to buy that \$599
11 bedroom," and they said, "Well, we don't have that
12 anymore, sold out, but we can put you over here and
13 show you this \$899 bedroom." If they do that as a
14 practice, it has to be a practice, okay, and it has
15 to be an unfair practice that they are doing and it
16 has to have an impact on the public, public impact.

17 Now, the Unfair Trade Practices Act, if you
18 prove a violation you get treble damages, whatever
19 damages you prove are tripled by the Court and you
20 have to pay attorney fees to the party who brought
21 it. It is a punitive statute, folks, it really can
22 impact a business hard. We submit it doesn't
23 apply, shouldn't apply but more importantly we
24 submit they haven't proven anywhere near what would
25 have to be proven for them to come in here and

1 successfully prove unfair trade practice. This
2 loan to South Causeway was unique, it is not
3 capable of being repeated, this is a unique loan
4 made on a unique piece of property under unique
5 circumstances, it is not a practice that can be
6 repeated.

7 I was going to tell you some more things
8 about the affidavit of Peggy Wheeler-Cribb but if
9 there is one thing I want you to look at carefully,
10 you need to read it, give a real hard look at the
11 evidence, this affidavit Miss Cribb gave, she had
12 all the time in the world to put this together, she
13 had all the time in the world to choose her words,
14 this was not put together until July, 2011, and it
15 is just a concocted story about what all went on in
16 this case.

17 Ladies and gentlemen, I tell jurors all the
18 time you're the conscience of the community, you're
19 the conscience of the community. My arguments to
20 you today have not been designed to appeal to your
21 prejudice, to your passion, to your perceived
22 dislike for banks maybe, I hope you don't have that
23 perception dislike. I hve tried to appeal to your
24 reason, I have tried to appeal to your sense of
25 fairness, to your common sense.

1 I have got a cartoon, I keep it in my office,
2 above the book case, it's a cartoon by my friend
3 Bob Ariel who used to work for The State newspaper,
4 he is now a freelance cartoonist, you all have
5 probably seen his work in your paper, there is a
6 cartoon I have shown the jury several times. This
7 was the death that started all those lawsuits, the
8 death of personal responsibility.

9 When the day comes and we can't come to court
10 and get jurors like you to hold people personally
11 responsible for their choices, their decisions,
12 their obligations, the documents they sign, when
13 that day comes our society falls, the rule of law
14 no longer applies, the prosperity and freedom that
15 Americans enjoy every day will be put at risk.
16 That can't happen.

17 Ladies and gentlemen, if you return a verdict
18 for even a penny to South Causeway, even a penny,
19 they will have won, they will have set a
20 precedence, they come into court with
21 counter-claims when you have a foreclosure, it
22 works, you get a jury trial, "A jury gave us an
23 award," even if it's a penny it allows them to say
24 it all worked. Let your message by your verdict,
25 ladies and gentlemen, let your message be a message

1 that the rule of law is alive and well, personal
2 responsibility is alive and well.

3 Your verdict, and let's talk about that word
4 verdict. Verdicto is the latin word for speak the
5 truth. That is how we got that word in our
6 language.

7 Your verdict, ladies and gentlemen, in this
8 case needs to be a verdict that speaks the truth
9 about the rule of law, personal responsibility and
10 fairness in this Court. Let it go forth from
11 Georgetown County that people are going to be held
12 responsible for their decisions.

13 Thank you for your attention.

14 THE COURT: Thank you, Mr. Collins.
15 Miss Byrd.

16 MS. BYRD: May it please the Court?

17 THE COURT: Yes, ma'am.

18 MS. BYRD: Thank you, Your Honor.

19 Good morning. I have three children, my two
20 oldest are in elementary school right down the
21 road, my son who is the oldest is going into fourth
22 grade and my daughter just started kindergarten, my
23 middle daughter, and every year before school
24 starts they have a meet the teacher night where the
25 students are invited to come and meet their teacher

1 in the classroom for the first time. It is
2 exciting for them. This year it was real excit9ng
3 for my kindergartener because she was going to see
4 her new school.

5 As we walked down the hallway with her we saw
6 a huge sign on almost every wall of this school
7 that said no bullying zone, and I'm sure that she
8 didn't understand at that time what that meant but
9 the week after school started she got an assignment
10 from her guidance counselor in the school and it
11 was about bullying, and so her dad and I sat down
12 with her and even made her big brother participate
13 and it was all about bullying and it was
14 identifying bullying and giving examples of
15 bullying and understanding why it was wrong and I
16 thought how relevant that was to this case and how
17 true it was that the sign that hangs in her
18 classroom that says everything I need to know I
19 learned in kindergarten, because this case is about
20 bullying.

21 From the very beginning of this loan First
22 South Bank has bullied Miss Peggy Wheeler-Cribb,
23 they bullied her by changing the terms of the
24 collateral, they bullied her by forcing her to
25 close on this loan when she asked for more time,

1 they bullied her by failing to fund the interest
2 reserve account that they promised and then telling
3 her that she had to do it. They bullied her by
4 terminating this loan for no reason, and finally
5 they bullied her by filing this foreclosure action
6 for the sole purpose of forcing her to accept an
7 offer that they thought she should accept. They
8 also bullied her by calling the auction company,
9 despite the auction company's decision, plan and
10 development for how this property should best be
11 sold, to give her the best chance to sell this
12 property, that is what they wanted to do so they
13 bullied her again.

14 And the bullying hadn't stopped. You have
15 gotten to see it in this very courtroom, you saw
16 how they have treated Miss Peggy the entire time we
17 have been here. In his opening statement and even
18 again today Mr. Collins told you he was going to
19 prove to you that Miss Peggy was a liar, that she
20 was rude and that she stiff armed people but have
21 you seen any evidence of that? Shame on them,
22 shame on them for saying that.

23 And when he stood and told you that during
24 opening statement the law permits me to stand up
25 and make an objection, I could have made it then

1 but I wanted to hear, I wanted to hear what Mr.
2 Collins thought he had to make you believe to prove
3 his case and render a verdict for First South Bank
4 so I didn't.

5 And what evidence has he presented to you all
6 to show that she's a liar? Has he proved she was
7 rude, that she stiff armed anybody? You have the
8 affidavit in evidence and he has presented you with
9 blow-ups and highlights and you can read it
10 yourself, read the affidavit yourself and remember
11 what she testified to, look at the emails. I would
12 suggest to you that not one thing in her story has
13 changed throughout the entire time. Everything she
14 said has remained consistent. Now, the way Mr.
15 Collins interprets it or the way that the bank
16 interprets it may be different but it has remained
17 the same and you get to decide that.

18 What is striking to me is that repeatedly Mr.
19 Collins said that you the members of this jury
20 shouldn't even get to see or hear or decide this
21 case. Why? Because bullies don't do their
22 victimizing out in public, they don't want people
23 to hear or see what they have done. That bigger,
24 stronger kid on the playground, he doesn't do the
25 bullying in front of teachers. Why? Because he

1 knows they will stop him. They will call him out
2 because they know it's wrong, so they wait until
3 the kids are alone, and it's the same case here,
4 they don't want you to hear what they have done.

5 Remember what else Mr. Collins said? That
6 foreclosure should go to the Master in Equity where
7 they just put up the records custodian and put up
8 the documents and that's it, with no regard to what
9 they have done or not done. They just want to put
10 it through the mill. Well, not today, ladies and
11 gentlemen. You get to decide based on the facts
12 and the evidence whether this bank has acted
13 properly and whether we have proved our claim. You
14 get to decide to make this courtroom and our
15 community a no bullying zone.

16 Now I want to talk to you about the burden of
17 proof. The burden of proof in this case is by
18 preponderance of the evidence. Rarely in life are
19 we certain about anything and certainty is not
20 required but, rather, you are to use your common
21 ense in deciding this case, and the legal words for
22 common sense is preponderance of the evidence. You
23 can picture it as the scales of justice and if they
24 tip slightly in one person's favor then that is the
25 way you should decide this case. If you lean one

1 way or the other, then that is the way you should
2 decide this case.

3 I want to talk briefly about the verdict form
4 that is going to be presented to you and a little
5 bit about what you will see here. You see, we have
6 three claims that you are going to be deciding
7 against First South Bank. The first is a breach of
8 contract claim. A breach of contract claim is just
9 simply that the bank broke its promises or it
10 didn't do what it said it was going to do under the
11 terms of the contract, and we suggest to you there
12 are many breaches of contract and any one of which
13 would be sufficient to prevail on our claim.

14 Let's talk about the first one. You have
15 heard hours of testimony on these bank documents
16 and you have seen the documents, they are in
17 evidence, you will take them back to the jury room,
18 you will be able to review them but I want to talk
19 to you specifically about one provision. This is
20 the second page of the loan commitment letter which
21 is Plaintiff's Exhibit 1. You can read the entire
22 thing for yourself.

23 In this document under loan purpose it
24 provides \$300,000 shall be placed into a restricted
25 access account, that is the interest reserve

1 account we keep talking about, and this was done.
2 Down here in letter F it says an additional
3 \$550,000 of the proceeds of the loan shall be
4 disbursed by bank into the account to fund montly
5 interest payments due upon the loan, and this is
6 important, this is, upon the earlier to occur of
7 completion of the infrastructure and six months
8 from the date of the loan closing. We would
9 suggest that is clear, upon the earlier of X and Y,
10 whichever one happens first, that is common sense
11 but the law will help us in this regard, but
12 because they have argued, "No, both of these things
13 have to happen before we are required to put that
14 money into the account," well, the law helped us in
15 this regard because it says that if there is a
16 provision in the contract and it's not clear, then
17 you must construe it against the person who drafted
18 it.

19 So, if you find that that is not clear, which
20 I suggest it is not, it is clear to me but if you
21 find it is not, then you should resolve any
22 uncertainty against First South Bank and that makes
23 a huge difference in this case because if they had
24 put that money in the interest reserve account we
25 wouldn't be here today. That money would have

1 carried this loan through the duration.

2 The second breach of contract that we allege
3 is distinctly proven to you through substantial
4 evidence is that the bank terminated this loan
5 before Miss Peggy or South Causeway could even ask
6 for additional funds. You have heard that
7 testimony. I asked Mr. Lyerly on the stand whether
8 he had terminated or frozen the loan and you recall
9 he said, "No, we have never done that," so we had
10 to resort to his deposition where he raised his
11 hand, placed his other hand on the Bible and swore
12 to tell the truth and we pointed out at least six
13 times during his deposition where he admitted they
14 froze the loan and we did that with Mr. Lyerly but
15 that is not what he said on the stand.

16 Miss Peggy testified they contacted her, they
17 told her the loan was frozen, they came down here,
18 remember, she said, "They first asked me to go to
19 Columbia and I said no, so they came down here,"
20 they told her again at that meeting, Mr. Lyerly was
21 there. And we produced emails, those are also in
22 evidence, Mr. Lyerly copied on them, where they say
23 the loan has been terminated, it is no longer
24 available to those people. So, we think that is a
25 breach of the contract.

1 Remember I asked Mr. Lyerly, "Point to the
2 provision in this contract that allows you to
3 unilaterally terminate funding." And he shuffled
4 through it, even though they drafted it, he
5 shuffled through it and he never could find a
6 provision that allowed them to do that, and that is
7 a breach of contract.

8 The last two deal with what I started my
9 opening statement on Tuesday of last week and I
10 told you that in every contract there is an implied
11 obligation of good faith and fair dealing and the
12 judge will tell you this when he instructs you on
13 the law, but it is critical that you understand
14 that it is in every contract, whether it is written
15 in there or not, if it is not written in there it
16 should be stamped in bright bold red letters on the
17 page of every piece of that contract. You have an
18 obligation to act in good faith and deal fairly
19 with the other party to a contract and in this case
20 on at least two instances they failed to do so.

21 First they failed to act in good faith and
22 deal fairly when they called Mr. Lovelace, when Mr.
23 Lovelace called Mr. Thomas and told him the exact
24 amount owed on the loan, that the loan was about to
25 mature and that it would not be renewed and they

1 could not and would not accept partial payment.

2 The second breach of the implied covenant of
3 good faith and fair dealing is when First South
4 Bank allowed Lincoln-Harris who they knew was
5 trying to buy this property from Miss Peggy to come
6 in and review their confidential bank file only to
7 use that to the detriment of their customer Miss
8 Peggy. Those are breaches that you can consider in
9 our breach of contract claim.

10 The second claim that we have made and you
11 will see is on the jury verdict form is in
12 violation of the South Carolina Unfair Trade
13 Practices Act, and under the Act a practice or
14 conduct that is unfair or deceptive is unlawful.
15 It doesn't require an illegal act, it doesn't
16 require fraud, it only requires that it be unfair
17 or deceptive.

18 And they defined it and the judge will tell
19 you how better to define those words but if it is
20 unequivocal, if it is oppressive, if it is offensive
21 to public policy, if it is immoral, then it is a
22 violation of the South Carolina Unfair Trade
23 Practices Act.

24 Both experts that have testified, both
25 experts said that what First South Bank did in

1 revealing the confidential information of its
2 customer to third parties was improper. Now, it
3 took a lot to get that out of Mr. Ashburne, we had
4 to go through his deposition but ultimately you
5 will recall at the end of his testimony he said,
6 "Well, it's improper but not illegal, it was
7 improper but it was not illegal." Well, we're not
8 required to prove it was illegal. Improper will
9 do, unethical. We all agree on that.

10 We also have to show under the Unfair Trade
11 Practices Act that there is a potential that this
12 can be repeated, that it has an impact on the
13 public and one way you can show it is to show, you
14 can meet that burden by showing it has happened in
15 the past or that it is likely to happen in the
16 future.

17 In this case we have already shown this
18 happened twice. They disclosed the information to
19 Lincoln-Harris, they disclosed the information to
20 the auction company. That solves the problem. But
21 we'll do even more. You can use as a potential for
22 repetition and the effect on all of you the fact
23 that they have no policy. Mr. Lyerly testified
24 this bank has absolutely no policy about sharing
25 information with third parties, so that that could

1 happen to any one of us, any member of the public,
2 they could just call and disclose your confidential
3 banking information to anyone at anytime for any
4 purpose and that is what they did, they did it
5 twice to this customer.

6 And the judge will tell you even one is
7 enough to qualify under the Act, even one. You
8 have two, coupled with a lack of policy of
9 procedure to prevent it from happening again.

10 The third and final claim that you will
11 consider on the jury verdict form is tortuous
12 interference with contract. That is the contract
13 with First, I'm sorry, South Causeway and Christy's
14 Auction Company. They had an auction plan
15 developed, Mr. Cooper and Mr. Thomas used their
16 professional judgment and skill to work with Miss
17 Peggy to set the prices and set the manner for the
18 auction and I urge you to consider what has been
19 marked as Defendant's Exhibit Number 3. That is
20 the original auction contract and you can clearly
21 see on there that the terms of that auction were
22 changed and they were changed only after the call
23 from Mr. Lovelace to Mr. Thomas where he directed
24 them to change those prices. You will see that on
25 the back of that contract, when you lift it up you

1 will be able to see the prices were set at 1.1
2 million, 1.4 million, 2 million and 2.5, and if you
3 add those up that is \$7,000,000, which is what the
4 whole piece was being offered at. And that was
5 more than sufficient to cover anything that was
6 owed to First South Bank, more than sufficient, but
7 as a result of that call they had to change the
8 prices to 4.8 million dollars for any of those four
9 parcels. You heard Mr. Thomas testify and you
10 heard Miss Peggy testify that doesn't make any
11 sense, but you all know that it doesn't make any
12 sense.

13 Well, why would the bank do that? We know
14 now because during this whole time they were
15 negotiating their own deal with Lincoln-Harris,
16 they were trying to get this loan sold to
17 Lincoln-Harris and the auction wasn't helping and
18 Lincoln-Harris wanted all 19 acres, they didn't
19 want a piece of it or a parcel of it. They told
20 you the last thing the bank wants is to end up with
21 the property. Well, then why not allow them to
22 sell it? The only thing the bank was worried about
23 was its money, is what they told you. Then why not
24 take some of it? Instead, they basically prevented
25 any possibility that this auction could be

1 successful.

2 Another element of the tortuous interference
3 with contract claim is that they had to have
4 interfered without justification, and what
5 justification have they offered to you for
6 interfering with that contract? Let's talk about
7 it. They said, "We called to protect our
8 collateral." Think about that. Does that make
9 sense to you? If I have my house listed and I have
10 a mortgage on it, someone makes me an offer that is
11 lower than what I owe I can't sell it, the bank is
12 protected, they just don't sign off on it. So,
13 there was no need for them to protect the
14 collateral. That is an excuse to call the auction
15 company, to prevent the auction from going forward
16 in a manner that would have resulted in a sale.

17 What other justification did they offer you?
18 You heard Mr. Lyerly testify yesterday that it
19 would be an embarrassing situation for the auction
20 company, he wanted to make sure it wasn't an
21 embarrassing situation. What about their customer,
22 their own customer? Did they care that they were
23 embarrassing her, they were violating her
24 confidence, her trust? I would suggest they did
25 not.

1 I want to talk to you about a few things that
2 Mr. Collins discussed with you. First is
3 credibility. He talked about the fact that
4 everybody needs to come in this courtroom and be
5 honest. Okay, let's think back. Of the witnesses
6 that we called, our witness Miss Peggy on the
7 stand, how many times did we have to use her
8 deposition to say, "Oh, wait a minute, now, that is
9 not true." He pointed out one time when she said,
10 when he asked something and he pulled out the
11 deposition, and what she said was the same as the
12 answer in the deposition, she did not lie. Now,
13 think about.

14 Now think about their witness Mr. Lovelace,
15 how many times did we have to point out in his
16 deposition the false testimony that was being given
17 here, inconsistencies.

18 How about Mr. Ashburne, their expert? How
19 many times did Mr. Goddard have to re-read his
20 deposition transcript to you? Inconsistent. So,
21 you decide who is credible. We feel comfortable
22 with our witnesses.

23 Mr. Collins also mentioned, "Well, why didn't
24 you call this witness, why didn't you call that
25 witness, why didn't we call Bob Gwin?" Well, the

1 fact is we tried and they objected.

2 MR. COLLINS: Judge, I have to object to this
3 argument. That is absolutely improper.

4 THE COURT: Overruled.

5 MS. BYRD: Thank you, Your Honor.

6 MS. BYRD: We asked, we had him, we were
7 ready to bring him and they objected and wouldn't
8 let him testify. We're not hiding anything from
9 you. Lincoln-Harris, Lincoln-Harris, that is their
10 buddy, if they wanted them to testify why didn't
11 they call them?

12 Then they asked about Darwin, Miss Peggy's
13 son, why didn't we call him. Here is the answer.
14 You guys have been here for a week and Darwin knows
15 the exact same information that Peggy knows, yet he
16 stands up here and somehow insinuates to you that
17 he's a liar too just because we didn't call him.
18 These are their customers, this is how they treat
19 their customers.

20 He also talked to you about, well, if we felt
21 Lincoln-Harris did something wrong why don't we sue
22 Lincoln-Harris? Well, we didn't have a contract
23 with Lincoln-Harris, they did, why don't they sue
24 them, because Mr. Lyerly testified he knew that
25 Lincoln-Harris was out there sharing the

1 confidential information and talking to people
2 about developing this property while Miss Peggy is
3 trying to have an auction and did nothing, and now
4 he wants to say we should sue them?

5 Finally, he talked about a release and the
6 release of these claims. Well, I would submit to
7 you, number one, that because they breached the
8 contract, what you are going to hear from the
9 judge, when you breach a contract you can't then
10 complain if you say somebody else later breached
11 it. So, in other words, if what we're saying is
12 correct, then they can't enforce the contract
13 against us because they breached first. In any
14 event, look at the timing. All these disclosures
15 made to Lincoln-Harris, made to the auction company
16 came after that release was signed.

17 Now I want to talk to you about damages. You
18 will consider two kinds of damages, actual damages
19 and punitive damages, and here is what we know. We
20 know that Lincoln-Harris in June of 2008 made an
21 offer to purchase this property, this 19 acres for
22 \$675,000 per usable acre for 18.3 acres, and I had
23 to do the math but I have added this up, that is
24 \$12,352,500. That is what the offer was in 2008
25 from Lincoln-Harris.

1 Two years later, in 2010. From the same
2 company, Lincoln-Harris, for the same property they
3 are offering \$4,000,000. Ladies and gentlemen, we
4 can't deny that the real estate market has gone
5 down but it has not gone down by \$8,352,000, it
6 hasn't gone down that much and you are free to
7 decide whether it is 8,352,000, whatever number you
8 ascribe, that is your decision.

9 The second issue is punitive damages.
10 Punitive damages are meant, they are shown by clear
11 and convincing evidence and what we have to show is
12 that the conduct of First South Bank was willful,
13 was reckless, was in disregard, absolute disregard
14 for the rights of their client, and I would submit
15 to you we have shown that through clear and
16 convincing evidence. Punitive damages are meant to
17 punish this bank and deter this bank from ever
18 treating someone like this again. But not only
19 this bank, but any other bank that is going to come
20 into this county and do business with our citizens,
21 and that is what punitive damages are for and you
22 will hear more about what is required but willful
23 and reckless conduct of First South Bank requires
24 that you award punitive damages. Make them write
25 policies on releasing confidential information,

1 make them do it. It will be recorded in this
2 courthouse for everybody to see.

3 Mr. Collins is right, this will have an
4 effect on all banks and it should and that is what
5 we hope because despite what Mr. Collins told you
6 in opening that we may never have another bank left
7 here in Georgetown County, I would suggest to you
8 what that is wrong, I would suggest to you what we
9 will have is good banks, banks that treat their
10 customers fairly, banks that treat their customers
11 the way they should be treated.

12 In proving punitive damages and your
13 consideration of punitive damages think about the
14 fact that the bank concealed the identify of
15 Lincoln-Harris from Miss Peggy even when she
16 directly asked. She asked who was considering
17 buying her loan, because the timing didn't seem
18 right, and they refused to tell her, they concealed
19 it and it went on for months and they refused to
20 tell her, and she told you on the stand if they had
21 just said it's Lincoln-Harris that she would have
22 recognized the name and that could have been the
23 end of it. But they didn't do that, they concealed
24 that.

25 I just wanted to first thank you all for your

1 time and attention during this case. I know some
2 of these documents have been boring and this case
3 has been somewhat complex but your decision is
4 simple, is it right, is it wrong? There is right
5 and wrong and you know it, you know what is right,
6 and we would just like to emphasize that this is
7 Miss Peggy's one day in court, you have been here
8 for so long but you do get to go back to your life,
9 to work, to your families tomorrow, and similarly I
10 get to go back to my office and work and family,
11 Judge Russo will have another case, other matters
12 to work on, but Miss Peggy, this is her one shot
13 and we implore you to give her a full cup of
14 justice, not a half cup, because a half cup of
15 justice is a half a cup of injustice and she
16 deserves more. Give us a verdict in favor of South
17 Causeway and make it a verdict that you're proud of
18 and our community can be proud of.

19 Thank you again for your time.

20 THE COURT: Thank you, Miss Byrd.

21 Mr. Collins.

22 MR. COLLINS: Well, I guess I found out just
23 now I'm on trial. The bullies released a 1.4
24 million dollar lot for \$500,000, the bank could
25 have driven a much tougher bargain than they did.

1 Does a bullying bank keep the interest rate four
2 percent after the foreclosure started, when the
3 statutory law allows them to boost it up to 14
4 percent? Does a bullying bank allow a borrower to
5 stay in ownership of the property without any
6 foreclosure when they commit acts or allow things
7 to happen that are clearly described in the loan
8 instrument as events of default?

9 This is the loan agreement, events of
10 default, one of them is failure to pay debts
11 generally as they become due, all right? Failure
12 to perform, the real property taxes became due,
13 they didn't pay them. The bank could start
14 foreclosing right then. And another default is if
15 the borrower abandons construction of the
16 improvements, not to resume construction for a
17 period of five consecutive days. They could have
18 done that way, way before they foreclosed. So,
19 does a bullying bank treat their customer like
20 that? I think what this bank did is demonstrated
21 to be abundantly fair and reasonable.

22 Mrs. Byrd talked to you about a number of
23 things but she never got around to telling you and
24 explaining to you how anything that she has
25 covered, anything she talked about proximately

1 caused a loss. Causation is a huge event. Nothing
2 anybody did caused that property to go down in
3 value like it did. She says it couldn't have gone
4 down from twelve to four. Well, whatever it's
5 worth somebody can come forward with an offer today
6 while you're in there deliberating and Miss Cribb
7 can sell that land, okay? She's never been under
8 any limitation on selling that land to anybody she
9 wants to, nothing this bank has done has caused her
10 not to own it and not to be able to sell it.

11 And let me tell you about this. She said,
12 you know, all this unfair treatment by banks.
13 Banks work things out, banks don't want to have a
14 seven day trial in Georgetown County and with all
15 this expense, they don't want that, go get me an
16 offer from somebody, let them bring their offer,
17 let it be conditional on First South Bank financing
18 their deal, let it be conditional on First South
19 Bank taking a lesser amount for the mortgage.
20 Banks work things out all the time.

21 And finally, when you saw me stand up and
22 object, it was when Mrs. Byrd said they tried to
23 call some of these witnesses I pointed out in my
24 opening statement that weren't called, she said
25 they tried to call them but that we objected.

1 That's just not true. Witnesses can be subpoenaed
2 to this courtroom. Judge Russo did not tell First,
3 I mean South Causeway they couldn't call a witness,
4 he abundantly gave them opportunity, he abundantly
5 gave them the ability to come in here and prove
6 their case. Even if I had objected, which I
7 didn't, he could have said, "Your objection is
8 overruled, Mr. Collins, they get to call that
9 witness." It is their case. They had the burden
10 of proof, we didn't. As to the counter-claims they
11 have the burden of proof.

12 They say give Miss Peggy a full measure of
13 justice, not just a half a cup. As I told you
14 earlier, any verdict that you return on these
15 counter-claims saying that First South Bank owes
16 money to South Causeway is going to be a big change
17 in how banks do business in Georgetown County,
18 probably in the hole state of South Carolina. This
19 bank has been fair, this bank has lived up to its
20 obligations, this bank is entitled to foreclose,
21 this bank should not be required to pay any damages
22 to South Causeway.

23 Thank you very much.

24 THE COURT: Thank you, Mr. Collins.

25 Ladies and gentlemen, I'm now going to, while

1 it is time for me to give you the charge on the
2 law, before I do that I'm going to give you a short
3 break and let you get something to drink, if you
4 want a snack or something like that. We'll take
5 just a little bit of time to let you do that and
6 then I will bring you out and we will, I will then
7 give you the charge on the law.

8 So, if you would, have no conversation about
9 the case, we're not at that point yet, we're close,
10 so please go ahead and anything you need you let us
11 know and we'll send it in, okay?

12 (The jury was excused from the
13 courtroom).

14 THE COURT: All right, I'm going to run by
15 you this number two, which is now number two and
16 three and give me your thoughts, we can talk about
17 it and beat it around if we need to. Eliminating
18 number two, the current one, I've got number two,
19 did First South Bank without just cause cease all
20 further advancements under the commercial
21 development portion of the loan after the initial
22 disbursement was made at the closing of the loan on
23 June 25th, '08. Yes or no.

24 Three. If your answer to question two is no
25 proceed to question four. If your answer to

1 question two is yes, did such action constitute a
2 breach of contract by First South Bank, yes or no.

3 MR. FLOYD: I think that's fine, Your Honor,
4 from our standpoint, not seeing it, that's fine.

5 MR. GODDARD: Your Honor, I believe our
6 position on that is that is also satisfactory.

7 THE COURT: I'm going to print that out so
8 you can eyebrow it.

9 MR. GODDARD: Perfect.

10 THE COURT: I know it is not as easy to
11 comprehend something when you're hearing it, so
12 we're going to print that out, I'll let you look at
13 that and then we'll be at ease right now if you all
14 want to use the restroom or whatever, get something
15 to drink.

16 MR. FLOYD: Thank you, Your Honor.

17 MS. BYRD: Thank you, Your Honor.

18 (Recessed at 12:15 p.m.).

19 (Resumed at 12:30 p.m.).

20 THE COURT: All right, is the plaintiff ready
21 to bring the jury out for the charge?

22 MR. COLLINS: Yes, sir, Your Honor.

23 THE COURT: Is the defendant ready?

24 MS. BYRD: Yes, sir, Your Honor.

25 THE COURT: All right, bring them out.

1 (The jury returned to the courtroom).

2 THE COURT: All right, ladies and gentlemen,
3 during the course of the trial and as I told you
4 when we got started you are the judges of the facts
5 and I'm the judge of the law, so it has been
6 appropriate that while the lawyers have been
7 presenting to you the evidence and the facts of the
8 case that I have been out of the way and allowing
9 them to do that but we have reached the portion of
10 this trial where you and I are now in this
11 together, you as the judge of the facts and me as
12 the judge of the law and so I come down here to be
13 with you to give you the charge on the law.
14 Another reason is it is just more friendly to talk
15 to people like this than it is to sit up there on
16 that bench, so I'm going to give you the charge,
17 I'm going to read it verbatim so that I don't
18 misstate anything or leave anything out. It looks
19 very lengthy but it is because I'm sort of blind
20 and so I've got like a big font, all caps, double
21 spaced and I still need my glasses to see it. But
22 I'm going to, as I said, read it verbatim. I'm
23 going to, when the time is appropriate for you go
24 back to deliberate I'm going to send this to the
25 jury room with you so you will have this in the

1 jury room should you need to refer to it.

2 But members of the jury please give me your
3 attention, I will now instruct you or charge you
4 the law as it applies to the facts as you find them
5 to be.

6 The defendant South Causeway, LLC, claims
7 that it has been injured or damaged by the actions
8 of the plaintiff First South Bank. In bringing
9 this lawsuit the defendant South Causeway claims
10 that the plaintiff First South Bank should
11 compensate it for its injuries or damages. By the
12 Constitution and laws of the state of South
13 Carolina you the jury are the sole judges of the
14 facts and the evidence in this case. I am not
15 permitted to intimate any opinion that I may have
16 about this case or show any feeling to you as to
17 what I think about the facts and the evidence. I
18 am not permitted to indicate how I feel about the
19 merits of the case. I tell you now that I do not
20 have an opinion in this case nor am I entitled to
21 an opinion under the law.

22 Members of the jury, in determining what the
23 facts are in this case you of necessity must pass
24 upon the credibility of witnesses who have
25 testified. Credibility in the law simply means

1 believability. The value and the weight to be
2 given to the testimony is in your sound discretion.
3 You alone must decide the force and the effect and
4 the truth of the testimony.

5 In making a determination as to the
6 credibility of witnesses there are many factors
7 that you may and should take into consideration,
8 such as the appearance or the manner of the witness
9 as he or she gave testimony from the witness stand.
10 This is known in the law as the demeanor of a
11 witness. Did the witness have an interest in the
12 outcome of the trial, was the witness forthright or
13 hesitant, was the witness' testimony consistent or
14 did it contain discrepancies.

15 You may consider the ability of the witness
16 to know about the facts to which that witness
17 testified. Did the witness have a cause or reason
18 to be biased or prejudiced in favor of the
19 testimony that he or she gave, was the testimony of
20 the witness corroborated and made stronger by other
21 testimony and evidence or was it made weaker and
22 impeached by other testimony and evidence.

23 As jurors you have the right to believe a
24 small portion of a witness' testimony and disregard
25 the larger portion, you may believe a larger

1 portion of a witness' testimony and disregard the
2 smaller, you may disregard a witness' testimony
3 entirely if you have a sound reason in the record
4 for doing so. You may believe the testimony of a
5 single witness against that of many or believe many
6 witnesses against one. Most certainly, however,
7 you do not determine the matter of credibility or
8 believability merely by counting the number of
9 witnesses for either side.

10 Throughout this entire process you have but
11 one single objective and that is to seek the truth
12 regardless from what source that truth may come.

13 Now, by the very same Constitution and laws
14 which make you the finders of the facts and
15 evidence in this case I am as the trial judge made
16 the sole and only instructor in the law. You must
17 accept as correct the law as I charge it to you to
18 be the correct law. And finally in that regard
19 neither you nor I should be concerned with what the
20 law ought to be in this state but, rather, what I
21 charge you the law to be in this state.

22 Now, the fact that the parties are a
23 corporation or business organization must not enter
24 into or affect your verdict. A corporation or a
25 business organization is entitled to the same fair

1 trial at your hands as a private individual. All
2 parties are equal before the law and each should be
3 given the same fair and equal treatment by you.
4 You are to decide the case solely and exclusively
5 on the evidence alone except that you shall be
6 guided at all times in your deliberations by the
7 law as the Court explains it to you. Regardless of
8 any opinion you may have as to what the law ought
9 to be it would be a violation of your sworn duty to
10 base a verdict upon any view of the law other than
11 that which is given to you in these instructions
12 from the Court.

13 Now, South Causeway has the burden of proving
14 each of the elements of its counter-claims for
15 breach of contract, violation of the South Carolina
16 Unfair Trade Practices Act and tortuous
17 interference with contract by what is known in the
18 law as the greater weight or the preponderance of
19 the evidence.

20 Now -- I lost my place here. When I say that
21 a party must prove a proposition by the greater
22 weight or the preponderance of the evidence we mean
23 that the evidence on that proposition must be more
24 convincing on that party's side than on the other
25 side. This can be illustrated by imagining a set

1 of scales. When the trial begins the scales are
2 even. After all the evidence has been presented,
3 if the scales should remain even or if they tip
4 even slightly in favor of First South Bank then
5 South Causeway, LLC, would have failed to meet the
6 burden of proof and would not be entitled to
7 recover in this case.

8 If on the other hand those scales tip even
9 slightly in favor of South Causeway they would have
10 met the burden of proof and you should return a
11 verdict for South Causeway. The preponderance or
12 the greater weight of the evidence is that part of
13 the evidence which carries to your mind the
14 conviction of its truth, fixed conviction of truth
15 outweighs the other evidence in the case and
16 satisfies you that justice lies there.

17 So, what is a contract? A contract is an
18 agreement between two or more parties. The
19 preliminary step in making of which is an offer by
20 one and an acceptance by the other in which the
21 minds of the parties meet and concur in
22 understanding the terms. A contract is the meeting
23 of the minds of at least two parties. It involves
24 an offer and an acceptance and it must bind both
25 parties. The essentials of a contract are that,

1 number one, that a person or entity is able to
2 contract. The parties in this case are
3 corporations or business entities and are able to
4 contract and able to be contracted with.

5 Two, a person or entity able to be contracted
6 with.

7 Three, a thing to be contracted for.

8 Four, good and sufficient consideration.

9 Five, clear and explicit words to express the
10 contract.

11 And six, the acceptance of both the
12 contracting parties.

13 In South Carolina contracts may be in writing
14 or it may be oral. That is, by word of mouth. Or
15 it may be a combination of those types. That is,
16 some things in writing, some things oral or by word
17 of mouth. To make a contract there must be an
18 offer and an acceptance. An offer is a proposal
19 which is definite and certain in its terms. The
20 offer must be communicated to the other party. The
21 mere intention to do an act is not an offer. In
22 addition, preliminary negotiations are not offers.
23 An offer may be withdrawn at anytime before it is
24 accepted.

25 If you find that an offer was made you must

1 next decide whether the offer was accepted. An
2 offer can only be accepted by the person to whom it
3 was made. The acceptance must be communicated to
4 the person who made the offer. Unless the offer
5 specifically states that the acceptance must be
6 made at a certain place or time or in a certain way
7 an offer may be accepted in any way which lets the
8 person making the offer know that the offer is
9 accepted. An acceptance does not have to be
10 expressed, it may be inferred from the acts or the
11 conduct of the party accepting the offer. However,
12 there must be some expression of the intent to
13 accept the offer either by words, signing or some
14 act communicated to the person making the offer or
15 that person's agent.

16 If you find that an offer was rejected or was
17 not accepted then there was no contract. A
18 contract is a transaction involving two or more
19 parties whereby each becomes obligated to the other
20 with reciprocal right to demand performance of what
21 is promised by each respective person. A contract
22 is an agreement on sufficient consideration to do
23 or not do a particular thing. Therefore, the
24 consideration is a vital element in a binding
25 contract. No contract is complete without legal

1 consideration. When the law says there must be
2 consideration the law does not require any form of
3 consideration. The law says consideration is that
4 which the parties agree to as consideration. It
5 may be money, it may be an agreement to do a
6 particular thing, it may consist of mutual
7 promises. Consideration may be some right,
8 interest or benefit given to a party, it may also
9 be the failure to do an act, a loss or
10 responsibility which is undertaken by a party. As
11 I said, consideration may be money, an act, a
12 service or a promise to do something or to not do
13 something in the future. Mutual promises may
14 constitute consideration.

15 In making your decision as to whether a valid
16 contract exists you should only be concerned with
17 whether there was any consideration, not the value
18 of the consideration. You should not weigh the
19 value of the consideration given by one party
20 against the value of the other party's
21 consideration. You are to decide only whether
22 there was consideration to support the agreement,
23 not whether the agreement was a good one.

24 Now, the word breach as it applies to
25 contracts is defined as a failure without legal

1 excuse to perform any promise which forms a whole
2 or a part of a contract, including the refusal of a
3 party to recognize the existence of the contract or
4 the doing of something inconsistent with the
5 existence.

6 When performance of a duty under a contract
7 is due any nonperformance is a breach. In other
8 words, a party breaches a contract when it does not
9 perform as it agreed to perform under the contract.
10 A party's contractual duty is found in the
11 obligation assumed by the party to the contract. A
12 party's failure to comply with the contractual duty
13 constitutes the breach.

14 Nonperformance of a valid contract is a
15 breach thereof. A breach occurs when a party
16 refuses or neglects to perform some duty that is
17 required by the terms of the contract. A breach of
18 contract is any unjustified failure to perform any
19 promise, express or implied, that is a part of the
20 contract or a violation or nonfulfillment of the
21 obligations, agreements or duties imposed by the
22 contract or the commission or omission of some act
23 that violates the expressed or the implied
24 undertakings that are contained in the contract.

25 A breach may occur when a party without legal

1 excuse fails to perform any promise that is all or
2 part of a contract or knowingly prevents, hinders
3 or makes more costly the other party's performance
4 or in advance of the due date of its performance
5 repudiates its promise to perform. That is,
6 repudiates or renounces the contract.

7 South Causeway, LLC, is only entitled to
8 recover if you find that it has proved by the
9 preponderance of the evidence that First South Bank
10 did in fact breach the contract between the two
11 parties. Accordingly, to recover for a breach of
12 contract South Causeway, LLC, must establish three
13 elements by the preponderance of the evidence.

14 First, that there was a binding contract
15 entered into by the parties.

16 Second, the breach or the unjustifiable
17 failure to perform the contract.

18 And third, damages suffered by the plaintiff
19 as a direct and proximate result of that breach.

20 Remember, a binding, valid contract must
21 exist for there to be a cause of action for breach
22 of contract. South Causeway, LLC, must prove each
23 of the elements, each element of the contract sued
24 on.

25 Now, although implied covenants are not

1 favored in the law, the settled principles are that
2 noncontradictory terms may be implied in a contract
3 in order to effectuate the manifest intention of
4 the parties when the circumstances warrant it and
5 that there exists in every contract an implied
6 covenant of good faith and fair dealing.

7 Under South Carolina law there exists in
8 every contract an implied covenant of good faith
9 and fair dealing. A contract includes not only
10 what is expressly stated, but also what is
11 necessarily to be implied from the language used
12 and external facts such as the surrounding
13 circumstances. Terms which may clearly be implied
14 from a consideration of the entire contract are as
15 much a part thereof as though plainly written on
16 its face.

17 In the absence of an expressed provision
18 therefore, the law will imply an agreement by the
19 parties to a contract to do and perform those
20 things that according to reason and justice they
21 should do in order to carry out the purpose for
22 which the contract was made. The policy of the law
23 is to supply in contracts what is presumed to have
24 been deemed perfectly obvious by the parties and
25 the parties are supposed to have made those

1 stipulations which is honest, fair and just --
2 which as honest and fair and just men they ought to
3 have made.

4 The implied covenant of good faith modifies
5 and becomes part of the provisions of the contract
6 itself. In construing a contract you shall use the
7 following rules of construction. In the
8 construction or the interpretation of a contract
9 common sense and good faith are the leading
10 touchstones of the inquiry. All contracts should
11 receive a sensible and a reasonable construction
12 and not such a construction as will lead to an
13 absurd consequence.

14 An interpretation which involves the more
15 reasonable and probable contract should be adopted.
16 Where one construction makes the provision unusual
17 or extraordinary and another construction which is
18 equally consistent with the language employed would
19 make it reasonable, fair and just, the latter
20 construction must prevail. The rights of the
21 parties must be measured by the contract which the
22 parties themselves made regardless of its wisdom,
23 reasonableness or failure of the parties to demand
24 their rights carefully.

25 A contract should be construed so as to give,

1 if possible, full force and effect to every part of
2 it. When a provision is ambiguous the intent of
3 the parties controls. The intent of the parties is
4 a question of fact to be resolved by you the jury
5 when the contract is ambiguous. In an effort to
6 ascertain the party's intention the situation of
7 the party as well as their purposes at the time of
8 the contract, at the time the contract was entered
9 into must be determined.

10 A contract is ambiguous when the terms of the
11 contract are inconsistent on their face or are
12 reasonably susceptible of more than one
13 interpretation. A contract is ambiguous only when
14 it may fairly and reasonably be understood in more
15 ways than one -- excuse me. An ambiguous contract
16 is one that can be understood in more ways than
17 just one or is unclear because it expresses its
18 purposes in an indefinite manner. Ambiguities must
19 be construed against the party who prepared the
20 contract.

21 A provision of a contract which does not
22 clearly express the intention of the parties should
23 be construed against the one whose benefit was
24 asserted. Ambiguous language in a contract should
25 be construed liberally and strongly in favor of the

1 party who did not write or prepare the contract and
2 is not responsible for the ambiguity.

3 Doubtful language in a contract should be
4 interpreted most strongly against the party who has
5 selected that language, especially where he seeks
6 to use such language to defeat the contract or its
7 operation. In case of doubt or ambiguity a
8 contract will be construed most strongly against
9 the party who drew it or prepared it or whose
10 attorney drew or prepared it.

11 Where a party to a contract adopts a
12 reasonable interpretation of documents furnished by
13 another and relies upon it that reliance is due to
14 be protected, notwithstanding that the other
15 party's interpretation may also be reasonable.
16 Where a contract is prepared by one party it will
17 be presumed that its words were employed
18 deliberately and with intention.

19 Parties to a contract are not expected to
20 exercise clairvoyance in spotting hidden
21 ambiguities in the contract. They are protected if
22 they innocently construe in their own favor an
23 ambiguity susceptible of another interpretation.
24 When there is no ambiguity in a contract it must be
25 construed according to the terms which the parties

1 have used and terms used in the contract should be
2 seen and understood in their plain, ordinary and
3 poplar sense.

4 Language used in a contract must be
5 interpreted in its natural and ordinary sense.
6 Absent an obvious omission or a drastic conflict in
7 provisions a party to a contract is not normally
8 required to seek clarification of any and all
9 ambiguities, doubts or possible differences in
10 interpretation. The rights of the party to a
11 contract must be measured by the contract which the
12 parties themselves made.

13 The Court is not in the business of making a
14 contract for a party. The intention of a contract
15 is to be determined from the language. Language
16 which is perfectly clear determines the full force
17 and effect of the document. Where a contract
18 evidences care in its preparation it will be
19 presumed that its words were employed deliberately
20 and with intention.

21 In construing a contract the primary
22 objective is to ascertain and give effect to the
23 intention of the parties. The parties' intention
24 must in the first instance be derived from the
25 language of the contract. The primary test as to

1 the character of a contract is the intention of the
2 parties, such intention to be gathered from the
3 whole scope and effect of the language that's used.

4 The intent and the purport of a written
5 contract must be gathered from the contents of the
6 entire agreement and not from any particular clause
7 or provision therein. Every term contained in a
8 contract must be considered and given effect if
9 possible. If the language of the contract is
10 plain, unambiguous and capable of only one
11 reasonable interpretation no construction is
12 required and the contract's language determines the
13 true force and effect. When the language of the
14 contract is ambiguous, that is, it has more than
15 one meaning you are permitted to consider the
16 circumstances that surround the making of the
17 contract to help you in determining the real
18 intention of the parties. You may not, however,
19 use such circumstances to give the contract a
20 meaning that is not apparent on its face. The
21 paramount rule in interpreting contracts is to
22 ascertain the intention of the parties and then to
23 put these intentions into effect.

24 To arrive at a correct conclusion as to the
25 intention of the parties it is proper that the

1 contract be considered in the light of the
2 surrounding circumstances. The parties' intentions
3 must in the first instance be derived from the
4 language of the contract. The intention of a
5 contract, excuse me, the intention of a contract is
6 to be determined from the language. Language which
7 is perfectly clear determines the full force and
8 effect of the document. Words which admit of a
9 more extensive or more restrictive signification
10 must be taken in that sense which will best
11 effectuate what is reasonable.

12 To suppose -- let me back up. Words which
13 admit of a more extensive or more restrictive
14 signification must be taken in that sense which
15 will best effectuate what is reasonable to suppose
16 was the real intention of the parties.

17 In determining the intent of the parties you
18 may not consider the undisclosed or secret
19 intentions of a party but rather you must be guided
20 only by the parties' outward expressions. Where
21 the contract has been put into writing you should
22 gather the intention and the meaning of the parties
23 primarily from the content of the written document
24 itself. Words cannot be read into a contract which
25 import an intent wholly unexpressed when the

1 contract was executed.

2 The parole evidence rule states that where
3 the terms of a written instrument are unambiguous,
4 clear and explicit, extrinsic evidence of
5 statements made contemporaneously with or prior to
6 its execution are inadmissible to contradict, vary
7 or explain its terms. The parole evidence rule
8 prevents the introduction of extrinsic evidence of
9 agreements or understandings contemporaneous with
10 or prior to the execution of the written instrument
11 when the extrinsic evidence is to be used to
12 contradict, vary or explain the written instrument.
13 This rule excludes evidence which would give a
14 perfectly clear agreement a different meaning or
15 effect other than indicated by the plain language
16 of the agreement.

17 If a contract is ambiguous parole evidence is
18 admissible to show the true meaning of the contract
19 and the intent of the parties. Parole evidence may
20 be admitted to supply a deficiency and establish
21 the true intent of the parties. Parole evidence is
22 admissible to show the true meaning of an ambiguous
23 written contract. An ambiguous contract, as I said
24 earlier, is one that can be understood in more ways
25 than just one or is unclear because it expresses

1 its purpose in an indefinite manner.

2 Where a written contract is silent as to a
3 particular matter and ambiguity thereby arises
4 parole evidence is admissible to supply the
5 deficiency.

6 Now, the First South Bank claims that if
7 there was a breach of contract South Causeway, LLC,
8 by its actions after the alleged breach waived its
9 right to enforce the contract. Waiver involves the
10 intentional relinquishment of a known right. That
11 is, waiver is a voluntary and intentional
12 abandonment or relinquishment of a known right. It
13 may be implied from the circumstances indicating an
14 intent to waive. An implied waiver results from
15 acts and conduct of the party against whom the
16 doctrine is invoked, from which an intentional
17 relinquishment of a right is reasonably inferable.

18 Acts that are inconsistent with the continued
19 assertion of a right may also give rise to a
20 waiver. Waiver is an affirmative defense. The
21 burden of proof is upon the party who asserts it.
22 Generally the party claiming waiver must show that
23 the party against whom the waiver is asserted
24 possessed at the time actual or constructive
25 knowledge of his or her rights or of all the

1 material facts upon which they depend. Strict and
2 full performance of a contract by one party may be
3 waived by the other party, in which case there is
4 to the extent of the waiver no right to damages for
5 the failure to perform strictly or fully. Either
6 party to a contract may waive any of the provisions
7 made for it's benefit.

8 And unexplained delay in enforcing the
9 contract may constitute evidence of waiver and
10 acquiescence and nonperformance. Waiver of a
11 contractual right is largely a matter of intent.
12 The right to prosecute a breach of contract action
13 may be waived if the party which has the right acts
14 in such a manner as to lead the other side to
15 believe that the right has been relinquished. In
16 other words, once a breach of contract occurs the
17 nonbreaching party must enforce its rights or lose
18 them.

19 A default in the performance of a contract
20 may be waived. Although intent is necessary to
21 effect a waiver of a breach of contract, it need
22 not be shown by direct evidence. The waiver of a
23 breach of contract may be shown by an act which is
24 so inconsistent with the intent to enforce the
25 right which arises upon the breach as to reasonably

1 induce a belief that the right has been
2 relinquished.

3 If you find First South Bank has proved that
4 South Causeway, LLC, acted in such a way as to
5 waive its rights to enforce the breach of contract.
6 then your verdict must be for First South Bank on
7 this issue.

8 Now, a person who signs a contract or other
9 written document cannot avoid the effect of the
10 document by claiming he or she did not read it. A
11 person signing a document is responsible for
12 reading the document and making sure of its
13 contents. That is to say every contracting party
14 owes a duty to the other party to the contract and
15 to the public to learn the content of a document
16 before he or she signs it. One who signs a written
17 instrument has the duty to exercise reasonable care
18 to protect themselves. Such duty requires that he
19 or she read the contract which they sign. If the
20 person cannot read he or she has the affirmative
21 duty to ask someone to read the document to them.
22 Simply stated, a person who signs a contract or
23 other written document is bound by the terms and
24 the conditions of the writing.

25 Now, the term release has been defined as the

1 relinquishment, concession or giving up of a right,
2 claim or privilege by the person in whom or to whom
3 it accrues, to the person against whom it might
4 have been demanded or enforced. A release is an
5 agreement providing that a duty owed to the maker
6 of the release is discharged immediately. A
7 release is contractual in nature and you must first
8 look to the language of the release to determine
9 the intentions of the parties. The general rule in
10 South Carolina is that when a party seeks to set
11 aside a release they must first return any
12 consideration received by them for the release.

13 Now, one who intentionally and improperly
14 interferes with the performance of a contract
15 between another and a third person by inducing or
16 otherwise causing the third person not to perform
17 the contract is subject to liability to the other
18 for the pecuniary loss resulting from the failure
19 of the third person to perform the contract. The
20 theory of this doctrine is that the parties to a
21 contract have a property right in the contract
22 which a third person has no more right to
23 maliciously deprive them of or injure them in than
24 it would have to injure their property. Such an
25 injury without sufficient justification amounts to

1 a tort for which the injured party may seek
2 damages.

3 To establish an action for intentional
4 interference with an existing contractual
5 relationship, sometimes referred to as tortuous
6 interference with an existing contract, South
7 Causeway, LLC, must prove, first, the existence of
8 a contract.

9 Second, the wrongdoer's knowledge of the
10 contract.

11 Third, the intentional procurement of the
12 contract's breach.

13 Fourth, the absence of justification.

14 And fifth, resulting damages.

15 The rule presupposes the existence of a valid
16 contract. That is, there must be a valid and
17 enforceable contract for a cause of action for
18 tortuous interference with an existing contract to
19 exist. The particular agreement must be in force
20 and effect at the time of the breach that the
21 offending party has caused. If for any reason it
22 is entirely void there is no liability for causing
23 its breach.

24 Knowledge of the existence of a contract is a
25 condition of liability before interference with it.

1 Therefore, a person cannot be liable for
2 interfering with a contract of which that person
3 was unaware. There is no liability where the party
4 charged with procuring a breach of a contract has
5 acted in ignorance of the existence of any
6 contract. It is not necessary to prove actual
7 knowledge. It is enough to show that the person
8 had knowledge of the facts which if followed by
9 reasonable inquiry would have led to complete
10 disclosure of the contractual relations and the
11 rights of the parties.

12 For a cause of action to arise a breach must
13 be intentional and procured. South Causeway, LLC,
14 must prove that the outsider intentionally induced
15 the third person not to perform its contract with
16 South Causeway, LLC.

17 The second element is the intent to cause the
18 result. If First South Bank did not have this
19 intent its conduct does not subject it to
20 liability. The tort of intentional interference
21 with a contractual relationship requires that the
22 third party's interference in fact procures the
23 breach complained of. The alleged act of
24 interference must influence, induce or coerce one
25 of the parties to the contract to abandon the

1 relationship or to breach the contract.

2 South Causeway, LLC, must show that before
3 the, must show that but for the interference the
4 contractual relationship would have continued.
5 Regardless of First South Bank's behavior, there
6 must actually be a breach of the underlying
7 contract before there can be an interference with
8 an existing contractual relationship.

9 The absence of justification may be inferred.
10 Inference with a contract, excuse me, interference
11 with a contract is justified when it is motivated
12 by a legitimate business purpose. The exercise in
13 good faith of a legal right by a party to a
14 contract affords no basis for an action by the
15 second party for intentional interference with
16 contracts even though the consequence of the legal
17 right by the first party is to cause a third party
18 not to perform under the contract with the second
19 party.

20 In determining whether First South Bank's
21 conduct intentionally interfered with a contract of
22 South Causeway, LLC -- let me back up. In
23 determining whether First South Bank's conduct in
24 intentionally interfering with a contract of South
25 Causeway, LLC, is improper you must consider the

1 following factors. First, the nature of First
2 South Bank's conduct.

3 Two, First South Bank's motive.

4 Three, the interest of the others with which
5 First South Bank's conduct interferes.

6 Four, the interest sought to be advanced by
7 First South Bank.

8 Five, the social interest in protecting the
9 freedom of action of First South Bank and the
10 contractual interest of the other.

11 Six, the proximity or the remoteness of First
12 South Bank's conduct to the interference.

13 And seven, the relations between the parties.

14 An essential element of the tort of
15 interference with a contractual relationship is
16 that damages resulted from the breach. In an
17 action for interference with a contract South
18 Causeway, LLC, may recover such damages sustained
19 by it as are a natural and proximate consequence of
20 the interference. The measure of damages includes,
21 one, unforeseen expenses.

22 Two, damage to reputation.

23 Three, damage for loss of employees.

24 Four, damage for loss of customers.

25 And five, damage for loss of good will.

1 Aggravated, unjustified interference with
2 contractual rights in reckless disregard of the
3 rights of the contracting parties justifies an
4 award of punitive damages.

5 Now, South Carolina has the South Carolina
6 Unfair Trade Practices Act which is contained in
7 the Code of Laws as passed by the General Assembly
8 of this state and is contained in Section 39-5-10
9 through 39-5-56. It is the law of this state and
10 it provides that unfair methods of competition and
11 unfair or deceptive acts or practices in the
12 conduct of any trade or commerce are unlawful. The
13 terms trade and commerce include the advertising,
14 offering for sale, sale or distribution of any
15 services and any property, tangible or intangible,
16 real, personal or mixed, and any other article,
17 commodity or thing of value wherever situated and
18 any trade or commerce directly or indirectly
19 affecting the people of South Carolina.

20 Although the Act defines trade and commerce
21 to include the previously mentioned activities, the
22 list is not exclusive. The word trade and commerce
23 as used in the Act are synonymous. Broadly
24 defined, the word trade includes the business of
25 buying as well as the business of selling.

1 The Act authorizes recovery only when the
2 plaintiff has suffered any ascertainable loss of
3 money or property as a result of the use or
4 employment by another person of an unfair or
5 deceptive method, act or practice.

6 To recover pursuant to the Unfair Trade
7 Practices Act South Causeway, LLC, must prove by a
8 preponderance of the evidence, first, a violation
9 of the Unfair Trade Practices Act.

10 Second, proximate cause.

11 And third, damages.

12 The act or practice complained of must be
13 unfair or deceptive. Whether an act or practice
14 is unfair or deceptive within the meaning of the
15 Act depends on the surrounding facts and the impact
16 of the transaction on the marketplace. An act or
17 practice is unfair when it is offensive to the
18 public, offensive to public policy or when it is
19 immoral, unethical or oppressive. It need not be
20 based on a binding contract.

21 Where a contract exists a mere breach of the
22 contract is not conduct which violates the Act.
23 Proof of common law fraud is not required to
24 establish a violation. However, to be actionable
25 under the Act the unfair or the deceptive act or

1 practice complained of must have an impact on the
2 public interest.

3 There is no need to show that a
4 representation was intended to deceive but only
5 that it had the capacity, effect or tendency to do
6 so. A deceptive act or practice is one which has
7 a tendency to deceive. Even a truthful statement
8 may be deceptive if it has the capacity or tendency
9 to deceive.

10 To be actionable under the Unfair Trade
11 Practices Act the unclear method or unfair method
12 of competition or unfair, deceptive acts or
13 practice must have adverse impact upon the public
14 interest. Expressed differently, the Act is not
15 available to redress a private wrong where the
16 public interest is unaffected. An unfair or
17 deceptive act or practice has an impact on the
18 public interest if the act or the practice has the
19 potential for repetition.

20 The potential for determining repetition may
21 be shown in two ways. First, by showing the same
22 kind of actions occurred in the past, thus making
23 it likely that they will continue to occur absent
24 deterrence.

25 Or two, by showing the company's procedures

1 create a potential for repetition of the unfair and
2 deceptive acts.

3 These are not the only means for showing
4 potential repetition. South Causeway, LLC, must
5 present proof of specific facts disclosing that
6 members of the public were adversely affected by
7 the unfair conduct or that they were likely to be.
8 Even a single instance of an unfair or deceptive
9 act or practice is sufficient to base a claim for
10 damages under the Act.

11 A deliberate or intentional breach of a valid
12 contract is not in and of itself a violation of the
13 Unfair Trade Practices Act. The act complained of
14 should be deceptive or actually approach
15 deception.

16 The term unfair trade practice encompasses a
17 wide variety of shady practices sometimes
18 associated with the marketing of consumer goods and
19 services. South Causeway, LLC, must prove
20 proximate cause. In addition, South Causeway, LLC,
21 must prove damages. Actual damages include special
22 or consequential damages which are the natural and
23 proximate result of the deceptive conduct.

24 Any person is liable for damages resulting
25 from their use or employment of an unfair trade

1 practice. Under the Unfair Trade Practices Act any
2 person who suffers any ascertainable loss of money
3 or property as a result of the use or the
4 employment by another of an unfair or deceptive
5 method, act or practice may recover actual damages
6 or compensatory damages. Compensatory damages are
7 damages in satisfaction of or in recompense for
8 loss or injury sustained. The phrase actual
9 damages refers to common law damages or the
10 difference in value between that which South
11 Causeway, LLC, parted and that which it received.

12 The damages recoverable for a breach of
13 contract are those which follow as a natural
14 consequence of the breach or those damages which
15 may reasonably be supposed to have been within the
16 contemplation of the parties at the time the
17 contract was entered into. One who seeks to
18 recover damages for a breach of contract to which
19 it was a party must show that the contract has been
20 performed on its part or at least that it was at
21 the appropriate time able, ready and willing to
22 perform.

23 A party who has been injured by the breach of
24 a contract is entitled to recover the amount of the
25 loss. That is to say they are entitled insofar as

1 can be done by a monetary award to be placed in the
2 same position they would have occupied if the
3 contract had been performed.

4 Where two parties have made a contract which
5 one of them has broken the damages which the other
6 party ought to receive in respect to such breach of
7 contract should be such as may fairly and
8 reasonably be considered to arise naturally
9 according to the usual course of things from the
10 breach of contract itself or such damages as may
11 reasonably be supposed to have been within the
12 contemplation of the parties at the time that they
13 made, at the time they made it, as the probable
14 result of the breach.

15 Actual damages are properly called
16 compensatory damages, meaning to compensate, to
17 make the injured party whole, to put them in the
18 same position they were in prior to the damages
19 received insofar as monetarily this is possible.
20 In other words, actual or compensatory damages
21 include compensation for all injuries which are
22 naturally the proximate result of the alleged
23 wrongful conduct. Actual damages are damages in
24 satisfaction of or in recompense for loss or
25 injuries sustained. The goal is to restore the

1 injured party as nearly as possible through the
2 payment of money to that same position he or she
3 was in prior to the wrongful injury. The basic
4 measure of actual damages is the amount needed to
5 compensate a party for the loss proximately caused
6 by the wrong so that the party will be in the same
7 position it would have been had there been no
8 wrongful injury.

9 The existence, causation or amount of damages
10 cannot be left to conjecture, guesswork or
11 speculation. However, proof of the amount of loss
12 with absolute mathematical certainty is not
13 required. Damages must be proved withing a
14 reasonable degree of certainty. The evidence
15 presented by the defendant must enable you the jury
16 to determine what amount is fair, just and
17 reasonable and South Causeway, LLC, bears the
18 burden of proving by the preponderance of the
19 evidence that it is entitled to compensatory
20 damages.

21 Now, in this case South Causeway, LLC, is
22 seeking punitive damages in addition to actual
23 damages. Punitive damages are imposed as
24 punishment, they are not intended to compensate.
25 Punitive damages are allowed in the interest of

1 society in the nature of punishment and as a
2 warning and example to deter the wrongdoer and
3 others from committing like offenses in the future.
4 Moreover, they serve to vindicate a party, a
5 private right by requiring the wrongdoer to pay
6 money to the injured party.

7 Punitive damages serve at least three
8 important purposes. First, punishment of the
9 wrongdoer's reckless, willful, wanton or malicious
10 conduct.

11 Second, deterrence of similar future conduct
12 by the wrongdoer and others.

13 And third, compensation for the reckless or
14 willful invasion of the injured party's private
15 rights.

16 As you consider the issue of punitive damages
17 the highest burden of proof known to the civil law
18 is applicable. In any civil action where punitive
19 damages are claimed the injured party has the
20 burden of proving such damages by clear and
21 convincing evidence. Punitive damages can only be
22 awarded where the injured party proves by clear and
23 convincing evidence the wrongdoer's actions were
24 willful, wanton, malicious or in reckless disregard
25 of the injured party's rights.

1 Clear and convincing evidence requires that
2 the evidence must be found to be credible, the
3 facts to which the witness testified must be
4 distinctly remembered, the testimony must be
5 precise and explicit and the witness must be
6 lacking in confusion as to the facts in issue. The
7 evidence must be of such weight that it produces in
8 the mind of the trier of fact a firm belief or
9 conviction without hesitancy as to the truth of the
10 allegations sought to be established.

11 A conscience failure to exercise due care
12 constitutes willfulness. It is the present
13 consciousness of wrongdoing that justifies the
14 assessment of punitive damages against the
15 wrongdoer. Punitive damages will be allowed even
16 when the wrongdoer does not realize it is invading
17 the injured party's rights so long as the act is
18 committed in such a manner that a person of
19 ordinary prudence would conclude that it was done
20 in reckless disregard of the rights of another.
21 The injured party cannot recover punitive damages
22 based on negligent conduct.

23 Negligence is the doing of some act which a
24 person of ordinary prudence would not have done
25 under the similar circumstances or failure to do

1 what a person of ordinary prudence would have done
2 under similar circumstances. Mere negligence will
3 not support an award of punitive damages. To
4 recover punitive damages the injured party must
5 prove by clear and convincing evidence that the
6 wrongdoer's actions were willful, wanton or
7 reckless. The word reckless, willful and wanton
8 are synonymous. The terms are used to describe a
9 conscious failure to exercise and observe
10 reasonable or due care. Recklessness is
11 distinguished from negligence.

12 Negligence is the failure to use due care.
13 Negligence is carelessness. Negligence is failure
14 by omission or commission to exercise due care as a
15 person of ordinary prudence would exercise in the
16 same circumstance. Recklessness is a higher degree
17 of culpability and responsibility. Recklessness
18 signifies a conscious failure to exercise due care.
19 Recklessness is a conscious indifference to the
20 rights of the injured party or a reckless disregard
21 to the rights of the injured party. Recklessness
22 is an awareness of wrongful conduct and a
23 continuation to act reckless of consequences --
24 excuse me... Recklessness is an awareness of
25 wrongful conduct and a continuation to act

1 regardless of the consequences.

2 A test for determining whether a tort may be
3 deemed reckless, willful or wanton is whether it
4 has been committed in such a manner and under such
5 circumstances that a person of ordinary reason or
6 prudence would have been conscious of it as an
7 invasion of the rights of the injured party.

8 Before you can award punitive damages you
9 must first find the injured party is entitled to
10 actual or nominal damages. There must be an award
11 of actual or nominal damages for a verdict of
12 punitive damages to be supported. This rule is
13 premised on the fact that liability must be
14 established before an injured party can seek
15 punitive damages. Therefore, if you do not award
16 actual or nominal damages, then you cannot award
17 punitive damages.

18 There is no formula or standard that can be
19 used as a measure for assessing punitive damages.
20 However, factors relevant to your consideration of
21 punitive damages are as follows.

22 First, the character of the wrongdoer's acts.

23 Second, the nature and the extent of the harm
24 to the injured party.

25 Three, the wrongdoer's degree of culpability.

1 Four, the punishment that should be imposed.

2 Five, the duration of the conduct.

3 Six, the wrongdoer's awareness or
4 concealment.

5 Seven, the existence of similar past conduct.

6 Eight, the likelihood the award will deter
7 the wrongdoer or others from like conduct.

8 Nine, whether the award is reasonably related
9 to the harm likely to result from such conduct.

10 And ten, the wrongdoer's wealth or ability to
11 pay.

12 The financial condition of a wrongdoer is a
13 factor you should consider in awarding punitive
14 damages. However, there is no requirement that the
15 wrongdoer be a person of means before you are
16 justified in awarding punitive damages. While the
17 wealth of a wrongdoer is a relevant factor in
18 assessing punitive damages, it is not necessarily
19 controlling. In other words, the financial worth
20 of a wrongdoer is a fact to be properly considered
21 by you in determining the amount to be awarded as
22 punitive damages, if any, but evidence of net worth
23 is not a prerequisite to punitive damage award.

24 When under proper allegations an injured
25 party proves by clear and convincing evidence a

1 willful, wanton, reckless or malicious violation of
2 its rights it is not only the right but the duty of
3 the jury to award punitive damages. Accordingly,
4 if you should find that the injured party is
5 entitled to recover punitive damages in addition to
6 actual damages it would be your duty to include
7 such damages in your verdict and award such in an
8 amount as you deem reasonable and proper in light
9 of the facts and circumstances.

10 Now, Mr. Foreman, and ladies and gentlemen,
11 I'm now drawing near to the end of this charge and
12 I want you to clearly understand that you are not
13 partisans or advocates for the plaintiff or the
14 defendant. You do not serve as jurors to reward
15 your friends or punish your enemies. In this
16 regard you have been selected by both the plaintiff
17 and the defendant to be fair and impartial jurors.
18 It is your duty by your joint deliberations to
19 determine the truth in this case, keeping in mind
20 that South Causeway, LLC, has the burden of proving
21 each and every element of its case, then to the
22 facts which you determine to be true you should
23 take and apply the law which has been given to you
24 by this Court, thus arriving at a verdict which
25 speaks the truth in this case. In fact, the word

1 verdict comes from the Latin word verdicto, which
2 means a true saying. Thus, when you have
3 accomplished your responsibilities you will have
4 satisfied your oath as jurors and you will have
5 discharged your duty to this Court.

6 The word juror also comes from Latin. The
7 word means an oathed person. A juror is a person
8 has taken a solemn oath to bring their best talent
9 and capability to the task of rendering a fair and
10 impartial verdict. Your oath designates you as an
11 official of the Court. This oath is commensurate
12 with the oath taken by the judge. The judge and
13 the jury will honor their duties and responsibility
14 so as to achieve a fair and impartial verdict.

15 Everyone is entitled to justice in this case,
16 both the plaintiff and the defendant. All are
17 entitled to justice, nothing more, nothing less.
18 You owe no support or sympathy to anyone. The
19 Court is of the confirmed opinion that whatever
20 verdict you reach will represent truth and justice
21 for all parties involved.

22 Now, your verdict in this case must be
23 unanimous, you must all agree on the verdict,
24 whatever it may be.

25 Mr. Foreman, the verdict form will be in the

1 front of this notebook. It is called a special
2 verdict form. The reason it is called special
3 verdict form is it has specific questions that you
4 the jury will be asked to answer and I'm going to
5 review it with you. It is simple, you can read it
6 and follow it but I'm just going to review it with
7 you.

8 At the top it has the caption of the case and
9 then as to action one, breach of contract, it has
10 here as to South Causeway, LLC's, counter-claim for
11 breach of contract we the jury unanimously find
12 either for the plaintiff First South Bank or for
13 the defendant South Causeway, LLC. And so then you
14 continue reading and it says if you find for First
15 South Bank you are instructed to proceed to cause
16 of action two.

17 If you find for South Causeway, LLC, you are
18 instructed to answer each of the questions set
19 forth below before you proceed to cause of action
20 two. So then if you reach those questions, if you
21 answered for the defendant South Causeway to that
22 first question you will then come down and you will
23 have to answer this question. Did First South Bank
24 breach the contract to South Causeway, to South
25 Causeway, LLC, by not depositing additional amounts

1 into the interest reserve account after the initial
2 disbursements made at the closing of the loan on
3 June 25th of '08.

4 You will either answer yes or no. Then you
5 will come to the next question. And I don't need
6 to read them all for you, you can read them. You
7 will, each of these, you will read each of these
8 questions and you will answer each of those
9 questions.

10 If you answer the first one for the
11 defendant, if you answer the first one for the
12 plaintiff the First South Bank you will then skip
13 these questions and you will proceed to cause of
14 action two. But regardless of which path you take
15 you will end up eventually at cause of action two
16 and that is for the violation of the South Carolina
17 Unfair Trade Practices Act, the alleged violation
18 of that Act. There your responses would be you
19 either find for the plaintiff First South Bank or
20 the defendant South Causeway, LLC, and then you
21 will move to the next one and you have the same
22 responses.

23 Then you come to a section listed as damages
24 and here it says that if the jury unanimously finds
25 for the plaintiff First South Bank on each of the

1 above causes of action you will stop here, you will
2 sign the verdict form as the foreman and you will
3 knock on the door and let the bailiff know you have
4 a verdict.

5 If the jury unanimously finds for the
6 defendant South Causeway, LLC, on any of the above
7 causes of action you would then answer the
8 following questions and then you will read those
9 questions and then answer those questions.

10 It is a simple form, it has, I mean, it is
11 four pages but it is very simple, you just follow
12 it.

13 Now, if you have any questions about any of
14 this of course you can always let me know and I
15 will do what I can to answer those questions.

16 What I'm going to do at this time, I'm going
17 to excuse you to your jury room but I'm going to
18 ask you to not begin your deliberations quite yet.
19 What I'm going to do is I'm going to double check
20 with the attorneys to make sure I have included
21 everything in the charge. If I have missed
22 anything, if I need to correct anything I will
23 bring you back out and do that. If everything is
24 good we'll collect the exhibits and put them
25 together, put this notebook with them. When you

1 receive the notebook and the exhibits that is your
2 queue then to begin your deliberation, okay? And
3 we are having lunch brought in for you, so they are
4 going to be feeding you shortly. It may be here, I
5 don't know.

6 THE CLERK: It's here.

7 THE COURT: It's here so I'm going to leave
8 it up to you all, if you all want to eat and talk
9 or if you all want to eat and talk afterward, it is
10 up to you, I'm going to let you totally handle
11 that. But if you would, go back to the jury room,
12 do not begin deliberations until you receive these
13 items, okay?

14 (The jury was excused from the courtroom at
15 1:40 p.m.).

16 THE COURT: All right, any exceptions or
17 objections from the plaintiff with regard to the
18 charge?

19 MR. COLLINS: No, Your Honor, thank you.

20 THE COURT: Anything from the defense?

21 MS. BYRD: No, Your Honor.

22 THE COURT: If you all would do me a favor,
23 get with Henry and make sure that all the exhibits
24 that are in are there. If there is anything that
25 doesn't belong up there, take it back to your

1 table, make sure we don't have exhibits at your
2 table and we'll get all that together and we'll
3 send it back. So, let's go ahead and do that.

4 All right, tell them they can begin their
5 deliberations and ask the alternate to step out.

6 (Recessed at 1:46 p.m.).

7 (Resumed at 3:25 p.m.).

8 THE COURT: Is the plaintiff ready to receive
9 the jury verdict?

10 MR. COLLINS: Yes, Your Honor.

11 THE COURT: Is the defendant ready?

12 MS. BYRD: Yes, Your Honor.

13 THE COURT: All right, bring the jury in.

14 (The jury returned to the courtroom).

15 THE COURT: All right, Mr. Vicas, has the
16 jury arrived at a unanimous verdict, sir?

17 JUROR: Yes, Your Honor, we have.

18 THE COURT: All right, if you would please
19 pass the notebook up.

20 Thank you, sir.

21 All right, publish the jury verdict, please,
22 ma'am.

23 THE CLERK: Pursuant to Rule 49 of the South
24 Carolina Rules of Civil Procedure we the jury in
25 the above entitled action find the following

1 special verdicts.

2 As to South Causeway, LLC's, counter-claims
3 for breach of contract we the jury unanimously find
4 for the plaintiff First South Bank.

5 Cause of action two, violation of South
6 Carolina Unfair Trade Practices Act, as to South
7 Causeway's counter-claim for violating South
8 Carolina Unfair Trade Practices Act, we the jury
9 unanimously find for the plaintiff First South
10 Bank.

11 Cause of action three, alleged tortuous
12 interference with contract. As to South Causeway,
13 LLC's, counter-claim for tortuous interference with
14 contract we the jury unanimously find for the
15 plaintiff First South Bank.

16 We the jury -- is that it?

17 THE COURT: Yes, ma'am, that's it.

18 All right, ladies and gentlemen, you heard
19 the Madam Clerk publish your verdict. If the
20 verdict that she published is in fact your decision
21 please raise your right hand.

22 All right. Thank you very much.

23 Ladies and gentlemen, I want to thank you for
24 your service last week and this week. You know, I
25 would love to sit here and just tell you that we're

1 going to make it worth your while, we're going to
2 compensate you. I just don't have that authority.
3 Obviously you will get a check for your service
4 but, Lord, when you see it please don't think that
5 is what we think of your time. Your time is
6 valuable, it is extremely valuable but I do want to
7 say this. You know, people, I don't think they
8 all, the general public really appreciates jury
9 service until they have done it and then once you
10 have done it, I don't know if you understand how
11 valuable what you have done this week and a half
12 has been. It's been said oftentimes and I agree a
13 hundred percent that other than serving your
14 country in the military this is the highest form of
15 service you can give your community. These parties
16 had differences and they needed, they could not
17 resolve them and they needed your help in resolving
18 them. That occurs every day in this courthouse and
19 we live in a country that allows our differences to
20 be settled this way and if you have ever been in a
21 country that does it differently you will
22 appreciate where you live and that we do the things
23 we do the way we do them.

24 If you need an excuse for your work the clerk
25 downstairs in the clerk's office, you can you go by

1 the clerk's office and they will give that to you.

2 You mail the checks:

3 THE CLERK: Yes, sir.

4 THE COURT: The check will be in the mail, is
5 that right?

6 THE CLERK: Yes.

7 THE COURT: Don't get terribly excited, wait
8 for it, it won't be a lot of money. What do they
9 pay in Georgetown?

10 THE CLERK: \$25 a day.

11 THE COURT: Guys, in Florence they pay \$10 a
12 day, so count your blessings, I guess.

13 Thank you for your service. You have earned
14 an exemption, I believe Judge John probably told
15 you back when you were qualified last week, I know
16 it sounds a year away, but you all are only
17 required to serve on jury duty once every three
18 calendar years in Circuit Court. So the balance of
19 this year and the next two years if you receive a
20 summons for jury service in Circuit Court you can
21 claim that exemption and be excused but I do tell
22 folks all the time it is just an exemption, it
23 doesn't mean you're not qualified to serve, so I
24 would encourage you to serve if you get another
25 summons but then again, I haven't sat in your seat.

1 I have never been summonsed for jury duty, I'm 57
2 years old and I have never been summoned for
3 jury duty except once and it was about five years
4 ago and it was for a term of court that I was
5 presiding over, so I have never had the opportunity
6 to do what you have done this week or past week and
7 a half. But I want to thank you for your service.
8 It is just so vitally important, I just can't tell
9 you.

10 If you need that work excuse please go by the
11 clerk's office and they will give that to you and
12 you're free to go.

13 (Jury excused from the courtroom).

14 THE COURT: All right. I don't want to speak
15 for anybody but I think someone had mentioned
16 earlier that whatever the verdict was, that you
17 were going to request ten days.

18 MR. GODDARD: Yes, Your Honor, I think we
19 agreed to that before.

20 THE COURT: Ten days in which to file any
21 post trial motions, I will certainly give you that
22 opportunity.

23 Let me get you all to step up here real
24 quick.

25 (Unrecorded bench conference).

1 THE COURT: All right. Now, the jury has
2 resolved the legal issues and so now the issue
3 regarding foreclosure is before the Court for the
4 Court to decide and on that. I will be happy to
5 hear from the plaintiff.

6 MR. TYLER: Thank you, Your Honor. D. J.
7 Tyler on behalf of the plaintiff First South Bank.
8 Your Honor, we have entered into evidence the note
9 which has matured, we have entered into evidence
10 the mortgage, we have also entered and established
11 what I believe to be the debt as well during
12 plaintiff's case in chief and under the terms of
13 the note and the mortgage, Your Honor, we have the
14 right to foreclose on the property and proceed with
15 selling the property.

16 THE COURT: All right.

17 MR. TYLER: Your Honor, and attorney fees, we
18 have a right to recover attorney fees. Your Honor,
19 as Judge Hyman previously ruled, that would be
20 taken up post jury trial.

21 THE COURT: All right, sir.

22 MR. COLLINS: Judge, we also believe that
23 should there be an appeal filed we are entitled to
24 require that the defendant post an appeal bond in
25 an appropriate sum.

1 THE COURT: Miss Byrd, again I know that
2 we're doing ten days with regard to post trial
3 motions but with regard to the equitable issue of
4 foreclosure I will be happy to hear from you.

5 MS. BYRD: Your Honor, with regard to
6 equitable issues, foreclosure, we renew again our
7 motion for directed verdict on that issue. We
8 believe that the plaintiff has not established with
9 the required certainty the amount of the debt and
10 therefore they are not entitled to foreclose. We
11 also believe there was sufficient evidence
12 presented during the trial of this matter to
13 warrant the finding of unclean hands which would
14 prevent the foreclosure, Your Honor.

15 THE COURT: All right.

16 MR. COLLINS: Judge, with regard to that, the
17 point she made or typically made during examination
18 of one of the bankers, one of our witnesses is that
19 it was a rate that was capable of moving up or down
20 if the Wall Street Journal published prime rate
21 changed and what we determined and Mr. Lyerly
22 testified about this when he was recalled is that
23 Wall Street Journal rate was the same from 2008,
24 until today, so it didn't change and therefore that
25 calculation is to the penny accurate, we believe.

1 THE COURT: All right, sir. All right, I
2 think we dealt with it throughout the course of
3 this trial, at least early on, and I think the case
4 law supports as well that the legal issues were to
5 be tried by a jury and they were to be tried first
6 and if there are any facts, common facts, that the
7 Court was bound by whatever the jury found or the
8 decision of the jury, and keeping in line with
9 that, I think that there is a valid note and
10 mortgage in this case, it does appear that the debt
11 is, has been established and I think it is
12 appropriate and I'm going to grant the foreclosure
13 to the plaintiff on that note and mortgage and then
14 with regard to the attorney fees issue I'm going to
15 grant those attorney fees, I'm going to ask you to
16 submit an affidavit to that effect and then allow
17 Miss Byrd to address whatever issues when you
18 address the post trial motions regarding the
19 attorney fees.

20 MS. BYRD: Your Honor, just so I'm clear for
21 the record, are you saying you are granting the
22 attorney fees? Our understanding was they would
23 file and submit an affidavit and at that time we
24 would have the right to request a hearing on the
25 attorney fees issue.

1 THE COURT: Correct.

2 MS. BYRD: Okay..

3 THE COURT: Correct. I haven't granted, I
4 haven't approved any amount.

5 MS. BYRD: Okay, thank you, Your Honor.

6 THE COURT: And so you will be able to do
7 that and then argue that before whoever.

8 MR. COLLINS: And, Judge, our request for a
9 bond to be posted is pursuant to Section 18-9-170
10 of the South Carolina Code of Laws and it requires
11 two sureties, I didn't realize this until I saw
12 that writing, that is the basis upon which that
13 will be sought. We'll put that in our proposed
14 order, Your Honor. And, Judge, we would be happy
15 for you to schedule any post trial hearings in your
16 chambers or in the courthouse in Florence if that
17 is your preference.

18 THE COURT: All right.

19 MR. TYLER: Your Honor, one more thing. In
20 the proposed order it is typical unless Your Honor
21 wants to come back here to actually attend the
22 sale, that you would order the clerk's office
23 actually handle the sale.

24 THE COURT: Yes.

25 MR. TYLER: Just follow normal course?

1 THE COURT: Sure, absolutely.

2 Miss Byrd, do you want to be heard regarding
3 the request for an appeal bond? It is premature
4 because I don't know that appeal has been filed.

5 MS. BYRD: That's right, Your Honor, I think
6 it is an appellate issue, I think if we ask for
7 stay the appellate court would impose that bond. I
8 know that is what the statute says, but without an
9 amount I think it is a premature issue.

10 THE COURT: All right. Well, what I will do,
11 then, I will be looking to receive proposed order
12 with regard to the ruling on equitable issues. Mr.
13 Tyler, make sure you send Miss Byrd a copy of that.

14 MR. TYLER: Yes, sir.

15 THE COURT: At the time you send it to me,
16 and Miss Byrd, if there are any issues with that I
17 will certainly hear from you.

18 MS. BYRD: Thank you, Your Honor.

19 THE COURT: Let me take this moment to thank
20 everybody, all of the lawyers, the bank personnel,
21 Miss Cribb, these folks, everyone has been as
22 professional as I have ever seen. These trials are
23 trials in and of themselves aren't always easy but
24 what makes them easy is when I have good lawyers
25 and good litigants who are very professional and

1 accommodating and you all have been that and more
2 and so it has been a pleasure working with
3 everybody on this case.

4 MR. COLLINS: And we return the compliment to
5 Your Honor. Thank you for your patience and thank
6 you for the courtesies that you have extended.

7 MS. BYRD: Thank you, Your Honor.

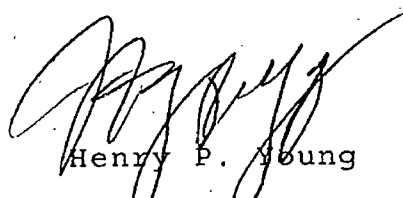
8 THE COURT: All right.

9 (Adjourned at 3:31 p.m.).
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Georgetown County,
11 South Carolina, on the 25th day of September, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 March 24, 2013

15
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19 Henry P. Young
20 Court Reporter
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Lyerly, Chip

From: Greg Currie <GCurrie@lincolnharris.com>
Sent: Monday, May 24, 2010 8:30 AM
To: Lyerly, Chip
Cc: mackcallum@aol.com
Subject: RE: South Causeway

Chip:

Thank you for your note. After our initial visit, we reviewed the county approved site plan and development plan internally and with our engineering firm. We had non-binding meetings with county officials who understood our concerns on how the site was "loaded" and we got feedback that our suggested changes would be supported. We then met with major tenants to test their interest and we received non-binding interest. I spoke with you several weeks ago and shared with you that our development and financial modeling was indicating a blended acre price in the \$170k range if we were buying on a purely speculative basis. Through Charles, we suggested that if we could bind the property so we could get tenant commitments, I could remove some risk factors in our modeling which would get us closer to your par value. Rather than produce an intermediate step of an LOI, I instructed our lawyer to go directly to a purchase agreement for the note. I thought this would save time and eliminate surprises for the bank and us. To every extent possible, we want to reduce risk. Our leasing team is at a national conference for shopping centers this week and we feel we can get commitments if the property is bound.

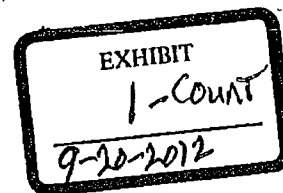
Chip, I am sorry we could not hit your expectations in timing. We were moving as quickly as possible. This is a unique piece of property that is somewhat "shop worn" among retailers. The pending auction did not help matters either. We are in a very different economic environment than we were even a year ago. We remain very interested in the property, but we respect the bank's position. Hopefully, this will help explain our position.

Best regards,

Greg

From: Lyerly, Chip [chiplyerly@FIRSTSOUTHBANCORP.com]
Sent: Friday, May 21, 2010 5:14 PM
To: Greg Currie
Cc: mackcallum@aol.com
Subject: RE: South Causeway

Greg:



Lyerly, Chip

From: Greg Currie <GCurrie@lincolnharris.com>
Sent: Friday, May 21, 2010 4:28 PM
To: Lyerly, Chip
Cc: mackcallum@aol.com
Subject: South Causeway
Attachments: Harris Investments_Note Purchase Agreement.DOC

Chip:

Attached, please find the note purchase agreement we would propose for the subject property. This agreement is open for review and comment by the bank and the bank's legal counsel. Our intent is to put in a first class development; however, we need to mitigate our risk prior to buying the note at par. We will use the option period and extension period, if needed, to secure commitments for retailers we have identified. These retailers will not commit to the project until we have some type of control over the land and/or note during the option period. This note purchase will not be subject to any financing contingency. Beyond our tenant risk, we would want to limit our risk of lender liability and we have proposed language to support this. Please feel free to call my cell if you have questions. I am excited that we are getting closer to a deal on this project.

Best regards,

Greg

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Lyerly, Chip

From: Greg Currie <GCurrie@lincolnharris.com>
Sent: Saturday, March 27, 2010 11:52 AM
To: Lyerly, Chip
Cc: dtyler@tcjps.com; Lovelace, Wayne; Alex Kelly
Subject: RE: South Causeway Property
Attachments: 20100327114527550.pdf

Chip:

Thanks for your prompt response. I want to provide a quick overview of our investment process so you can direct us to the right place to complete our due diligence work. I am one of four members of our Executive Committee and I direct our Private Equity portfolio. I have been authorized by our Executive Committee to acquire the South Causeway property if it meets our investment criteria. The preliminary "soft commitments" I have for tenants and anchor tenants has generated more than enough private equity commitments to proceed.

Buying the note is a logical step for our group and our private equity partners. We are comfortable in getting interest payments over the next four months. We understand that the note can be paid off or refinanced elsewhere and we are satisfied with the collateral if the note goes into default.

Along with our lawyer, I will be the one to examine the loan documents you outlined. I can come to Spartanburg to review this or if it is allowed, you can forward these documents in digital form for review by me and our attorney.

Alex Kelly is a real estate developer for Lincoln Harris who has extensive experience with the South Carolina market. Alex has numerous developments in the Charleston area and is very familiar with Grocery Anchored Retail Centers. Since the South Causeway property has been improved over the past few years, Alex is hoping you have the following information in your files:

- Survey
- Phase I and borings
- Civil Design drawings for site work completed to date (these drawings may constitute total completion with only a portion of the work being completed).
- Draw requests for the loan (if the work was not completed with loan dollars this may be the run. ie: work was completed prior to loan?)
- Special inspections of work completion (should state components of the site work which was completed per category).
 - Utility work
 - Grading
 - Detention
 - Off sites

- Permits (OCRM, Encroachment Permits (SCDOT correspondence) and other construction permits))
- Traffic Impact Analysis
- Approved site plan and any other site plans in Lender possession.
- Water & Sewer capacity certification letters.
- Zoning verification letter and other municipal approval documentation.

Generally, this data is kept in its original form rather than digitally. This is why Alex is prepared to go wherever necessary to view these documents. Please check your files and see if this information is available for review and also let me know if it is acceptable to send the note and support documents for my review.

By the way, Johnny came by the office this morning and signed the clean CA you sent. I am attaching this document to this email.

Thanks and I look forward to hearing from you at your earliest convenience.

Greg Currie

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

From: Lyerly, Chip [mailto:chiplyerly@FIRSTSOUTHBANCORP.com]
 Sent: Saturday, March 27, 2010 9:25 AM
 To: Greg Currie
 Cc: dtyler@tcjps.com; Lovelace, Wayne
 Subject: Re: South Causeway Property

Greg: I have spoken this morning with Wayne Lovelace and we think logistically it would be easier for us to meet Alex in our Spartanburg office...say 1:30 PM on Monday rather than him having to drive to Columbia after he would finish in Spartanburg. Please confirm if this is satisfactory ASAP. Also, we will make our attorney available to you via telephone in the event there are any legal questions that we can not answer. Will Alex be bringing anyone to assist him in the document review?

W. C. "Chip" Lyerly III
 President
 First South Bank
 1333 Main Street Suite 220
 Columbia, SC 29201
 803 806-3103 (direct)

803 546-3370 (cell)
803 343-3445 (fax)

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

From: Greg Currie <GCurrie@lincolnharris.com>
To: Lyerly, Chip
Sent: Fri Mar 26 18:41:45 2010
Subject: RE: South Causeway Property

Chip:

I will have Johnny sign the new CA on Monday morning. Alex could hand deliver the document after lunch on Monday and begin reviewing documents at that time. Let me know if this timing works for you. We are anxious to get started.

Best regards,

Greg

From: Lyerly, Chip [mailto:chiplyerly@FIRSTSOUTHBANCORP.com]
Sent: Friday, March 26, 2010 5:56 PM
To: Greg Currie
Subject: RE: South Causeway Property

Greg: I am attaching a clean copy pdf that has been change to reflect the name of Harris Investment Company #1. Please have Mr.. Harris execute and return.

When would you like to schedule a visit to review documents?

W. C. "Chip" Lyerly III

President
First South Bank
1333 Main Street, Suite 220
Columbia, SC 29201
803 806-3103 (Direct)
803 343-3445 (Fax)
803 546-3370 (Cell)
chiplyerly@firstsouthbancorp.com

From: Greg Currie [mailto:GCurrie@lincolnharris.com]
Sent: Friday, March 26, 2010 5:04 PM
To: Lyerly, Chip
Cc: Alex Kelly
Subject: South Causeway Property

Dear Chip:

I have attached an executed confidentiality agreement from Harris Investments, LLC which has a black lined correction in Section 5. Johnny Harris has initialed this change which makes this a "live" agreement; however, we will be happy to execute a clean copy once you and your attorney are in agreement on this minor change.

Johnny is the sole member of Harris Investment Company #1, LLC dba Harris Investments, LLC. I am also forwarding you the Articles of Organization for this entity from our Secretary of State. If you would be more comfortable using the exact name on the CA instead of our trade name, we are also happy to make this change. I simply wanted to get the CA to you as soon as possible so you could get comfortable with the capacity question.

Since Johnny is the sole member of this S.P.E., I will be forwarding under separate and confidential cover Johnny's personal financial statement which will show specific capacity for this entity. This PFS is being provided for the exclusive use of your bank and for no other purpose.

As we discussed on the telephone yesterday, we have private equity partners who have equal or greater financial strength as Johnny. Generally, they participate in our deals on a "shoulder to shoulder" basis. Lincoln Harris, Johnny's company, fee develops, manages and leases our ventures (www.lincolnharris.com <<http://www.lincolnharris.com>>). Alex Kelly, who is copied on this email, is our lead developer from Lincoln Harris.

After our initial due diligence, our investment group likes the property, but our financial modeling values the land between \$253,000 and \$303,000 per acre. This spread in value hinges on the zoning, infrastructure work and other entitlements. We believe your bank may have information on the property which will assist and expedite our valuation studies.

We would be interested in buying your bank's note on this property assuming our attorney is comfortable with all of the supporting documents. We have been involved in similar transactions recently; therefore, you should expect smooth execution from us if we move forward. We are anxious to review your available information and I understand from Alex that he could come to Columbia next week to review your materials.

Let me know if you need additional information and I look forward to working with you.

Best regards,

Greg Currie

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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.



1333 Main Street ■ Suite 100 ■ Columbia, South Carolina 29201 ■ (803) 343-3436 ■ Fax (803) 343-3477

FSB-SC 02059

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
May 30, 2008
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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.

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
May 30, 2008
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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").

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
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Page 4

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

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
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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

Ms. Peggy Wheeler-Cribb
Mr. Wil Darwin Wheeler
May 30, 2008
Page 6

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

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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 Property may 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.

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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 Personality.
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

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described therein, (c) 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 withdraw 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.

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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

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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.

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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.

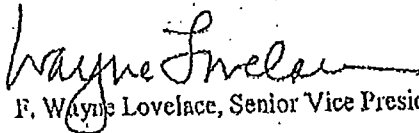
By acceptance hereof each of the addressees hereof certifies that all information provided to the Bank by or on behalf of the Borrower and each Guarantor is true and complete in all material respects and that the same was given to induce the Bank to make a loan as herein requested.

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

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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.

PLAINTIFF'S
EXHIBIT

2

FSB-SC 03251

LOAN AGREEMENT

This Loan Agreement (this "Agreement") dated June __, 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.

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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.

(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 (hereinafter 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, unfilled 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 licenses 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, a 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 not 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 or 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 and 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, L.H. (SEAL)
Its: Member

BANK:

FIRST SOUTH BANK

By: Tracye Insley
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 Personality". The Land, the Infrastructure and the Tangible Personality 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.



BORROWER'S NAME AND ADDRESS SOUTH CAROLINA, LLC 334 MYRTLE AVENUE PAWLEYS ISLAND, SC 29585	LENDER'S NAME AND ADDRESS FIRST SOUTH BANK - COLUMBIA 1333 MAIN STREET COLUMBIA, SC 29201	Loan Number <u>8134802</u> Date <u>06-25-2008</u> Maturity Date <u>07-05-2011</u> Loan Amount \$ <u>8,500,000.00</u> Renewal Of _____

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 Dollars \$ 8,500,000.00

☐ Single Advance: I will receive all of this principal sum on _____. No additional advances are contemplated under this note.
☒ Multiple Advances: 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 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 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 8.00% per year until 06-25-2008.

☒ Variable Rate: This rate may then change as stated below.
☒ Index Rate: The future rate will be 1.00% 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 06-25-2008. 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 first payment will change.

ACCURAL 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 5.00% 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 FLOOR FEE: \$30.00 FOR REPORT: \$85.00

PAYMENTS: I agree to pay this note as follows:
MONTHLY PAYMENTS OF ACCRUED INTEREST CALCULATED ON THE AMOUNT OF CREDIT OUTSTANDING BEGINNING ON 06-25-2008 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 18.77 ± 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 pens, accessories, repairs, replacements, improvements, and accessories to the Property; any original evidence of title or ownership; and all collections 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, tools, 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 entitle me 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 licenses, 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 existing, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, unaffiliated 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:

ITEM ON THE 10.72+/- ACRE TRACT LOCATED AT THE CORNER OF OCEAN HIGHWAY & SOUTH CAWENNA, GEORGETOWN COUNTY, FAIRFAX ISLAND, SC 29545 AND THE PROPOSED IMPROVEMENTS TO BE CONSTRUCTED THEREON. THE PROPERTY ALSO INCLUDES THE PERSONALITY DESCRIBED ON SCHEDULE 'A' HERETO, AND A FIRM ON LOT #4, 334 WHITE AVENUE, FAIRFAX ISLAND, SC 29545 AS SHOWN ON A MAP BY THE FAIRFAX GROUP, DATED JULY 8, 2008 AS FURTHER DESCRIBED IN A MORTGAGE TO BE EXECUTED AT CLOSING.

Earthworks Inc. & Co. P.C.

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

The Property will be used for: ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.
Borrower/Owner: State of organization/registration (if applicable) is: _____

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY: This agreement secures the 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 redemption, if properly described in this agreement. It 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 state is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide notification 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, and the extent to which I am 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 purposes 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, loan 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 of 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 obligation 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 extension, renewal, refinancing and replacement 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 for 30 days 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 protect all accounts and you will be 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 retained by myself, I will do so. You may exercise my rights with respect to obligations of any account debtor, 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.

Signed _____
SEE ATTACHED HYPOTHECATION AGREEMENT

SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in when to transfer an interest, now or in the future, whenever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accretions 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 food, 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 THE 16.22-1-1 ACRES 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 DISCLOSED ON SCHEDULE "A" HERETO. AND A FARM ON LOT 14, 331 MYRTLE AVENUE, PAWLEYS ISLAND, SC 29585 AS SHOWN ON A PLAT BY THE EARTHWORKS GROUP, DATED JULY 9, 2006 AS FURTHER DESCRIBED IN A MORTGAGE 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 tell 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 redemption. If property described in this agreement is located in another state, the law of the state in which the property is located, 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 officer 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 notification 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 proceeds made payable in 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) if 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, line of credit 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 protect 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 bonded 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 for 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 retained 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

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 second 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.

PERFECTING 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," "me" means the terms that apply to this loan. "I," "you" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agree 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 occurs 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 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 to 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 to 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 my promise, on any debt or agreement I have with you;
- (4) any other creditor or mine attempts to collect any debt I owe him through court proceedings;
- (5) I do, 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 prelitigation 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
PEGGY WHEELER-COBB, MEMBER

Wayne Lovelace
SIGNATURE FOR LENDER: WAYNE LOVELACE, SR. VICE PRESIDENT

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 Personality". The Land, the Infrastructure and the Tangible Personality 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.

Instrument
200800011833

Book Page
990 267

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

FIRST SOUTH BANK - COLUMBIA
1333 MAIN STREET
COLUMBIA, SC 29201
803/343-2435

*Reels A & C
case + 1. 68 acres
TD 4*

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 08-25-2003 and the parties and their addresses are as follows:

MORTGAGOR: SOUTH CAUSEWAY, LLC
374 MYRTLE AVENUE
PAWLEYS ISLAND, SC 29586

☐ 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) of 19.22 +/- ACRES AT OCEAN HIGHERWAY & SOUTH CAUSEWAY (Address), PAWLEYS ISLAND (City), South Carolina 29586 (Zip Code)

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

SOUTH CAROLINA - AGRICULTURAL/FORESTAL REAL ESTATE SECURITY INSTRUMENT NOT FOR SALE, RENT, OR OTHER USE, AND NOTICE FOR EXEMPTION
EX-100 01/20/01, 2001 Statutes Revisions, Inc. & Co. Ltd. All Other ADOCS-REVISED 1/21/2003

(page 1 of 1)

**PLAINTIFF'S
EXHIBIT**

4

FSB-SC 02352

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 \$ 1,500,000.00. 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 5-26-2009 IN THE AMOUNT OF \$1,500,000.00

- 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 this right of recapture.

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. 891), 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.

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

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

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

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

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

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

16. 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.

17. 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, guaranteeing, 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 1840, 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 the 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 documents 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 interpretative 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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W.C.

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 the Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

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

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

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

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

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to the 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 as 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 certifications 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 action 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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File

- ☐ **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

Robert Wheeler Crabb, Treasurer 6/25/08
(Signature) (Date) (Print)

(Signature) (Date) (Print)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

[Signature]
(Witness)

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

Instrument
200800011833

Book Page
990, 258

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 29th day

of JUNE, 2008

[Signature]
Notary Public for South Carolina

[Signature]

My commission expires: 6/31/09

**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 Siting 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.

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:



FSB-SC 02326

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.

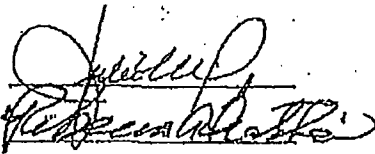
5. All documents necessary to authorize the Borrower to execute any of the Loan Documents and to engage in any transaction or business in connection with which the Loan is made have been duly authorized, executed and filed.

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: Benjamin Whitcomb (SEAL)
Its Member

FSB-SC 02328

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

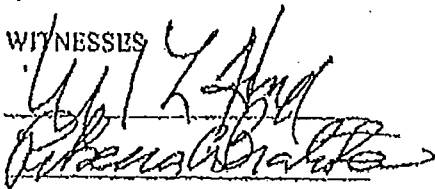
connection with the Loan, the other Guarantor's Guaranty, and all other documents and instruments, if any, executed and delivered by the other Guarantor, in connection with the Loan, are true and correct as of the date hereof.

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.

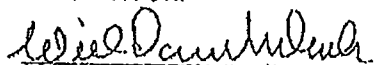
7. The Guarantor acknowledges that, except as expressly set forth in the Loan Documents, no representations of any kind or character have been made to Guarantor by the Lender to induce Guarantor to execute and deliver this document and Guarantor's Guaranty. The Guarantor further acknowledges that the 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

GUARANTY

NUMBER

(City)

SIGNATURE

(Date)

08/21/2024

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce ~~SALESMAN/BUYER/LESSOR~~ SALESMAN/BUYER/LESSOR (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of SALESMAN/BUYER/LESSOR

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following: _____

and any extensions,

renewals or replacements thereof (hereinafter referred to as the "indebtedness").

B. If this ☐ is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "indebtedness"). Without limitation, this guaranty includes the following described debt(s): _____

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. If there be more than one Undersigned, such revocation shall be effective only as to the one so revoking. The death or incompetence of the Undersigned shall not revoke this guaranty, except upon actual receipt of written notice thereof by Lender and then only as to the decedent or the incompetent and only prospectively, as to future transactions, as herein set forth.

3. If the Undersigned shall be dissolved, shall die, or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ UNLIMITED. (If unlimited or if no amount is stated, the Undersigned shall be liable for all indebtedness, without any limitation as to amount), plus accrued interest thereon and all other costs, fees, and expenses agreed to be paid under all agreements evidencing the indebtedness and securing the payment of the indebtedness, and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to Lender on account of the indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2, all of which are made a part hereof.

This guaranty is ☒ unsecured; ☐ secured by a mortgage or security agreement dated _____

☐ secured by _____

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

Peggy Wheeler - Smith
PEGGY WHEELER-SMITH

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



FSB-SC 02305

ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all indebtedness; (ii) any one or more extensions or renewals of indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any indebtedness; (iii) any waiver, adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any indebtedness; (v) any discharge of any evidence of indebtedness or the acceptance of any instrument in renewal thereof or substitution thereof; (vi) any failure to obtain collateral security (including rights of setoff) for indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon indebtedness; (x) any election by the Lender under §111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against Lender any defense of waiver, release, statute of limitations, res judicata, statute of frauds, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any indebtedness, or any setoff available against Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The Undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though the Borrower's obligations had not been discharged.

8. The Undersigned further agrees that the Undersigned shall be and remain obligated to pay indebtedness even though any other person obligated to pay indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy portion interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not otherwise accrue to indebtedness due to Borrower's discharge, and the Undersigned shall remain obligated to pay such amounts as though Borrower's obligations had not been discharged.

9. If any payment applied by Lender to indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such indebtedness as fully as if such application had never been made.

10. Until the obligations of the Borrower to Lender have been paid in full, the Undersigned waives any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration, and any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debts, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing indebtedness. Lender shall not be required first to resort for payment of the indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. This guaranty shall be enforceable against each person signing this guaranty, even if only one person signs and regardless of any failure of other persons to sign this guaranty. If there be more than one signer, all agreements and promises herein shall be construed to be, and are hereby declared to be, joint and several in each of every particular and shall be fully binding upon and enforceable against either, any or all the Undersigned. This guaranty shall be effective upon delivery to Lender, without further act, condition or acceptance by Lender, shall be binding upon the Undersigned and the heirs, representatives, successors and assigns of the Undersigned and shall inure to the benefit of Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as authorized by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of Lender's acceptance hereof.

FSB-SC 02306

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.



FSB-SC 02329

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

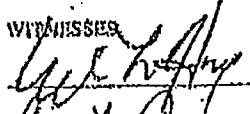
connection with the Loan, the other Guarantor's Guaranty, and all other documents and instruments, if any, executed and delivered by the other Guarantor, in connection with the Loan, are true and correct as of the date hereof.

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.

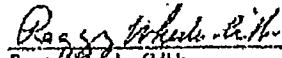
EXECUTED AND DELIVERED as of the 25th day of June, 2008.

WITNESSES

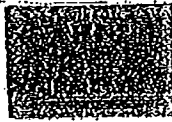


Gregory L. J.

GUARANTOR:



Peggy Wheeler-Cribb (SEAL)



DOUGLAS L. HINDS
WILLIAM S. COWAN
WILLIAM S. STRANGE
GEORGE R. GERR, JR.

LAW OFFICES
HINDS, COWAN, STRANGE & GERR

604 FRONT STREET
GEORGETOWN, SOUTH CAROLINA 29440

DALHO ADDRESS:
POST OFFICE DRAWER 1410
GEORGETOWN, SOUTH CAROLINA 29442

TELEPHONE (843) 687-2141
FACSIMILE (843) 627-0265
E-MAIL: HCSO@COX.NET

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.

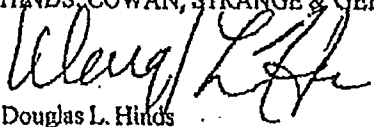
14. The execution and delivery of the Security Documents, and the recording of the Borrower Mortgage, the Guarantor Mortgage and the Financing Statements, create a valid and perfected security interest in the Bank in the Collateral. No other filings in any jurisdiction are necessary to perfect the security 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.

First South Bank
June 25, 2008
Page 4

Very truly yours,

HINDS, COWAN, STRANGE & GEER


Douglas L. Hinds

DLH/rab

FSB-SC 02375

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 990 at 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

Page 1 of 5

Initial: _____

PLAINTIFF'S
EXHIBIT

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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, warranties, 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 Cwin, 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 guarantees 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 remain in full force and effect.

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

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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:

Peggy Wheeler
Longhorn M. Cribb
Peggy Wheeler
Longhorn M. Cribb
Peggy Wheeler
Longhorn M. Cribb

Wayne Fowler
Longhorn M. Cribb

SOUTH CAUSEWAY, LLC

By: Peggy Wheeler (SEAL)
Its: Member

Peggy Wheeler (SEAL)
Peggy Wheeler-Cribb

Will Darwin Wheeler (SEAL)
Will Darwin Wheeler

FIRST SOUTH BANK

By: Wayne Fowler
Its: Senior Vice President

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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 #8134802

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 \$4,771,887.27, 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,

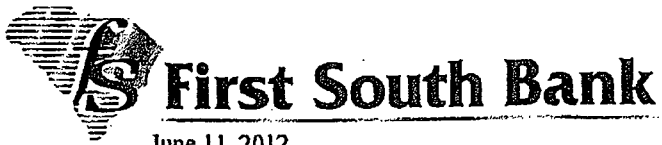
Wayne Lovelace
Senior Vice President
First South Bank

Cc: Ms. Peggy Wheeler-Cribb
Personal Guarantor

Mr. W. Darwin Wheeler
Personal Guarantor



1333 Main Street ■ Suite 100 ■ Columbia, South Carolina 29201 ■ (803) 343-3435 ■ Fax (803) 343-3477
South Causeway_00003



June 11, 2012

Collins & Lacy, P.C.
P. O. Box 12487
Columbia, SC 29211-2487

Re: Payoff Quote- South Causeway, LLC
Note #8134802

To Whom It May Concern:

It is our policy to send a letter of disclosure when quoting a verbal payoff.

The payoff amount for note #8134802 in the name of South Causeway, LLC is \$5,274,772.66* as of 06/11/2012. Please add daily per diem for each day after payoff date.

Payoff should be submitted to First South Bank, Attn: Chip Lyerly or Wayne Lovelace, 1333 Main Street, Suite 100, Columbia, SC 29201.

The following is a breakdown of the amount due. If you have any questions regarding this payoff, please contact Chip Lyerly at (803) 806-3103 or Wayne Lovelace at (803) 806-3104.

Current Balance	\$4,774,112.73
Accrued Interest	378,357.74
Late Charges	999.99
Escrow in Payoff	0.00
Prepayment Penalty	0.00

Appraisal Fee -	750.00
(Invoice# 42198- Atlantic Appraisals, LLC)	
Property Tax Redemption- (2010 and 2011)	
(Parcels# 04-0164-030.00.00 and 04-0164-033.00.00)	47,831.40
(Parcels# 04-0169-001.03.00 and 04-0169-001.04.00)	72,593.05
Misc. Fees-	
(copies from Horry County Clerk of Court)	127.75

TOTAL PAYOFF AMOUNT	\$5,274,772.66*
Per Diem	563.61

* Total payoff amount may not include additional funds due to First South Bank including but not limited to Attorney Fees, property taxes currently due, etc. *Please contact account officer for exact payoff.*

If we may be of further assistance, you can call either Chip or Wayne at the numbers mentioned above.

Sincerely,

Julie M. Cason
Executive Assistant to the President
Banking Officer



Instrument 200800011836 Book Page 990 265

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

Lot 4 rease
 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 08-26-2008 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 Mortgages.

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
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.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FAMA, FARM, FIA OR VA USE, AND NOT FOR CONSUMER PURPOSES) (page 1 of 8)
 EXPEDITE © 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RESI-SC 1/21/2003

CERTIFIED A TRUE
 AND CORRECT COPY
W.A. Prevatt
 REGISTER OF DEEDS
 GEORGETOWN COUNTY, S.C.



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 \$ 8,500,000.00. 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 8-25-2008 IN THE AMOUNT OF \$8,500,000.00

- 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.

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

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

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

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

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

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

(page 5 of 8)

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 the Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

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

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

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

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

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

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

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

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

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

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

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

(page 6 of 8)

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

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

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

THIS MORTGAGE IS TO PROVIDE COLLATERAL SECURITY FOR A LOAN TO SOUTH CAUSEWAY, LLC.
WILL DARRIN WHEELER WILL BE A GUARANTOR ON SAID LOAN BY WAY OF HYPOTHICATION 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 Darrin Wheeler 6/25/08
(Signature) (Date) (Seal)
(Signature) WILL DARRIN WHEELER

(Signature) (Date) (Seal)

Signed, Sealed and delivered in the presence of:

[Signature]
(Witness)

[Signature]
(Witness)

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

(page 7 of 8)

PROBATE: _____, COUNTY OF Georgetown) ss.
STATE OF SOUTH CAROLINA

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 26TH day

of JUNE 2009

Rebecca A. Bate
Notary Public for South Carolina

Yc H H

My commission expires: 1/25/12

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.

Instrument Book Page
20080011836 990 274

73737 Hinds

20080011836
Filed for Record in
GEORGETOWN SC
WANDA PREVAILLE
06-25-2008 At 03:45 pm.
MORTGAGE 16.00
STATE TAX .00
COUNTY TAX .00
Book 990 Page 265 - 274

Wanda A. Prevaille

~~CANCELLED AND SATISFIED~~this 10th day of APRIL, 2009

FIRST SOUTH BANK

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

FIRST SOUTH BANK - COLUMBIA
1333 MAIN STREET
COLUMBIA, SC 29201
(803) 343-3435

Witness

by Wanda J. Prevatt
SENIOR VICE PRESIDENT

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: YALL DARWIN WHEELER
334 MYRTLE AVENUE
PAWLEYS ISLAND, SC 29585Satisfied and Cancelled of Record this 9th day ofFebruary 2011
Wanda J. Prevatt
REGISTER OF DEEDS☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.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*****

10331C Edwin
201100001274
Filed for Record in
GEORGETOWN SC
WANDA PREVATT, REGISTER OF DEEDS
02-09-2011 At 10:15 am.
SATISFACTION 5.00
Book 1630 Page 310 - 310Wanda J. PrevattThe 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.

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

(page 1 of 8)

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

CERTIFIED A TRUE
AND CORRECT COPYWanda J. Prevatt
REGISTER OF DEEDS
GEORGETOWN COUNTY, S.C.PLAINTIFF'S
EXHIBIT

15

Chitty, Carson

From: Lovelace, Wayne
Sent: Tuesday, June 03, 2008 2:00 PM
To: 'WheelerCribb@aol.com'; dlh@sc.rr.com; GGeer@sc.rr.com; wwheeler2@sc.rr.com
Subject: RE: Questions?

Dear Peggy, Darwin, Doug and George:

Thank you very much for the questions you have raised concerning our commitment for financing your project located at South Causeway Road and Highway 17. I will attempt to answer each as follows:

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

From: WheelerCribb@aol.com [mailto:WheelerCribb@aol.com]
Sent: Tuesday, June 03, 2008 11:48 AM
To: Lovelace, Wayne; dlh@sc.rr.com; GGeer@sc.rr.com; wwheeler2@sc.rr.com
Subject: Questions?

Wayne, Darwin and I have gone over the proposed loan commitment several times and we have gotten on the speaker phone with Doug Hinds. I'm listing our concerns.

Some of it was a little hard for us to understand and Doug said he had to study it and he and George will study it some more today.

First Doug said he thought he saw somewhere that the appraisal was for 17 acres. We need to make sure all tracks of the land were appraised. There were two track in the first purchase, then we added Neil Lewis property which made it 19.22 acres. We need a copy of appraisal before we can make a final decision.

ANSWER

We have not received a copy of the "Land Comparison Appraisal" report but the appraiser has indicated that his final value will be between \$8MM and \$8.1MM (or approximately \$420,000 / acre). This valuation is based on sales of similarly-sized properties as close in proximity to the subject site as possible.

Once all of the necessary documents have been received by us (i.e. construction contracts for the installation of the road system, water, sewer and storm drainage infrastructure, etc.), we will forward them to the appraiser and he will render the actual A&D appraisal by assigning a value to the overall project by placing a value on the common area and the individual lots within the development. This should take approximately 2 weeks.

As to the actual acreage, he was furnished a boundary survey of both the original 17.54 acre tract and the 1.68 acre "Lewis" tract to appraise. Thus, his report will reflect a value for the entire 19.22 acre tract, as requested.

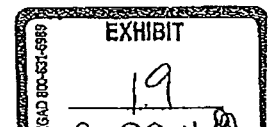
Page 2.

A. \$65,000 fee needs to be due at closing, not signing

ANSWER

On Page 3 of the Commitment Letter, the fee described will be considered "fully earned" once the commitment is accepted. However, the fee will not be due until closing.

B. We need to know the cost of Banks legal fees that we have to pay.



ANSWER

I have discussed this with Don Tyler (Tyler, Cassell, Jackson, Peace & Silver, LLP) and this, obviously, is a function of the time devoted to document review, preparation, etc. Based on Don's best estimate, he believes that his fee will be approximately \$9,500 for this transaction. However, according to Don, it may be slightly more or slightly less, depending on what other legal needs may / may not arise.

- C. We need to know exactly what kind of insurance you are talking about. We have no plans to name First South Bank on our beach houses. We expect the Causeway property to stand on it's own.

ANSWER

Aside from normal title insurance requirements and evidence from the General Contractor that there is adequate protection afforded for Workers Compensation and General Liability claims, no additional insurance should be required. However, the Bank will reserve the right to require certain insurance coverages (such as flood and / or hazard) if any improvements constructed or installed at the "Project Site" during the development phase are considered "insurable".

No insurance naming First South Bank connected with any of your other improved properties (i.e. those with habitable structures) is expected or required.

Page 6

7. If we understand the wording of this, it is not acceptable. We will in no way secure this loan with our beach houses and lots. In speaking with you, I understood you were using lot # 4 as extra collateral until final lease was worked out with Lowe's, which may be around 6 months.

ANSWER

It was never our intention to make a part of our collateral package any properties other than the 19.22 acres and Lot 4 / 334 Myrtle Avenue. Further, the reason for including Lot 4 stemmed from the fact that we did not have a current appraisal upon which to make a decision as to how much to allocate toward our initial advance at closing. The statutory advance against "unimproved property" is 65% of the appraised value of the real estate being purchased / financed and a maximum of a 75% against the total value of the proposed project. In the absence of a current land appraisal, we wanted to make sure that we were sufficiently secured in the event that the property appraised for less than expected and still be able to fund your initial needs.

As to the proposed release of Lot 4, your understanding is correct. Subject to the maximum advance requirements stated above, once we receive a copy of the engineer's certificate evidencing that all of the infrastructure improvements have been installed, the development is complete and is in compliance with all applicable zoning requirements or we have been furnished a final copy of the signed lease between you and Lowe's Foods, our collateral interest in Lot 4 will terminate and our mortgage will be released.

Also, we would want the excess funds from loan at First Palmetto and the excess funds from the original \$550K loan with First South Bank to go to us at closing.

ANSWER

I cannot speak for First Palmetto, but it would seem to me that all they would be interested in would be the payment of all principal and accrued interest through the requested payoff date. Any funds remaining in your reserve account would be released and would be made available to you for withdrawal, etc.

As to First South Bank, we have requested that the funds remaining in your reserve account with us (approximately \$31,169 as of today) be "netted" against the payoff as these funds were originally part of the loan proceeds so you would get the benefit of these funds by way of a lower payoff amount. If this creates a problem, we will be glad to discuss it further and get back to you.

Of the \$1,400,000.00 for construction and installation of roads, drives, parking, etc. we would need at closing, \$100,000.00 for clearing and storm water work that is on going now and will be completed by closing. (already at \$60,000)

ANSWER

As stated above, we have not received a copy of the construction contract(s) or the actual budget for the infrastructure development from your approved / selected General Contractor. After receipt, review and approval of the contract(s) and budget, we will make advances based on all work performed which has been approved and certified to by the supervising engineer.

Thank you for your time and effort in this.

Peggy and Darwin

Get trade secrets for amazing burgers. Watch "Cooking with Tyler Florence" on AOL Food.

Chitty, Carson

From: WheelerCribb@aol.com
Sent: Wednesday, July 02, 2008 12:37 PM
To: Lovelace, Wayne
Subject: Re: LINCOLN HARRIS DEAL (Causeway Property)

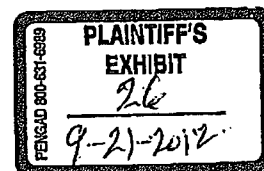
Information only. We would not be interested in those terms. ☺

In a message dated 7/2/2008 12:17:36 P.M. Eastern Standard Time, wlovelace@FIRSTSOUTHBANCORP.com writes:

?

Wayne

Gas prices getting you down? Search AOL Autos for fuel-efficient used cars.



1/5/2011

FSB-SC 01128

Chitty, Carson

From: WheelerCribb@aol.com
Sent: Wednesday, March 11, 2009 3:39 PM
To: Lovelace, Wayne
Subject: Loan

Wayne, Darwin and I have decided to go with option # 2. We are concerned about the \$10,000 in attorney fee. We feel this is extremely high for making a change when we already paid high attorney fees when we closed on the loan. I know you said this was an estimate and of course I would request an itemized statement of the charges.

We really appreciate your working with us on this and we are pushing to close on Monday so I can pay the other taxes.

I know you aren't comfortable with talking to Neil Mauntone, but if you want to get on a conference call with Doug Hinds and myself to talk about the additional \$10,000 attorney fees, please let me know.

Again I thank you for working with us on this.

Sincerely, Peggy 

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!



1/5/2011

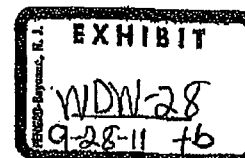
FSB-SC 00109

Subj: Pwd:
Date: 11/19/2008 9:58:53 P.M. Eastern Standard Time
From: <wheeler2@sc.rr.com>
To: WheelerCribb@aol.com

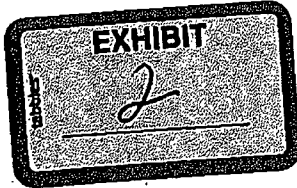
WAITING ON ANSWER FROM LOVELACE

Message-ID: <21284746.348491227144882531.JavaMail.root@cdptpa-web21-z01>
Date: Wed, 19 Nov 2008 20:34:42 -0500
From: <wheeler2@sc.rr.com>
To: robbieinpawleys@aol.com
Subject:
MIME-Version: 1.0
Content-Type: text/plain; charset=utf-8
Content-Transfer-Encoding: 7bit
X-Priority: 3 (Normal)
Sensitivity: Normal
X-Originating-IP: from 216.189.170.161 by webmail.sc.rr.com; Thu, 20 Nov 2008 1:34:42 +0000

I picked you but mom is waiting on an answer from our banker approving your firm. If we go with you I wont to stay with the same price and a 5% comm. 6 months terms would be fine. we are also intrested in subdividing the property TO HELPFACILITATE A SELL for purchaser example we sell 12 acres keep 7 were negotiable we owe 5 million on the tract. price of 10mil 500k to be clear. no sit down and talk's and no letters of intent's. contracts with checks to your firm will be looked at no putting money up with REGISTERED agents I no you get my drift. also if banker approves your firm (BANKER KEEPS SAYING YOU NEED A NATIONAL FIRM THEY SUGGESTED CBRICHARD ELLIS PRUDENTIAL BURROUGHS CHAPIN, ONE OTHER NATIONAL FIRMS) WERE LOOKING FOR A BUYER NOT SOMEONE TO TIE OUR PROPERTY UP FOR 6 MONTHS. THANKS



Friday, November 21, 2008 AOL: WheelerCribb
South Causeway_00037

Real Estate Auction Listing Agreement

THIS AUCTION LISTING AGREEMENT made and entered into this 12 day of April, 2010 between SOUTH CAUSEWAY LLC ~~Wheeler~~ hereinafter referred to as Seller, Vintage Estates Realty, LLC, hereinafter referred to as Broker, and Truitt Owens, hereinafter referred to as the Auctioneer.

WITNESSETH

WHEREAS the Sellers are desirous of selling Real Estate hereinafter described to wit: Intersection Hwy 17 & South Causeway / 19 +/- Acres

City: Pawley Island State: SC Zip: 29585
County: Georgetown Tax Map # 04-0164-030-00-00, 04-0164-033-00-00, 04-0169-001-03-00.

WHEREAS the Broker/Auctioneer shall render professional services to sell at Public Auction the above described property. IN consideration of the mutual agreements contained herein, as well as the mutual benefits, advantages or disadvantages to each of the parties hereto, the parties agree as follows:

1. **AUTHORITY TO SELL.** The Seller hereby grant to the Broker/Auctioneer, acting as agent for the Sellers, the authority to sell the above described property at Public Auction under the Terms and Conditions stated herein.
2. **PLACE AND DATE OF SALE.** The Auction of the Real Estate shall be held on site at South Causeway Property / Corner of Hwy 17 & S. Causeway on the 1 Day of June, 2010, beginning at approximately 1PM.
3. **BASIS OF SALE:** Said property is hereby listed to sell; () ABSOLUTE, for the highest gross bid/price offered by the successful Bidder regardless of amount or, with (☒) RESERVE, wherein Seller agrees to sell if a minimum bid price of \$7 Million 4.8 is offered by a Bidder, for the entire parcel, 4.8
Reserve for individual lots are as follows: Lot 1 \$1.5 Million Lot 2 \$1.5 Million Lot 3 \$1.5 Million Lot 4 \$1.5 Million
4. **TERMS.** The Real Estate described above shall be offered subject to Seller's approval of the final bid immediately following the Auction. PH-8 mile PER PARENT PWC 15-31-10
 - a. On the day of Auction, the successful bidder will be required to pay an amount equal to \$5,000.00 or 10% of the Final Bid Price, whichever is greater, into the Broker's Escrow account, with the balance due within 30 days or by July 1, 2010.
 - b. The property is to be sold "AS-IS" with no warranties or guarantees by the Seller or the Broker/Auctioneer whatsoever as to the present or future use.
 - c. Subject property is to be transferred by Insurable Deed from the Seller to the successful Purchaser(s).
 - d. Seller to furnish clear and marketable deed, pay all property taxes and fees prorated to day of closing, cost of deed stamps, any outstanding liens on property. All other closing costs are to be paid by the Purchaser(s), including title examination, recording fees and if applicable, the cost of appraisals, survey, attorney's fees and preparation of closing documents.
5. **EXCLUSIVE RIGHT OF SALE.** The Broker/Auctioneer shall hold an Exclusive Right to Sell or an Exclusive Listing to sell the above described real property from the date of the signing of this agreement until the date of the Auction and for a period of 30 (Thirty) days after the date of the Auction. This period shall be irrevocable and any sales of all or part of the above described property, made between the date of this contract and the date ending 30 (Thirty) days after the date of the Auction, whether the said sale is made by the Sellers, or any of its agents or employees, shall entitle the Broker/Auctioneer to a commission for that sale, based upon the commission schedule as established in this agreement. Any offers from other sources before the Auction must be contingent on property not selling for more on Auction day.

X Seller Wheeler

Seller _____

Auctioneer Truitt OwensBroker D. Owens

6. **PROMOTIONAL EXPENSES:** It is specifically understood that the Seller will be responsible for paying the sum of \$ 6450 / PAID for advertising and promotion costs. This fee is due at the signing of the Real Estate Auction Listing Agreement.
7. **AGENCY:** Seller and Broker/Auctioneer agree Broker/Auctioneer is representing Seller in this transaction, however, Seller acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Seller. Owner acknowledges that after entering into this written agency contract, Broker might request a modification in order to act as a dual agent in a specific transaction. If asked (please initial one) ☐ permission to act as a dual agent will not be considered or ☒ permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Seller agrees, Seller will execute a separate written Dual Agency Agreement.
8. **SALES FEES.** Parties agree that a Buyer's Premium in the amount of Ten (10%) of the High Bid Price, will be paid by the Purchaser(s) and shall be payable to the Broker/Auctioneer at closing. Seller agrees the Broker/Auctioneer may pay a cooperating commission to a broker who properly registers a client under the terms and conditions of the Auction, who becomes the successful Bidder and closes on the property.
9. **PAYMENT OF COMMISSION.** All deposits placed by the successful bidder of the Real Estate are to be held in Vintage Estates Realty Trust Account until the date of the closing of the transaction. On the date of the closing, deposited monies are first to be used to satisfy the sales fee and any expenses due and owing to the Broker/Auctioneer and the balance paid to the Sellers. In any event, the Broker/ Auctioneer is to receive full payment of this commission and expenses on the date of the closing.
10. **MULTIPLE LISTING SERVICE:** The property (☒) shall be, (☐) shall not be entered into the Multiple Listing Services of which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. The listing price shall be X N/A.
11. **REPRESENTATION OF SELLER.**
 - a. Seller warrants they possess good and marketable title to all properties to be sold and further that the Seller has the right to sell said property.
 - b. Seller agrees that the Auction be conducted under the complete control of the Auctioneer and the Seller will not in any way interfere with the execution of the Auction or commit any act that may hinder or in any way diminish the effectiveness or success of the Auction resulting in the loss of sale of any part of the property, then and in that event, the Seller shall nonetheless be responsible to pay the Broker/Auctioneer's commission and expenses due in accordance with paragraph Eight (8) of this agreement based upon the highest bid received for that portion of the property or the entire parcel which sale was lost due to the actions of the Seller.
 - c. Seller shall furnish all documents requested by Broker/Auctioneer including but not limited to: appraisals, deeds, or any other documents that would be of assistance in helping the Broker/Auctioneer prepare for the Auction.
 - d. In the event that for any reason a successful bidder does not follow through the transaction at closing, the Broker/Auctioneer shall receive fifty percent (50%) of the earnest money deposited as commissions and expenses due, not to exceed agreed commission and expenses. If the particular sale does not close due to the Seller, the Broker/Auctioneer shall be entitled to full commission in accordance with paragraph 6 and the Sellers shall be liable for all expenses due the Broker/Auctioneer.
12. **LITIGATION.** In any litigation brought to enforce any of the terms of this agreement, the successful party shall be entitled to recover in addition to other damages, their attorney's fee and court costs incurred in said litigation.

X Seller MC

Seller _____

Auctioneer MC

Broker DS

13. **ORDER OF SALE.** It shall be the responsibility of the Broker/Auctioneer to prepare a sales agenda on the property as soon as possible after the execution of this agreement.

12. **SELLER AGREES TO:**

- Make property continuously available to the Broker/Auctioneer from the date of this contract to the ending date of this agreement;
- Allow Broker/Auctioneer to install a lock box on property (if applicable);
- Allow Broker/Auctioneer to place property in electronic marketing mediums including but not limited to the Internet, MLS Internet Data Exchange or other similar online computer services to share listing data;
- Allow Broker/Auctioneer the exclusive right to display "For Sale", "Auction" or other similar signs on the property;
- Clean property as necessary to create Curb Appeal. (Keep Grass Cut).

13. **SUBSEQUENT SALE.** It is understood and agreed that the advertising and/or offer of this property at Public Auction may or may not be in conjunction with any other properties, at the sole discretion of the Auctioneer.

14. **ENTIRE AGREEMENT.** This constitutes the entire agreement between the parties. No amendments or changes to this Agreement shall be effective unless agreed to in writing by all parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals:

WITNESSES:

SELLER(S):

X Wendy D. Truitt 6/5/10 X Thomas M. Thomas 6/5-31-10
 Witness to Seller Date Seller Date

 Witness to Seller Date Seller Date

Sellers Address: _____

Phone: _____ Fax: _____ E-Mail: _____

 Witness to Broker Date

Vintage Estates Realty, LLC 5/31/10
 Date

 Witness to Auctioneer Date

Truitt Owens 5/31/10
 Auctioneer, Truitt Owens Date

Broker/ Auctioneer Address: 10593 Ocean Highway, Suite B, Pawleys Island, SC 29585

Phone: (843) 237-5553 Fax: (843) 237-5559 E-Mail: Dthomas@MyVintageEstates.com
Jtoland4sale@aol.com

X Seller Wendy D. Truitt Seller _____ Auctioneer Thomas M. Thomas Broker _____

Subj: Fwd: Fwd: South Causeway Commercial Property
Date: 5/15/2010 4:02:18 P.M. Eastern Daylight Time
From: wwheeler2@sc.rr.com
To: wheelercribb@aol.com

This is the letter my broker put together per our conversation.

Chuck

Christies Great Estates

10593 Ocean Hwy.
Pawleys Island, S.C. 29585

w. 843-237-5553
f. 843-237-5559
c. 843-240-2912

Charles F. Cooper, Jr.

Begin forwarded message:

From: "Don Thomas" <dlthomas@myvintageestates.com>
Date: May 15, 2010 2:20:06 PM EDT
To: <ccooper@myvintageestates.com>
Subject: South Causeway Commercial Property

Chuck.

I received a call from Mr. Wayne Lovelace, senior vice president with First South Bank in Columbia with regards to their position as the lien holder for the property on the South Causeway. He wanted us to know that they would not accept anything less than the amount owed on the property, which is just shy of \$4.8mil. in other words, no Short Sale would be considered. He said he noticed on our auction web-site that the property was showing divided up into 4 different lots. Mr. Lovelace wanted us to know that they would not be willing to release a portion of the property to a buyer and they are only interested in selling the entire 19 acres together as one whole parcel. Since we had discussed that possibility we are going to have to address this with Ms. Peggy and make sure we are all on the same page as we proceed with the auction.

Thanks.

Don S. Thomas



Thursday, November 04, 2010 AOL: WheelerCribb

South Causeway_00475

FIRST SOUTH BANK

WAYNE LOVELOCK

\$ 4.8 MIL PRINCIPAL BALANCE

(803) 806-3104 DIRECT LINE

SR. VP

D

SOUTH CAUSEWAY LLC

SINGLE MEMBER - PEGGY WHANER

NOTE MATURES JULY 5TH

NOT GOING TO RENEW

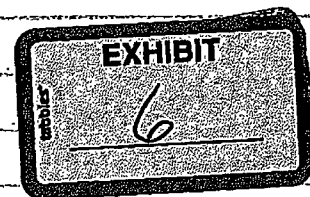
Hwy 17

WAYNE LOVELOCK

FIRST SOUTH BANK

NOT INTERESTED IN

PARTIAL PAYMENT



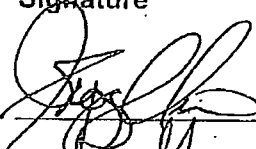
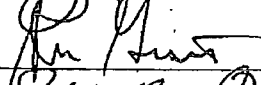
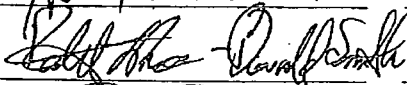
Registered Bidders Sign-In Sheet

Auction Location:

Property Address: Corner of Hwy 17 & South Causeway Rd.
Pawleys Island, SC 29585

Date: June 1, 2010

By my signature below I acknowledge that I have registered to bid in the auction noted above. A copy of the "Terms and Conditions" for the auction have been furnished to me, I have reviewed them, and have received an Auction Catalogue. I understand that a verbal bid acknowledged by the auctioneer is a binding contract.

Bidder Number	Printed Name	Signature	Date
1	Greg Currie		6/1/2010
2	Ann Gramb		6/1/20
3	Donald Smith		6/1/10
4	Chris Reese		6/1/10

Vintage Estates Realty, LLC
10593 Ocean Highway, Suite B
Pawleys Island, SC 29585
(843) 237-5553 Office
(843) 237-5559 Fax
www.MyVintageEstates.com





Subj: **Banking Needs**
Date: 9/24/2007 12:43:11 P.M. Eastern Daylight Time
From: wlovelace@FIRSTSOUTHBANCORP.com
To: WheelerCribb@aol.com

Peggy / Darwin:

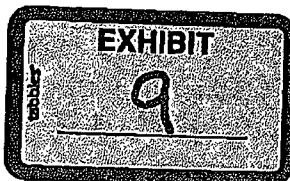
Just following up since we last talked on July 23rd. Anything that First South can handle for you at the present time? I was thinking that the property(s) that you previously refinanced through the NY lender may have interest rate(s) that may be higher than rates currently in effect. Call me at (803) 806-3104 or let me know by return e-mail. Also, I will be glad to drive down at your convenience to discuss anything that may be on the horizon.

Thanks for your previous business.

Wayne

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Friday, September 28, 2007 AOL: WheelerCribb
South Causeway_00038



Chitty, Carson

From: WheelerCribb@aol.com
Sent: Thursday, May 15, 2008 9:33 AM
To: Lovelace, Wayne
Cc: rbratcher@sc.rr.com; wwheeler2@sc.rr.com
Subject: Re: Doug Hinds

Wayne, I was out all day yesterday. I sent everything to Doug Tuesday and then had a conversation with him, George Geer and myself on the speaker phone. Doug felt it might be too much for him to handle. George said he would like to look at it and see if it is something he can do. He was out of his office all day yesterday. I called George this morning and he said he was getting ready to look into it. I sent him the answers to the last questions you proposed for Roger Henderson. George said for you or your attorney to call him at 843.527.2441. I assured him we feel comfortable that the banks attorneys will look out for our interest. Let me know if you need anything from me. If after talking to you/your attorneys George doesn't feel he can do this we will be short in finding another attorney so we can move forward quickly.

Thanks, Peggy ☺

In a message dated 5/14/2008 5:18:43 P.M. Eastern Standard Time, wlovelace@FIRSTSOUTHBANCORP.com writes:

Peggy:

Have you contacted Doug Hinds about our desire to talk to him regarding the South Causeway property?

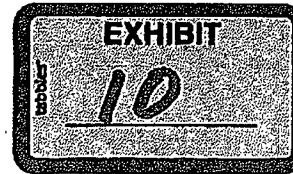
Wayne

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1/5/2011

FSB-SC 01014



Loan Summary & Approval

Tab # 13

Setup Information

Relationship Name Peggy P. Wheeler-Cribb and Will
Description D. Wheeler

Date 5/1/2008
Officer Name Wayne Lovelace
Branch Columbia

Loan Summary

Borrower Name LLC, or similar, to be determined prior to closing.

Guarantor Name Peggy Wheeler-Cribb
Will D. Wheeler

Loan Amount \$6,500,000.00 ☐ Renewal ☒ Participation

Bank Owned \$ \$5,000,000.00 Bank Owned % 76.92%
Total Exposure \$5,000,000

Purpose Acquisition and development financing. Proceeds will be used to refinance existing First South Bank loan #8126202 (\$550,000), refinance existing loan with First Palmetto Savings Bank, Camden, SC (\$3,600,000), fund infrastructure development (roads, water, sewer and storm drainage) of a 19.2 (+/-) acre commercial site located at South Causeway and Highway 17 South, Pawleys Island, SC, (\$1,400,000), provide for a 3-year interest reserve with First South Bank (\$850,000) and pay misc. legal fees and closing costs associated with the closing of this loan (\$100,000).

Loan Type Development

Pricing

(Initial) Interest Rate 6.00% ☐ Fixed Rate ☒ Variable Rate
Index WSJ Prime Variance (basis pts.) +1.000%
Interest Floor Cap Repricing Freq Daily
Fee 65,000.00 ROE

Loan Term Three years, interest due and payable monthly on sums advanced and outstanding.

Primary Source of Repayment Primary source of repayment to come from the sale of the various commercial outlots derived from the development of this property.

Secondary Source of Repayment Secondary source of repayment to come from the liquidation of other personal assets / real estate.

Collateral Description First mortgage on the 19.2 acre tract of real estate located at the corner of South Causeway and Highway 17 South, Georgetown County, Pawleys Island, SC, and the proposed Improvements to be constructed thereon, and a first mortgage on real estate described as Lot 4 / 334 Myrtle Avenue, Pawleys Island, SC, as shown on a plat by The Earthworks Group, dated July 9, 2006, subject to a land comparison appraisal report indicating a minimum value of \$6,900,000 on the unimproved 19.2 acre tract and \$1,400,000 on the Myrtle Avenue property. Post-closing, future advances will be made subject to receipt and review of a bank-approved A&D appraisal report indicating a minimum "as-built" value of \$9,500,000.

Value \$10,000,000.00 LTV 65.0% ☒ Auto Compute LTV
Valuation Source LTC ☐ Compute LTV from Collateral Summary
Total collateral value to be determined once new appraisals have been obtained.

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☒ No Policy Exceptions

Loan Conditions

Requirement/Description

Frequency
Prior to closing.

Loan approval is conditioned upon FSB's ability to sell a minimum of \$1,500,000 of the proposed loan to a participating lender, leaving FSB with only \$5 million of Total Credit Exposure. FSB will keep all loan fees associated with this credit facility.

Post-closing, future advances will only be made subject to receipt and review of a bank approved A&D appraisal report, indicating a minimum "as-built" value of \$9.5 million.

Post-closing, future advances will only be made subject to the bank's receipt and review of all construction contracts, development budgets and other underwriting documents as may be appropriate.

Lender Comments

The Columbia Office requests approval of this credit subject to receipt and review of a real estate appraisal in form and content satisfactory to First South Bank in all respects. The loan is also subject to FSB's ability to sell a minimum of \$1,500,000 of the proposed loan to a participating lender leaving us only a \$5,000,000 exposure. FSB to keep all fees associated with this loan. See Additional Officer Comments Attached Hereto.

Approval

Calculated Risk Grade 4,4,1,3

Weighted Average Risk Grade 347.8

Override Risk Grade

Required Signatures

Title	Check If Needed	Signature	App'd w/	App'd cond.	Decline	Approval Date
SVP/AE	X	Wayne Lovelace				
EVP	X	Chip Lyerly				
Senior Credit Officer	X	Frank Callison				5/20/08
Chief Credit Officer	X	Larry Harper				5-20-08

(Recommend to Board)

Board Loan Committee

See Committee Minutes

Approval Conditions and Grade Override Comments

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COMMENTS

BORROWER INFORMATION / PROPERTY INFORMATION

Peggy P. Wheeler-Cribb and her son, Wil D. (Darwin) Wheeler, live at 334 Myrtle Avenue, Pawleys Island, SC, 29585. Wil was formerly owner / operator of a coin-operated gaming machine business in the Myrtle Beach-area and his mother, Peggy, has been a real estate investor and church / community volunteer for the past 40 years. Currently, they jointly own several large tracts of real estate in the Pawleys Island and Georgetown, SC-areas. Most of their holdings are income producing, oceanfront rental properties but Ms. Wheeler-Cribb, individually, owns a 19.22 acre tract located at the intersection of South Causeway Road and Highway 17 (South) in Pawleys Island, SC, which she and Darwin would now like to develop into approximately 8 commercial lots.

Ms. Wheeler-Cribb purchased the property in 2005 and 2006 in two separate transactions: (1) 17.54 acres (+/-) for \$5.85MM and (2) 1.68 acres (+/-) for \$1.2MM. The properties were appraised in October, 2005, and May, 2006, by E. F. Hucks and Associates, Inc. (E. F. Hucks, MAI, SRA), Pawleys Island, SC, in the amount of \$6.88MM (\$6.0MM for the 17.54 acre tract and \$880M for the 1.68 acre tract). It should be noted that the 1.68 acre tract was appraised for considerably less than the purchase price but was the last parcel needed by the owner in order to control the entire 19.22 acres.

The proposed borrower would be a LLC (to be formed) or, possibly, a family trust (Borrower). We are assisting Ms. Wheeler-Cribb in securing legal counsel to determine the best way to proceed.

BACKGROUND

In December, 2007, First South Bank provided \$550,000 in new financing to these individuals in order to provide initial funding for planning and engineering work to develop the Highway 17 (South) property. For several months they have been holding discussions with a number of companies such as Bi-Lo, Kroger and Harris Teeter to serve as anchor tenant. However, it now appears that they have settled on Lowe's Foods (a division of Alex Lee Corporation) of Wilksboro, NC, to serve in this capacity.

The Earthworks Group, Inc., the land planning and engineering company they have retained to assist them in this project, has estimated the cost to develop the property at approximately \$1MM. However, Darwin believes that \$1.2MM to \$1.4MM will be closer to the actual cost to construct the roads and infrastructure, depending on whether he or another party has to pay the expense of installing the stop light at the new intersection to be created when Tyson Drive is extended into the development.

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REQUEST

The loan request is for a 3-year, land acquisition and development loan in the amount of \$6,500,000, the proceeds of which would be used as follows:

Proposed Budget

\$3,600,000

Refinance existing debt on the 19.2 acre tract, currently financed through First Palmetto Savings Bank, Camden, SC.

\$ 550,000

Refinance existing debt on Lot 4, Myrtle Avenue, Pawleys Island, SC, currently financed through First South Bank.

\$1,400,000

Estimated cost of road construction and infrastructure development.

\$ 850,000

Estimated 3-year interest reserve, based on an assumed average principal balance outstanding equal to 70% of the committed loan amount and an assumed average interest rate of 6.50%. $(\$6,500,000 \times 70\% \times 6.50\% = \$295,750 \times 3 \text{ years} = \$887,250. \text{ Say, } \$850,000).$

\$ 100,000

Misc. legal fees, accounting, closing costs, etc.

\$6,500,000

The proposed loan will be secured by a first mortgage on the 19.2 acre tract (A/V, based on actual cost = \$6.88M), and the improvements to be constructed thereon, and a first mortgage on Lot 4 / 334 Myrtle Avenue, Pawleys Island, SC (A/V = \$1.4M). Expected pricing is to be WSJP + 1%, floating, payable monthly, with an origination fee of 1%, or \$65,000. Our approval would be subject to our finding a participating partner to purchase a minimum of \$1.5MM of this loan in order to reduce our exposure to \$5.00M.

I have had several discussions with Steven Strickland, P.E. with The Earthworks Group, Inc. regarding the timeline for development and he expects road construction to start around July 1st. A tree removal permit has already been issued, as well as, a permit for the excavation of the required "dry ponds". Completion is expected to take approximately 30 days at which time all bids for the infrastructure development will be in for review. Thus far, the bids in hand have tracked the estimate that Earthworks made last month.

REPAYMENT

The primary source of repayment is to come from the development and sale of the individual out-lots within the proposed site. Each site will have an estimated minimum retail value of approximately \$1MM / acre and there will be some 13 to 14 developed acres which should generate between \$13MM to \$14MM in retail sales. Our proposed release fee is expected to be 85% of the Gross Sales Price, or a minimum of \$850,000 per acre.

In addition, the borrowers are also discussing a "build-to-suit" arrangement with Lowe's Foods, Inc. to construct a 42,500 SF food store which will serve as the anchor for the development. Lowe's proposes to pay a total lease fee of \$16 / SF (NNN) with an initial term of 20-years with four (4), five (5) year options.

PROPERTY LOCATION / NEIGHBORHOOD DATA / SITE DATA

Georgetown County is located in eastern South Carolina along the Atlantic Coast between Horry and Charleston Counties. Horry County, and especially the Myrtle Beach area, significantly influence the life and economy of Georgetown County. This influence is especially significant in the area between the Atlantic Ocean and the Waccamaw River (Intercoastal Waterway) known as the Waccamaw Neck. The "Neck" has experienced most of the recent commercial and residential development in Georgetown County, and because of oceanfront resorts and golf courses, is most influenced by tourism. Pawleys Island, Litchfield and Murrells Inlet are all considered part of this area.

The Georgetown County labor force has remained fairly stable over the last few years. Moreover, the 2000 Census indicated that the population of Georgetown County had increased 20.5% from 1990 to 2000, while the population on the Waccamaw Neck had increased 72% and the population of the Andrews area over 17.3% during the same time period. Recent Board of Education decisions have included the expansion and building of new schools to meet the projected increased in the population over the next five years.

GEORGETOWN COUNTY CENSUS RESULTS

<u>Area</u>	<u>1990</u>	<u>2000</u>	<u>Change</u>
County	46,302	55,797	20.5%
Waccamaw Neck	9,680	16,646	72.5%
Murrells Inlet	3,334	5,519	65.5%
Pawleys-Litchfield	6,346	11,127	75.3%
Andrews area	7,401	7,929	7.13%
Town of Andrews	3,050	3,068	.50%

Source: US Census Bureau

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Therefore, the projected increase in population, along with the residential developments described herein, should help create a viable commercial development in the subject market area.

NEIGHBORHOOD DATA

The neighborhood consists of properties along US Highway 17 (South) in the Pawleys Island / Litchfield area. The boundaries include Huntington Beach and Brookgreen Gardens to the north, the Atlantic Ocean to the east, Prince George to the south and the IntraCoastal Waterway (Waccamaw River) to the west. In the subject's immediate area the land uses along Highway 17 (South) are primarily commercially oriented, with contiguous residential properties. Adjacent to the subject property along the eastern boundary is a small subdivision of moderately priced single family homes called Pawleys Landing.

Highway 17 (South) is a major transportation access route between Myrtle Beach to the north and Charleston to the south as well as east / west interior roads. The commercial development in the subject's immediate area includes a Grocery Store, Service Station and Convenience Store, Restaurants, Garden Centers, Medical Offices, Car Dealerships, Car Washes, golf Courses and Retail Stores. In Pawleys Island, several residential subdivisions are found along Highway 17 (South) which include Pawleys Plantation, DeBordieu Colony, Prince George, Hagley Estates, and Camden Creek. Town Home / Condominium developments include Rose Crest, DaGulla Way and True Blue. Pawleys Plantation, Hagley Estates and True Blue are situated around golf courses.

To summarize, based on continued residential development and the projected increase in population, the subject neighborhood appears well positioned for continued growth and seems well-suited to support a development of this sort.

SITE DATA

The site consists of approximately 19.22+/- acres of vacant land zoned PD, Planned Development. Irregular in shape, it is a primarily level tract with both open and wooded areas with pine and light under growth of hardwood and shrubs. The site has excellent access to Highway 17 (South) with additional access to the South Causeway Road, to Pawleys Island and Smalls Loop.

The subject has approximately 2,605 front feet divided between 1333 front feet on Highway 17, 460 front feet on South Causeway Road and 810 front feet on Smalls Loop. The rear boundary is landlocked by residential properties.

There are no known environmental hazards associated with this property. A Phase I Environmental Site Assessment, commissioned by the National Bank of South Carolina (NBSC), performed by Mr. Michael Whaley, Southeastern Regulatory Compliance, Inc., Pawleys Island, SC, submitted to us for review, did not reveal any known or suspected existing environmental conditions associated with the property (Phase I Environmental Assessment, Page 11, Paragraph 8.0, FINDINGS).

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The subject property is located in Flood Zone "X", as shown on FEMA Community Panel Number 450085 0267 F, dated 08/02/1996.

FINANCIAL

A review of the personal financial statements for both Daiwin and Peggy, respectively, show substantial real estate holdings in, and around, the Pawleys Island area. Among the properties owned are several oceanfront homes valued at between \$3MM and \$4MM each, not including their 4-plex, oceanfront personal residence located at 334 Myrtle Avenue. According to the Laccicotte Company's property management division, the oceanfront properties, along with the two units available at the 4-plex, typically rent for around \$5,000 / week. These units are normally in high demand and generally are booked months in advance.

The Individual Underwriting Summaries for both borrowers show, on a combined basis, a 2007 Gross Individual Income of \$ _____ and \$ _____, including \$ _____ in Rental Cash flow. Individual Global Cash Flow coverage is shown as _____ x (2007) and _____ x (2006). (NOTE: GLOBAL CASH FLOW COVERAGES WILL BE COMPLETED AS SOON AS ALL 2007 FINANCIALS HAVE BEEN RECEIVED FROM THEIR CPA. THE REPAYMENT FOR THESE NOTES IS NOT DEPENDENT ON THE PERSONAL INCOME OF THE APPLICANTS).

RECOMMENDATION

I recommend approval of this request, subject to the following:

1. The initial advance will be made solely to refinance the real estate, pay estimated closing costs and fund a small interest reserve, the total of which is not expected to exceed \$4.5MM, or 65% of the appraised value of the property, based on a limited scope, land comparison appraisal to be performed by E. F. Hucks & Associates, Inc., Myrtle Beach and Pawleys Island, SC. The balance of the request (\$2.5MM) will be retained until such time as we are furnished a bank approved-A&D real estate appraisal and a construction contract to build the road system and install the infrastructure for water, sewer and storm drainage.

2. Receipt and review of the borrowers' 2007 federal tax returns plus an updated personal financial statement on each.

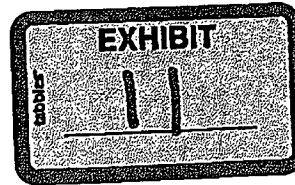
[Note: Their CPA, Ken Altman, is currently completing their returns and expects to have the remaining information to us by May 30th. We have current PFS's on file, dated November, 2007].

3. Sale of a minimum of \$1.5MM of the proposed debt to a participating lender leaving our maximum exposure at \$5.0MM.

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Overall, it is my opinion that this request represents a manageable risk, particularly with a national credit tenant (Lowe's Foods) serving as anchor. It is worth noting that many of our borrowers' requests are "collateral-driven" with much of their personal income derived from capital gains. For this reason there will always be swings in their personal income giving rise to uneven cash flows and coverage ratios. However, payments from the Lowe's ground lease should provide them a greater measure of financial stability plus reduce their dependency on volatile capital gains.

Finally, approval of this loan will also afford us the opportunity to assist the borrowers with any of their future development needs. At the present time, they are also holding discussions with national pharmacies, fast food chains and local / regional banking institutions regarding the site's various out-lots which, depending on the circumstances, may require construction / permanent financing for improvements.



Chitty, Carson

From: WheelerCribb@aol.com
Sent: Sunday, June 01, 2008 12:59 PM
To: Lovelace, Wayne
Subject: Response to Letter of Intent

Wayne, Darwin and I have read this and # 7 in letter of intent will not work for us. We thought the Causeway property would stand on it's own. We have to plan on the two additional lots at 334 Myrtle to be available to us to use to bridge any shortfalls we might have between now and 2010 when Lowe's Food store opens. We feel sure we will need at least \$500, maybe a million to bridge this time period. Once before we had everything cross collateralized and we vowed never to do that again.

Peggy and Darwin

In a message dated 5/29/2008 5:42:06 P.M. Eastern Standard Time, wlovelace@FIRSTSOUTHBANCORP.com writes:

Dear Peggy:

By way of an attachment to this e-mail, I am sending you and George Geer a copy of our Loan Commitment Letter in connection with your proposed development of the 19 acre (+/-) tract located at Highway 17 and South Causeway Road, Pawleys Island. The actual hard copy will be sent to you tomorrow, Friday, May 30, by regular mail to your Pawleys Island post office box.

Please review our proposal and let us know of any questions. If everything appears acceptable, we ask that you and Darwin initial the bottom of each page and sign and date the last page where shown. We would like to work toward a closing around June 15th - June 20th, if possible.

Thank you very much for allowing us to handle this request.

Wayne

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

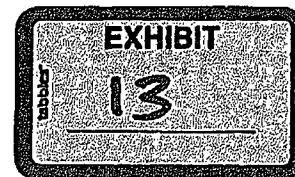
From: estudio350@firstsouthbancorp.com
[mailto:estudio350@firstsouthbancorp.com]
Sent: Thursday, May 29, 2008 5:22 PM
To: Lovelace, Wayne
Subject: Scanned from e-studio350 05/29/2008 17:21

Scanned from e-studio350.
Date: 05/29/2008 17:21
Pages:13
Resolution:200x200 DPI

1/5/2011

FSB-SC 01033

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



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 🍷



Chitty, Carson

From: WheelerCribb@aol.com
Sent: Thursday, August 14, 2008 4:23 PM
To: Lovelace, Wayne; wwheeler2@sc.rr.com; GGeer@sc.rr.com
Subject: South Causeway LLC

Wayne we are meeting at Doug's/George's office Thursday the 21 at 9 30. We would love for yawl to be there if you want. Darwin said be sure to explain to you that we were purposely not rushing. One is because we have the back up from Harris Teeter and also to make sure everything is covered and understood and agreed by all parties. George wanted to read it several time and have us do the same and mark any thing we aren't happy with or question. We will move forward as soon as we get either of the contracts signed.

Thanks 😊

Looking for a car that's sporty, fun and fits in your budget? [Read reviews on AOL Autos.](#)

1/6/2011

FSB-SC 01416



Chitty, Carson

From: WheelerCribb@aol.com
Sent: Wednesday, July 02, 2008 12:05 PM
To: Lovelace, Wayne
Cc: wwheeler2@sc.rr.com
Subject: Fwd: LINCOLN HARRIS DEAL (Causeway Property)
Attachments: 20080701145524295.pdf

Wayne, just to keep you informed about interest in property.

Have a great day ☺

From: johndraughn@chicora.net
To: wheelercribb@aol.com
CC: jarvisfaircloth@charter.net
Sent: 7/1/2008 4:06:53 P.M. Eastern Standard Time
Subj: Fw: LINCOLN HARRIS DEAL

843 272 8700

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

From: "John Draughn" <johndraughn@chicora.net>

Gas prices getting you down? Search AOL Autos for fuel-efficient used cars.

1/5/2011

FSB-SC 01123



**LETTER OF INTENT FOR THE
PURCHASE OF REAL PROPERTY**

PROPERTY:

Approximately Eighteen and Three Tenths (18.30) gross acres located along Highway 17 and South Causeway Road in County of Georgetown, South Carolina, as indicated on Exhibit A. Property is a portion of three (3) separate parcels (Parcel ID # 04-0169-001-03-00 and Parcel ID # 04-0164-033-00-00 and Parcel ID # 04-0164-030-00-00)

SELLER:

Peggy Wheeler-Cribb

PURCHASER:

Lincoln Harris Properties, LLC.

PURCHASE PRICE:

The purchase price shall be \$675,000 per usable acre. The estimated usable acreage is 18.30 acres.

EARNEST MONEY DEPOSIT:

\$25,000 upon execution of the purchase agreement; to be held by designated title company and to be refundable if the purchase agreement is terminated on or before the expiration of the Initial 120 Due Diligence Period or any extensions if one or more of the Contingencies is not satisfied. All Earnest Money Deposits shall be credited against the Purchase Price.

**INITIAL DUE DILIGENCE PERIOD; DUE
DILIGENCE PERIOD EXTENSIONS:**

The Initial Due Diligence Period shall be One Hundred Twenty (120) days from the effective date of the Purchase Contract. During the Initial due diligence Period, Purchaser shall investigate and attempt to satisfy items listed below in Conditions To Closing with the understanding, Purchaser shall submit a site plan for approval prior to the expiration of the due Diligence Period. Additionally, Purchaser and Seller shall work diligently to negotiate acceptable CCR's.

Purchaser may terminate the Purchase Agreement at any time and for any reason during the initial due diligence period, and shall receive a full refund of the earnest money deposit. The initial deposit shall become non refundable at the end of the initial due diligence period, except in the event the Conditions to Closing can not be resolved to Purchaser satisfaction during the initial due diligence period. Purchaser shall

an affiliate of
Lincoln Property Company

The Rotunda
4201 Congress Street, Suite 175
Charlotte, North Carolina 28209

704.714.7600 telephone
704.716.8600 fax
lincolnharris.com

FSB-SC 01124

have two (2) successive options to extend the due diligence period for sixty (60) day each period, with an additional earnest money deposit of \$10,000 for each period. The deposit for each period shall become non refundable at the end of the period for which it was deposited, unless one or more of the Conditions of Closing are not satisfied or waived by Purchaser.

CLOSING:

Closing shall occur within thirty (30) days following the end of the due diligence period or any due diligence extension periods.

CONDITION OF PROPERTY:

The Property shall be delivered with all utilities, including water, sanitary sewer, electricity and natural gas to property with adequate service capacities necessary for Purchaser's intended use.

SELLER DOCUMENTS:

Seller agrees to furnish the following documents to Purchaser within five (5) business days from the accepted date of this letter, if available:

- a. Copies of Covenants and Restrictions.
- b. Seller's survey of property.
- c. Copies of any Phase I and/or environmental report prepared for the subject property.
- d. Title policy issued to Seller.
- e. Geotechnical studies

CONDITIONS TO CLOSING:

1) Title & Survey: Seller shall deliver unencumbered, marketable, and insurable title at closing together with a survey acceptable to Purchaser. Seller shall be responsible for subdivision and recording of any necessary plat prior to closing. 2) Environmental: Seller shall present the property at closing in a condition free of any environmental contamination. 3) Receipt of any required governmental approvals including but not limited to, zoning, site plan approvals, signage, building plans, wetland and stream crossings, wetland mitigation permits and curb cuts. 4) execution of acceptable CCR's (Conditions, Covenants, and Restrictions), as well as necessary OEA (Operation and Easement Agreements), 5) soils acceptable to Purchaser.



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FSB-SC 01125

BROKERAGE:

It is acknowledged and understood that John Draughn with Coldwell Banker Chicora is representing the Buyer and the Seller is responsible for paying a commission to Coldwell Banker Chicora. A separate commission agreement shall be entered into between the Seller and Coldwell Banker Chicora.

The Letter of Intent shall be an expression of interest in acquiring these properties and shall not be a binding agreement between either party until such time a purchase agreement is executed by both parties. Peggy Wheeler-Cribb and Lincoln Harris Properties, LLC agree that this letter of intent, any documents arising therefrom, the negotiations pertaining thereto, and any information supplied by Peggy Wheeler-Cribb or Lincoln Harris Properties, LLC will be kept confidential and will not be communicated to any third parties (other than to consultants, counsel, accountants and other similar persons advising a party in connection with this transaction) without the prior approval of the other party. If the transaction is not consummated for any reason, all documents given to Lincoln Harris Properties, LLC by Peggy Wheeler-Cribb or its representatives shall be promptly returned.

Seller:

Peggy Wheeler Cribb

Dated: _____

Buyer:

Lincoln Harris Properties, LLC

By: John A. Mankert

Its: Exec VP. & cfo

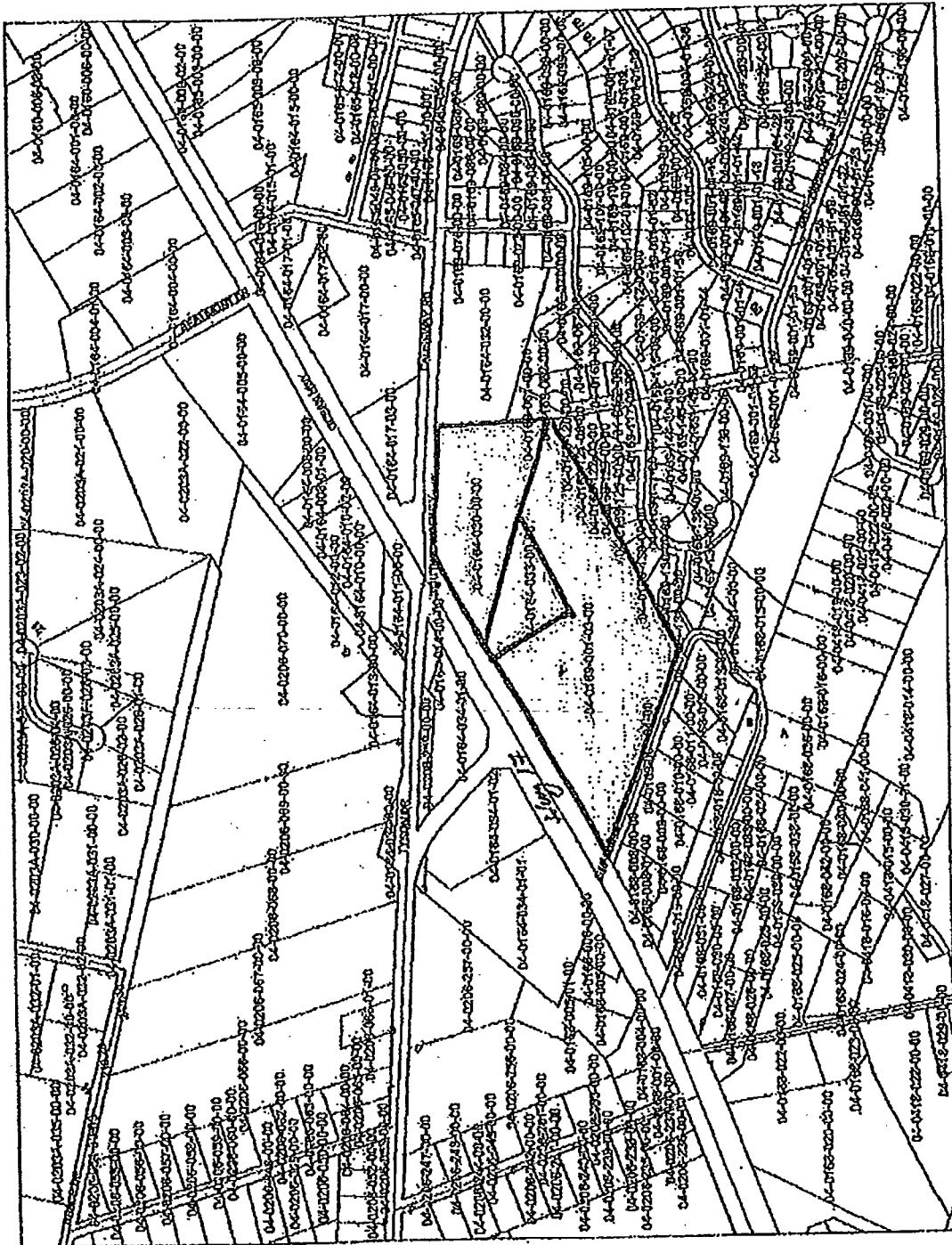
Dated: 6-30-08



**LINCOLN
HARRIS**
an affiliate of
Lincoln Property Company

FSB-SC 01126

EXHIBIT A



FSB-SC 01127.

2 July 2010

Ms. Peggy Wheeler Cribb
Via E-Mail at
wheeler cribb@aol.com

Peggy,

As we discussed by phone this A.M., I have received executed agreements to acquire the property at South Causeway from Lincoln Harris Company in Charlotte.

LH is one of the largest privately owned full service development companies in the S.E. with a portfolio exceeding \$12,000,000.00 in Commercial and Retail Development, including South Park in Charlotte. Their intent is to develop a Grocery enclosed Retail in S.C. together with some Medical space with a completed value in excess of 19.0. They are financially capable of delivering this project, and financials supporting this are available, if the other terms are acceptable. Their offer consists of 2 options for the land owner:

1. An outright purchase for the sum of \$4,000,000.00 in cash at closing.

OR

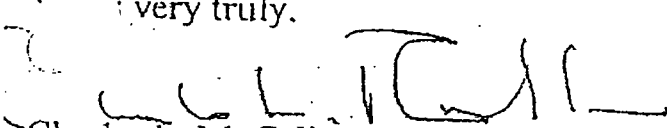
2. A Participating Purchase at a lesser price (\$3,000,000.00), but providing for the land owner to participate in the development and sale, in 5 years of the project, which would result in a purchase price of \$4,800,000.00.

If you would like to discuss either of these options, I will be available to meet with you on Friday after 10:30 A.M.

Thank you and I may be reached at 343-545-9550 or by cell at 803-606-1700.

I look forward to hearing from you.

Very truly,


Charles L. McCallum
CLM:ccr

South Causeway_00482



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,

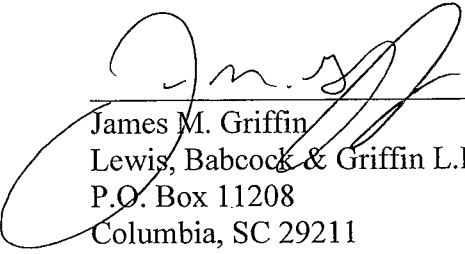
v.

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.



James M. Griffin
Lewis, Babcock & Griffin L.L.P.
P.O. Box 11208
Columbia, SC 29211
803-771-8000

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

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First South Bank,

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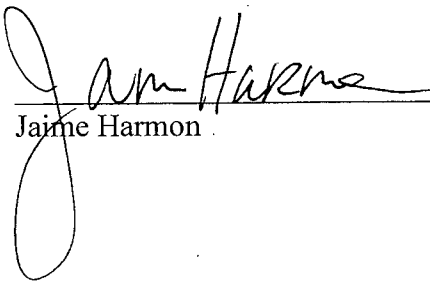
Appellant,

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:

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

Columbia, South Carolina
November 19, 2013


Jaime Harmon