THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Master in Equity

Case No. 2011-CP-07-0340
Appellate Tracking Number: 2019-000047

TD Bank, N.A.,
Successor by merger to Carolina First Bank, ... Respondent,

v.

Wilbert Roller, Jr., Betty V. Roller, and James Williams..... Defendants, of whom

Wilbert Roller Jr. and Betty V. Roller are the..... Appellants.

RECORD ON APPEAL

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Attorneys for Appellants

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ORDERS

The South Carolina Court of Appeals

TD Bank, N.A., Successor by merger to Carolina First Bank, Respondent,

v.

Wilbert Roller, Jr., Betty V. Roller, and James Williams, Defendants,

Of Whom Wilbert Roller, Jr. and Betty V. Roller are the Appellants.

Appellate Case No. 2014-002674

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011CP0700340

ORDER

Pursuant to Rule 260(b) of the South Carolina Appellate Court Rules, SCACR, the parties have consented to dismiss this appeal with each party to bear its own costs. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221 (b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

FILED
1-26-16

Columbia, South Carolina

cc:
Thomas R. Goldstein, Esquire
Matthew Tillman, Esquire
Robert V. Mathison, Jr., Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-340
	)	
CAROLINA FIRST BANK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CONSENT ORDER TO AMEND CAPTION AND AMEND COMPLAINT**
	)	
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
	)	
Defendants.	)	
	)	

BEAUFORT COUNTY, S.C.
CLERK OF COURT
11 OCT 26 AM 11:0

This matter is before the Court on the motion of the Carolina First Bank, for an Order granting it leave to amend the caption to reflect a change in the name of the Plaintiff from Carolina First Bank to TD Bank, N.A., Successor by Merger to Carolina First Bank. Plaintiff further requests that it be allowed to amend its Complaint to add a claim for quiet title against a new Defendant to the action - James Williams. A copy of the proposed Summons and First Amended Complaint is attached hereto.

It appears that all parties who have appeared in the action consent to the requested amendment.

It is **ORDERED** that leave is granted to amend the caption to reflect the Plaintiff's name change to TD Bank, N.A., Successor by Merger to Carolina First Bank. It is further **ORDERED** that Plaintiff may amend its Complaint to assert a quiet title claim against Defendant James Williams.

AND IT IS SO ORDERED.

s/ C. Mullen
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, SC
October 25 2011

WE MOVE:	WE CONSENT:
WOMBLE CARLYLE SANDRIDGE & RICE, PA	BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Matt Tillman Daniel Q. Orvin, Esq. Matthew E. Tillman, Esq. 5 Exchange Street P.O. Box 999 Charleston, SC 29402 (843) 722-3400	Tommy Goldstein by Matt Tillman w/permission Thomas R. Goldstein, Esq. P.O. Box 71121 Charleston, SC 29415 (843)554-4291
Attorneys for Plaintiff	Attorneys for Defendants Wilbert Roller, Jr. and Betty V. Roller

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	

2014 JUL -3 PM 3:54

BEAUFORT COUNTY, SC
CLERK OF COURT

TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**MASTER IN EQUITY'S ORDER OF BIFURCATION AND JUDGMENT OF FORECLOSURE AND SALE**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	**(Deficiency Demanded Against Defendants Wilbert Roller, Jr. and Betty V. Roller)**
Defendants.	)	

This Court took up the contested case hearing in this foreclosure action on April 29, 2014. Matthew Tillman of Womble Carlyle Sandridge & Rice, LLP, attorneys attended the hearing for the Plaintiff, and Tommy Goldstein, of Belk, Cobb, Infinger and Goldstein, P.A. attended as attorney for Defendants Wilbert Roller, Jr. and Betty V. Roller ("Roller Defendants"). Ron Williams, who is not an attorney, but the defendant's, James Williams' son, appeared for defendant James Williams. According to Mr. Williams, the defendant, James Williams, is elderly and in poor health and not able to appear in court.

The plaintiff made James Williams a party to this action because Mr. Williams claims title to a portion of the property that is the subject of this dispute. Thus, because there is an issue requiring an Order quieting title as well as an Order evaluating the foreclosure action, this Court bifurcated the foreclosure and quiet title claims asserted by the Plaintiff.

The Court took up the foreclosure portion of the case on April 29, 2014, and rescheduled the quiet title portion of the case for May 30, 2014, to allow the defendant, James Williams, to retain counsel if he desired and to consider Plaintiff's application to quiet title at that time. ①

① Mr. Williams has retained Robert Mathison, esq

On January 14, 2011, the plaintiff filed a summons and complaint, seeking foreclosure of the property commonly referred to as the Roller tract. On March 23, 2011, the Rollers filed an Answer to the Complaint and on December 8, 2011, the Rollers filed an Answer to the First Amended Complaint. These pleadings interposed several defenses, novation, fraud in the inducement, and tortious interference with prospective business relations. The defendants, Rollers, also demanded an appraisal as provided for by § 29-3-680, S. C. Code, ann. ("In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.")

Benjamin Roper Jenkins, III, testified on behalf of the plaintiff, and Wilbert Roller testified on behalf of the defendants. The Court also reviewed the documentary evidence produced by the parties. Based on this evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Home Affordable Modification Program does not apply because this foreclosure action involves a mortgage encumbering commercial real estate. As commercial real estate, the mortgaged property is not an owner-occupied dwelling as defined in the Administrative Order issued by the South Carolina Supreme Court on May 2, 2011 (the "Administrative Order"). As a result, the Administrative Order does not apply to this foreclosure action as evidenced by the Certificate of Exemption filed on August 1, 2011.

2. The plaintiff filed the *Lis Pendens*, Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint, with Exhibits in the office of the Clerk of Court for Beaufort County on January 24, 2011.

3. The plaintiff thereafter filed the Certificate of Exemption from May 2, 2011 Administrative Order ("Certificate of Exemption") in the office of the Clerk of Court for Beaufort County on August 1, 2011.

4. After the plaintiff discovered there might exist a claim as to a portion of the property, the plaintiff amended its complaint and filed the Summons and First Amended Complaint in the office of the Clerk of Court for Beaufort County on October 26, 2011. The plaintiff filed the Second *Lis Pendens* in the office of the Clerk of Court on November 7, 2011. For the convenience of the reader, the Court refers to the *Lis Pendens*, Civil Action Coversheet, Summons, Complaint, and the Second *Lis Pendens*, Second Summons and First Amended Complaint collectively as the "Pleadings."

5. The plaintiff served these Pleadings on Simon Fraser, an attorney for the Roller Defendants, on February 2, 2011. (See the Acceptance of Service filed in the office of the Clerk of Court for Beaufort County, South Carolina on May 6, 2011.)

6. The plaintiff served these Pleadings personally on the defendant, James Williams, on December 9, 2011. The plaintiff filed this Affidavit of Personal Service in the office of the Clerk of Court for Beaufort County, South Carolina on December 28, 2011.

7. The Roller Defendants timely filed and served an answer and counterclaim to the original Complaint on March 23, 2011 and to the First Amended Complaint on December 8, 2011.

8. The Roller Defendants are not individuals entitled to protection under the Service Members Civil Relief Act, 50 USCS §§ 501 *et seq.*

9. For value received, on or about August 9, 2007, the Roller Defendants executed and delivered to Carolina First Bank a promissory note in the original principal amount of Two Million Three Hundred Thousand and 00/100ths ($2,300,000.00) Dollars (the "Original Note").

10. To secure payment of the Original Note and the debt evidenced thereby, the Roller Defendants executed and delivered to Carolina First Bank a Mortgage dated August 9, 2007 ("Original Mortgage"), whereby the Roller Defendants mortgaged to Plaintiff the property described in Exhibit 1 (the "Subject Property" or the "Roller tract").[1] Carolina First Bank recorded this mortgage on August 14, 2007 in the Beaufort County Register of Deeds ("ROD") at Mortgage Book 2612, at Pages 521-529.

11. On or about September 23, 2008, the Roller Defendants executed a renewal promissory note in favor of Carolina First Bank in the amount of One Million Eight Hundred Fifty Thousand and 00/100ths ($1,850,000.00) Dollars ("First Renewal Note"), under which the Roller Defendants promised to pay the amounts outstanding under the Original Note on terms set forth in the First Renewal Note. Pursuant to the First Renewal Note and the Original Mortgage, the Roller Defendants agreed that their payment obligations under the First Renewal Note would continue to be secured by the Original Mortgage.

12. On or about April 10, 2009, the Roller Defendants executed a renewal promissory note in favor of Carolina First Bank in the amount of One Million Eight Hundred Fifty Thousand and 00/100ths ($1,850,000.00) Dollars (the "Second Renewal Note"), under which the Roller Defendants promised to pay the amounts outstanding under the Original Note, as amended by the First Renewal Note, on terms set forth in the Second Renewal Note. Pursuant to the Second Renewal Note and the Original Mortgage, the Roller Defendants agreed that their payment obligations under the Second Renewal Note would continue to be secured by the Original Mortgage.

[1] The Court will determine the exact description of the property to be sold at the subsequent foreclosure sale following the May 30, 2014, hearing on Plaintiff's quiet title action. Therefore, the property description is subject to modification.

13. On or about November 27, 2009, the Roller Defendants executed a renewal promissory note in favor of Carolina First Bank in the amount One Million Eight Hundred Fifty Thousand and 00/100ths ($1,850,000.00) Dollars (the "Third Renewal Note"), under which the Roller Defendants promised to pay the amounts outstanding under the Original Note, as amended by the First Renewal Note and Second Renewal Note, on terms set forth in the Third Renewal Note. Pursuant to the Third Renewal Note and the Original Mortgage, the Roller Defendants agreed that their payment obligations under the Third Renewal Note would continue to be secured by the Original Mortgage.

14. Under the terms of the Third Renewal Note, and to further secure payment of the Third Renewal Note and the debt evidenced thereby, the Roller Defendants executed and delivered to Carolina First Bank a Mortgage dated November 27, 2009, additional security secured by a separate parcel of real property. (For convenience, the Court will refer to this additional security as the "Additional Mortgage"). The Roller Defendants mortgaged to Plaintiff additional property ("Second Mortgaged Tract"). The Additional Mortgage was recorded in the ROD in Mortgage Book 2912, at Pages 291-299.

15. Thereafter, on or about December 14, 2012, the Rollers paid to Carolina First a lump sum payment of $100,000 to be applied to principal and interest. In exchange for this payment, the Plaintiff executed and delivered a Release of the Additional Mortgage, by which it released and satisfied its encumbrance on the Second Mortgaged Tract. The plaintiff recorded this Release of Mortgage in the ROD on January 11, 2013 at Book 3206, Pages 1692-1694.

16. At the close of the plaintiff's case, the defendants, Rollers moved for an Involuntary Non-Suit with or without prejudice under Rule 41(b) of the *South Carolina Rules of Civil Procedure* on the ground that the plaintiff failed to demonstrate that it had standing to bring

the action.[2] The plaintiff's witness, Benjamin R. Jenkins, III, testified that Carolina First merged with the plaintiff on June 17, 2010. He claimed that the new entity holds the Notes. In response the defendants, Rollers, argued that the plaintiff failed to produce the best evidence of the Notes under Rule 1002 of the South Carolina Rules of Evidence. ("To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided these rules or statute.") The Court agrees with the defendants that the best evidence of a Note is always the original, but also notes that the inquiry does not stop there as the following Rule, Rule 1003, provides that the admissibility of a duplicate is proper unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. For this reason, the Court overruled the objection to the failure to produce the originals.

17. The standing issue is more difficult. Nationwide this issue has come up frequently in the wake of the collapse of the housing market in 2008, brought about by unscrupulous transactions on Wall Street. It is true that the plaintiff failed to produce any documentary evidence of the merger, relying instead on the testimony of its witness. When faced with this exact question, the Court of Appeals of Indiana found that the witness's testimony was sufficient. *CFS, LLC v. Bank of America,* N.E.2d (2012). On the same issue, the Supreme Court of Maine went in the opposite direction, holding that without documentary proof showing the plaintiff held the Note, the Bank could not foreclose on the property. See *Wells Fargo Bank, N.A. v. deBree*, 2012 ME 34 (Me. 2012). The Supreme Court of South Carolina has not determined this issue. This Court concludes that the witness's testimony is

[2] "After the plaintiff in an action tired by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief."

sufficient to establish the standing of the plaintiff to foreclose and therefore denies the defendants', Rollers', motion for involuntary non-suit under Rule 41(b).[3]

18. The plaintiff is entitled to its reasonable attorneys' fees and costs of collection under the term of the Third Renewal Note. Due to the existence of the title issue and the work associated with it, the parties agreed to confer after the hearing to determine a fair amount of attorneys' and costs to assign to plaintiff's collection efforts and add to the judgment in this matter. The parties have informed the court that they agreed that $25,000.00 is an appropriate amount to assign for attorneys' fees and costs.

19. The Original Mortgage constitutes a valid first priority mortgage lien covering the Subject Property.

20. Plaintiff is the current holder as the successor to Carolina First Bank of all notes and the Original Mortgage.[4]

21. Payments due on the Third Renewal Note have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amounts due thereon and has placed the Third Renewal Note and Original Mortgage in the hands of its attorneys for collection.

22. The following amounts are due and owing on the Notes and Mortgage as of April 29, 2014, including costs and expenses of collection and attorneys' fees:

Principal	$1,762,913.86
Interest	$744,469.04
Late Charges	$28,453.34
Fees	$2,560.00
Escrow Tax	$0.00

[3] Both parties timely renewed motions at the close of the case. The Court granted plaintiff's motion on defendants' causes of action for fraud in the inducement and novation for failure to prove the elements by a preponderance of the evidence.

[4] As set forth above, the Court appreciates the defendants', Rollers', argument that merger must be proved to obtain standing to foreclose, but the Court finds plaintiff's witness is competent to testify as to the merger and that plaintiff acquired all assets of Carolina First Bank, including the Note that is the subject of this action.

Escrow Insurance	$0.00
Escrow MPP	$0.00
Attorneys' Fees and Costs	$25,000.00
Total Net Payoff	$2,563,396.24

Interest continues to accrue after April 29, 2014 at the default rate of 10.00% per annum, as set forth in the Third Renewal Note (which is a *per diem* of $489.69829).

23. Plaintiff seeks to foreclose the Original Mortgage and does not waive the right to a personal or deficiency judgment against the Roller Defendants for the full amount found to be due to Plaintiff under the Third Renewal Note and Original Mortgage, with the right to enter a personal deficiency judgment against the Roller Defendants for any deficiency in this action remaining after the sale of the Subject Property. The amount of any deficiency, if any, will be calculated after appraisal by the method set forth in § 29-3-700, S. C. Code, ann.

24. The defendants, Rollers, previously demanded an appraisal by their verified pleading, and the Court finds that this verified prayer for appraisal contained in their verified answer is sufficient under § 29-3-680. Should the property fail to bring at judicial sale sufficient to satisfy the amount of the debt, the Court will determine whether appraisal is warranted under the facts of the case and, if so, appoint three appraisers using the procedure required by § 29-3-700, S. C. Code, ann.

CONCLUSIONS OF LAW

I conclude that the Original Mortgage is not subject to modification under the Home Affordable Modification Program, that this foreclosure proceeding is exempt from the Administrative Order, that the Plaintiff should have judgment of foreclosure of the Original Mortgage and the Subject Property should be ordered sold at public auction after due

advertisement. The Subject Property shall be sold at the foreclosure sale conducted by the Master in Equity for Beaufort County at a date to be determined.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court shall hold a hearing on ~~May 30~~ June 26th 3:00, 2014, at ~~1:00~~ PM for the purpose of ruling on Plaintiff's quiet title cause of action against James Williams. The order issued at or shortly after this hearing shall establish the property description of the Subject Property to be sold.

2. The Home Affordable Modification Program does not apply because this foreclosure action involves a mortgage encumbering commercial real estate.

3. The Subject Property is not an owner-occupied dwelling as defined in the Administrative Order, and the Administrative Order does not apply to this foreclosure action as evidenced by the Certificate of Exemption.

4. There is due to the Plaintiff on the Third Renewal Note set forth in the First Amended Complaint the sum of $2,563,396.24, including attorneys' fees and costs, as of April 29, 2014, and Plaintiff is entitled to judgment for this amount.

5. The amount due in the preceding paragraph shall bear interest hereafter until paid on the Third Renewal Note at the rate of 10.00% *per annum* (*per diem* of $489.69829) from April 29, 2014 until the entry of judgment and at the statutory post-judgment rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the Subject Property after April 29, 2014 and before the sale of the Subject Property, these advances may be added to the total judgment debt.

6. The Roller Defendants are liable for the aforesaid debt. On or before the date of sale of the Subject Property the Roller Defendants may pay to the Plaintiff's attorneys the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. On default of payment at or before the time herein indicated, the Subject Property (3) will be sold by the Beaufort County Master in Equity or his agent, at public auction, at the Beaufort County Courthouse, Beaufort, South Carolina on some convenient sales day hereafter on the following terms:

> The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Beaufort Master in Equity, or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments. Purchaser shall pay all costs of recording the deed.

8. Plaintiff seeks to foreclose the Original Mortgage and does not waive the right to a personal or deficiency judgment against the Roller Defendants.

9. After advertisement according to law, giving notice of the time and place of such sale, and the terms thereof, the Beaufort County Master in Equity will convey to the purchaser, or purchasers, a deed to the Subject Property; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the Subject Property sold under this Report and hereinafter more fully described.

 (3) subject to the quiet title portion of the case.

Under South Carolina Code § 12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

10. The proceeds of the sale will be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action.

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

THIRD, any surplus proceeds to be held subject to further order of the Court.

11. Upon the making of the sale of the Subject Property, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the purchaser or purchasers will be let into possession of the premises on production of the deed, and Sheriff or Beaufort County shall put the holder of the deed into possession of the premises.

12. Each defendant and all persons whosoever claiming under any of them will be forever barred and foreclosed of all right, title and interest and equity of redemption in the Subject Property so sold, or any part thereof.

13. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, adjusting the judgment in light of the appraisal, if necessary, and disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

14. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales date.

15. The Court further acknowledges that the Roller Defendants repeatedly sought to rezone the Subject Property.[5] The rezoning request may have led to an increased value of the Subject Property, such that the Roller Defendants could have sold the Subject Property for an amount close to or exceeding the outstanding debt. However, the Town of Bluffton denied the rezoning request on multiple occasions. The Roller Defendants did not waive any claim they may have against the Town of Bluffton.

May 30, 2014
Beaufort, South Carolina

Marvin Dukes
Beaufort County Master in Equity

[5] When the Rollers acquired the tract, the property was in Beaufort County and zoned commercial. While they were in Texas, the Town of Bluffton annexed the property and downzoned it to residential.

EXHIBIT 1 (3)

ALL those certain pieces, tracts or parcels of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, shown and described as Phase 2A, 16.698 Ac., Power Line R/W, 2.686 Ac. (Proposed), and Power Line R/W 2.267 Ac. (Existing), on a plat entitled "Windtree Subdivision:, prepared by Carol B. Baughman, RLS# 3717, dated February 11, 1986, and revised on March 26, 1986, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 193. For a more detailed description as to location, courses, metes, bounds, distances, etc., reference to the said recorded plat may be had.

This being a portion of the same property conveyed by Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 228 at Page 1549 and Deed Book 256 at Page 579.

Beaufort County PIN Number: R610-031-000-0002-0000

(3) see footnote 2, page 10

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-0340

TD Bank, N.A., Successor by Merger to Carolina First Bank, 2014 JUN 3 PM 3:54 Wilbert Roller, Jr., Betty V. Roller and James Roller

PLAINTIFF(S)

BEAUFORT COUNTY, S.C. DEFENDANT(S)

Submitted by: Matthew E. Tillman Womble Carlyle Sandridge & Rice, LLP 5 Exchange Street Charleston, SC 29401	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
T.D. Bank, N.A., Successor by Merger to Carolina First Bank	Wilbert Roller, Jr. and Betty V. Roller	$2,563,396.24
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

/s/ MARVIN H BULLCESTIL — 7-3-14

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on the 3rd day of July 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 7th day of July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn Ellen - STAFF

CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-00340

CAROLINA FIRST BANK, ET AL.

PLAINTIFF(S)

WILBERT ROLLER, JR., ET AL.

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAME BEFORE ME 11/10/2014 ON DEFENDANT'S MOTION FOR RECONSIDERATION, FILED 7/11/2014. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION.

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

3069
Judge Code

11/17/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

MATTHEW TILLMAN

ATTORNEY(S) FOR THE PLAINTIFF(S)

THOMAS R. GOLDSTEIN
ROBERT V. MATHISON, JR.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-0340

TD Bank, N.A., Successor by Merger to Carolina First Bank, ,

PLAINTIFF(S)

Wilbert Roller, Jr., Betty V. Roller and James Roller

DEFENDANT(S)

Submitted by: Matthew E. Tillman Womble Carlyle Sandridge & Rice, LLP 5 Exchange Street Charleston, SC 29401	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

2016 APR 12 PM 3:11

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Order Granting Motion to Enforce Settlement Agreement

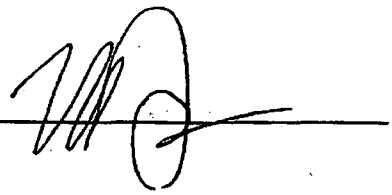
INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge  3069 Judge Code 4/12/16 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT 2016 MAY 25 P 4:59	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**CONSENT ORDER TO SUPPLEMENT AND AMEND JUDGMENT**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

BEAUFORT COUNTY, S.C.
CLERK OF COURT

By operation of the Master in Equity's Order of Bifurcation and Judgment of Foreclosure and Sale executed on May 30, 2014 and recorded on July 3, 2014, this Court entered a judgment against Defendants Wilbert Roller, Jr. and Betty V. Roller in the amount of 2,563,396.24. The Plaintiff now seeks to supplement and amend this judgment to include additional interest, fees and costs incurred in this matter.

Upon consent of the parties to this action, the Court hereby grants Plaintiff's request and enters an amended judgment in the amount of $2,924,228.70 as of April 19, 2016, broken down as follows:

Principal	$ 1,762,913.86
Interest	$ 1,097,541.50
Late Charges	$ 28,453.34
Appraisal Fees	$ 5,320.00
Attorneys Fees and Costs	$ 30,000.00
Total	**$ 2,924,228.70**

WHEREFORE, it is hereby ordered that the judgment against Wilbert Roller, Jr. and Betty V. Roller is now Two Million Nine Hundred Twenty Four Thousand Two Hundred Twenty Eight and 70/100 Dollars ($2,924,228.70), with interest accruing at a per diem rate of

$489.70 from April 19, 2016 through the date of confirmation of the sale of the subject property pursuant to the Notice of Sale entered in this action.

Marvin Dukes, Beaufort County Master in Equity

April ____, 2016
Beaufort, South Carolina

WE CONSENT:

Rob Mathison by Matt Tillman 4per

Robert V. Mathison, Jr., Esq.
Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938

Attorneys for James Williams

WOMBLE CARLYLE SANDRIDGE & RICE PA

Daniel Q. Orvin (S.C. Bar No. 13744)
Matthew Tillman (S.C. Bar No. 70358)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax

Attorneys for Plaintiff

Thomas R. Goldstein, Esq. (S.C. Bar No. 2186)
Belk, Cobb, Infinger & Goldstein, P.A.
PO Box 71121
Charleston SC 29415-1121
Business Phone: (843) 554-4291

Attorneys for Wilbert Roller, Jr. and Betty Roller

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

FORM 4
JUDGMENT IN A

CASE NO. 2011 CP-07

TD Bank, N.A., Successor by Merger to Carolina First Bank, ,

PLAINTIFF(S)

Wilbert Roller, Jr., Betty V. Ro

DEFENDANT(S)

2016 MAY 25 PM 12: 35
JEAN ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Submitted by: Matthew E. Tillman
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29401

Attorney for : ☒ Plaintiff
or
☐ Self-Represented Litiga

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This order ☒ ends ☐ does not end the case.

ORDER INFORMATION

Additional Information for the Clerk : Amended Judgment

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
T.D. Bank, N.A., Successor by Merger to Carolina First Bank	Wilbert Roller, Jr. and Betty V.Roller	$2,924,228.70
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**MASTER'S REPORT ON SALE**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS,	)	
Defendants.	)	

2016 AUG 29 PM 3:58
BEAUFORT COUNTY, SC
CLERK OF COURT

UNDER AUTHORITY of a Master in Equity's Order of Bifurcation and Judgment of Foreclosure and Sale filed on July 3, 2014, and upon further order set forth in the Order Granting Motion to Enforce Settlement Agreement filed in this action on April 8, 2016, and after due notice and advertisement, I offered for sale, to the highest bidder for cash, at public auction conducted on June 6, 2016, the real property which is the subject to this suit, and received a high bid from Ryan Hillyer in the sum of Four Hundred Twenty One Thousand and 00/100 ($421,000.00) Dollars.

Ryan Hillyer, as the successful bidder, having paid the costs and expenses as provided in said Order, I have executed and delivered to Ryan Hillyer a good and sufficient deed of conveyance of said real property, and bill of sale of said personal property.

IT IS THEREFORE ORDERED that the said sale and the Master's Report on Sale is hereby confirmed by this Court.

IT IS SO ORDERED.

The Honorable Marvin H. Dukes, III
Beaufort County Master in Equity

Beaufort, South Carolina
August 22, 2016

11-340

Plaintiff : TD Bank, N.A.

Defendant: Wilbert Roller, Jr., et al

Case # 2011-CP-07-0340

Successful Bidder: Ryan Hillyer
Bluffton, SC 29910

STATEMENT OF RECEIPTS AND DISBURSEMENTS

Sale Date: July 6, 2016
Compliance Date: August 5, 2016

INTEREST CALCULATION/ AMOUNT DUE PER FORECLOSURE ORDER

	Amount	Check#	Date	Receipt#
Bid Amount:	$421,000.00			
Deposit	$21,050.00	6826501102	7/6/16	
Net Due (before interest)	399,950.00			

Interest Accrual per Order $489.70
$399,950.00 at % for days($/day)

TOTAL AMOUNT DUE FROM PURCHASER	$399,950.00

INTEREST CALCULATION/AMOUNT DUE PER FORECLOSURE ORDER

	Amount	Check#	Date	Receipt#
Deposit	$21,050.00			
Balance from Purchaser	$399,950.00			
Total Received	$421,000.00			
Amount paid to Beaufort Co Treasurer	$2,500.00			
Amount paid to Plaintiff's attorney	$418,500.00			
Remaining Balance/Excess funds	0.00			Judgment
				$2,924,228.70

Marvin H. Dukes, III
Master in Equity for Beaufort County South Carolina

ELECTRONICALLY FILED - 2017 Jun 29 3:43 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	CONSENT ORDER FOR APPRAISAL
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

This matter comes before the Court on Defendants Wilbert Roller Jr. and Betty v. Roller's (the "Rollers") application for an order of appraisal pursuant to S.C. Code § 29-3-680. The appraisal concerns TMS # R610-031-000-0002-0000 in Beaufort County, South Carolina (the "Property").

1. The Rollers designated Michael Halpin of Halpin Appraisal to perform appraisal services pursuant to S.C. Code § 29-3-710.

2. The Plaintiff designated Gary W. Schwab of Charleston Area Appraisals, LLC to perform appraisal services pursuant to S.C. Code § 29-3-710.

3. With the consent of the parties, the Court hereby designates Christopher Donato of Atlantic Appraisals, LLC ("Third Appraiser") to complete the appraisal board described in S.C. Code §§29-3-710 and -720.

4. The Rollers will deposit the sum of $1,500.00 into the Court (or in to one of the law firm's escrow account if the parties jointly agree to use a lawyer's escrow account in place of the Clerk of Court) to pay the costs of work performed by the Third Appraiser, and the Court

ELECTRONICALLY FILED - 2017 Jun 29 3:43 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

shall be empowered to distribute the funds upon completion of the work performed by the Third Appraiser.

5. The Third Appraiser shall have until June 23, 2017 to determine the true value of the Property as of April 8, 2016, taking into consideration sale value, cost and replacement value of improvements, income production and all other proper elements which, in the Third Appraiser's discretion, enter into the determination of true value of the Property. (The Thrid Appraiser may request extensions if the work cannot be properly completed under the deadline set herein.)

6. By July 14, 2017, (unless the Court grants an extension upon application by the Third Appraiser) the appraisal board shall make a return to the Court in accordance with S.C. Code § 29-3-710, S. C. Code, ann.

_____, 2017
Beaufort, South Carolina

_____
Marvin Dukes, Beaufort County Master in Equity

WE CONSENT:

s/Thomas R. Goldstein
Thomas R. Goldstein, (S.C. Bar No. 2186)
Belk, Cobb, Infinger & Goldstein, P.A
Post Office Box 71121
Charleston SC 29415-1121
Business Phone: (843) 554-4291
tgoldstein@cobblaw.net

Attorneys for Wilbert Roller, Jr. and Betty Roller

WOMBLE CARLYLE SANDRIDGE & RICE PA

s/Matthew Tillman
Daniel Q. Orvin (S.C. Bar No. 13744)
Matthew Tillman (S.C. Bar No. 70358)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax

Attorneys for Plaintiff

ELECTRONICALLY FILED - 2017 Jun 29 3:43 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

Beaufort Common Pleas

Case Caption: Carolina First Bank , plaintiff, et al VS Wilbert Roller Jr , defendant, et al

Case Number: 2011CP0700340

Type: Order/Consent Order

So Ordered:

s/Marvin H. Dukes III #3069

Valbridge
PROPERTY ADVISORS
Atlantic Appraisals, LLC

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843-884-1266 phone
800-477-1218 toll-free
843-881-7532 fax
valbridge.com

ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

July 17, 2018

Judge Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Beaufort County Courthouse
102 Ribaut Road, Room 1228
Beaufort, SC 29901

RE: Roller Property Appraisals

Dear Judge Dukes,

The Board of Appraisers met via conference call at 2:00 PM on April 9, 2018. The Board consisted of Gary W. Schwab, Gary Beaver and myself. Messrs. Schwab and Beaver had made appraisals of the property and I acted as a reviewer/mediator.

Some background on the time it took to constitute this Board and arrange a meeting (conference call) may be helpful to understand my later explanation for the lack of Mr. Beaver's signature.

The appraisal done for Mr. Thomas R. Goldstein was under the auspices of Halpin Appraisal with co-signatories of Michael P. Halpin and Gary Beaver. Mr. Halpin, in my opinion, was the logical choice to participate as a member of the Board of Appraisers since it was his firm on the letterhead and his was the first signature on the letter of transmittal. Repeated attempts to contact Mr. Halpin were made, but I received no returned calls or emails. I finally made contact with Mr. Halpin, but he refused to be on the Board of Appraisers saying that we should talk to Mr. Beaver. Ultimately, Messrs. Tillman and Goldstein agreed that Mr. Beaver could substitute for Mr. Halpin and I was given Mr. Beaver's contact information. It should be noted that Mr. Beaver, since his participation in the Roller appraisal, had moved to Texas.

My calls and emails to Mr. Beaver were also fruitless. It finally took Mr. Goldstein's intervention to make contact with Mr. Beaver and set up the conference call.

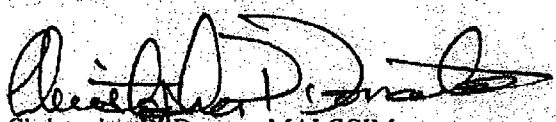
Valbridge
PROPERTY ADVISORS
Atlantic Appraisals, LLC

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843-884-1266 phone
800-477-1218 toll-free
843-881-7532 fax
valbridge.com

ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

The results of the conference call are described in the Affidavit of Board of Appraisers attached with this letter. The Board unanimously agreed on a value for the Roller property of $900,000. It was my understanding that since the Board was in unanimous agreement all members of the Board must sign (with notary) the Affidavit. Mr. Schwab and I have signed the Affidavit, but repeated attempts to call and email Mr. Beaver have failed. In the absence of his cooperation, therefore, I am submitting the Affidavit of Board of Appraisers without his signature. I hope this is satisfactory.

Respectfully Submitted,



Christopher D. Donato, MAI CCIM
South Carolina Certified General Real Estate Appraiser
SC CG 292

cc: Mr. Matthew Tillman
Email – mtillman@wcsr.com

Mr. Thomas Goldstein
Email – tgoldstein@cobblaw.net

ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP070340

AFFIDAVIT OF BOARD OF APPRAISERS

State of South Carolina
County of Charleston

The undersigned, Christopher D. Donato, Gary Beaver, and Gary W. Schwab, being duly sworn, hereby deposes and says:

1. We represent the Board of Appraisers in estimating the value of Beaufort County land hereinafter known as The Roller Property,
2. We are all licensed and/or certified appraisers in the State of South Carolina,
3. Mr. Beaver made an appraisal of the Roller Property for Mr. Thomas R. Goldstein of Belk, Cobb, Infinger & Goldstein, P.A., Mr. Schwab made an appraisal of the same property for TD Bank, and Mr. Donato was appointed by the court to mediate between the two appraisers.
4. Mr. Beaver estimated a value of $2,050,000 for the Roller Property and Mr. Schwab estimated a value of $600,000.
5. The Board of Appraisers met by conference call at 2:00 PM on April 9, 2018.
6. Both Mssrs. Beaver and Schwab used a sales comparison approach as the principal method of estimating value and both used a unit of comparison of dollars per acre. However, Mr. Beaver used the gross area of the property of 21.447 acres and Mr. Schwab used the net area of 10.8 acres.
7. Mr. Donato stated that the Roller Property had 37% unusable acreage and Mr. Beaver's comparable sales had unusable land ranging from 0% to 18.75%, but no adjustments made. This skewed his estimated value to an unreasonably high number.
8. All appraisers ultimately agreed that the proper area of the subject was 10.8 acres (usable area only) and everyone ultimately agreed on a value for The Roller Property of $900,000.

I declare that, to the best of my belief and knowledge, the information herein is true, correct and complete.

Executed this 30th **day of** May, 2018

Christopher D. Donato, MAI

ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

NOTARY ACKNOWLEDGEMENT

STATE OF South Carolina, COUNTY OF Charleston, SC

Teresa M Scott
Notary Public

Teresa M. Scott
Name

My Commission Expires: 4/21/2021

Executed this_____day of_____,2018

_____
Gary Beaver

NOTARY ACKNOWLEDGEMENT

STATE OF_____, COUNTY OF_____, TX

_____
Notary Public

_____
Name

My Commission Expires:_____

Executed this 13 day of June 2018

Cary W. Schwab

NOTARY ACKNOWLEDGEMENT

STATE OF SC COUNTY OF Charleston SC

Notary Public

Ann S Grizzle

Name

My Commission Expires: 07 05 2027

ANN S GRIZZLE COM. EXP. NOTARY PUBLIC 07.05.2027 SOUTH CAROLINA

ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

ELECTRONICALLY FILED - 2018 Oct 26 12:01 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**ORDER DENYING DEFENDANTS' MOTION TO VACATE DEFICIENCY JUDGMENT**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

This matter comes before the Court on Defendants' August 29, 2018 Motion to Vacate Demand for Deficiency ("Motion to Vacate"). The Court held a hearing on this matter on October 1, 2018. After consideration of the briefs filed by the parties and oral argument presented at the hearing, the Court hereby denies the Motion to Vacate.

PROCEDURAL BACKGROUND

This is a foreclosure action concerning Beaufort County TMS # R610-031-000-0002-0000 (the "Subject Property"). The Plaintiff sought to foreclosure on a 2007 mortgage given by the Defendants to secure a loan made to the Plaintiff. By order dated July 3, 2014, the Court entered an order of foreclosure to satisfy the debt. The foreclosure order established the Defendants' debt at $2,563,396.24, ordered the sale of the subject property, and specifically provided that the Plaintiff did not waive its right to deficiency judgment. The Court then entered a Consent Order to Supplement and Amend Judgment, filed on May 25, 2016, which increased the total judgment to $2,924,228.70. The Subject Property was sold at public auction, as

ELECTRONICALLY FILED - 2018 Oct 26 12:01 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP070340

reflected in the Master's Report on Sale, filed on August 29, 2016, which confirmed the sale of the Subject Property for $421,000 to a third party bidder.

The Defendants requested an order of appraisal pursuant to S.C. Code Ann. § 29-3-680. The Court entered a Consent Order for Appraisal on June 29, 2017. The appointed appraisal board filed a return on July 27, 2018, in which the board established the value of the Subject Property as $900,000.

On August 29, 2018, the Defendants filed their Motion to Vacate. In the Motion to Vacate, the Defendants requested that the Court vacate the deficiency judgment in its entirety because the Plaintiff had not provided an appraisal from the original 2007 loan to the Defendants and because the Plaintiff allegedly received T.A.R.P. funds. The Defendants did not specify whether the Motion to Vacate was filed under Rule 60, SCRCP, as an appeal of the appraisal rights return, or under some other procedural theory.

LEGAL DISCUSSION

The Motion to Vacate must be denied under any theory presented by the Defendants. As an initial matter, there is no evidence that the Defendants ever requested an appraisal from the Plaintiff, by way of discovery or otherwise, prior to the appraisal board' return. It is not clear whether an appraisal even exists.

1. **The Defendants' request to appeal the the return of the appraisal board is time-barred.**

To the extent the Motion to Vacate may be construed as an appeal of the appraisal board return, it is time-barred. S.C. Code § 29-3-750 provides that "[t]he petitioner or the judgment creditor may appeal from the return of the appraisers upon notice stating the ground of such appeal served upon the other party ***within ten days after notice of the filing of the return***." The Return was electronically filed and delivered to counsel for Mr. and Mrs. Roller on July 27,

ELECTRONICALLY FILED - 2018 Oct 26 12:01 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

2018. The Motion to Vacate was not filed until August 29, 2018. Therefore, the appeal is untimely and the determination of the appraisal board is final. The return of the appraisal board is a judgment of this Court as set forth in S.C. Code § 29-3-740.

2. The Defendants cannot prove a fraud on the Court.

To the extent the Defendants seek to vacate any judgment based on fraud on the Court, they have failed to prove that the Plaintiff committed a fraud on the Court. The standard for vacating a judgment is a high bar:

> [N]ot every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered; intrinsic fraud is not sufficient for equitable relief. In 31 Am. Jur., *Judgments*, Section 655, page 232, it is stated: "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.

Bryan v. Bryan, 220 S.C. 164, 167-168, 66 S.E.2d 609, 610 (1951). There is no evidence of fraud by the Plaintiff, and certainly no evidence that the Plaintiff prevented the Defendants from presenting their case.

The Defendants argue that the Plaintiff never produced the pre-loan appraisal. First, the Defendants never requested this information. Second, this is wholly irrelevant to any question in the case. S.C. Code Ann. § 29-3-720 requires that the appraisal board alone determine the value of the property as of the ***date of sale***. There is no evidence that the appraisal board requested any appraisals conducted at the time of the 2007, nor would they have any reason to do so – the sale occurred in 2016. Therefore, pre-loan appraisals have no bearing on the valuation of the property for purposes of reduction of the deficiency judgment.

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The Defendants also argue the Plaintiffs did not provide information concerning the receipt of T.A.R.P. funds. First, that information was not requested in discovery, and not raised at trial. Defense counsel did not request this information until after the deadline to appeal the appraisal rights determination had passed. Second, it is irrelevant:

> Absent grounds to set aside the decree of foreclosure, there is no discretion to cut off the right to a deficiency after sale where (1) the complaint in the foreclosure action asks for personal judgment, (2) the amount of the debt is fixed in the foreclosure decree, and (3) the sale is insufficient to satisfy the entire debt.

Am. Gen. Fin. Servs. v. Brown, 376 S.C. 580, 658 S.E.2d 99 (2008). Even if the Plaintiff received T.A.R.P. funds (and there is no evidence in the record that it did), there is no provision in South Carolina law which permits the Court to set off a deficiency judgment for funds received. Indeed, all that is required is that the Plaintiff request a deficiency judgment in the complaint, and the sale funds are insufficient to satisfy the debt. Those elements are satisfied here.

3. The Court does not have discretion to vacate the judgment.

South Carolina law is clear: the Court does not have the discretion to vacate the deficiency judgment awarded to the Plaintiff based on equitable principles. *Am. Gen. Fin. Servs. v. Brown*, 376 S.C. 580, 658 S.E.2d 99 (2008). In *Brown*, the trial court refused to enter a deficiency judgment because doing so "would not be equitable." *Id.* The Supreme Court of South Carolina held that a Master-in-Equity does not have the discretion to deny a deficiency judgment unless the creditor expressly waived the claim for a deficiency. *Id.* at 583, 658 S.E.2d at 100. The Plaintiff did not waive its right to the deficiency judgment, so this Court has no discretion to refuse the request for a deficiency or vacate the judgment.

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CONCLUSION

For the reasons set forth below, the Court denies Defendants' Motion to Vacate. Further, the Court credits the $900,000 value assigned by the appraisal board and reduces the deficiency judgment against the Defendants to $2,566,334.12 as of August 30, 3018. The deficiency judgment will continue to accrue interest at the statutory rate after that date.

Marvin Dukes, Beaufort County Master in Equity

October __, 2018
Beaufort, South Carolina

ELECTRONICALLY FILED - 2018 Oct 26 12:01 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

Beaufort Common Pleas

Case Caption: Carolina First Bank , plaintiff, et al VS Wilbert Roller Jr , defendant, et al

Case Number: 2011CP0700340

Type: Master/Order/Deficiency Judgment and Form 4

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2018 Oct 26 12:01 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 **CP-** 07-340

TD BANK, NA., Successor by Merger to Carolina First Bank
PLAINTIFF(S)

WILBERT ROLLER, JR. BETTY V. ROLLER and JAMES WILLIAMS
DEFENDANT(S)

Submitted by: Matthew E. Tillman, Womble Bond Dickinson (US) LLP, 5 Exchange Street, Charleston SC 29401	**Attorney for :** xx☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

xx☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: xx☐ See attached order (formal order to follow) xx☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
TD Bank, N.A.	Wilbert Roller, Jr., Betty V. Roller and James Williams	$2,566,334.12 as of August 30, 2018 with interest continuing to accrue at the statutory rate after that date.
		$
		$

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

ELECTRONICALLY FILED - 2018 Oct 26 12:01 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Matthew E. Tillman, Womble Bond Dickinson (US) LLP
5 Exchange Street
Charleston SC 29401
ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas R. Goldstein, Belk, Cobb, Infinger & Goldstein PA
2344 Cosgrove Avenue
Charleston SC 29415-1121
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

ELECTRONICALLY FILED - 2018 Dec 12 12:36 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 **CP-**07-00340

Carolina First Bank, et al.
PLAINTIFF(S)

Wilbert Roller Jr., et al.
DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This came before me December 4th, 2018 on Defendants' Motion for Reconsideration, filed November 2nd, 2018. After hearing from parties and further review of the file, I hereby deny the motion.

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge

3069
Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Matthew Tillman

ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas R. Goldstein

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

ELECTRONICALLY FILED - 2018 Dec 12 12:36 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

ELECTRONICALLY FILED - 2018 Dec 12 12:36 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

Beaufort Common Pleas

Case Caption: Carolina First Bank , plaintiff, et al VS Wilbert Roller Jr , defendant, et al

Case Number: 2011CP0700340

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

PLEADINGS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-340
CAROLINA FIRST BANK,	)	
Plaintiff,	)	**SUMMONS**
v.	)	**(Suit on a Promissory Note and Mortgage Foreclosure)**
WILBERT ROLLER JR. AND BETTY V. ROLLER	)	**(Non-Jury)**
Defendants.	)	

FILED
JOANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
11 JAN 24 PM 4:03

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber, Daniel Q. Orvin, at his office at 5 Exchange Street, Charleston, South Carolina 29401, within thirty (30) days after service hereof, exclusive of the day of said service; and if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

BUIST MOORE SMYTHE McGEE P.A.

Daniel Q. Orvin (S.C. Bar No. 13744)
Ryan Gilsenan (S.C. Bar No. 74756)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax
Attorneys for Plaintiff

Charleston, South Carolina
January 20, 2011

{01940576.}

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-340
	)	
CAROLINA FIRST BANK,	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(Suit on a Promissory Note)**
v.	)	**(Mortgage Foreclosure)**
	)	**(Deficiency Demanded)**
WILBERT ROLLER JR. AND BETTY V. ROLLER	)	**(Non-Jury)**
	)	
Defendants.	)	

11 JAN 21 PM 4:04
BEAUFORT COUNTY, S.C.

Plaintiff Carolina First Bank complaining of the above-captioned Defendants Wilbert Roller Jr. and Better V. Roller, alleges and says as follows:

1. Plaintiff Carolina First Bank, ("**Plaintiff**" or "**Lender**"), is a bank doing business in Beaufort County, South Carolina.

2. The subject of this action is real property located in Beaufort County, South Carolina more fully described on the attached **Exhibit "A"** and **Exhibit "B"** which is incorporated herein by reference (collectively, the "**Real Property**"). The portion of the Real Property described Exhibit "A" is hereafter referred to as "**Property A**" and the portion described in Exhibit "B" is hereafter referred to as "**Property B**".

3. Plaintiff is informed and believes the Defendants Wilbert Roller Jr. and Betty V. Roller (together, the "**Rollers**" or "**Borrower**"), are residents of Beaufort County, South Carolina.

4. This Court has jurisdiction over the parties and the subject matter in this action.

FACTS

5. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim.*

6. On or about August 9, 2007, Borrower executed and delivered to Lender a promissory note in the original principal amount of **TWO MILLION THREE HUNDRED THOUSAND AND 00/100THS ($2,300,000.00) DOLLARS** (the "**Original Note**"). A copy of the Original Note is attached hereto as **Exhibit "C"** and its terms are incorporated herein by reference.

7. The Original Note and all renewals thereof are secured, in part, by a Mortgage executed by Borrower and delivered to the Plaintiff encumbering Property A dated August 9, 2007, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the "**Register of Deeds**") in Mortgage Book 2612, at Pages 521-529 (the "**2007 Mortgage**"). A copy of the 2007 Mortgage is attached hereto as **Exhibit "D"** and its terms are incorporated herein by reference.

8. On or about September 23, 2008, Borrower executed a renewal promissory note in favor of Lender in the amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100THS ($1,850,000.00) DOLLARS** (the "**First Renewal Note**") promising to pay Lender the amounts outstanding under the Original Note on terms set forth in the First Renewal Note. A copy of the First Renewal Note is attached hereto as **Exhibit "E"** and its terms are incorporated herein by reference.

9. Pursuant to the First Renewal Note and the 2007 Mortgage, the Borrower agreed that its payment obligations under the First Renewal Note would continue to be secured by the 2007 Mortgage.

10. On or about April 10, 2009, Borrower executed a renewal promissory note in favor of Lender in the amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100THS ($1,850,000.00) DOLLARS** (the "**Second Renewal Note**") promising to pay Lender the amounts outstanding under the First Renewal Note on terms set forth in the Second Renewal Note. A copy of the Second Renewal Note is attached hereto as **Exhibit "F"** and its terms are incorporated herein by reference.

11. Pursuant to the Second Renewal Note and the 2007 Mortgage, the Borrower agreed that its payment obligations under the Second Renewal Note would continue to be secured by the 2007 Mortgage.

12. On or about November 27, 2009, Borrower executed a renewal promissory note in favor of Lender in the amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100THS ($1,850,000.00) DOLLARS** (the "**Third Renewal Note**") promising to pay Lender the amounts outstanding under the Second Renewal Note on terms set forth in the Third Renewal Note. A copy of the Third Renewal Note is attached hereto as **Exhibit "G"** and its terms are incorporated herein by reference.

13. The Third Renewal Note and all renewals thereof are secured, in part, by a Mortgage executed by Borrower and delivered to the Plaintiff encumbering Property B dated November 27, 2009, and recorded in the Office of the Register of Deeds in Mortgage Book 2912, at Pages 291-299 (the "**2009 Mortgage**). A copy of the 2009 Mortgage is attached hereto as **Exhibit "H"** and its terms are incorporated herein by reference.

14. Pursuant to the Third Renewal Note and the 2007 Mortgage, the Borrower agreed that its payment obligations under the Third Renewal Note would also continue to be secured by

the 2007 Mortgage. The 2007 Mortgage secures the Original Note and any extensions, renewals, modifications and substitutions thereof.

15. Under the terms of the Third Renewal Note, interest accrued on the outstanding principal balance at the rate of six and 00/100ths (6.00%) percent per annum commencing on November 27, 2009, and daily thereafter at the Prime Rate announced by Carolina First Bank (the "**Prime Rate**") plus one-fourth (0.25%) percent per annum.

16. The Third Renewal Note obligated Borrower to make monthly payments beginning on December 27, 2009, and then on the 27th day of each month thereafter, with a final payment of the entire outstanding balance of principal and interest due on August 15, 2010 (the "**Maturity Date**").

17. The Third Renewal Note further provided that in the event any payment of principal or interest remained overdue for a period in excess of twenty (20) days, Borrower would pay Lender a late payment fee equal to five (5.0%) percent of the overdue amounts or TWENTY-FIVE AND NO/100THS ($25.00) DOLLARS, whichever was greater.

18. The Third Renewal Note further provided, in part, than an event of default would occur if Borrower failed to make a payment on time, in the full amount due.

19. The Third Renewal Note provides that in the event of a default, Lender is entitled to accelerate all amounts due under the Third Renewal Note.

20. The Third Renewal Note further provided, in part, that in the event of default, the entire principal would bear interest at the rate in effect prior to default plus four (4.0%) percent per annum.

21. The Third Renewal Note provides that if an action or other proceeding is brought to collect the Third Renewal Note, the Plaintiff shall be entitled to recover its attorneys' fees and costs incurred.

FOR A FIRST CAUSE OF ACTION
(Suit on Promissory Note)

22. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim.*

23. Borrower failed to make payments as required by the Third Renewal Note, by, without limitation, failing to pay all principal and interest due as of the Maturity Date and therefore is in default.

24. Pursuant to the terms of the Third Renewal Note, the entire balance of the Third Renewal Note is now due and payable.

25. Borrower was notified of its default by letter dated August 19, 2010, and has failed to cure the same by paying the full amount due.

26. Plaintiff is entitled to recover all costs and reasonable attorneys' fees with respect to this cause of action and seeks relief from the Court which is set forth hereafter. Plaintiff has retained and employed the law firm of Buist Moore Smythe McGee P.A. for the purpose of instituting and prosecuting this action.

27. As of January 18, 2011, the total amount due under the Third Renewal Note is **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, exclusive of late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011. Interest after such date accrues at the per diem rate set forth in the Third Renewal Note.

28. Plaintiff demands its right to seek judgment against Borrower for any deficiency, interest, costs and fees (including, without limitation, attorneys' fees) against Borrower under this cause of action.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of 2007 Mortgage)

29. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim.*

30. As set forth more fully above, Borrower is in default in the performance of the terms, covenants and provisions of the Third Renewal Note and the 2007 Mortgage by, without limitation, failing to pay all principal and interest due as of the Maturity Date and therefore is in default.

31. Pursuant to the terms of the Third Renewal Note, the entire balance of the Third Renewal Note is now due and payable.

32. The Third Renewal Note and the 2007 Mortgage have been placed in the hands of Buist Moore Smythe McGee P.A., attorneys for collection. It is provided in the Third Renewal Note, among other things, that if the Third Renewal Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, that Borrower would promise to pay costs of collection including reasonable attorneys' fees and costs of collection.

33. As of January 18, 2011, the total amount due under the Third Renewal Note is **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS,** exclusive of late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011. Interest after such date accrues at the per diem rate set forth in the Third Renewal Note.

34. Accordingly, Plaintiff is entitled to an order directing that the 2007 Mortgage be declared a valid first priority lien on Property A, and that Property A be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

35. Plaintiff is further entitled to an order directing that out of the proceeds of the sale of Property A, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and the 2007 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

36. Defendant is now liable for payment of the full amount of the debt now owed on the Third Renewal Note, plus Plaintiff's attorneys' fees and costs of collection and is entitled to a judgment of foreclosure under the 2007 Mortgage.

37. In the event that any foreclosure sale does not fully satisfy the debt of Defendant, and the Plaintiff's fees and costs, the Plaintiff demands its right to a deficiency judgment against Defendant under this cause of action.

38. The loan giving rise to this foreclosure action is not owned, guaranteed or managed by Fannie Mae, Freddie Mac or a servicer who has signed an agreement to participate in the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program ("HMP") and, therefore, the loan is not subject to modification under the HMP.

FOR A THIRD CAUSE OF ACTION
(Foreclosure of 2009 Mortgage)

39. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim*.

40. As set forth more fully above, Borrower is in default in the performance of the terms, covenants and provisions of the Third Renewal Note and the 2009 Mortgage by, without limitation, failing to pay all principal and interest due as of the Maturity Date and therefore is in default.

41. Pursuant to the terms of the Third Renewal Note, the entire balance of the Third Renewal Note is now due and payable.

42. The Third Renewal Note and the 2009 Mortgage have been placed in the hands of Buist Moore Smythe McGee P.A., attorneys for collection. It is provided in the Third Renewal Note, among other things, that if the Third Renewal Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, that Borrower would promise to pay costs of collection including reasonable attorneys' fees and costs of collection.

43. As of January 18, 2011, the total amount due under the Third Renewal Note is **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, exclusive of late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011. Interest after such date accrues at the per diem rate set forth in the Third Renewal Note.

44. Accordingly, Plaintiff is entitled to an order directing that the 2009 Mortgage be declared a valid first priority lien on Property B, and that Property B be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons

claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

45. Plaintiff is further entitled to an order directing that out of the proceeds of the sale of Property B, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and the 2009 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

46. Defendant is now liable for payment of the full amount of the debt now owed on the Third Renewal Note, plus Plaintiff's attorneys' fees and costs of collection and is entitled to a judgment of foreclosure under the 2009 Mortgage.

47. In the event that any foreclosure sale does not fully satisfy the debt of Defendant, and the Plaintiff's fees and costs, the Plaintiff demands its right to a deficiency judgment against Defendant under this cause of action.

48. The loan giving rise to this foreclosure action is not owned, guaranteed or managed by Fannie Mae, Freddie Mac or a servicer who has signed an agreement to participate in the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program ("HMP") and, therefore, the loan is not subject to modification under the HMP.

WHEREFORE, the Plaintiff prays that this Honorable Court issue its Order:

A. Granting Plaintiff judgment against Defendant under the First Cause of Action in the amount of **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, together with late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011;

B. Granting Plaintiff judgment of foreclosure under the 2007 Mortgage as to the Second Cause of Action;

C. Directing that the 2007 Mortgage be declared a valid first priority lien on Property A, and that Property A be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

D. Directing that out of the proceeds of the sale of Property A, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and 2007 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

E. Granting Plaintiff judgment of foreclosure under the 2009 Mortgage under the Third Cause of Action;

F. Directing that the 2009 Mortgage be declared a valid first priority lien on Property B, and that Property B be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

G. Directing that out of the proceeds of the sale of Property B, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and 2009 Mortgage with interest thereon as set out

above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

H. Granting Plaintiff leave, if so minded, to have a Receiver appointed upon proper application to this Court; and,

I. Granting the Plaintiff such other and further relief as may be just and proper.

BUIST MOORE SMYTHE McGEE P.A.

Daniel Q. Orvin (S.C. Bar No. 13744)
Ryan Gilsenan (S.C. Bar No. 74756)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax

Attorneys for Plaintiff

Charleston, South Carolina
January 26, 2011

LIST OF EXHIBITS

Exhibit "A" – Property A Description

Exhibit "B" – Property B Description

Exhibit "C" – Original Note

Exhibit "D" – 2007 Mortgage

Exhibit "E" – First Renewal Note

Exhibit "F" – Second Renewal Note

Exhibit "G" – Third Renewal Note

Exhibit "H" – 2009 Mortgage

Exhibit "A"
Property A Description

ALL those certain pieces, tracts or parcels of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, shown and described as **Phase 2A, 16.698 Ac., Power Line R/W, 2.686 Ac. (Proposed),** and **Power Line R/W 2.267 Ac. (Existing),** on a plat entitled "Windtree Subdivision:, prepared by Carol B. Baughman, RLS# 3717, dated February 11, 1986, and revised on March 26, 1986, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 193. For a more detailed description as to location, courses, metes, bounds, distances, etc., reference to the said recorded plat may be had.

SAVING AND EXCEPTING all that certain tract or parcel of land lying and being in the Town of Bluffton, Beaufort County, South Carolina. Said parcel of land being dedicated as a portion of the Bluffton Parkway Phase 3 right of way and being more particularly described as follows; BEGINNING AT AN IRON PIPE FOUND on the existing easterly right of way line of Buck Island Road (66' R/W at this point), having South Carolina state plane coordinates (NAD 83) of N 157216.6734, E 2036657.4289; thence along the aforesaid right of way line of Buck Island Road, N 25°46'59" E a distance of 473.24' to a 3/4" iron pipe set; thence leaving the aforesaid right of way line of Buck Island Road, S 64°15'53" E a distance of 18.25' to a 3/4" iron pipe set; thence S 25°44'07" W a distance of 227.40' to a 3/4" iron pipe set; thence S 22°59'03" W a distance of 236.04' to a 3/4" iron pipe set; thence N 79°18'10" W a distance of 31.14' to an iron pipe found; which is the POINT OF BEGINNING, having an area of 10,060 square feet, or 0.231 acres.

Said saved and excepted parcel of land being generally bounded as follows: on the north and east by Betty V. Roller, on the south by Richard Renick, and on the west by Buck Island Road and also being shown on a plat entitled "A Right of Way Plat for a Portion of Bluffton Parkway Phase 3 through Lands of Betty V. Roller", prepared by Thomas Hutton Engineering Co., dated June 16, 2005 and signed by South Carolina Professional Land Surveyor Wright C. Powers Jr. No 19895.

This being a portion of the same property conveyed to Mortgagor by Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 228 at Page 1549 and Deed Book 256 at Page 579.

Beaufort County PIN Number: R610-031-000-0002-0000

Exhibit "B"
Property B Description

ALL that certain Unit, lying and being in Hilton Head Island, Beaufort County, South Carolina known as Unit Number G-98, Windmill Harbour Marina Horizontal Property Regime, Phase V, and being more particularly shown and described by reference to the Master Deed of Windmill Harbour Company, established said Horizontal Property Regime, and the First, Second, Third and Fourth Expansion Amendments thereto said Master Deed dated being the 11th day of February, 1985, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 413 at Page 547, the First Expansion Amendment dated December 21,1988 and recorded in said Register of Deeds Office in Book 518 at Page 1931, the Second Expansion Amendment dated January 5, 1989 and recorded in said Register of Deeds Office in Book 520 at Page 699, the Third Expansion Amendment dated January 31, 1989 and recorded in said Register of Deeds Office in Book 522 at Page 519, and the Fourth Expansion Amendment date August 28, 1990 and recorded in said Register of Deeds Office in Book 560 at page 208.

Beaufort County PIN Number: R501-006-00A-0283-098G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-LP-07 - 000248
	)	
CAROLINA FIRST BANK,	)	
	)	
Plaintiff,	)	
	)	LIS PENDENS
v.	)	
	)	
WILBERT ROLLER, JR. AND BETTY V. ROLLER	)	
	)	
Defendants.	)	

2011 JAN -7 PM 12:31
JEANNE ANN ROSEREAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been or is about to be commenced in this Court in which the above-named Plaintiff has brought or is anticipating bringing an action for the purpose of foreclosing upon the following two (2) Mortgages covering certain real property located in Beaufort County, State of South Carolina more fully described herein:

(1) that certain Mortgage dated August 9, 2007, given to Plaintiff Carolina First Bank by Defendants Wilbert Roller, Jr. and Betty V. Roller, which mortgage was recorded on August 14, 2007 in the Register of Deeds for Beaufort County, South Carolina in Book 2612, at Page 521, in the original principal amount of Two Million Three Hundred Thousand and No/100ths ($2,300,000.00) Dollars, and which covers certain real property located in Beaufort County, State of South Carolina more fully described on **Exhibit "A"** attached hereto and incorporated herein by reference;

(2) that certain Mortgage dated November 27, 2009, given to Plaintiff Carolina First Bank by Defendants Wilbert Roller, Jr. and Betty V. Roller, which mortgage was recorded on December 1, 2009, in the Register of Deeds for Beaufort County, South Carolina in Book 2912, at Page 291, in the original principal amount of Two Million Seven Hundred Seventy-Five Thousand and No/100ths ($2,775,000.00)

Dollars, and which covers certain real property located in Beaufort County, State of South Carolina more fully described on **Exhibit "B"** attached hereto and incorporated herein by reference;

BUIST MOORE SMYTHE McGEE P.A.

Daniel Q. Orvin (S.C. Bar No. 13744)
Ryan Gilsenan (S.C. Bar No. 74756)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax
Attorneys for Plaintiff

Charleston, South Carolina
JANUARY 6, 2011

EXHIBIT "A"
PROPERTY DESCRIPTION

ALL those certain pieces, tracts or parcels of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, shown and described as **Phase 2A, 16.698 Ac., Power Line R/W, 2.686 Ac. (Proposed)**, and **Power Line R/W 2.267 Ac. (Existing)**, on a plat entitled "Windtree Subdivision:, prepared by Carol B. Baughman, RLS# 3717, dated February 11, 1986, and revised on March 26, 1986, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 193. For a more detailed description as to location, courses, metes, bounds, distances, etc., reference to the said recorded plat may be had.

SAVING AND EXCEPTING all that certain tract or parcel of land lying and being in the Town of Bluffton, Beaufort County, South Carolina. Said parcel of land being dedicated as a portion of the Bluffton Parkway Phase 3 right of way and being more particularly described as follows; BEGINNING AT AN IRON PIPE FOUND on the existing easterly right of way line of Buck Island Road (66' R/W at this point), having South Carolina state plane coordinates (NAD 83) of N 157216.6734, E 2036657.4289; thence along the aforesaid right of way line of Buck Island Road, N 25°46'59" E a distance of 473.24' to a 3/4" iron pipe set; thence leaving the aforesaid right of way line of Buck Island Road, S 64°15'53" E a distance of 18.25' to a 3/4" iron pipe set; thence S 25°44'07" W a distance of 227.40' to a 3/4" iron pipe set; thence S 22°59'03" W a distance of 236.04' to a 3/4" iron pipe set; thence N 79°18'10" W a distance of 31.14' to an iron pipe found; which is the POINT OF BEGINNING, having an area of 10,060 square feet, or 0.231 acres.

Said saved and excepted parcel of land being generally bounded as follows: on the north and east by Betty V. Roller, on the south by Richard Renick, and on the west by Buck Island Road and also being shown on a plat entitled "A Right-of Way Plat for a Portion of Bluffton Parkway Phase 3 through Lands of Betty V. Roller", prepared by Thomas Hutton Engineering Co., dated June 16, 2005 and signed by South Carolina Professional Land Surveyor Wright C. Powers Jr. No 19895.

This being a portion of the same property conveyed to Mortgagor by Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 228 at Page 1549 and Deed Book 256 at Page 579.

Beaufort County PIN Number: R610-031-000-0002-0000

EXHIBIT "B"
PROPERTY DESCRIPTION

ALL that certain Unit, lying and being in Hilton Head Island, Beaufort County, South Carolina known as Unit Number G-98, Windmill Harbour Marina Horizontal Property Regime, Phase V, and being more particularly shown and described by reference to the Master Deed of Windmill Harbour Company, established said Horizontal Property Regime, and the First, Second, Third and Fourth Expansion Amendments thereto said Master Deed dated being the 11th day of February, 1985, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 413 at Page 547, the First Expansion Amendment dated December 21,1988 and recorded in said Register of Deeds Office in Book 518 at Page 1931, the Second Expansion Amendment dated January 5, 1989 and recorded in said Register of Deeds Office in Book 520 at Page 699, the Third Expansion Amendment dated January 31, 1989 and recorded in said Register of Deeds Office in Book 522 at Page 519, and the Fourth Expansion Amendment date August 28, 1990 and recorded in said Register of Deeds Office in Book 560 at page 208.

Beaufort County PIN Number: R501-006-00A-0283-098G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-340**
CAROLINA FIRST BANK,	)	
	)	
	)	
Plaintiff,	)	
versus	)	
	)	**ANSWER**
	)	**JURY TRIAL DEMANDED**
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
	)	
	)	
Defendants.	)	

Comes now the defendants and show unto the Honorable Court as follows:

FOR A FIRST DEFENSE
Qualified General Denial

1. The defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or otherwise explained below.

2. The defendants admit paragraphs 1, 2, 3 and 4.

3. Paragraphs 5, 22, 29 and 39 are re-allegation paragraphs to which no reply is required.

4. The defendants admit paragraph 6, but as more fully explained before, show that this Note has been modified from its original terms.

5. The defendants admit paragraph 7, that the Note is secured by a mortgage, but as more fully explained before, the defendants show that the mortgage has been modified from its original terms.

6. The defendants admit paragraphs 8 (renewal promissory Note), and 9 (renewal Note secured by original mortgage), but as more fully explained below, the defendants show that the Note and Mortgage have been modified from their original terms.

7. The defendants admit paragraphs 10 (second renewal Note), and 11 (second renewal Note secured by original mortgage), but as shown more fully below, the Note and Mortgage have been modified from their original terms.

8. The defendants admit paragraphs 12 (third renewal Note) and 13 (third renewal Note secured by original mortgage), but as shown more fully below, the Note and Mortgage have been modified from their original terms.

9. The defendants admit paragraphs 14 in so far as it alleges that the 2007 mortgage secures the various renewal Notes, but shows further that the parties entered into a joint venture modification by which the plaintiff would forbear acceleration until the Bluffton commercial tract is sold.

10. The defendants admit paragraph 15.

11. The defendants deny paragraph 16, and show further that while the defendants admit the debt owed to the plaintiff, they show further that the parties entered into a modification agreement by which, in exchange for additional collateral, the parties entered into a joint venture to develop and sell the commercial Bluffton property.

12. The defendants admit so much of paragraphs 17 and 18 as allege the terms of the Third Renewal Note, but show further that in exchange for additional securing collateral, the parties entered into a joint venture to develop and sell the commercial tract in Bluffton. (For convenience, the defendants refer to the 19 acre tract as the "Commercial Tract.")

13. The defendants deny paragraph 19, and show further that because of the parties' re-negotiation of terms by which the defendants granted to the plaintiff additional security to which the plaintiff would otherwise not be entitled, the parties created a new agreement in the nature of a joint venture by which the plaintiff would share in the profits of the development of the Bluffton Commercial Property.

14. The defendants admit paragraphs 20 and 21, and that the Third Renewal Note provides for interest and attorneys fees as stated, but denies that the plaintiff is entitled to either due to the parties' re-negotiation of the agreement.

15. The defendants admit so much of paragraph 23 as alleges that the defendants failed to make the payments as required by the Third Renewal Note, but shows further that the plaintiff is not entitled to accelerate the balance of the Note because the parties entered into a modification of the Third Renewal Note, and the defendants have performed in accordance with the new agreement by pledging additional collateral to secure the loan and agreeing to a joint venture with the plaintiff to develop and sell the Bluffton commercial tract.

16. The defendants deny paragraph 24.

17. The defendants admit paragraph 25 so far as the plaintiff has notified the defendants of an alleged default, but the defendants deny that there is a default.

18. The defendants admit so much of paragraph 26 as alleges that the plaintiff retained the law firm of Buist, Moore, Smythe & McGee as attorneys, but deny that the plaintiff is entitled to attorney's fees because of the parties' renegotiation of the loan.

19. The defendants admit so much of paragraph 27 as sets forth the calculation of the principal and interest currently due to the plaintiff, but deny that the plaintiff is entitled to accelerate the Note and foreclosure its mortgage.

20. The defendants deny paragraph 28.

21. The defendants deny paragraphs 30 and 31, and show further that while the defendants admit the principal and interest due to the plaintiff, the defendants deny that the plaintiff is entitled to accelerate the Note by virtue of the parties' agreement to enter into a new agreement providing additional collateral to the plaintiff to secure the Note.

22. The defendants admit so much of paragraphs 32 and 33 as allege that the defendants are indebted to the plaintiff in the amounts claimed and that the plaintiff has placed the matter in the hands of Buist, Moore, Smythe & McGee for collection, but deny that the plaintiff is entitled to accelerate the balance and foreclose because the parties reached a new agreement by which the defendants would pledge additional security and enter into a joint venture with the plaintiff to develop and sell the Bluffton commercial tract.

23. The defendants deny paragraphs 34, 35, 36, and 37.

24. The defendants lack sufficient information to admit or deny paragraphs 38 because the defendants are not aware what Troubled Asset Relief Program disbursements, if any, the plaintiff requested and received, and therefore, the defendants deny paragraph 38 for lack of specific information.

25. The defendants deny paragraphs 40, and 41.

26. The defendants admit so much of paragraphs 42 and 43 as alleges the amount owed and that the matter has been placed in the hands of Buist, Moore, Smythe &

McGee for collection, but deny that the plaintiff is entitled to accelerate the Note and foreclose on the Mortgage.

28. The defendants deny paragraphs 44, 45, 46, and 47.

29. The defendants lack sufficient information to admit or deny paragraph 48 because the defendants are not aware what Troubled Asset Relief Program disbursements, if any, the plaintiff requested and received, and therefore, the defendants deny paragraph 48 for lack of specific information.

FOR A SECOND AFFIRMATIVE DEFENSE BY WAY OF NOVATION

30. The defendants repeat the above allegations as if set forth here verbatim.

31. The parties entered into a new agreement, which they intended to substitute for the new obligation with the intent to extinguish the old obligation.

32. The defendants furnished additional valuable security to the plaintiff, which the plaintiff, absent an agreement between the parties, would not be entitled to receive, and the defendants have performed the agreement by executing the necessary documents to encumber additional, valuable real property.

33. Pursuant to the parties' agreement, the defendants transferred valuable property rights to the plaintiff in order to fulfill the terms of a mutual agreement to transform the parties' relationship into joint participants sharing in the profits of the sale and development of the Bluffton commercial tract.

34. Due to the parties' mutual agreement and the consummation of such agreement by the transfer of valuable property rights in previously unencumbered property to the plaintiff, the third amended Note as been extinguished.

FOR A THIRD AFFIRMATIVE DEFENSE BY WAY OF APPRAISAL

35. The defendants repeat the above allegations as if set forth here verbatim.

36. The plaintiffs are not entitled to a deficiency judgment because the value of the collateral exceeds the amount secured by the mortgage, and the defendants are entitled to have an appraisal of the subject property as provided by § 29-3-680, S. C. Code, ann.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(fraud in the inducement)

37. The defendants repeat the above allegations as if set forth here verbatim.

38. The parties entered into a joint venture by which the defendants agreed to convey to the plaintiff valuable additional collateral and share in the profits of the sale and development of the Bluffton commercial tract.

39. The plaintiff represented that in exchange for additional collateral and a share of the profits of sale up to a maximum of $2,775,000.00, and the plaintiff would forebear on accelerating the Third Amended Note and foreclosure. (See ¶ 2 of Exhibit "H" attached to plaitniff's complaint: "The total principal amount secured by this Security Instrument at any one time will not exceed $2,775,000.00.")

40. The defendants relied on such representations, and without such representations, the defendants would not have conveyed additional valuable collateral to the plaintiff. On November 27, 2009, the defendants conveyed "for good and valuable consideration," a security interest in the defendants' Windmill Harbour Mariana property. (See exhibit "H" attached to plaintiff's complaint.)

41. The plaintiff intended that the defendants rely on the promises and intended to deceive the defendants in order to induce them to convey additional valuable consideration.

42. The defendants had a right to rely upon the representations of the plaintiff and did so rely.

43. The defendants have been harmed by the promises made to them by performing their part of the bargain in conveying additional valuable collateral to the bank.

Wherefore, having fully set forth their Answer, the defendants pray that the Court inquire into the matters herein, and deny the plaintiff's request for acceleration and foreclosure and sale of the disputed property in accordance with the evidence presented, for a declaration that the parties have created a novation as participants in a joint venture, for appraisal of the property in the event of a foreclosure, for costs of this action, and for such other and further relief as the Court deems just and proper.

March 3, 2011

Thomas R. Goldstein, Esq.
P. O. Box 71121
Charleston, SC 29415-1121
(843) 554-4291 phone
(843) 554-5566 fax
tgoldstein@cobblaw.net
Attorneys for Defendants

Verification

I have read the foregoing Answer and the facts alleged therein are true and correct to the best of my knowledge. I have relied upon the advice of counsel regarding matters of law. We request an appraisal of the property.

Wilbert Roller

Betty Roller

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☐ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 7th day of March 20 11

BY

Mar 04 11 12:24p BACKOFFICE RECEIVED 03/04/2011 11:12 8435545566 BELK COBB INFINGER 843-342-6380 p.7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 11-CP-07-340
	)	
Carolina First Bank,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**REPLY TO DEFENDANTS' COUNTERCLAIM**
	)	
Wilbert Roller, Jr. and Betty V. Roller,	)	
	)	
Defendants.	)	
	)	

The Plaintiff Carolina First Bank, (the "**Plaintiff**") responding to the Counterclaim of Defendants Wilbert Roller, Jr. and Betty V. Roller (collectively the "**Defendants**") respectfully shows this Court as follows:

1. The Plaintiff denies each and every allegation contained in Defendants' Answer and Counterclaim not specifically hereinafter admitted. All terms not defined herein shall have the definitions contained in the Plaintiff's Complaint.

2. Paragraphs 1 through 36 of Defendants' Answer are in response to the Plaintiff's Complaint and require no response from Plaintiff. To the extent a response is required, Plaintiff denies each and every allegation stated therein.

AS TO THE COUNTERCLAIM
Fraud in the inducement

3. The Plaintiff denies each and every allegation contained in the Defendants' Counterclaim not specifically hereinafter admitted.

4. Answering Paragraph 37, Plaintiff hereby incorporates its responses in the preceding paragraphs as if fully restated herein.

5. Plaintiff denies Paragraphs 38 through 43 and demands strict proof thereof.

ADDITIONAL DEFENSES

6. Although Plaintiff has not yet had the opportunity to fully investigate or conduct formal discovery regarding Defendants' claims, Plaintiff believes there may be facts establishing the availability of certain affirmative defenses. In order to preserve those defenses, Plaintiff alleges the following:

FOR A FIRST AFFIRMATIVE DEFENSE

7. Defendants have failed to state a cause of action in their Counterclaims upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

8. Defendants' claims are barred because of untimely and/or insufficiency of process and/or untimely and/or insufficiency of service of process.

FOR A THIRD AFFIRMATIVE DEFENSE

9. The Plaintiff pleads that the Defendants are barred from recovery, in whole or in part, for failing to mitigate damages and/or failing to avoid avoidable consequences.

FOR A FOURTH AFFIRMATIVE DEFENSE

10. Defendants' Counterclaim is barred by the equitable doctrines of estoppel, waiver, and/or laches.

FOR A FIFTH AFFIRMATIVE DEFENSE

11. Defendants lacks standing to bring these claims.

FOR A SIXTH AFFIRMATIVE DEFENSE

12. Defendants may have breached and defaulted under the Third Renewal Note and other loan documents and therefore, are barred from any recovery under the Third Renewal Note, other loan documents or otherwise.

FOR A SEVENTH AFFIRMATIVE DEFENSE

13. Defendants' claims are barred by the consent of Defendants.

RESERVATION AND NON-WAIVER

14. Plaintiff reserves and does not waive any additional or further defenses as may be revealed by information acquired in discovery or otherwise.

WHEREFORE, having fully replied to the Counterclaim of Defendants the Plaintiff requests that this Court:

A. Inquire into the matters and facts set forth in the pleadings, issue its Order dismissing the Counterclaim of the Defendants with prejudice and grant the relief requested by the Plaintiff in its Complaint; and,

B. For an award of reasonable attorneys' fees, costs and such other relief as the Court deems just and equitable.

WOMBLE CARLYLE SANDRIDGE & RICE,
A Professional Limited Liability Company

Daniel Q. Orvin, S.C. Bar No. 13744
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

May __ 2011
Charleston, South Carolina

CERTIFICATE OF SERVICE

I do hereby certify that on the 6th day of May 2011, I served a copy of the within *Plaintiff's Reply to Defendants' Counterclaim* to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Ave.
Charleston, S.C. 29405

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	CASE NO: 2011-CP-07-0340
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK, Plaintiff, v. WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS Defendants.	**FIRST AMENDED COMPLAINT** **(Suit on a Promissory Note)** **(Mortgage Foreclosure)** **(Deficiency Demanded)** **(Quiet Title)** **(Non-Jury)**

BEAUFORT COUNTY, S.C.
CLERK OF COURT
11 OCT 26 AM 11:09

Plaintiff TD Bank, N.A., Successor by Merger to Carolina First Bank complaining of the above-captioned Defendants Wilbert Roller Jr. and Better V. Roller, alleges and says as follows:

1. Plaintiff TD Bank, N.A., Successor by Merger to Carolina First Bank (also referred to as "**Plaintiff**" or "**Lender**"), is a bank doing business in Beaufort County, South Carolina.

2. The subject of this action is real property located in Beaufort County, South Carolina more fully described on the attached **Exhibit "A"** and **Exhibit "B"** which is incorporated herein by reference (collectively, the "**Real Property**"). The portion of the Real Property described Exhibit "A" is hereafter referred to as "**Property A**" or the "**Encumbered Parcel**." The portion described in Exhibit "B" is hereafter referred to as "**Property B**".

3. Plaintiff is informed and believes the Defendants Wilbert Roller Jr. and Betty V. Roller (together, the "**Rollers**" or "**Borrower**"), are residents of Beaufort County, South Carolina.

4. Plaintiff is informed and believes that Defendant James Williams is a resident of Chatham County, Georgia.

5. This Court has jurisdiction over the parties and the subject matter in this action.

FACTS

6. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim*.

A. Crosby Tract/Encumbered Parcel

7. The property that described in Exhibit A to this pleading is a portion of a tract formerly owned by W.D. Crosby ("Crosby Tract"), consisting of approximately 83 acres, which was conveyed as follows:

Grantor	Grantee	Date	Deed Book
W.D. Crosby	J.K. Beach	January 18, 1909	Book 29, Page 257
J.K. Beach	William G. Glidden	April 14, 1938	Book 53, Page 519 1/2
William G. Glidden	Helen M. Glidden	February 21, 1939	Book 56, Page 191
Helen M. Glidden	William G. Glidden	November 12, 1947	Book 66, Page 104
Gilbert E. Johnson, Executor of Last Will & Testament of William Glidden	George Neder	February 3, 1965	Book 128, Page 184

The deeds in the above chain generally contain the following property description:

> [A]ll that certain piece, parcel or tract of land lying situate, and being in Bluffton Township, Beaufort County and State of South Carolina, containing Eighty Five Acres (85) more or less, and being bounded as follows, North by Public Road, South by Boise Green, East by W.H. Swain, and West by public road known as Narrowroad and Thos. H. Hodge.

8. By deed dated June 7, 1972, George Neder conveyed 73.2 acres of the Crosby Tract to Wilbert Roller, Jr. This parcel is further described as Parcel "2" in a plat prepared by D.W. Price and recorded with the Beaufort County Register of Deeds Office in Plat Book 20 at

page 32. The deed was recorded in the Beaufort County Register of Deeds Office in Book 198, Page 1665 and is hereinafter referred to as the "Roller Tract." The plat prepared by D.W. Price shows the Roller Tract to the north of a parcel owned by Albert Green and another owned by Richard and Myrick Kenick.

9. By deed dated May 21, 1975, Wilbert Roller conveyed the Roller Tract to Betty Roller. This deed was recorded in the Beaufort County Register of Deeds Office in Book 228, Page 1549.

10. By deed dated November 14, 1977, Betty Roller conveyed a one-half interest in the Roller Tract to Wilbert Roller. This deed was recorded in the Beaufort County Register of Deeds Office in Book 256, Page 579.

11. The Roller Tract was subsequently subdivided as depicted on a plat prepared by Carol B. Baughman dated February 11, 1986 and revised on March 26, 1986. This subdivision plat carved out a 16.698 acre parcel, together with a power line right of way ("Encumbered Parcel"). The subdivision plat was recorded in the Beaufort County Register of Deeds Office in Plat Book 33, Page 193. It depicts the Encumbered Parcel as north of property owned by Albert Green and Richard Kenick. The Encumbered Parcel has been assigned the following tax map number: R610 031 000 0002 0000.

12. As set forth in the factual recitation concerning the notes and mortgages granted to the Plaintiff, the Rollers granted two mortgages on the Encumbered Parcel to Lender, one in 2007 and the other in 2009.

B. Green Tract Conveyances

13. The Encumbered Parcel lies to the north of a 45-acre parcel once owned by Albert Green ("Green Tract"). Portions of the Green Tract have subsequently been conveyed to, among others, James Williams ('Williams Tract") and Richard and Myrick Kenick ("Kenick Tract").

14. On November 30, 1951, Albert Green conveyed the Kenick Tract (approximately one acre) to Richard and Myrick Kenick. The deed was recorded in the Beaufort County Register of Deeds Office at Book 70, Page 294. The property description set forth in the deed provides that the Kenick Tract is "bounded on all sides except north by Grantor, and on North by land formerly belonging to W.D. Crosby."

15. By condemnation order dated June 4, 2008, the Kenick Tract was awarded to Beaufort County, South Carolina.

16. The Williams Tract was conveyed from Albert Green as follows:

Grantor	Grantee	Date	Deed Book
Albert Green	Benjamin Ward and Albertha Ward	February 16, 1971	Book 182, Page 36
Elrid Moody, Treasurer of Beaufort County, South Carolina (Tax Sale Deed)	Goldie Davis	May 12, 1981	Book 322, Page 1639
Goldie Davis	Eugene Williams	July 31, 1989	Book 533, Page 2384
Eugene Williams	James Williams	June 15, 1993	Book 792, Page 240

Each of the deeds in the chain of the Williams Tract contain the following property description:

All that certain piece, parcel or lot of land situate, lying and being in the Buck Island section of Bluffton Township, Beaufort County, South Carolina, and being more particularly bounded and described as follows, to-wit: On the North and East by lands of the Grantor, Albert Green; On the South by lands of Richard Cannick and on West by South Carolina Highway 7-29. For a more complete description as to metes, bounds, courses and distances reference is made to that certain plat made by R. L. Sensenbach, R.D.S. dated Feb. 6, 1971, which is hereto attached and made a part hereof.

17. On June 20, 2007, James Williams recorded a plat that purports to depict the location of the Williams Tract north of the Kenick Tract, and therefore within the footprint of the Encumbered Parcel. This plat is recorded in the Beaufort County Register of Deeds Office at Book 120, Page 111.

18. On several tax maps and on at least one recorded plat, the Williams Tract is depicted as north of the Kenick Tract, and therefore within the footprint of the Encumbered Parcel. The tax map identification number for the Williams Tract is R610 031 000 004I 0000.

C. Note/Mortgage

19. On or about August 9, 2007, Borrower executed and delivered to Lender a promissory note in the original principal amount of **TWO MILLION THREE HUNDRED THOUSAND AND 00/100THS ($2,300,000.00) DOLLARS** (the "**Original Note**"). A copy of the Original Note is attached hereto as **Exhibit "C"** and its terms are incorporated herein by reference.

20. The Original Note and all renewals thereof are secured, in part, by a Mortgage executed by Borrower and delivered to the Plaintiff encumbering the Encumbered Parcel dated August 9, 2007, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina (the "**Register of Deeds**") in Mortgage Book 2612, at Pages 521-529 (the "**2007 Mortgage**"). A copy of the 2007 Mortgage is attached hereto as **Exhibit "D"** and its terms are incorporated herein by reference.

21. On or about September 23, 2008, Borrower executed a renewal promissory note in favor of Lender in the amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100THS ($1,850,000.00) DOLLARS** (the "**First Renewal Note**") promising to pay Lender the amounts outstanding under the Original Note on terms set forth in

the First Renewal Note. A copy of the First Renewal Note is attached hereto as **Exhibit "E"** and its terms are incorporated herein by reference.

22. Pursuant to the First Renewal Note and the 2007 Mortgage, the Borrower agreed that its payment obligations under the First Renewal Note would continue to be secured by the 2007 Mortgage.

23. On or about April 10, 2009, Borrower executed a renewal promissory note in favor of Lender in the amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100THS ($1,850,000.00) DOLLARS** (the "**Second Renewal Note**") promising to pay Lender the amounts outstanding under the First Renewal Note on terms set forth in the Second Renewal Note. A copy of the Second Renewal Note is attached hereto as **Exhibit "F"** and its terms are incorporated herein by reference.

24. Pursuant to the Second Renewal Note and the 2007 Mortgage, the Borrower agreed that its payment obligations under the Second Renewal Note would continue to be secured by the 2007 Mortgage.

25. On or about November 27, 2009, Borrower executed a renewal promissory note in favor of Lender in the amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND 00/100THS ($1,850,000.00) DOLLARS** (the "**Third Renewal Note**") promising to pay Lender the amounts outstanding under the Second Renewal Note on terms set forth in the Third Renewal Note. A copy of the Third Renewal Note is attached hereto as **Exhibit "G"** and its terms are incorporated herein by reference.

26. The Third Renewal Note and all renewals thereof are secured, in part, by a Mortgage executed by Borrower and delivered to the Plaintiff encumbering Property B dated November 27, 2009, and recorded in the Office of the Register of Deeds in Mortgage Book

2912, at Pages 291-299 (the "**2009 Mortgage**). A copy of the 2009 Mortgage is attached hereto as **Exhibit "H"** and its terms are incorporated herein by reference.

27. Pursuant to the Third Renewal Note and the 2007 Mortgage, the Borrower agreed that its payment obligations under the Third Renewal Note would also continue to be secured by the 2007 Mortgage. The 2007 Mortgage secures the Original Note and any extensions, renewals, modifications and substitutions thereof.

28. Under the terms of the Third Renewal Note, interest accrued on the outstanding principal balance at the rate of six and 00/100ths (6.00%) percent per annum commencing on November 27, 2009, and daily thereafter at the Prime Rate announced by Plaintiff (the "**Prime Rate**") plus one-fourth (0.25%) percent per annum.

29. The Third Renewal Note obligated Borrower to make monthly payments beginning on December 27, 2009, and then on the 27th day of each month thereafter, with a final payment of the entire outstanding balance of principal and interest due on August 15, 2010 (the "**Maturity Date**").

30. The Third Renewal Note further provided that in the event any payment of principal or interest remained overdue for a period in excess of twenty (20) days, Borrower would pay Lender a late payment fee equal to five (5.0%) percent of the overdue amounts or TWENTY-FIVE AND NO/100THS ($25.00) DOLLARS, whichever was greater.

31. The Third Renewal Note further provided, in part, than an event of default would occur if Borrower failed to make a payment on time, in the full amount due.

32. The Third Renewal Note provides that in the event of a default, Lender is entitled to accelerate all amounts due under the Third Renewal Note.

33. The Third Renewal Note further provided, in part, that in the event of default, the entire principal would bear interest at the rate in effect prior to default plus four (4.0%) percent per annum.

34. The Third Renewal Note provides that if an action or other proceeding is brought to collect the Third Renewal Note, the Plaintiff shall be entitled to recover its attorneys' fees and costs incurred.

FOR A FIRST CAUSE OF ACTION
(Action to Quiet Title)

35. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim*.

36. The purpose of this claim is to determine the present owners of the Encumbered Parcel, to determine their interest in the properties, and to remove any questionable clouds from the titles.

37. As set forth above, the Encumbered Parcel is a portion of the former Crosby Tract.

38. The Green Tract was, at all times, south of the former Crosby Tract and now the Encumbered Parcel.

39. On November 30, 1951, Albert Green conveyed the Kenick Tract (approximately one acre) to Richard and Myrick Kenick. The deed was recorded at Book 70, Page 294. The property description set forth in the deed provides that the Kenick Tract is "bounded on all sides except north by Grantor, and on North by land formerly belonging to W.D. Crosby." Therefore, the Green Tract did not include any lands to the north of the Kenick Tract, such that the Kenick Tract was on the southern border of the Crosby Tract (now Encumbered Parcel).

40. Albert Green subsequently conveyed the Williams Tract to Benjamin and Albertha Ward. The property description in that and all subsequent deeds provides that the Williams Tract is bound on the North and East by lands of [Albert Green], on the South by Richard Cannick (sp) and on the West by Highway 7-29.

41. The Williams Tract could not have been located as described on the deeds. Indeed, the Kenick Tract is on the northern border of the Green Tract and southern border of the Encumbered Parcel. Therefore, the Williams Tract could not have been bound on the North and East by the lands of Albert Green and on the South by the Kenick Tract.

42. Therefore, James Williams does not own any parcel or portion of a parcel north of the Kenrick Tract and Green Tract.

43. The Court should enter a decree finding that the Encumbered Parcel encompasses all of that area depicted on the plat recorded in Plat Book 33, Page 19; that the Rollers own the Encumbered Parcel in fee simple and are entitled to quiet, peaceful possession of the Encumbered Parcel; that James Williams and all persons claiming under him have no estate, right, title, lien or interest in the Encumbered Parcel or any part thereof; and that the plat recorded in the Beaufort County Register of Deeds Office at Plat Book 120, Page 111 must be cancelled.

FOR A SECOND CAUSE OF ACTION
(Suit on Note)

44. Borrower failed to make payments as required by the Third Renewal Note, by, without limitation, failing to pay all principal and interest due as of the Maturity Date and therefore is in default.

45. Pursuant to the terms of the Third Renewal Note, the entire balance of the Third Renewal Note is now due and payable.

46. Borrower was notified of its default by letter dated August 19, 2010, and has failed to cure the same by paying the full amount due.

47. Plaintiff is entitled to recover all costs and reasonable attorneys' fees with respect to this cause of action and seeks relief from the Court which is set forth hereafter. Plaintiff has

retained and employed the law firm of Buist Moore Smythe McGee P.A. for the purpose of instituting and prosecuting this action.

48. As of January 18, 2011, the total amount due under the Third Renewal Note is **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, exclusive of late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011. Interest after such date accrues at the per diem rate set forth in the Third Renewal Note.

49. Plaintiff demands its right to seek judgment against Borrower for any deficiency, interest, costs and fees (including, without limitation, attorneys' fees) against Borrower under this cause of action.

FOR A THIRD CAUSE OF ACTION
(Foreclosure of 2007 Mortgage)

50. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim*.

51. As set forth more fully above, Borrower is in default in the performance of the terms, covenants and provisions of the Third Renewal Note and the 2007 Mortgage by, without limitation, failing to pay all principal and interest due as of the Maturity Date and therefore is in default.

52. Pursuant to the terms of the Third Renewal Note, the entire balance of the Third Renewal Note is now due and payable.

53. The Third Renewal Note and the 2007 Mortgage have been placed in the hands of Buist Moore Smythe McGee P.A., attorneys for collection. It is provided in the Third Renewal Note, among other things, that if the Third Renewal Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, that Borrower would promise to pay costs of collection including reasonable attorneys' fees and costs of collection.

54. As of January 18, 2011, the total amount due under the Third Renewal Note is **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, exclusive of late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011. Interest after such date accrues at the per diem rate set forth in the Third Renewal Note.

55. Accordingly, Plaintiff is entitled to an order directing that the 2007 Mortgage be declared a valid first priority lien on Property A, and that Property A be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

56. Plaintiff is further entitled to an order directing that out of the proceeds of the sale of Property A, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and the 2007 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

57. Defendant is now liable for payment of the full amount of the debt now owed on the Third Renewal Note, plus Plaintiff's attorneys' fees and costs of collection and is entitled to a judgment of foreclosure under the 2007 Mortgage.

58. In the event that any foreclosure sale does not fully satisfy the debt of Defendant, and the Plaintiff's fees and costs, the Plaintiff demands its right to a deficiency judgment against Defendant under this cause of action.

59. The loan giving rise to this foreclosure action is not owned, guaranteed or managed by Fannie Mae, Freddie Mac or a servicer who has signed an agreement to participate in the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program ("HMP") and, therefore, the loan is not subject to modification under the HMP.

FOR A FOURTH CAUSE OF ACTION
(Foreclosure of 2009 Mortgage)

60. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if set forth herein *verbatim*.

61. As set forth more fully above, Borrower is in default in the performance of the terms, covenants and provisions of the Third Renewal Note and the 2009 Mortgage by, without limitation, failing to pay all principal and interest due as of the Maturity Date and therefore is in default.

62. Pursuant to the terms of the Third Renewal Note, the entire balance of the Third Renewal Note is now due and payable.

63. The Third Renewal Note and the 2009 Mortgage have been placed in the hands of Buist Moore Smythe McGee P.A., attorneys for collection. It is provided in the Third Renewal Note, among other things, that if the Third Renewal Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, that Borrower would promise to pay costs of collection including reasonable attorneys' fees and costs of collection.

64. As of January 18, 2011, the total amount due under the Third Renewal Note is **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, exclusive of late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011. Interest after such date accrues at the per diem rate set forth in the Third Renewal Note.

65. Accordingly, Plaintiff is entitled to an order directing that the 2009 Mortgage be declared a valid first priority lien on Property B, and that Property B be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

66. Plaintiff is further entitled to an order directing that out of the proceeds of the sale of Property B, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and the 2009 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

67. Defendant is now liable for payment of the full amount of the debt now owed on the Third Renewal Note, plus Plaintiff's attorneys' fees and costs of collection and is entitled to a judgment of foreclosure under the 2009 Mortgage.

68. In the event that any foreclosure sale does not fully satisfy the debt of Defendant, and the Plaintiff's fees and costs, the Plaintiff demands its right to a deficiency judgment against Defendant under this cause of action.

69. The loan giving rise to this foreclosure action is not owned, guaranteed or managed by Fannie Mae, Freddie Mac or a servicer who has signed an agreement to participate

in the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program ("HMP") and, therefore, the loan is not subject to modification under the HMP.

WHEREFORE, the Plaintiff prays that this Honorable Court issue its Order:

A. Entering a decree holding that the Encumbered Parcel encompasses all of that area depicted on the plat recorded in the Beaufort County Register of Deeds Office at Plat Book 33, Page 19; that the Rollers own the Encumbered Parcel in fee simple and are entitled to quiet, peaceful possession of the Encumbered Parcel; that James Williams and all persons claiming under him have no estate, right, title, lien or interest in the Encumbered Parcel or any part thereof; and that the plat recorded in the Beaufort County Register of Deeds Office at Plat Book 120, Page 111 must be cancelled.

B. Granting Plaintiff judgment against Defendant under the First Cause of Action in the amount of **ONE MILLION NINE HUNDRED EIGHTY-NINE THOUSAND EIGHT HUNDRED EIGHTY AND 55/100THS ($1,989,880.55) DOLLARS**, together with late fees, attorneys' fees, collection and other costs, and interest accruing after January 18, 2011;

C. Granting Plaintiff judgment of foreclosure under the 2007 Mortgage as to the Second Cause of Action;

D. Directing that the 2007 Mortgage be declared a valid first priority lien on Property A, and that Property A be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

E. Directing that out of the proceeds of the sale of Property A, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and 2007 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

F. Granting Plaintiff judgment of foreclosure under the 2009 Mortgage under the Third Cause of Action;

G. Directing that the 2009 Mortgage be declared a valid first priority lien on Property B, and that Property B be sold at foreclosure in accordance with the law and practices of this Court, and that Borrower and all other persons claiming by, through or under it be barred and

forever foreclosed of all right, title, interest and equity of redemption in and to the said mortgaged premises or any part thereof.

H. Directing that out of the proceeds of the sale of Property B, after the costs of such sale has been deducted, including attorneys' fees and costs of collection, Plaintiff be paid in full the amount due on the Third Renewal Note and 2009 Mortgage with interest thereon as set out above and all amounts, including taxes and insurance premiums, and any past due taxes which may be due or which may be or have been paid by Plaintiff.

I. Granting Plaintiff leave, if so minded, to have a Receiver appointed upon proper application to this Court; and,

J. Granting the Plaintiff such other and further relief as may be just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE PA

Daniel Q. Orvin (S.C. Bar No. 13744)
Matthew Tillman (S.C. Bar No. 70358)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax

Attorneys for Plaintiff

Charleston, South Carolina
October 21, 2011

LIST OF EXHIBITS

Exhibit "A" – Property A Description

Exhibit "B" – Property B Description

Exhibit "C" – Original Note

Exhibit "D" – 2007 Mortgage

Exhibit "E" – First Renewal Note

Exhibit "F" – Second Renewal Note

Exhibit "G" – Third Renewal Note

Exhibit "H" – 2009 Mortgage

Exhibit "A"
Property A Description

ALL those certain pieces, tracts or parcels of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, shown and described as **Phase 2A, 16.698 Ac., Power Line R/W, 2.686 Ac. (Proposed)**, and **Power Line R/W 2.267 Ac. (Existing)**, on a plat entitled "Windtree Subdivision:, prepared by Carol B. Baughman, RLS# 3717, dated February 11, 1986, and revised on March 26, 1986, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 193. For a more detailed description as to location, courses, metes, bounds, distances, etc., reference to the said recorded plat may be had.

SAVING AND EXCEPTING all that certain tract or parcel of land lying and being in the Town of Bluffton, Beaufort County, South Carolina. Said parcel of land being dedicated as a portion of the Bluffton Parkway Phase 3 right of way and being more particularly described as follows; BEGINNING AT AN IRON PIPE FOUND on the existing easterly right of way line of Buck Island Road (66' R/W at this point), having South Carolina state plane coordinates (NAD 83) of N 157216.6734, E 2036657.4289; thence along the aforesaid right of way line of Buck Island Road, N 25°46'59" E a distance of 473.24' to a 3/4" iron pipe set; thence leaving the aforesaid right of way line of Buck Island Road, S 64°15'53" E a distance of 18.25' to a 3/4" iron pipe set; thence S 25°44'07" W a distance of 227.40' to a 3/4" iron pipe set; thence S 22°59'03" W a distance of 236.04' to a 3/4" iron pipe set; thence N 79°18'10" W a distance of 31.14' to an iron pipe found; which is the POINT OF BEGINNING, having an area of 10,060 square feet, or 0.231 acres.

Said saved and excepted parcel of land being generally bounded as follows: on the north and east by Betty V. Roller, on the south by Richard Renick, and on the west by Buck Island Road and also being shown on a plat entitled "A Right of Way Plat for a Portion of Bluffton Parkway Phase 3 through Lands of Betty V. Roller", prepared by Thomas Hutton Engineering Co., dated June 16, 2005 and signed by South Carolina Professional Land Surveyor Wright C. Powers Jr. No 19895.

This being a portion of the same property conveyed to Mortgagor by Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 228 at Page 1549 and Deed Book 256 at Page 579.

Beaufort County PIN Number: R610-031-000-0002-0000

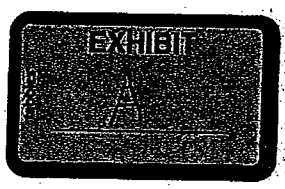
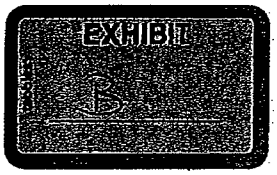


Exhibit "B"
Property B Description

ALL that certain Unit, lying and being in Hilton Head Island, Beaufort County, South Carolina known as Unit Number G-98, Windmill Harbour Marina Horizontal Property Regime, Phase V, and being more particularly shown and described by reference to the Master Deed of Windmill Harbour Company, established said Horizontal Property Regime, and the First, Second, Third and Fourth Expansion Amendments thereto said Master Deed dated being the 11th day of February, 1985, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 413 at Page 547, the First Expansion Amendment dated December 21,1988 and recorded in said Register of Deeds Office in Book 518 at Page 1931, the Second Expansion Amendment dated January 5, 1989 and recorded in said Register of Deeds Office in Book 520 at Page 699, the Third Expansion Amendment dated January 31, 1989 and recorded in said Register of Deeds Office in Book 522 at Page 519, and the Fourth Expansion Amendment date August 28, 1990 and recorded in said Register of Deeds Office in Book 560 at page 208.

Beaufort County PIN Number: R501-006-00A-0283-098G



LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
	WILBERT ROLLER JR		08/09/07	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
$2,300,000.00	CAROLINA FIRST BANK PRIME plus 0 250%	8 500%	08/15/08	Commercial

Creditor Use Only

EXHIBIT C

PROMISSORY NOTE

(Commercial - Draw)

DATE AND PARTIES The date of this Promissory Note (Note) is August 9, 2007 The parties and their addresses are

LENDER
CAROLINA FIRST BANK
104 South Main Street
Greenville, South Carolina 29601
Telephone (800) 476-8400

BORROWER
WILBERT ROLLER JR
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, South Carolina 29926

BETTY V. ROLLER
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, South Carolina 29926

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

A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together "You" and "Your" refer to the Lender.

B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note

C. Loan Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.

D Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.

E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.

F Percent Rates and rate change limitations are expressed as annualized percentages.

2 PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of $2,300,000.00 (Principal), plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan

3. ADVANCES Advances under this Note are made according to the following terms and conditions

A. Requests for Advances. My requests are a warranty that I am in compliance with all the Loan Documents When required by you for a particular method of advance, my requests for an advance must specify the requested amount and the date and be accompanied with any agreements, documents, and instruments that you require for the Loan Any payment by you of any check, share draft or other charge may, at your option, constitute an advance on the Loan to me All advances will be made in United States dollars I will indemnify you and hold you harmless for your reliance on any request for advances that you reasonably believe to be genuine. To the extent permitted by law, I will indemnify you and hold you harmless when the person making any request represents that I authorized this person to request an advance even when this person is unauthorized or this person's signature is not genuine

I or anyone I authorize to act on my behalf may request advances by the following methods.

(1) I make a request in person

(2) I make a request by phone.

B Advance Limitations. In addition to any other Loan conditions, requests for, and access to, advances are subject to the following limitations

(1) Discretionary Advances. You will make all Loan advances at your sole discretion

(2) Advance Amount Subject to the terms and conditions contained in this Note, advances will be made in exactly the amount I request

(3) Cut-Off Time Requests for an advance received before 02 00 PM will be made on any day that you are open for business, on the day for which the advance is requested.

(4) Disbursement of Advances On my fulfillment of this Agreement's terms and conditions, you will disburse the advance into my account number ON REQUEST

(5) Credit Limit I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan to be greater than the Principal limit. You may, at your option, grant such a request without obligating yourselves to do so in the future I will pay any over advances in addition to my regularly scheduled payments I will repay any over advance by repaying you in full within 10 days after the overdraft occurs

(6) Records Your records will be conclusive evidence as to the amount of advances, the Loan's unpaid principal balances and the accrued interest

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 8.500 percent (Interest Rate) until August 10, 2007, after which time it may change as described in the Variable Rate subsection

A Interest After Default. If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the Interest Rate payable on the outstanding Principal balance of this Note. In such event, interest will accrue on the outstanding Principal balance at the variable Interest Rate in effect from time to time, plus an additional 4.000 percent, until paid in full.

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance Any remainder will be refunded to me

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S C Code Ann. §§ 37-3-505, 37-3-105 and 37-10-101 et. seq.

D Accrual. Interest accrues using an Actual/360 days counting method

E. Variable Rate The Interest Rate may change during the term of this transaction

(1) Index Beginning with the first Change Date, the Interest Rate will be based on the following index For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank)

The Current Index is the most recent index figure available on each Change Date You do not guaranty by selecting this Index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers If this Index is no longer available, you will substitute a similar index You will give me notice of your choice

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date The Interest Rate may change August 10, 2007 and daily thereafter

(3) Calculation Of Change On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.250 percent The result of this calculation will be rounded to the nearest 001 percent Subject to any limitations, this will be the Interest Rate until the next Change Date The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note

(4) Effect Of Variable Rate A change in the Interest Rate will have the following effect on the payments The amount of scheduled payments and the amount of the final payment will change

5 ADDITIONAL CHARGES As additional consideration, I agree to pay, or have paid, these additional fees and charges

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Survey. A(n) Survey fee of $2,200 00 payable from separate funds on or before today's date
Loan Origination. A(n) Loan Origination fee of $11,500 00 payable from separate funds on or before today's date
Appraisal. A(n) Appraisal fee of $1,500.00 payable from separate funds on or before today's date.

6. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note

A. Late Charge. If a payment is more than 20 days late, I will be charged 5 000 percent of the Unpaid Portion of Payment or $25.00, whichever is greater I will pay this late charge promptly but only once for each late payment

B. Returned Check Charge. I agree to pay a fee not to exceed $25 00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

7. PAYMENT. I agree to pay this Note in installments of accrued interest beginning September 15, 2007, and then on the 15th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on August 15, 2008

Payments will be rounded to the nearest 9.01 With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest If you and I agree to a different application of payments, we will describe our agreement on this Note You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is TO REFINANCE EXISTING LOAN AT COASTAL STATES BANK ($1,800,000 00) AND PROVIDE CAPITAL FOR NEW RESTAURANT ($500,000 00)

10 SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Mortgage - 21 45 ACRES OF LAND ON THE NORTHEAST CORNER OF BUCK ISLAND ROAD AND BLUFFTON PARKWAY	BETTY V ROLLER

11. DEFAULT I will be in default if any of the following occur

A. Payments I fail to make a payment in full when due

B. Insolvency or Bankruptcy The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you

C. Death or Incompetency I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change

K Property Transfer I transfer all or a substantial part of my money or property.

L Property Value. You determine in good faith that the value of the Property has declined or is impaired

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

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

13 WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note

(4) You, or any institution participating in this Note, may invoke your right of set-off

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

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you

14. REMEDIES. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following

A. Acceleration You may make all or any part of the amount owing by the terms of this Note immediately due

B. Sources You may use any and all remedies you have under state or federal law or in any Loan Document.

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

D Payments Made On My Behalf Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate

E. Termination. You may terminate my right to obtain advances and may refuse to make any further extensions of credit

F. Set-Off. You may use the right of set-off This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account

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

G. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

15. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses These expenses are due and payable immediately If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me

16. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate

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

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

19. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns

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

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

22 NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing Notice to one Borrower will be deemed to be notice to all Borrowers I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request All financial statements and information I give you will be correct and complete I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

23. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information

24. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

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

BORROWER:

(Seal)
WILBERT ROLLER JR
Individually

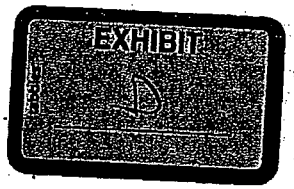
(Seal)
BETTY V ROLLER
Individually

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255-64-6699

BEAUFORT COUNTY SC - ROD
BK 02612 PGS 0521-0529
DATE: 08/14/2007 10:16:32 AM
INST # 2007061647 RCPT# 604785

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This document was prepared by Loan Operations - Document Preparation, Carolina First Bank, Post Office Box 1029, Greenville, South Carolina 29602

MORTGAGE

(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is AUGUST 9, 2007. The parties and their addresses are:

MORTGAGOR:
BETTY V. ROLLER & WILBERT ROLLER, JR.
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, South Carolina 29926

LENDER:
CAROLINA FIRST BANK
Organized and existing under the laws of South Carolina
104 South Main Street
Greenville, South Carolina 29601

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

SEE EXHIBIT 'A' WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in BEAUFORT County at 21.45 ACRES OF LAND ON THE NORTHEAST CORNER OF BUCK ISLAND ROAD AND BLUFFTON PARKWAY, BLUFFTON, South Carolina .

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

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed $2,300,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the

terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

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

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, dated August 9, 2007, from WILBERT ROLLER JR and BETTY V. ROLLER (Borrower) to Lender, with a loan amount of $2,300,000.00 and maturing on August 15, 2008. One or more of the debts secured by this Security Instrument contains a future advance provision.

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

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

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

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

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

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

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

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

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

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

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

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

Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

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

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

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

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

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

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

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

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

A. Payments. Mortgagor or Borrower fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Death or Incompetency. Mortgagor dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

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

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Insecurity. Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

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

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

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

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

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

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

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

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

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

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

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

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

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

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

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

21. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

22. PERSONAL PROPERTY. Mortgagor gives to Lender a security interest in all personal property located on or connected with the Property, including 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 (all of which shall also be included in the term 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.

23. OTHER TERMS. The following are applicable to this Security Instrument:

A. Additional Terms. This Agreement (along with all deposit accounts, mortgages, security agreements, pledge agreements and any and all other security instruments and items of collateral that I have at any time in the past given to you or that I may at any time in the future give to you) shall secure any and all of the obligations that I currently owe you or that I may at any time in the future owe you.

Notwithstanding the foregoing maximum obligation limit of $2,300,000.00 specified in paragraph 2 above, pursuant to the provisions of Section 29-3-50 et seq. of the South Carolina Code of Laws, as amended, this Mortgage shall secure payment of all future advances and/or extensions of credit that may subsequently be made to Mortgagor by Lender, when evidenced by promissory notes specifically referring to this Mortgage and all extensions and renewals thereof, the maximum principal amount of all existing indebtedness, future advances, extensions of credit and all other indebtedness outstanding at any one time and to be secured by this Mortgage not to exceed THREE MILLION FOUR HUNDRED FIFTY THOUSAND DOLLARS AND 00/100

($3,450,000.00), plus interest thereon, attorneys' fees and court costs, and any advances necessary for the protection of the security or title thereto, including, but not limited to, advances for taxes and insurance premiums and all other payments or liabilities otherwise provided for in this Mortgage. This Mortgage may secure interest which is deferred, accrued or capitalized as provided in the aforesaid statute.

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

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

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

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

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

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

MORTGAGOR:

(Seal) (Seal)

BETTY V. ROLLER
Individually

(Witness)

(Witness)

ACKNOWLEDGMENT:
(Individual)

State OF South Carolina County OF Beaufort ss.

I, J. Simon Fraser a notary public for South Carolina, do hereby certify that BETTY V. ROLLER, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. and Wilbert Roller, Jr.

Witness my hand and official seal this 9th day of August, 2007.

Signature of Notary Public

My commission expires: 3/12/07

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Exhibit "A"

PROPERTY DESCRIPTION

ALL those certain pieces, tracts or parcels of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, shown and described as **Phase 2A, 16.698 Ac., Power Line R/W, 2.686 Ac. (Proposed), and Power Line R/W 2.627 Ac. (Existing)**, on a plat entitled "Windtree Subdivision", prepared by Carol B. Baughman, RLS #3717, dated February 11, 1986, and revised on March 26, 1986, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 193. For a more detailed description as to location, courses, metes, bounds, distances, etc., reference to the said recorded plat may be had.

This being a portion of the same property conveyed to Mortgagor by Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 228 at Page 1549 and Deed Book 256 at Page 579.

This mortgage was prepared by J. Simon Fraser of Fraser & Allen, LLC, P.O. Box 5098, Hilton Head Is., SC 29938.

EXHIBIT

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
5121044511	WILBERT ROLLER JR		09/23/08	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
$1,850,000.00	CAROLINA FIRST BANK PRIME plus 0.250%	5.250%	03/23/09	Commercial

Creditor Use Only

PROMISSORY NOTE

(Commercial - Draw)
RENEWAL NOTE

DATE AND PARTIES. The date of this Promissory Note (Note) is September 23, 2008. The parties and their addresses are:

LENDER:
CAROLINA FIRST BANK
104 South Main Street
Greenville, SC 29601
Telephone: (800) 476-6400

BORROWER:
WILBERT ROLLER JR
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

BETTY V. ROLLER
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

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

A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.

B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.

C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.

D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.

E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.

F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. RENEWAL. This Note is a renewal of the following described note:

Note Date	Note Number	Note Amount
August 9, 2007	# 5121044511	$2,300,000.00

I have requested that the note listed in the table above be renewed. The remaining balance of the note listed in the table above is $1,871,218.66.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of $1,850,000.00 (Principal), plus interest from the date of disbursement, on the unpaid outstanding Principal balance until this Note is paid in full and you have no further obligations to make advances to me under the Loan.

4. ADVANCES. Advances under this Note are made according to the following terms and conditions.

A. Requests for Advances. My requests are a warranty that I am in compliance with all the Loan Documents. When required by you for a particular method of advance, my requests for an advance must specify the requested amount and the date and be accompanied with any agreements, documents, and instruments that you require for the Loan. Any payment by you of any check, share draft or other charge may, at your option, constitute an advance on the Loan to me. All advances will be made in United States dollars. I will indemnify you and hold you harmless for your reliance on any request for advances that you reasonably believe to be genuine. To the extent permitted by law, I will indemnify you and hold you harmless when the person

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making any request represents that I authorized this person to request an advance even when this person is unauthorized or this person's signature is not genuine.

I or anyone I authorize to act on my behalf may request advances by the following methods.

(1) I make a request in person.

(2) I make a request by phone.

B. Advance Limitations. In addition to any other Loan conditions, requests for, and access to, advances are subject to the following limitations.

(1) Discretionary Advances. You will make all Loan advances at your sole discretion.

(2) Advance Amount. Subject to the terms and conditions contained in this Note, advances will be made in exactly the amount I request.

(3) Cut-Off Time. Requests for an advance received before 02:00 PM will be made on any day that you are open for business, on the day for which the advance is requested.

(4) Disbursement of Advances. On my fulfillment of this Agreement's terms and conditions, you will disburse the advance into my account number ON REQUEST.

(5) Credit Limit. I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan to be greater than the Principal limit. You may, at your option, grant such a request without obligating yourselves to do so in the future. I will pay any over advances in addition to my regularly scheduled payments. I will repay any over advance by repaying you in full within 10 days after the overdraft occurs.

(6) Records. Your records will be conclusive evidence as to the amount of advances, the Loan's unpaid principal balances and the accrued interest.

5. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 5.250 percent (Interest Rate) until September 24, 2008, after which time it may change as described in the Variable Rate subsection.

A. Interest After Default. If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the Interest Rate payable on the outstanding Principal balance of this Note. In such event, interest will accrue on the outstanding Principal balance at the variable interest Rate in effect from time to time, plus an additional 4.000 percent, until paid in full.

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-805, 37-3-105 and 37-10-101 et. seq.

D. Accrual. Interest accrues using an Actual/360 days counting method.

E. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change September 24, 2008 and daily thereafter.

(3) Calculation Of Change. On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.250 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

6. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Loan Origination. A(n) Loan Origination fee of $2,500.00 payable from separate funds on or before today's date.
Document Preparation. A(n) Document Preparation fee of $269.00 payable from separate funds on or before today's date.

7. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 20 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment or $25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

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

8. PAYMENT. I agree to pay this Note in installments of accrued interest beginning October 23, 2008, and then on the 23rd day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on March 23, 2009.

Payments will be rounded to the nearest $.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

9. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

10. LOAN PURPOSE. The purpose of this Loan is RENEW LINE OF CREDIT.

11. SECURITY. The Loan is secured by previously executed, separate security instruments, including the following: REAL ESTATE MORTGAGE DATED AUGUST 9, 2007 IN THE ORIGINAL AMOUNT OF $2,300,000.00 COVERING PROPERTY KNOWN AS 21.48 ACRES OF LAND ON THE NORTHEAST CORNER OF BUCK ISLAND ROAD AND BLUFFTON PARKWAY, BLUFFTON, SC, SAID MORTGAGE RECORDED IN BEAUFORT COUNTY, AUGUST 14, 2007 IN BOOK 02612 PAGE 0521-0529.

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

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

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

14. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

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

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

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

15. REMEDIES. After I default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

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

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Termination. You may terminate my right to obtain advances and may refuse to make any further extensions of credit.

F. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

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

G. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

16. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

17. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

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

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

20. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

21. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

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

23. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any

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

24. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

25. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

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

BORROWER:

(Seal)
WILBERT ROLLER JR
Individually

(Seal)
BETTY V. ROLLER
Individually

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LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
5121044511	WILBERT ROLLER JR		04/10/09	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
$1,850,000.00	CAROLINA FIRST BANK PRIME plus 0.250%	3.500%	10/10/09	Commercial

Creditor Use Only

EXHIBIT

PROMISSORY NOTE

(Commercial - Single Advance)
RENEWAL NOTE

DATE AND PARTIES. The date of this Promissory Note (Note) is April 10, 2009. The parties and their addresses are:

LENDER:
CAROLINA FIRST BANK
104 South Main Street
Greenville, SC 29601
Telephone: (800) 476-6400

BORROWER:
WILBERT ROLLER JR
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

BETTY V. ROLLER
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

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

A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.

B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.

C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.

D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.

E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.

F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. RENEWAL. This Note is a renewal of the following described note:

Note Date	Note Number	Note Amount
September 23, 2008	# 5121044511	$1,850,000.00

I have requested that the note listed in the table above be renewed. The remaining balance of the note listed in the table above is $1,850,000.00.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of $1,850,000.00 (Principal) plus interest from April 10, 2009 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 3.500 percent (Interest Rate) until April 11, 2009, after which time it may change as described in the Variable Rate subsection.

A. Interest After Default. If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue on the unpaid Principal balance of this Note at a rate equal to the rate in effect prior to default, plus 4.000 percent, until paid in full.

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

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C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.

D. Accrual. Interest accrues using an Actual/360 days counting method.

E. Discounted Rate. The stated rate reflects a discount of 2.000 percent, from the formula used to determine later rates (provided in the Variable Rate section). This Discounted Rate will be in effect until April 11, 2009.

F. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change April 11, 2009 and daily thereafter.

(3) Calculation Of Change. On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.250 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Limitations. The Interest Rate changes are subject to the following limitations:

(a) Lifetime. Subject to the initial discount rate, the Interest Rate will never be less than 5.500 percent.

(5) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

5. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Renewal. A(n) Renewal fee of $500.00 payable from separate funds on or before today's date.

6. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 20 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment or $25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

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

7. PAYMENT. I agree to pay this Note in installments of accrued interest beginning May 10, 2009, and then on the 10th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on October 10, 2009.

Payments will be rounded to the nearest $.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. You may change how payments are applied in your sole discretion without notice to me. The actual amount of my final payment will depend on my payment record.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is TO RENEW LOAN.

10. SECURITY. The Loan is secured by previously executed, separate security instruments, including the following: REAL ESTATE MORTGAGE DATED AUGUST 9, 2007 IN THE ORIGINAL AMOUNT OF $2,300,000.00 COVERING PROPERTY KNOWN AS 21.45 ACRES OF LAND ON THE NORTHEAST CORNER OF BUCK ISLAND ROAD AND BLUFFTON PARKWAY, BLUFFTON, SC, SAID MORTGAGE RECORDED IN BEAUFORT COUNTY, AUGUST 14, 2007 IN BOOK 02512 PAGE 0521-0529.

11. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

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

13. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

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

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

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

14. REMEDIES. After I default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

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

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

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

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

15. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document.

Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

16. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

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

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

19. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

20. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

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

22. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

23. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

24. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

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

BORROWER:

(Seal)
WILBERT ROLLER JR
Individually

(Seal)
BETTY V. ROLLER
Individually

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LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
5121044511	WILBERT ROLLER JR		11/27/09	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
$1,850,000.00	CAROLINA FIRST BANK PRIME plus 0.250%	6.0%	08/16/10	Commercial

Creditor Use Only

EXHIBIT 6

PROMISSORY NOTE

(Commercial - Single Advance)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 27, 2009. The parties and their addresses are:

LENDER:
CAROLINA FIRST BANK
104 South Main Street
Greenville, SC 29601
Telephone: (800) 476-6400

BORROWER:
WILBERT ROLLER JR
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

BETTY V. ROLLER
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

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

A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.

B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.

C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.

D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.

E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.

F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. REFINANCING. This Note will pay off the following described note(s):

Note Date	Note Number	Note Amount
April 10, 2009	# 5121044511	$1,850,000.00

The remaining balance of the note listed in the table above is $1,850,000.00.

3. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of $1,850,000.00 (Principal) plus interest from November 27, 2009 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

4. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.0 percent (Interest Rate) until November 28, 2009, after which time it may change as described in the Variable Rate subsection.

A. Interest After Default. If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue on the unpaid Principal balance of this Note at a rate equal to the rate in effect prior to default, plus 4.000 percent, until paid in full.

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.

D. Accrual. Interest accrues using an Actual/360 days counting method.

E. Variable Rate. The interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change November 28, 2009 and daily thereafter.

(3) Calculation Of Change. On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.250 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Limitations. The Interest Rate changes are subject to the following limitations:

(a) Lifetime. The Interest Rate will never be less than 6.000 percent.

(5) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments will change.

5. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Renewal. A(n) Renewal fee of $500.00 payable from separate funds on or before today's date.

6. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 20 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment or $25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

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

7. PAYMENT. I agree to pay this Note as follows: I agree to pay all accrued interest on the balance outstanding from time to time in regular payments beginning December 27, 2009, then on the 27th day of each month thereafter. I agree to pay this loan in installments of principal in the amount of $100,000.00 plus accrued interest beginning May 27, 2010, and then on the 27th day of each month thereafter. A final payment of principal, together with any accrued but unpaid interest, will be due on August 15, 2010.

Payments will be rounded to the nearest $.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

8. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

9. LOAN PURPOSE. The purpose of this Loan is RENEW LINE OF CREDIT.

10. SECURITY. The Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Mortgage - 21.46 ACRES OF LAND ON THE NORTHEAST CORNER OF BUCK ISLAND ROAD AND BLUFFTON PARKWAY	WILBERT ROLLER JR, BETTY V. ROLLER
Mortgage - G-98 WINDMILL HARBOUR MARINA HORIZONTAL PROPERTY REGIME, PHASE V	WILBERT ROLLER JR, BETTY V. ROLLER

and by the following, previously executed, security instruments or agreements: REAL ESTATE MORTGAGE DATED AUGUST 9, 2007 IN THE ORIGINAL AMOUNT OF $2,300,000.00 COVERING PROPERTY KNOWN AS 21.46 ACRES OF LAND ON THE NORTHEAST CORNER OF BUCK ISLAND ROAD AND BLUFFTON PARKWAY, BLUFFTON, SC, SAID MORTGAGE RECORDED IN BEAUFORT COUNTY, AUGUST 14, 2007 IN INST #2007061647 RCPT #504785 BOOK 02612 PAGE 0521-0529 .

11. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

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

13. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

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

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

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

14. REMEDIES. After I default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

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

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

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

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

15. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

16. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

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

18. INSURANCE. I agree to obtain the insurance described in this Loan Agreement.

A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing the Loan.

B. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for the Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a seperate statement agreeing to this purchase.

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

20. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

21. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable. No present or future agreement securing any other debt I owe you will secure the payment of this Loan if, as a result, this Loan would become subject to Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

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

23. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

24. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

25. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

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

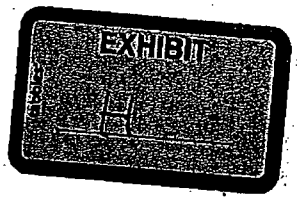
BORROWER:

WILBERT ROLLER JR [Seal]
Individually

BETTY V. ROLLER [Seal]
Individually

5121044511

BEAUFORT COUNTY SC - ROD
BK 02912 PGS 0291-0299
FILE NUM 2009068448
12/01/2009 02:35:49 PM
REC'D BY B BING RCPT# 682522
RECORDING FEES 15.00



Space Above This Line For Recording Data

This document was prepared by Loan Preparation Department, Carolina First Bank, Post Office Box 1029, Greenville, South Carolina 29602

MORTGAGE

DATE AND PARTIES The date of this Mortgage (Security Instrument) is NOVEMBER 27, 2009 The parties and their addresses are

MORTGAGOR
WILBERT ROLLER JR
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

BETTY V ROLLER
40 MILLWRIGHT DRIVE
HILTON HEAD ISLAND, SC 29926

ORIGINAL

LENDER
CAROLINA FIRST BANK
Organized and existing under the laws of South Caroline
104 South Main Street
Greenville, SC 29601

1 CONVEYANCE For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property

AS FURTHER DESCRIBED IN EXHIBIT 'A' WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in BEAUFORT County at G-98 WINDMILL HARBOUR MARINA HORIZONTAL PROPERTY REGIME, PHASE V, HILTON HEAD ISLAND, South Carolina

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

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed $2,775,000 00 This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument Interest under the Note will be deferred, accrued or capitalized, however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note

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

A Specific Debts The following debts and all extensions, renewals, refinancings, modifications and replacements A promissory note or other agreement, No 5121044611, dated November 27, 2009, from Mortgagor to Lender, with a loan amount of $1,850,000 00 and maturing on August 15, 2010

B. All Debts All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances Any such commitment must be in writing In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities This Security Instrument will not secure any other debt if Lender fails, with respect to that other debt, to fulfill any necessary requirements or limitations of Sections 19(a), 32, or 35 of Regulation Z

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases)

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

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases

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

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

A Payments. Mortgagor fails to make a payment in full when due

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender

C Death or Incompetency. Mortgagor dies or is declared legally incompetent

D. Failure to Perform Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument

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

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender

G. Misrepresentation Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided

H. Judgment Mortgagor fails to satisfy or appeal any judgment against Mortgagor

I Forfeiture The Property is used in a manner or for a purpose that threatens confiscation by a legal authority

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change

K. Property Transfer Mortgagor transfers all or a substantial part of Mortgagor's money or property This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section

L Property Value Lender determines in good faith that the value of the Property has declined or is impaired

M Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason

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

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

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

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq or otherwise as permitted by law Any receiver shall be vested with all of the powers, rights and duties of receivers generally Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency All amounts collected by Lender or the receiver shall, after the

expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy

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

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

Mortgagor represents, warrants and agrees that

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law

B Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property

C Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property, or (2) there is a violation of any Environmental Law concerning the Property In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law

D Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property, or (2) any violation by Mortgagor or any tenant of any Environmental Law Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings

E Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with

H Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property, (2) the existence, location, nature, and magnitude of

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

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

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

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

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

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

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

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

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

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

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

23 AMENDMENT, INTEGRATION AND SEVERABILITY This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender This Security Instrument and any other documents relating to the Secured

Debts are the complete and final expression of the agreement If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable

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

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

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

MORTGAGOR:

_____ (Seal)
WILBERT ROLLER JR
Individually

_____
(Witness)

_____
(Witness)

_____ (Seal)
BETTY V ROLLER
Individually

_____
(Witness)

_____
(Witness)

EXHIBIT A

ALL that certain Unit, lying and being on Hilton Head Island, Beaufort County, South Carolina known as Unit Number G-98, Windmill Harbour Marina Horizontal Property Regime, Phase V, and being more particularly shown and described by reference to the Master Deed of Windmill Harbour Company, established said Horizontal Property Regime, and the First, Second, Third and Fourth Expansion Amendments thereto said Master Deed dated being the 11th day of February, 1985, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 413 at Page 547, the First Expansion Amendment dated December 21, 1988 and recorded in said Register of Deeds Office in Book 518 at Page 1931, the Second Expansion Amendment dated January 5, 1989 and recorded in said Register of Deeds Office in Book 520 at Page 699, the Third Expansion Amendment dated January 31, 1989 and recorded in said Register of Deeds Office in Book 522 at Page 519, and the Fourth Expansion Amendment dated August 28, 1990 and recorded in said Register of Deeds Office in Book 560 at Page 208

This being the same property conveyed by Deed recorded February 17, 2006 in the Register of Deeds Office for Beaufort County, South Carolina in Record Book 2322 at Page 381

This mortgage was prepared in the law offices of Fraser & Allen, LLC, Post Office Box 5098, Hilton Head Island, South Carolina by J Simon Fraser, Esquire

Upon recording, return original to
J Simon Fraser, Esquire
Fraser & Allen, LLC
Post Office Box 6098
Hilton Head Island, SC 29938
(843) 785-3311
Re. JSF File # 0218-31

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-340**
CAROLINA FIRST BANK,	)	
Plaintiff,	)	
versus	)	
	)	**ANSWER TO AMENDED COMPLAINT**
	)	**JURY TRIAL DEMANDED**
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
Defendants.	)	

JEANNIE ALLEN SCARBOROUGH
BEAUFORT COUNTY, S.C.
CLERK OF COURT
11 DEC -8 PM 1:45

Comes now the defendants, answering the First Amended Complaint, filed October 26, 2011, and show unto the Honorable Court as follows:

FOR A FIRST DEFENSE
Qualified General Denial

1. The defendants deny each and every allegation of the complaint not otherwise admitted, qualified, or otherwise explained below.

2. The defendants deny paragraph 1

3. The defendants admit paragraphs 2, 3, 4 and 5.

4. Paragraphs 6, 35, 44, 50 and 60 are re-allegation paragraphs to which no reply is required.

5. The defendants admit paragraphs 7, 8, 9, 10, 11.

6. The defendants admit paragraph 12, but show further that this Note has been modified from its original terms.

7. The defendants admit paragraphs 13, 14, 15, 16, and 17

8. The defendants have no information about the allegations contained in paragraph 18 and cannot admit or deny.

9. The defendants admit so much of paragraph 19 as alleges that the Note is secured by a mortgage, but as more fully explained before, the defendants show that Note and the mortgage has been modified from its original terms.

10. The defendants admit paragraphs 20 (original promissory Note), and 21 (renewal Note secured by original mortgage), but as more fully explained below, the defendants show that the Note and Mortgage have been modified from their original terms.

11. The defendants admit paragraph 22.

12. The defendants admit paragraph 23 (second renewal Note), and 24 (second renewal Note secured by original mortgage), but as shown more fully below, the Note and Mortgage have been modified from their original terms.

13. The defendants admit paragraph 24 (third renewal Note secured by 2007 mortgage), but as shown more fully below, the Note and Mortgage have been modified from their original terms.

14. The defendants admit paragraph 25 (third renewal Note secured by original mortgage), but as shown more fully below, the Note and Mortgage have been modified from their original terms.

15. The defendants deny paragraph 26 and show further that they never received consideration for the mortgage on the property referred to as "Property B."

16. The defendants admit paragraphs 27 and 28, in so far as they allege that the 2007 mortgage secures the various renewal Notes, but shows further that the parties

entered into a joint venture modification by which the plaintiff would forbear acceleration until the Bluffton commercial tract (property A) is sold.

17. The defendants admit paragraph 29, but show further that the parties entered into a joint venture to market and sell the Bluffton commercial tract out of which sale the plaintiff, Carolina First Bank, would be paid in full. Thereafter Carolina First Bank or someone acting on the bank's behalf interfered in the defendants' sale, causing the buyer to withdraw and preventing the anticipated closing.

18. The defendants admit paragraph 30.

19. The defendants deny paragraphs 31, 32, and 33 and show further that while the defendants admit the debt owed to the plaintiff, they show further that the parties entered into a modification agreement by which, in exchange for additional collateral, the parties entered into a joint venture to develop and sell the commercial Bluffton property and that the defendants procured a purchaser who was willing to purchase the property.

20. The defendants admit so much of paragraph 34 as alleges the terms of the Third Renewal Note, but show further that in exchange for additional securing collateral, the parties entered into a joint venture to develop and sell the commercial tract in Bluffton. (For convenience, the defendants refer to the 19 acre tract as the "Commercial Tract."), which would have occurred but for the interference of the Carolina First Bank, and for that reason, the defendants deny that the plaintiff is entitled to an award of attorney's fees.

21. The defendants have not conducted a title search of the adjoining tract and thus lack sufficient information to admit or deny paragraphs 36, 37, 38, 39, 40, 41, but on

information and belief, the defendants believe the allegation of paragraph 42 and 43 are correct and they are not aware of any basis for James Williams claiming any portion of the defendants" property. Therefore, the defendants admit that James Williams does not have title to the property referred to throughout the plaintiffs' amended complaint as "property A."

22. The defendants deny paragraph 45, and show further that because of the parties' re-negotiation of terms by which the defendants granted to the plaintiff additional security to which the plaintiff would otherwise not be entitled, the parties created a new agreement in the nature of a joint venture by which the plaintiff would share in the profits of the development of the Bluffton Commercial Property.

23. The defendants admit so much of paragraph 46 as alleges that Carolina First notified the defendants of an alleged default, but the defendants deny that there is a default.

24. The defendants deny paragraphs 47, 48, and 49 and show further that the Third Renewal Note provides for interest and attorneys fees as stated, but denies that the plaintiff is entitled to a judgment or an Order of foreclosure or attorney's fees due to the parties' re-negotiation of the agreement.

25. The defendants deny paragraphs 51, 52, 53 (except to the extent paragraph 53 alleges that Carolina First place this matter in the hands of Buist, Moore, Smythe McGee, P.A. for collection), 54 55, 56, 57, and 58 and admit so much of these paragraphs as allege that the defendants failed to make the payments as required by the Third Renewal Note, but show further that the plaintiff is not entitled to accelerate the balance of the Note because the parties entered into a modification of the Third

Renewal Note, and the defendants have performed in accordance with the new agreement by pledging additional collateral to secure the loan and agreeing to a joint venture with the plaintiff to develop and sell the Bluffton commercial tract, which sale would have occurred but for the interference of the plaintiff.

26. The defendants have no information as to who owns the plaintiffs' loan and therefore deny paragraph 59.

27. The defendants deny paragraphs 61,62, 63 (except to the extent that paragraph 63 alleges that Carolina First placed the Note in the hands of Buist Moore Smythe McGee, P.A.), 64, 65, 66, 67,and 68.

28. The defendants have no information as to who owns the plaintiffs' loan and therefore deny paragraph 69.

FOR A SECOND AFFIRMATIVE DEFENSE BY WAY OF NOVATION

29. The defendants repeat the above allegations as if set forth here verbatim.

30. The parties entered into a new agreement, which they intended to substitute for the new obligation with the intent to extinguish the old obligation.

31. The defendants furnished additional valuable security to the plaintiff, which the plaintiff, absent an agreement between the parties, would not be entitled to receive, and the defendants have performed the agreement by executing the necessary documents to encumber additional, valuable real property.

32. Pursuant to the parties' agreement, the defendants transferred valuable property rights to the plaintiff in order to fulfill the terms of a mutual agreement to transform the parties' relationship into joint participants sharing in the profits of the sale and development of the Bluffton commercial tract.

33. Due to the parties' mutual agreement and the consummation of such agreement by the transfer of valuable property rights in previously unencumbered property to the plaintiff, the third amended Note as been extinguished.

FOR A THIRD AFFIRMATIVE DEFENSE BY WAY OF APPRAISAL

34. The defendants repeat the above allegations as if set forth here verbatim.

35. The plaintiffs are not entitled to a deficiency judgment because the value of the collateral exceeds the amount secured by the mortgage, and the defendants are entitled to have an appraisal of the subject property as provided by § 29-3-680, S. C. Code, ann.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(fraud in the inducement)

36. The defendants repeat the above allegations as if set forth here verbatim.

37. The parties entered into a joint venture by which the defendants agreed to convey to the plaintiff valuable additional collateral and share in the profits of the sale and development of the Bluffton commercial tract.

38. The plaintiff represented that in exchange for additional collateral and a share of the profits of sale up to a maximum of $2,775,000.00, and the plaintiff would forebear on accelerating the Third Amended Note and foreclosure. (See ¶ 2 of Exhibit "H" attached to plaitniff's complaint: "The total principal amount secured by this Security Instrument at any one time will not exceed $2,775,000.00.")

39. The defendants relied on such representations, and without such representations, the defendants would not have conveyed additional valuable collateral to the plaintiff. On November 27, 2009, the defendants conveyed "for good and

valuable consideration," a security interest in the defendants' Windmill Harbour Mariana property. (See exhibit "H" attached to plaintiff's complaint.)

40. The plaintiff intended that the defendants rely on the promises and intended to deceive the defendants in order to induce them to convey additional valuable consideration.

41. The defendants had a right to rely upon the representations of the plaintiff and did so rely.

42. The defendants have been harmed by the promises made to them by performing their part of the bargain in conveying additional valuable collateral to the bank.

FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM
(tortious interference in prospective business relations)

43. The defendants repeat the above allegations as if set forth here verbatim.

44. The parties entered into a joint venture by which the defendants agreed to convey to the plaintiff valuable additional collateral and share in the profits of the sale and development of the Bluffton commercial tract.

45. The defendants disclosed the identity of the purchaser and the terms of the sale. The plaintiff used this information to contact the purchaser directly and intentionally interfered with the defendants" potential contractual relations.

46. The plaintiff contacted the defendants" purchaser for an improper purpose.

47. As a direct and proximate result of Carolina First contacting the defendants" purchaser, the purchaser has now withdrawn from the sale thereby causing injury to the defendants.

Wherefore, having fully set forth their Answer to Amended Complaint, the defendants pray that the Court inquire into the matters herein, grant the defendants a trial by jury on the actions at law, and deny the plaintiff's request for acceleration and foreclosure and sale of the disputed property in accordance with the evidence presented, for a declaration that the parties have created a novation as participants in a joint venture, for appraisal of the property in the event of a foreclosure, for costs of this action, and for such other and further relief as the Court deems just and proper.

December 6, 2011

Thomas R. Goldstein #2186
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Charleston, SC 29415-1121
(843) 554-4291 phone
(843) 554-5566 fax
tgoldstein@cobblaw.net
Attorneys for Defendants

Verification

I have read the foregoing Answer to Amended Complaint and the facts alleged therein are true and correct to the best of our knowledge. We have relied upon the advice of counsel regarding matters of law. We request an appraisal of the property.

Wilbert Roller

Betty Roller

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 6th day of December 20 11

BY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**PLAINTIFF'S REPLY TO AMENDED ANSWER AND COUNTERCLAIM**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

Plaintiff TD Bank, N.A., Successor by Merger to Carolina First Bank ("Plaintiff") hereby responds to the Amended Answer and Counterclaim ("Counterclaim") asserted by Defendants Wilbert Roller, Jr. and Betty Roller ("Defendants"), as follows:

REPLY

1. Plaintiff denies each and every allegation of the Counterclaim not otherwise admitted below.

2. The allegations set forth in Paragraphs 1-35 of the Counterclaim constitute answers to the Amended Complaint and Affirmative Defenses asserted by the Defendants. As such, a response is not necessary. To the extent the allegations set forth in Paragraphs 1-35 may be construed as affirmative allegations against Plaintiff, those allegations are denied.

AS TO THE FIRST COUNTERCLAIM
(Fraud in the Inducement)

3. Responding to Paragraph 36 of the Counterclaim, Plaintiff incorporates its foregoing responses.

4. Plaintiff denies the allegations set forth in Paragraphs 37-42 of the Counterclaim.

AS TO THE SECOND COUNTERCLAIM
(Tortious Interference with Prospective Business Relations)

5. Responding to Paragraph 43, Plaintiff incorporates its foregoing allegations.

6. Plaintiff denies the allegations set forth in Paragraphs 44-47 of the Counterclaim.

AFFIRMATIVE DEFENSES

Although Plaintiff has not yet had the opportunity to investigate or conduct discovery regarding Defendants' claims, it believes there may be facts establishing the availability of certain defenses. In order to preserve those defenses, Plaintiff alleges the following:

7. The Counterclaim, and the causes of action contained therein, fails to state a claim upon which relief can be granted.

8. Defendants' counterclaims should be barred or reduced due to their failure to mitigate damages.

9. Defendants' claims are barred, in whole or in part, by the doctrines of unclean hands, estoppel, quasi estoppel, equitable estoppel, waiver and/or laches.

10. Defendants lack standing to assert their claims.

11. Defendants have breached the terms of the relevant loan documents and may not recover under those documents.

12. Defendants' counterclaims are barred due to consent to the terms set forth in the relevant loan documents.

13. Defendants' counterclaims are barred because they did not reasonably rely on any statements allegedly made by the Plaintiff.

Plaintiff hereby gives notice that it intends to rely upon any other defenses that may become available or appear during the discovery proceedings in this case and hereby reserves its right to amend its Reply to assert any such defenses.

RELIEF REQUESTED

WHEREFORE, Plaintiff TD Bank, N.A., Successor by Merger to Carolina First Bank, denying liability to the Defendants, demands judgment as follows:

A. For the relief requested in the Amended Complaint;

B. For an order of dismissal of Defendants' counterclaims with prejudice and, alternatively, a judgment in Plaintiff's favor; and

C. For costs and disbursements of this action along with such other and further relief as the Court deems just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE PA

Daniel Q. Orvin (S.C. Bar No. 13744)
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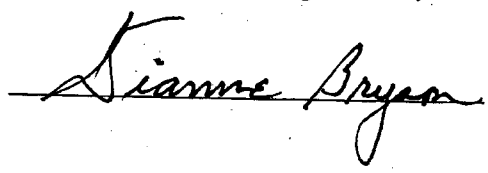
Charleston, South Carolina
January 6, 2012

CERTIFICATE OF SERVICE

This is to certify that on this the 6th day of January, 2012, and copy of the foregoing Reply to Amended Answer and Counterclaim was forwarded, via U.S. Mail, postage prepaid, to the following counsel of record:

Thomas R. Goldstein, Esq.
Goldstein & Cobb Law Firm
PO Box 71121
Charleston SC 29415-1121
Business Phone: (843) 554-4291
Attorneys for Defendants

Womble Carlyle Sandridge & Rice, LLP



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	

2014 JUL 11 PM 12:54
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	**MOTION FOR RECONSIDERATION OF MASTER IN EQUITY'S ORDER OF BIFURCATION AND JUDGMENT OF FORECLOSURE AND SALE**
v.	)	
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

TO MATTTHEW TILLMAN, ATTORNEY FOR PLAINTIFF, TD BANK, N.A.:

Please take notice that the defendants, Wilbert Roller and Betty V. Roller, will move, ten days after notice hereof, or as soon thereafter as counsel may be heard for an Order vacating and amending the Judgment of Foreclosure dated May 30, 2014, and filed July 3, 2014, and received by counsel for the moving defendants on July 3, 2014.

This motion is based upon Rule 59 of the *South Carolina Rules of Civil Procedure* and the following points of law, which the moving defendants respectfully submit were overlooked by the Court in entering the Order under review:

STANDING

The Court did not overlook the moving defendants' allegations regarding standing. Rather the Court misapplied the weight of the law on the issue. The Court correctly notes that

there is a split of authority on the subject, and that the South Carolina Supreme Court has yet to address the issue directly; however, the great weight of the decisions on the subject have been against successor corporations foreclosing unless the plaintiff presents cogent evidence of the putative plaintiff's right to foreclose because the question raises the most fundamental question: does the Court possess the power to act? As other state Supreme Courts—and several federal circuit Courts of Appeal—have addressed this legal issue, the overarching and unifying principle in all the decisions is the various courts circumscribing what they see as overreaching by large financial institutions profiting from their own wrongdoing.

In South Carolina, like in every other state, subject matter jurisdiction is fundamental to a court's power to act:

> Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state. Subject matter jurisdiction cannot be waived or conferred by consent. *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989); *American Agricultural Chemical Co. v. Thomas*, 206 S.C. 355, 34 S.E.2d 592 (1945) *Paschal v. Causey*, 309 S.C. 206, 420 S.E.2d 863 (Ct. App. 1992)

It is undisputed that the Rollers entered into a creditor/debtor relationship with Carolina First Bank, which, according to the record in this case, no longer exists. We also know as an undisputed fact that the plaintiff in this case, TD Bank N.A., did not own the security interest in the defendants' property until and unless it is the proper successor of Carolina First Bank. Therefore, it is crucial that in order to invoke the Court's power to act for the plaintiff, the plaintiff must demonstrate that it is the holder of the Note and its security instrument. In *Fielden v. Fielden*, 274 S.C. 219, 262 S.E.2d 43 (1980), the Supreme Court held that a 1979 amendment to a divorce decree could not operate to fix a 1977 Order incorporating an agreement between the parties because the Family Court in 1977 lacked subject matter jurisdiction: "This Court is aware of the May 16, 1979 Divorce Decree which incorporated the 1977 Separation

Agreement. **However, that event, which occurred subsequent to the entry of the Order on appeal, cannot operate to cure the Family Court's lack of subject matter jurisdiction at the time that Order was issued.**" (emphasis added) Here, the record is devoid of any evidence that the plaintiff owns the Note and Mortgage that is the subject of the action other than the unsupported opinion of plaintiff's witness, Benjamin Jenkins. Mr. Jenkins testified he is in charge of "special assets" and that he first became aware of the account with the defendants, Rollers, after someone in the Bank transferred the account to him as part of the "work out" department. Mr. Jenkins testified that TD Bank merged with Carolina First on June 17, 2010, but he relied only on his memory for this assertion.

In *Funderburk v. Funderburk*, 281 S.C. 246, 315 S.E.2d 126 (1984), the Court of Appeals held that the lower court properly refused to consider approving a 1981 contractual agreement because the Court lacked subject matter jurisdiction even though the law changed in 1983, giving the lower court jurisdiction. The point is that the lower court lacked jurisdiction in 1981, and even though the law changed in 1983 giving it jurisdiction, the change could not relate back. In the Order under review, the Court erroneously concludes that the plaintiff has met its burden of proof to demonstrate it is the real party in interest and is the owner of the account on which it sues. The Court overlooked the fact that, aside from Mr. Jenkins' opinion, the record is devoid of any evidence, and thus the plaintiff has not properly invoked the subject matter jurisdiction of the Court. As *Funderburk* demonstrates, the courts of this state are particular about when a court has the power to act.

The appellate courts of Florida and Alabama have found that subsequent cures cannot relate back. See *Rigby v. Wells Fargo Bank*, (Fla. App. 4 District filed April 4, 2012): "A party must have standing to file suit at its inception and may not remedy this defect by subsequently

obtaining standing." *Venture Holdings & Acquisitions Grp., LLC v. A.I.M. Funding Grp., LLC*, 75 So 3d 773, 776 (Fa 4th DCA 2011) Likewise the Court of Appeals in Alabama reached the same result in *Patterson v. GMAC Mortgage, LLC*, (Ala Civ. App. Filed January 20, 2012, Opinion No. 2100490): "In the case now before us, GMAC Mortgage like BAC in *Sturdivant v. BAC Home Loans, LP*, ___So 3d ___ (Ala. Civ. App. 2011), had not been assigned the mortgage before it initiated foreclosure proceedings. Consequently, under our holding in *Sturdivant*, GMAC Mortgage lacked authority to foreclose the mortgage when it initiated the foreclosure proceedings, and, therefore, the foreclosure and the foreclosure deed upon which GMAC based its ejectment claim are invalid."

The Ohio Supreme Court reversed an Order of foreclosure, relying on decisions by the United States Supreme Court, the Third and Ninth Circuit Courts of Appeals, the Supreme Courts of Florida, Oklahoma, Connecticut, and Nebraska, holding that the plaintiff must prove it is the real party in interest at the time of the filing of the complaint:

> The purpose behind the real party in interest rule is "to enable the defendant to avail himself of evidence and defenses that the defendant has against the real party in interest, and to assure him finality of the judgment, and that he will be protected against another suit brought by the real party at interest on the same matter. *Celanese Corp. of America v. John Clark Industries* (5th Cir. 1954), 214 F.2d 551, 556." *In re Highland Holiday* Subdivision, 27 Ohio App.2d 237, 273 N.E.2d 903 (1971)
> *Federal Home Loan Mortgage Corp. v. Schwartzwald*, 134 OhioSt.3d 13 (2012-Ohio 5017)

The South Carolina, Florida and Alabama cases are all in accord with the general principle of law. "Generally, jurisdiction of the court over a cause depends on the state of facts at the time the action is brought. Without the jurisdictional element of a case or controversy, any court is without power to render a decision. Thus, a court must first find that a party with standing has brought the cause, and that he brings a justiciable issue before the court. If such is

not the situation, there is nothing before the court, and the court is totally without jurisdiction to decide any issue in the cause." *C.J.S.*, "Courts" § 16. When faced with this issue, courts all over the country have required a foreclosing bank to prove it has standing. For example, the Supreme Court of Massachusetts held in *U. S. Bank, N.A. v. Ibanez*, 458 Mass. 637 (2011) held that under Massachusetts law, a creditor has to be the mortgagee to foreclose. If the foreclosing entity is not the original mortgagee, it must hold an assignment of the mortgage at the time it first published the notice of sale. If the assignment of the mortgage is obtained after publication of the notice, a subsequently completed foreclosure is unlawful and void.

The Florida Courts have been leaders in this area of law. *The Florida Law Journal*, Volume 85, No. 10 (December 2011) digested the law in this area, including a case that involved, as this one does, a bank claiming to hold title to the Note by merger. Under Florida Statutes §§90.902(1)(a) and 90.803(8) (2009), a bank bringing a foreclosure case under a theory that it acquired title by merger is required to prove "that the named plaintiff is successor by merger or name change. To support this allegation, if contested, a certified copy of a certificate of corporate existence from federal or state bank regulators, bearing the agency's seal, which are self-authenticating official records, can be obtained for a nominal charge from the agency." *The Florida Bar Journal*, Volume 85, Number 10 (December 2011) page 31.

Here, there is no proof, other than the unsupported opinion of the witness, that TD Bank is the successor of Carolina First and even if it is, whether it properly received either possession or title to the debt that is the subject of this matter. When the Court overruled the moving defendants' objection as to plaintiff's failure to produce the original document, the Court gave a pass to the plaintiff it is not entitled to receive. The moving defendants have no quarrel with the Court's analysis of *South Carolina Rules of Evidence* Rule 1003. Rule 1003 will ordinarily carry

the day except where a party resisting admission of the document challenges the plaintiff's standing. In other words, the Court correctly analyzed the offer of evidence under Rule 1003 as purely an evidentiary analysis, but the Court did not properly apply the rule because the Court overlooked that the moving defendants' challenge to plaintiff's standing. Because there is a challenge to standing, it thus becomes fundamental as to whether the Bank can or cannot produce the original of the Note that it claims it owns as well as sufficient proof that it acquired the assets of Carolina First Bank. At the very least, the Bank must put forth a compelling explanation as to how it claims to have the standing to bring this action. Thus, what might be a proper analysis under Rule 1003 in an ordinary case becomes an improper analysis when the defendants deny that the plaintiff is the holder of the Note on which it brings suit.

DEFENDANT'S MOTION FOR INVOLUNARTY NON-SUIT WITH PREJUDICE

At the close of the plaintiff's case and again at the close of the case, the moving defendants moved for an involuntary non-suit, the non-jury equivalent of a directed verdict in a jury trial. The standard for granting such a motion is well known:

> We note initially that while Paragon's motion at the close of the evidence was couched as a "directed verdict" motion, governed by Rule 50, SCRCP, this was a non-jury action. As Rule 50 by its nature is applicable to jury trials, the proper motion for Paragon to have made was a motion for involuntary non-suit under Rule 41, SCRCP. "After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." Rule 41(b), SCRCP; see *Ducworth v. Neely*, 319 S.C. 158, 159 n. 1, 459 S.E.2d 896, 897 n. 1 (Ct.App. 1995) (noting that motion styled directed verdict in non-jury action actually was a motion for involuntary non-suit under Rule 41(b), SCRCP, and therefore reviewed as such). Rule 41(b) allows the judge as fact finder to

> weigh the evidence and determine the facts. *Johnston v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992). Therefore, Paragon's appeal is from the master's factual findings as a judge in a non-jury action at law. *See South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 310 S.C. 232, 235, 423 S.E.2d 114, 116 (1992) (stating an action seeking money damages for breach of contract is an action at law); *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App. 1997) (same). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). Thus, this court must affirm if there is any evidence to support the master's findings.
>
> *Waterpointe I Property Owner's Assn. v. Paragon*, 342 S.C. 454, 536 S.E.2d 878 (Ct.App. 2000)

Here, it is undisputed that the only evidence the Bank produced of the moving defendants' alleged breach was the witness's unsupported testimony. The Bank's witness did not produce or testify from bank records or documents, but rather testified that he had reviewed the records on the Bank's computers and relied on counsel for arriving at and preparing a summary of the alleged past due balance. The witness had no basis for his opinion, and the amount of arrearage attested to by the plaintiff's witness was nothing more than speculation. In short, there was a failure of sufficient proof on the amounts paid and the amounts currently due, and therefore the Court could not calculate the present balance due. In a case in which the Bank is claiming entitlement to a deficiency judgment, the Court cannot allow the Bank to set the default amount due without adequate proof demonstrating the Bank's accuracy of its calculations and the amount of credits applied.

PLAINTIFF'S MOTION FOR INVOLUNTARY NON-SUIT WITH PREDJUDICE

Benjamin Roper Jenkins, III, testified on behalf of the plaintiff, and Wilbert Roller testified on behalf of the moving defendants. It is a fair summary of the testimony to say that Wilbert Roller's testimony was based on first-hand experience. He testified that not only had the Bank agreed to market the property jointly with him, but also that he paid the Bank a lump sum of $100,000.00 to be applied to the debt in exchange for forbearance and an agreement to market the property jointly. Mr. Roller also testified that he produce a buyer, Ms. Brockington, who was ready, willing and able to close—or at least pursue a closing—and that, according to Mr. Roller, the Bank interfered in the negotiations to keep all the profits from the potential sale. Mr. Roller testified that the Bank provided false information to Ms. Brockington about the Rollers being in bankruptcy in an effort to negotiate directly with her. However, in the Order under review, the Court is almost silent on the moving defendants' proof or an analysis of their claims. Even if the Court declines to reverse its decision on granting plaintiff's motion for involuntary non-suit, at the very least, the Court's lack of analysis of defendants' claims prevents them from further judicial review because the Order under review does not analyze the allegations, the elements or the proof of the defendants' counterclaims, and case law is littered with the corpses of litigants who did not request the lower court to address a claim not analyzed in the Court's order. The defendants produced a preponderance of the evidence that the parties entered into a new agreement, and the Bank's conduct confirms such an agreement. It is unconscionable to accept a $100,000 lump sum payment and then proceed on to a forced sale of the property when the defendants produced a viable buyer, especially where the plaintiff seeks a deficiency judgment.

Here, the defendants produced uncontroverted evidence that in order to induce the Bank to suspend the foreclosure, the defendants paid $100,000.00 lump sum and agreed to split the profits of sale with the Bank. The Bank concedes the lump sum payment, but denies any agreement to split profits. However, the Bank offered nothing to controvert Wilbert Roller's testimony about the potential buyer with whom the Bank interfered because the witness the Bank produced knows very little about the account in question. Because the Bank is seeking a deficiency judgment, the Court must require more than mere speculation about the balance due on the Note, and the record in this case as it stands, leaves the defendants'' evidence about a novation and the Bank's interference in a potential sale unchallenged. Thus, the defendants made out the elements of their claims by a preponderance of the evidence, yet the Order under review does not address or analyze the defendants' claims.

Based on the foregoing, the defendants respectfully submit that the Court should dismiss the plaintiff's claim without prejudice.

Respectfully submitted,

July 8, 2014
Charleston, South Carolina

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tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 9th day of July 20 14

BY T. R. Goldstein

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND REQUEST FOR EXPEDITED HEARING**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

2016 MAR 18 P 2:52

Pursuant to South Carolina Rule of Civil Procedure 43, the Plaintiff T.D. Bank, N.A., Successor by Merger to Carolina First Bank ("Plaintiff") hereby moves to enforce the settlement agreement entered into between the parties.

BACKGROUND

1. Defendants Wilbert Roller, Jr. and Betty V. Roller (the "Rollers") own certain real property designated as Tax Map Number R610-031-000-0002-0000 by the Beaufort County Tax Assessor ("Roller Tract").

2. Defendant James Williams claims ownership of certain real property designated as Tax Map Number R610 031 000 004I 0000 by the Beaufort County Tax Assessor ("Williams Tract").

3. Ronald Williams, who is James Williams' nephew, claims an interest in the Williams Tract.

4. On June 20, 2007, James Williams recorded a plat in the Beaufort County Register of Deeds Office, which purports to depict the extent of the Williams Tract. This plat was recorded in Book 120, Page 111 ('Williams Plat").

5. Due to issues associated with competing deed chains, the Roller Tract and Williams Tract overlap, such that the alleged Williams Tract is entirely within the footprint of the Roller Tract.

6. TD holds a first mortgage lien on the Roller Tract.

7. On or about January 24, 2011, TD filed a Complaint in Case No. 2011-CP-07-340 (the "Lawsuit") against the Rollers, in which TD alleged a foreclosure cause of action as to the Roller Tract. On or about October 26, 2011, TD filed an Amended Summons and Complaint, in which it added a declaratory judgment claim against James Williams, by which TD sought an order quieting title to the entire Roller tract and cancelling the Williams Plat and the tax map number associated with the Williams Tract.

8. On July 3, 2014, the Court entered an Order of Bifurcation and Judgment of Foreclosure and Sale, by which the Court granted TD's request to foreclose its mortgage on the Roller Tract and bifurcated the quiet title portion of the Lawsuit ("Master's Order").

9. The Rollers appealed the Master's Order in Appellate Case No. 2014-002674. That appeal has been dismissed and a remittitur issued to the lower court.

10. During the final hearing in this matter on October 19, 2015, the parties entered into a settlement agreement in open court and placed it upon the record. The material terms of the settlement agreement are as follows:

a. The parties agreed to enter into a formal, written settlement agreement.

b. Beginning on October 20, 2015, TD agreed to refrain from pursuing foreclosure of its mortgage for a period of 180 days.

c. TD agreed to pay the sum of $35,000 to the trust account for the attorney for James Williams, to be held in trust until James Williams and Ronald Williams delivered quitclaim deeds conveying their interests in the the Roller Tract and Williams Tract to TD. TD or its insurer stand ready and willing to deliver this payment into the trust account of counsel for James Williams.

d. Counsel for all parties agreed to execute a consent order cancelling the Williams plat and instructing the Beaufort County Tax Assessor to strike the Williams Plat from the tax map rolls.

e. TD agreed to hold the documents identified in Paragraphs 10(c) – (d) in trust until the earlier of: (1) the sale of the Property; or (2) the expiration of the 180 day period contemplated in this Agreement.

f. During the 180 day settlement period, the Rollers, James Williams and Ronald Williams agreed to engage in their best efforts to: (a) seek rezoning of the Roller Tract and Williams Tract to commercial; and (b) sell the Roller Tract and Williams Tract for a sum agreeable to both parties. TD had no responsibility to participate in or assist these efforts.

g. In the event the Roller Tract and the Williams Tract is sold within the 180 period contemplated by the settlement agreement, the proceeds shall be paid as follows:

    i. All amounts owed to TD on the mortgage (including attorneys' fees and costs) were to be paid in full;

ii. The net proceeds above the amounts paid to TD shall be split 70% to the Rollers and 30% to James Williams.

h. In the event the Roller Tract and Williams Tract were not sold within the 180-day period contemplated by this Agreement, and upon expiration of the 180 period, TD is permitted to immediately record the Master's Deed and proceed with the foreclosure process on the Roller Tract.

i. The Rollers, James Williams and Ronald Williams agreed to waive the right to contest the foreclosure.

j. TD reserved the right to seek a deficiency judgment from the Rollers and the Rollers reserved the right to pursue a claim for statutory appraisal.

k. In the event the foreclosure sale produces an overage (defined as an amount exceeding the amount owed to TD), those overage funds shall be split 70% to the Rollers and 30% to James Williams.

11. Counsel for TD provided settlement documents to the Defendants in early December 2015.

12. All counsel agreed to the form and content of the settlement documents.

13. However, James Williams and Ronald Williams did not execute the settlement documents despite numerous requests from counsel.

ARGUMENT

The parties entered into an enforceable settlement agreement on October 19, 2015. Defendants have refused to comply with the terms of the settlement agreement. The 180 period contemplated by the settlement agreement expires on April 17, 2016. Therefore, TD requests an order enforcing the settlement agreement, cancelling the Williams plat and instructing the

Beaufort County Tax Assessor to strike the Williams Plat from the tax map rolls. In addition, TD requests that the Court enter a Clerk's deed or Master's deed conveying the interest of James and Ronald Williams in the Roller Tract and Williams Tract to TD.

WHEREFORE, Plaintiff requests that the Court schedule an expedited hearing and enter an Order providing the relief set forth above.

WOMBLE CARLYLE SANDRIDGE & RICE PA

Daniel Q. Orvin (S.C. Bar No. 13744)
Matthew Tillman (S.C. Bar No. 70358)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
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Attorneys for Plaintiff

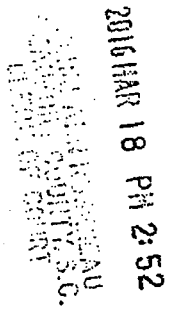
March 16, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that on March 16 2016 a copy of the foregoing **PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT AND REQUEST FOR EXPEDITED HEARING** was served, via U.S. Mail, postage prepaid, to the following parties:

Thomas R. Goldstein, Esq.
Goldstein & Cobb Law Firm
PO Box 71121
Charleston SC 29415-1121
Business Phone: (843) 554-4291
Attorneys for Roller Defendants

Robert V. Mathison, Jr., Esq.
Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938
Attorneys for James Williams



WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Carol Casey

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-340**
CAROLINA FIRST BANK,	)	
Plaintiff,	)	
versus	)	**VERIFIED PETITION & DEMAND FOR APPRAISAL § 29-3-680**
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
Defendants.	)	

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JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Comes now the defendants, Wilber Roller, Jr. and Betty V. Roller who demand an appraisal of the foreclosed property as provided by § 29-3-680, S. C. Code, ann. and assert that the appraised valued of the subject property is in excess of any deficiency judgment because the value of the collateral exceeds the amount secured by the mortgage, and the defendants are entitled to have an appraisal of the subject property as provided by § 29-3-680, S. C. Code, ann.

Wherefore, having fully set forth their verified petition and demand for appraisal, The petitioners pray for an Order of the Court assigning three disinterested appraisers. The petitioners designate Gary Beaver as their appraisal in conformity with § 29-3-710, S. C. Code, ann.

May 16, 2016

Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
(2344 Cosgrove Avenue)
N. Charleston, S. C. 29415-1121
843 554-4291
843 554-5566 (fax)
tgoldstein@cobblaw.net
Attorneys for defendants

VERIFICATION

We verify that the above information is true and correct.

May 16, 2016

Wilbert Roller

Betty Roller

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-340**
CAROLINA FIRST BANK,	)	
	)	
	)	
Plaintiff,	)	
versus	)	
	)	**AFFIDAVIT OF WILBERT ROLLER**
	)	
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
	)	
	)	
Defendants.	)	

Personally appeared before me, Wilbert Roller, who being duly sworn does depose and say:

I was the titleholder of the tract of land that was the subject of this foreclosure action. I acquired the 22-acre parcel on Buck Island Road in 1980 for the purchase price of $421,000.00. In 1980, when I purchased the property, the parcel was located in Beaufort County and zoned commercial. During my absence from the State of South Carolina during the years 1994 - 1998, the City of Bluffton annexed the parcel and downzoned it to multi-family residential.

The parcel is unique in Bluffton as it remains the only **undeveloped** large tract on Buck Island Road. All the other corners on Buck Island Road are developed and consist of shopping malls with large anchor tenants.

In June of 2008, I received an offer to purchase 17.5 acres for $325,000.00 per acre. (roughly 5.7 million dollars). The contract is attached to this affidavit. As a result,

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I hired Michael Kronimus of K.R.A. Associates, the leading architecture firm in the area to handle the presentation to the Town of Bluffton. The Town of Bluffton refused to restore my zoning due to the objections of a small group of Bluffton residents who demanded that I provide certain things for them as a condition of going forward. They demanded that I build a community civic center and a ballfield for them, and make a financial contribution to their neighborhood association, which I declined to do.

As a result, the tract retains its current zoning classification of "residential general," which does allow dense multi-family development on the property, a fact overlooked by the court-appointed appraisers. For example, as the property is currently zoned, it could accommodate a large condominium development, apartment complex, or mobile home park. The court appointed appraisal gives none of these future uses any consideration. In short, they ignore the property's highest and best use.

As it currently exists with its present zoning, the property is worth in excess of two million dollars as supported by the original appraiser prepared by Mark Halpern, attached here. Nearly forty years have elapsed since I acquired the property for $421,000.00. Houses acquired in Bluffton in 1980 are selling for ten or twenty times their 1980 value today. Any readily available inflation calculator—and there are thousands—demonstrates that the annualized inflation rate from 1980 to the present is 3.12%. This means that $100.00 in 1980 is equal to $321.41 today. Real estate values have climbed faster than the inflation rate. The Bank does not dispute this because the Bank conducted its own appraisal of the property as a condition of making a loan to me and determined that the collateral value of the land was sufficient to secure a $2,300,000.00 loan in 2007. Property values have not gone down in the last 11 years.

(I recognize that real estate absorbed a huge hit in 2008 due to the misconduct of various investment banks, but real estate values today are higher than they were in 2007, before the crash.)

In short, the value of the collateral is worth far more than the debt, even as currently zoned. Mr. Halpern's appraisal of $2,050,000.00 is low because it fails to consider the large number of residential units that can be constructed on the property as it is currently zoned. As currently zoned, the value of the property is at least $2,500,000.00, and if the Town of Bluffton would restore the zoning I had when I acquired the parcel, the 22 acres is worth in excess of six million dollars.

Further your deponent says not.

Wilbert Roller

SWORN TO BEFORE ME THIS
16th DAY OF AUGUST, 2018

Notary Public for South Carolina
My Commission expires: 3/23/2019

J. SIMON FRASER NOTARY PUBLIC SOUTH CAROLINA

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REAL ESTATE SALES CONTRACT

State of South Carolina

County of Beaufort **Tuesday, June 10, 2008**

This Real Estate Sales Contract (the "Contract") is made and entered into by and among the undersigned Sellers whose mailing address appears below their signatures (herein called collectively "Seller") and the undersigned Purchaser whose mailing address appears below her signature (herein called "Purchaser"). In consideration of the agreements herein contained, the parties hereto agree as follows:

6/3/08

1. CONVEYANCE:

Subject to the terms and conditions herein, Seller agrees to sell and convey and Purchaser agrees to purchase and take title to approximately 17.5 acres ("Property") located near the northeast corner of Buck Island Road and Bluffton Parkway, Bluffton, Beaufort County, SC. The Property includes a part of Beaufort County DMP # R610 031-000-002-000. The Property is delineated as Tract B on the attached Proposed Subdivision Platt attached hereto and made a part hereof. A survey of the combined Tract A and Tract B is attached as Exhibit C.

2. PAYMENT OF PURCHASE PRICE:

a. The "Purchase Price" of Property shall be Three Hundred Twenty Five Thousand and No/100 Dollars ($325,000.00) per acre contained within the parcel designated Tract B, including the acreage of any of such land (i) that has been or will be dedicated for municipal roads, (ii) that has been or will be designated a wetland buffer, but excluding any acreage that is wetlands, all as shall be determined by a final survey, site plan, and/or wetlands delineation to be agreed upon by Purchaser and Seller. The Purchase Price of Property shall be paid in cash or collected funds at Closing.

b. Upon full execution of this contract Ten Thousand and No/100 Dollars ($10,000.00) (the "Earnest Money") shall be deposited by Purchaser's check into an escrow account of the Seller's choosing. Earnest Money shall be applied toward the Purchase Price due at Closing.

c. If Buyer does not terminate this Agreement as and when permitted by paragraph 3 c below, then Buyer shall within five (5) business days after the later of (i) the end of the Inspection Period, or (ii) the date on which Buyer has all binding agreements and approvals (including without limitation wetlands-related approvals) as are necessary for the construction, maintenance, and operation of the access road for ingress and egress to and from the Property and Bluffton Parkway, and a right-in/right-out curb cut into Bluffton Parkway in connection with such access road, all as set forth more fully in Section 15 a below, deposit Purchaser's check into an escrow account of the Seller's choosing an additional Ninety Thousand and No/100 Dollars ($90,000), which shall be deemed part of the Earnest Money and shall be applied toward the Purchase Price due at Closing.

3. INSPECTION PERIOD:

a. During the period (the "Inspection Period") commencing the first business day after the Effective Date and continuing through the one hundred fiftieth (150th) day after delivery of the Seller Due Diligence Items (as defined below), the Purchaser shall be permitted to perform such inspections and evaluations of the Property and to conduct studies thereon as Purchaser may elect. If the end of the Inspection Period falls on a Saturday, Sunday or legal holiday, the end of the Inspection Period shall be automatically extended to the end of the next business day.

b. During the Inspection Period, Purchaser, its employees and its agents shall have the right to unlimited access to the Property to make such studies, investigations, tests, reviews and inspections of the

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Property, including such soil, engineering, planning, environmental, permitting, zoning or other studies and investigations as Purchaser shall deem appropriate in its sole discretion. Purchaser shall pay all costs incurred by Purchaser in making any such inspections and investigations and shall indemnify, defend and hold the Seller harmless from any liens, claims, losses and liabilities arising out of the Purchaser's exercise of such right and privilege to go upon the Property and shall restore as nearly as practicable the Property substantially in its condition prior to such investigations.

c. If during the Inspection Period, the Purchaser determines for any reason that the Property is not suitable for Purchaser's purposes in Purchaser's sole and absolute discretion, the Purchaser may terminate this Contract by delivering written notice of such determination to Seller on or before 5:00 pm Beaufort County, South Carolina time on the first business day after the final day of the Inspection Period. If Purchaser fails to timely give such notice of termination to Seller, this Paragraph shall be of no further force and effect, and Purchaser shall have no further right to terminate this Contract pursuant to this paragraph 3. If Purchaser does give notice of termination to Seller on or before the expiration of the Inspection Period, then the Earnest Money shall be refunded to Purchaser, and the parties hereto shall have no further rights, duties or obligations under this Contract, except that Purchaser shall, within ten (10) days after such termination, deliver to Seller copies of all feasibility studies, surveys, engineering reports and all other information obtained by Purchaser with respect to the Property, and this obligation shall survive termination of this Agreement.

4. SURVEY:

a. Purchaser, its agents, and contractors shall have the privilege of going on Property any time prior to Closing to make surveys (collectively, the "Survey") and soil tests of Property and the parties performing such survey or test shall have the right to cut brush and limbs necessary to survey the lines of Property and to make soil borings. Purchaser agrees to indemnify and hold Seller harmless against any property damage or personal injury or claim of lien against Property resulting from the activities permitted by this paragraph on Property.

b. Any such survey shall be performed by a South Carolina Registered and Licensed Surveyor selected by Purchaser, at Purchaser's sole expense, with the survey so made indicating the total number of acres in Property to the nearest one hundredth of an acre, exclusive of the rights-of-way of public roads and cemeteries. Any recent surveys commissioned by Seller shall be made available to Purchaser at no cost.

c. Seller shall bear the cost and responsibility of subdividing Property in accordance with Exhibit A. The subdivision plat will be submitted to Purchaser sixty days prior to Closing for Purchaser's review and approval, which shall not be unreasonably withheld.

5. CLOSING:

The closing (the "Closing") of the transaction contemplated by this Contract shall be by delivery of a properly executed general warranty deed (the "Deed") to Purchaser against receipt by Seller of the Purchase Price and upon performance of all other obligations of Seller hereunder, on a date (the "Closing Date") and at a place designated by Purchaser in southern Beaufort County, South Carolina, giving notice thereof at least 5 business days prior to the selected time, but in no event later than ninety (90) days after the end of the Inspection Period. If that date that is ninety (90) days after the end of the Inspection Period falls on a Saturday, Sunday or legal holiday, the last day for Closing shall be automatically extended to the end of the next business day.

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6. TITLE:

Purchaser shall have until thirty (30) days after the expiration of the Inspection Period to give Seller written notice of any defects or objections affecting the title to the Real Property or the use thereof by Purchaser disclosed by Purchaser's title examination and/or Survey. If the end of the thirty-day period falls on a Saturday, Sunday or legal holiday, the end of the such period shall be automatically extended to the end of the next business day. In addition, Purchaser may from time to time update the effective date of such title examination or Survey, and Purchaser may give notice to Seller of all defects or objections appearing subsequent to the effective date of its previous title examination or Survey, as the case may be. Seller shall have ten (10) business days after receipt of notice of title defects or objections from Purchaser to advise Purchaser in writing as to which of such title defects or objections Seller does not intend to satisfy or cure; provided, however, Seller hereby agrees that Seller shall satisfy or cure any such defects or objections consisting of past due taxes, mortgages, deeds of trust, tax liens, mechanic's or materialmen's liens, or other such monetary encumbrances. If Seller fails to give such written advice to Purchaser within said 10-business day period, then Seller shall be deemed to have agreed to satisfy or cure all such defects or objections set forth in Purchaser's notice. If any defect or objection is such that it is not reasonably susceptible of cure, or if Seller shall advise Purchaser in writing that Seller does not intend to satisfy or cure any specific non-monetary encumbrances, then Purchaser may elect either (a) to terminate this Contract by written notice to Seller, in which event the Earnest Money shall be immediately refunded to Purchaser and this Contract shall be of no further force or effect and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder, or (b) to accept title subject to such specific non-monetary encumbrances. Seller shall have until the Closing to satisfy or cure all such defects and objections which Seller shall have agreed (or shall have been deemed to have agreed) to satisfy or cure as provided above. If Seller fails or refuses to cure any defects and objections which Seller shall have agreed or have been deemed to agreed to cure or which are required herein to be satisfied or cured by Seller prior to the Closing, then, at the option of Purchaser, (i) Purchaser may terminate this Contract by written notice to Seller, in which event the Earnest Money shall be immediately refunded to Purchaser, and this Contract shall be of no further force and effect and Purchaser and Seller shall have no further rights, obligations or liabilities, (ii) if any such defect consists of past due taxes, mortgages, deeds of trust, tax liens, mechanic's or materialmen's liens, or other such monetary encumbrances, Purchaser may cure such defect or objection at or prior to Closing out of the Purchase Price at Closing or by way of a reduction in Purchase Price in an amount equal to the actual cost and expense incurred by Purchaser in connection with the curing of such defect or objection, (iii) Purchaser may accept title to the Real Property subject to such defects and objections, or (iv) any combination of items (ii) and (iii). If Purchaser elects to cure any such defects and objections pursuant to item (ii) hereof, then Purchaser at its option, upon giving notice to Seller, may extend the Closing until the date which is ten (10) days after the curing of such defects or objections or sixty (60) days from and after the last date set forth herein for the Closing (as the same may be extended pursuant to this Contract), whichever shall first occur. If any defect or objection shall not have been cured within such period, then Purchaser may exercise its option under either item (i) or (ii) hereof.

7. TAX AND OTHER APPORTIONMENTS:

Ad valorem taxes on Property, user fees, and other assessments with respect to the Property for the year in which the Closing occurs shall be prorated as of the Closing Date. If the Closing shall occur before the tax rate or the assessed valuation of the Property is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate and the assessed valuation of the Property are fixed for the year in which the Closing occurs, the parties agree to adjust the pro-ration of taxes and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment.

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8. ROLL BACK TAXES:

If Purchaser notifies Seller that the Property is or will be subject to "Roll-Back" taxes, within ten (10) days of receipt of such notice, Seller agrees to request rollback tax bills for the Property from the tax assessor or other appropriate authority for Beaufort County, South Carolina. To the extent rollback tax bills are available at Closing, Seller shall pay the rollback taxes for the Property at Closing. To the extent that roll back tax bills are not available at Closing, Seller agrees that the Purchaser shall be given a credit against the Purchase Price for the estimated amount of roll-back taxes. In the event that the credit given to Purchaser at Closing exceeds the actual roll-back taxes when they are assessed, then Purchaser shall refund the excess amount to Seller. In the event that the credit given to Purchaser at Closing is less than the actual roll-back taxes when they are assessed, then Seller agrees to deliver additional funds to Purchaser at the time that the taxes are assessed.

9. EXTENSIONS OF CLOSING DATE:

Two (60) day extension periods to the Closing are available to Purchaser for $10,000.00 each, with extension money being non-refundable ~~but applicable to the Purchase Price~~ and not applied to the Purchase Price. Payments must be made in advance to Seller.

10. ACCESS ROAD AND UTILITIES EASEMENT:

Purchaser and Seller shall prior to Closing enter into an easement agreement (the "Easement Agreement") providing for an infrastructure spine for utilities, including water distribution, waste water collection, main stormwater collection retention, and for a paved road (the "Road") connecting Buck Island Road and Bluffton Parkway over the approximate area (the "Easement Area") shown and designated on Exhibit A as "50' Joint Access Easement" and "50' Access Easement." The parties acknowledge that the exact location of the Easement Area may change as necessary to conform to governmental and permitting requirements; provided, however, that the final location shall be subject to the reasonable approval of the parties. The easement agreement shall be recorded and shall provide for a non-exclusive, commercial, perpetual reciprocal access and general utility easement for the Road and utilities over, under, and across the Easement Area for the benefit of the Seller's residual Tract (Tract A on Exhibit A) and the Purchaser's tract (Tract B on Exhibit A). The easement shall be appurtenant to the respective parcels for the benefit of Purchaser and Seller as the owners of Tract A and Tract B, their respective successors in title to Tract A and Tract B as to all or any portion of such tracts, and the respective tenant(s) or occupant(s) of such tracts or any portion thereof, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the owners of such tracts from time to time and/or (ii) such tenant(s) or occupant(s) of such tracts from time to time. Purchaser and Seller shall obtain from their respective mortgagees such subordinations and joinders as may be necessary to insure marketable title to the Easement Area free and clear of the claims of such mortgagees.

The Road shall be constructed over and across the Easement Area by a contractor to be chosen by the Purchaser and completed within one year of Closing. Seller and Purchaser shall contribute their pro rata share of this cost, calculated based on the relative high ground acreage of (i) the Property conveyed to Purchaser pursuant to this Contract; and (ii) the residual property retained by Seller (the "Residual Property"). Prior to Closing the Purchaser shall secure no less than three bids to perform the construction described herein above and at Closing Purchaser and Seller shall each cause their pro rata share of the cost of the lowest bid shall be placed in Escrow to pay for said work. The easement referred to above shall obligate Purchaser and Seller and their respective successors in title to pay their pro rata share (determined as set forth above) of the cost of the maintenance of the Road and other spine facilities, including without limitation landscaping. The Seller shall also pay any incremental costs to include the Residual Property in the storm water retention system to be constructed on the Property. The Seller shall also pay the incremental costs of bringing the water and sewer to the boundary of the Residual Property so that those systems will also serve the Residual Property.

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There shall be no cross-easments for parking. Without limiting the generality of the foregoing, there shall be no parking easement or parking rights over the Property for benefit of the Residual Property, and there shall be no parking easement or parking rights over the Residual Property for benefit of the Property.

11. SELLER'S OBLIGATIONS AT THE CLOSING.

At the Closing, Seller shall deliver to Purchaser each of the following documents:

a. The Deed conveying fee simple marketable record title to the Property to Purchaser free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances whatsoever, excepting only those matters of record (the "Permitted Exceptions") as to which Purchaser has not given Seller notice of objection and which do not materially, adversely affect the marketability of title as determined Purchaser in its sole discretion, and which are acceptable to Purchaser in its reasonable discretion;

b. The Easement Agreement, executed by all parties necessary to convey marketable title to that portion of the Easement Area located on the Residual Property, together with a joinder or subordination executed by any mortgagees of that portion of the Easement Area located on the Residual Property, and appropriate resolutions and incumbency certificates establishing the authority of the grantors of the Easement with respect to to that portion of the Easement Area located on the Residual Property to grant the Easement, in a form and substance deemed reasonably necessary by Purchaser and Purchaser's title insurance company;

c. An Affidavit of Seller in form reasonably acceptable to Purchaser's title insurance company which has as its subject matter averments that, with respect to the Property, there are no rights or claims of parties in possession not shown by the public records and that there are no liens, or rights to a lien, for services, labor or materials furnished and/or imposed by law and not shown by the public records;

d. An Affidavit of Seller stating that Seller is not a "foreign person", as that term is defined in 7 C.F.R. Section 781.2 of the Rules and Regulations promulgated under the Agricultural Foreign Investment Disclosure Act of 1978 and is not required to file any reports under said Act and its supporting rules and regulations, and further stating that Seller is not a "foreign person", as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and otherwise in form and content sufficient to eliminate Purchaser's withholding obligations under said Section 1445 with respect to the sale and purchase of the Property;

e. If the Seller is a legal entity, a current appropriate resolutions and incumbency certificates establishing Seller's authority to consummate the transaction contemplated herein in a form and substance deemed reasonably necessary by Purchaser and purchaser's title insurance company;

f. Such information as is required for Purchaser and/or the closing attorney to file IRS Form 1099-S;

g. If the Seller is a legal entity, a current certificate of existence from the Secretary of State of South Carolina as to the existence of the Seller;

h. If the Seller is a legal entity, a current tax compliance letter from the South Carolina Department of Revenue;

i. If the Seller is a legal entity, copies of the organizational documents of the Seller; and

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j. Any and all other documents reasonably deemed necessary by Purchaser, purchaser's title insurance company, or other governmental requirements to consummate the transaction contemplated herein in accordance with the terms of this Contract.

12. PURCHASER'S OBLIGATIONS AT THE CLOSING.

At the Closing, Purchaser shall deliver to Seller the following:

a. The balance of the Purchase Price by certified check or wire transfer of immediately available U.S. funds;

b. The Easement Agreement, executed by all parties necessary to convey marketable title to that portion of the Easement Area located on the Property, together with a joinder or subordination executed by any mortgagees of that portion of the Easement Area located on the Property, and appropriate resolutions and incumbency certificates establishing the authority of the grantors of the Easement with respect to to that portion of the Easement Area located on the Property to grant the Easement, in a form and substance deemed reasonably necessary by Seller and Seller's title insurance company;

c. A closing statement, to be prepared by Purchaser's attorney, setting forth the allocation of closing costs, purchase proceeds, etc.;

d. If the Purchaser (or its assignee) is a legal entity, a certificate stating that the entity is, as of the date of Closing, in existence and in good standing in the state of its formation;

e. If the Purchaser (or its assignee) is a legal entity, such consents and authorizations as Seller may reasonably deem necessary to evidence authorization of Purchaser for the purchase of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Purchaser in connection with Closing; and

f. Such other documents as may be reasonable and necessary to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Contract.

13. NO MATERIAL CHANGES.

Seller hereby covenants and agrees that, from and after the Effective Date hereof until the date of the Closing, Seller shall not, without the prior written consent of Purchaser, (i) change or alter the physical condition of the Property or remove any trees, (ii) grant or otherwise create or consent to the creation of any easement, restriction, lien, assessment or encumbrance affecting the Property or any portion or portions thereof, (iii) pursue or consent to the pursuit of any rezoning of the Property or any portion or portions thereof (other than the required zoning change provided for in paragraph 16 below), or (iv) market the Property for sale to any other party.

14. POST INSPECTION PERIOD CHANGES.

If at any time after the Inspection Period and prior to the Closing there shall occur a change in the status of the zoning regulations applicable to the Property (other than the required zoning change provided for in paragraph 16 below, or in the conditions imposed by applicable governmental authorities for the grant of building permits, or in the availability of utilities, including water, sanitary sewer, storm sewer, natural gas, electricity and telephone, to service the Property (e.g., a sewer moratorium), any of which prohibits or inhibits, or would cause a delay of, the immediate development and use of Purchaser's intended use of the Property, then Purchaser shall have the right to postpone the final date for the Closing until the earlier of (i) the date which is ten (10) business days after the lifting or removal of the impediment to the immediate development and use of the Property, or (ii) the date which is sixty (60) days after the date for

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the Closing. If the impediment to the immediate development and use of the Property has not been removed or lifted on or before the last day of such postponement period, then Purchaser shall have the right to terminate this Contract by written notice to Seller, whereupon the Earnest Money shall be returned to Purchaser and this Contract shall be of no further force or effect.

15. CONTIGUITY WITH AND ACCESS TO BLUFFTON PARKWAY

Notwithstanding anything in this Contract to the contrary, Purchaser's obligation to complete Closing under this Contract is contingent upon the following:

a. Ingress Egress Road. Purchaser is able, at a price acceptable to Purchaser, to obtain on or before Closing either an easement or such title (including without limitation any necessary wetland crossing permit) as is necessary to construct, maintain, use, and operate an access road for ingress and egress to and from the Property and Bluffton Parkway and a permit from the South Carolina Department of Transportation or other applicable authority for a right-in/right-out curb cut into Bluffton Parkway in connection with such access road, at a location acceptable to Bi-Lo, LLC, as a potential anchor retail tenant of the Property, or any comparable successor potential anchor retail tenant of the Property, as applicable. Purchaser agrees that Seller may be involved in the negotiations and applications for the foregoing as and to the extent desired by Seller, and that such negotiations and applications shall be conducted in a manner reasonably acceptable to Seller.

b. Sight Line Requirements. Evidence satisfactory to Purchaser as to governmental plans for landscaping, buffers, walls, etc. along Bluffton Parkway, sufficient to insure that the Property will have adequate sight lines from Bluffton Parkway in accordance with customary retail anchor tenant requirements.

c. Termination Right. Notwithstanding anything in this Contract to the contrary, if the foregoing conditions precedent in this paragraph 15 are not satisfied on or before Closing (whether before or after the expiration of the Expiration Period), Purchaser may terminate this Contract by written notice to Seller. If Purchaser gives notice of termination to Seller pursuant to this subparagraph, then the Earnest Money shall be refunded to Purchaser, and the parties hereto shall have no further rights, duties or obligations under this Contract, except that Purchaser shall, within ten (10) days after such termination, deliver to Seller copies of all feasibility studies, surveys, engineering reports and all other information obtained by Purchaser with respect to the Property, and this obligation shall survive termination of this Agreement.

16. ZONING CONDITIONS AND OBLIGATIONS

Notwithstanding anything in this Contract to the contrary, Purchaser's obligation to complete Closing under this Contract is contingent upon the following conditions being satisfied prior to and at the Closing:

a. Zoning. This Contract is expressly contingent upon the rezoning of the Property for Purchaser's intended use as a commercial retail development as shown on the preliminary site attached as Exhibit B hereto. ~~The Seller covenants and agrees to cause such rezoning on or before Closing at Seller's sole cost and expense.~~* If necessary, the Closing Date shall be extended as required to secure the proper zoning without the payment of any additional extension fees. Application shall be made in the name of either Seller or Purchaser as required under governing law. If such zoning and/or annexation is not obtained on or before the date of Closing, then Purchaser may, at its option, cancel this Contract, and the Earnest Money, including extension payments, if any, shall be returned to the Purchaser.

b. Governmental Approvals. This Contract is expressly conditioned upon the receipt of (i) all approvals, permits and licenses issued by township, county, state, federal or other public authorities that are deemed necessary by Purchaser for its use of the Property as a commercial, retail facility, and

6-30-08

* Seller has and will continue with an application to have Property rezoned for commercial retail Development and will diligently pursue the rezoning. If the rezoning to commercial retail Development is denied, Purchaser may terminate this Contract.

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(ii) any and all subdivision approvals necessary to convey the Property to Purchaser (the "Governmental Approvals"). Seller shall, in all ways, fully cooperate with Purchaser in the pursuit of the Governmental Approvals including, without limitation, executing any application necessary to obtain each and every Governmental Approval. "Final Approval" of the Governmental Approvals shall be the date when all of the Governmental Approvals have been reviewed and finally approved by the appropriate governmental agencies. If Final Approval has not occurred on or before the Closing, Purchaser may, at its option, either (a) continue this Contract in full force and effect until the same has occurred without the payment of additional extension fees, (b) terminate this Contract, in which case this Contract shall be of no further force and effect, and Escrow Agent is instructed to return to Purchaser the Earnest Money, or (c) waive some or all parts of this contingency (with or without imposition of further conditions not involving additional dollar expense by Seller) at Purchaser's sole and absolute discretion, and proceed with the Closing.

c. Termination Right. Notwithstanding anything in this Contract to the contrary, if the foregoing conditions precedent in this paragraph 16 are not satisfied on or before Closing (whether before or after the expiration of the Expiration Period), Purchaser may terminate this Contract by written notice to Seller. If Purchaser gives notice of termination to Seller pursuant to this subparagraph, then the Earnest Money shall be refunded to Purchaser, and the parties hereto shall have no further rights, duties or obligations under this Contract, except that Purchaser shall, within ten (10) days after such termination, deliver to Seller copies of all feasibility studies, surveys, engineering reports and all other information obtained by Purchaser with respect to the Property, and this obligation shall survive termination of this Agreement.

17. GENERAL CONDITIONS TO CLOSING.

The following conditions shall be satisfied on or before the Closing Date and Seller shall duly perform all obligations required to be performed by them to satisfy each condition, or the Purchaser shall have no further obligations or responsibilities under this Contract, and this Contract shall be, at the option of Purchaser, null and void. Purchaser may waive any and all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Purchaser of any of its other rights or remedies at law or equity if Seller shall be in default under this Contract.

a. All conditions precedent to Purchaser's obligations set forth in this Contract shall have been satisfied, including without limitation those set forth in the paragraph 15 relating to the Bluffton Parkway and paragraph 16 relating to the required zoning change.

b. Seller shall have performed and complied with all obligations conditions contained in this Contract to be performed by Seller;

c. There shall have occurred no material adverse change in the physical condition of the Property, the presence or absence of hazardous or regulated materials on the Property, the status of title to the Property, or the scope or delineation of wetlands on the Property, between the end of the Inspection Period and the Closing Date; and

d. No portion of the Property shall have been condemned.

e. Seller's representations and warranties contained in this Contract, including without limitation those set forth in Paragraph 18 of this Contract shall be true and correct at Closing;

f. Seller shall not have made an assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature or been adjudicated as bankrupt or filed a petition in voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors

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under the federal bankruptcy law or any other similar law or statute of the United States or any state, and no such petition shall have been filed against it; and

g. Seller shall have executed and delivered all instruments and documents required by this Contract to be delivered by Seller; provided, however, that the Seller may condition the delivery of the Deed upon the simultaneous payment of the Purchase Price by Purchaser, and may tender delivery of the limited warranty deed subject to that condition, without breaching the terms of this Contract.

18. SELLER'S REPRESENTATIONS AND WARRANTIES.

To induce Purchaser to purchase the Property from Seller, Seller represents and warrants to Purchaser to the best of Seller's knowledge as follows:

a. There are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, pending or threatened against Seller or the Property, or any portion or portions thereof, or relating to or arising out of the ownership of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, including, without limitation, any condemnation or eminent domain proceedings.

b. No person, firm, corporation or other legal entity whatsoever has any right or option whatsoever to acquire the Property or any portion or portions thereof or any interest or interests therein.

c. Seller has not received any notice that the Property or any portion or portions thereof is or will be subject to or affected by any special assessments, whether or not presently a lien thereon.

d. Seller is not in violation or breach of any ordinance, code, law, rule, requirement or regulation applicable to the Property.

e. Seller has not used or operated the Property or any portion of the Property in any manner for the storage, use, treatment, manufacture or disposal of any hazardous materials or regulated substance, and to the best of Seller's knowledge, neither the Property nor any portion of the Property has ever been used or operated for the storage, use, treatment, manufacture or disposal of any hazardous materials or regulated substances.

f. To the best of Seller's knowledge, there are not now and never have been underground storage tanks located on the Property.

g. To the best of Seller's knowledge and belief, there are no actions, suits, proceedings or proposals of any kind or nature whatsoever pending or being considered relating to any proposed changes to the highways, roadways and/or access ways adjoining or adjacent to the Property, including, without limitation, the widening thereof, construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts, proposed or pending installation or removal of traffic lights or any other changes or proposed changes in traffic patterns or management of traffic flow thereover.

h. Any and all actions, if any, required by Seller to authorize the execution and delivery of this Contract and the consummation of the transaction contemplated herein have heretofore been taken, and this Contract shall constitute a valid and binding agreement, enforceable against Seller in accordance with the terms hereof.

19. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

To induce Seller to sell the Property to Purchaser, Purchaser represents and warrants to Seller to the best of

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Purchaser's knowledge as follows:

a. Purchaser is duly created and validly existing pursuant to the laws of the jurisdiction of its organization and is duly qualified to do business in the jurisdiction in which the Property is situated if and to the extent that such qualification is required.

b. Purchaser has the capacity and authority to execute this Contract and perform the obligations of Purchaser under this Contract. All action necessary to authorize the execution, delivery and performance of this Contract by Purchaser has been taken, and such action has not been rescinded or modified. Upon the execution of this Contract, this Contract will be legally binding upon Purchaser and enforceable against Purchaser in accordance with all of its provisions. If Purchaser (or its assignee) is a legal entity, the person signing this Contract on behalf of Purchaser has been duly authorized to sign and deliver this Contract on behalf of Purchaser.

c. Purchaser is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency that would limit or restrict Purchaser's right to enter into and carry out this Contract.

d. Neither the execution of this Contract nor the consummation of the transactions contemplated herein by Purchaser will constitute a breach under any contract or agreement to which Purchaser is a party or by which Purchaser is bound or affected.

e. No consent or approval of any third party (including, without limitation any governmental authority) is or was required in connection with Purchaser's execution and delivery of this Contract or its consummation of the transaction contemplated herein.

20. CLOSING COSTS:

Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, all of the cost of the preparation of the Deed and customary Seller affidavits and certifications, any deed transfer taxes and Purchaser shall pay, on the Closing Date, the cost of any title insurance policies or commitments, the cost of a title search or abstract of the Property, all recording costs, the cost of any inspections and any other customary charges and costs of Closing. Except as otherwise provided herein, each party shall pay its own attorneys' fees.

21. BROKERAGE COMMISSION:

Purchaser shall pay a real estate commission of 3.5% to Engard Real Estate Company at Closing. Except for the foregoing, no Broker's Fees (as hereinafter defined) have been paid or are due and owing to any person or entity by the Seller and the Purchaser. As used herein, **"Broker's Fees"** shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property including real estate commissions, selection fees, nonrecurring management and startup fees, development fees or any other fee of similar nature. Seller and Purchaser, each hereby agrees to indemnify and hold harmless the other from and against any and all claims for Broker's Fees or similar charges with respect to this transaction other than those set forth above, arising by, through or under the indemnifying party, and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this paragraph. This indemnification agreement of the parties shall survive the Closing.

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22. MISCELLANEOUS:

a. This Contract constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings and agreements heretofore and between these parties are merged herein. No representation, promise or inducement not included herein shall be binding upon any party hereto. The terms "Seller" and "Purchaser", shall be construed in the plural and the appropriate gender shall be read into all pronouns used herein to reference any of said parties whenever the sense of this Contract so requires.

b. This Contract may not be changed orally, but only by an agreement in writing signed by Purchaser and Seller.

c. Notices given pursuant to this Contract shall be in writing, delivered in person or by overnight courier service or by certified mail, return receipt requested, addressed to the mailing address given herein. The time of postmark shall be deemed the time of receipt of mailed notices.

d. The provisions of this Contract shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors and assigns and the legal representatives of their estates, as the case may apply.

e. The word "Closing" or words of similar import as used in this Contract shall be construed to mean the originally fixed time and Closing Date specified herein or any adjourned time and date provided herein or agreed to in writing by the parties.

f. Seller and Purchaser agree that such papers as may be legally necessary to carry out the terms of this Contract shall be executed and delivered by such parties at Closing.

g. Seller shall be responsible for all utility bills, if any, incident to Property as of the date prior to Closing.

h. All agreements herein which must, by implication or necessity, survive the Closing, shall be deemed to so survive as the sense of this Contract requires and will be noted by separate agreement at Closing.

i. Possession of Property shall be granted to Purchaser upon Closing.

j. Purchaser shall have the right to assign this Contract to any person or persons, partnership, corporation, limited liability company, or any other entity, including without limitation an entity to be formed hereafter, and the sale contemplated by this Contract shall be consummated in the name of such assignee and the assignment may be made by the Purchaser at any time prior to Closing.

k. Purchaser hereby discloses that Thomas J. Ravenel and Renee Brookinton, principals of the Purchaser, are Licensed South Carolina Real Estate Brokers.

l. The term "Effective Date" shall mean the date upon which this Contract has been fully executed by Seller and Purchaser and each of Seller and Purchaser has received a fully executed counterpart hereof.

23. BREACH BY SELLER.

If Seller fails to comply with or perform any of the covenants, agreements and obligations to be performed

by Seller under the terms and provisions of this Contract, then, at Purchaser's option: (i), Purchaser shall be entitled to sue for specific performance; or (ii) Purchaser shall be entitled, upon giving written notice to Seller as herein provided, to terminate this Contract and to receive the return of the Earnest Money and receive reimbursement from Seller for Purchaser's actual out-of-pocket due diligence costs pertaining to this transaction (including attorneys' fees) (collectively, "Purchaser's Due Diligence Costs"); provided, however, such reimbursement obligation shall in no event exceed Ten Thousand and No/100 Dollars ($10,000.00), and such payment shall be Purchaser's full liquidated damages for such default, and the parties hereto acknowledging that it is impossible to more precisely estimate the damages to be suffered by Purchaser upon Seller's default. Upon any such termination pursuant to option (ii) the above, all Earnest Money shall be immediately returned to Purchaser, Seller shall pay Purchaser's Due Diligence Costs within ten (10) days of receipt of a written accounting thereof, whereupon this Contract and all rights and obligations created hereunder shall be deemed of no further force or effect.

24. BREACH BY PURCHASER.

If Purchaser fails to purchase the Property in accordance with the terms of this Contract, then Seller shall, upon written notice to Broker and Purchaser specifying the default of Purchaser hereunder, be entitled to obtain and retain the Earnest Money as full liquidated damages. Under no circumstances shall Seller be authorized to (i) seek any additional damages, (ii) seek specific performance of this Contract, or (iii) seek any other remedy against Purchaser, and the sole remedy of Seller be limited to the delivery to Seller of Earnest Money.

THIS AGREEMENT has been executed first by R&B Partners, LLC and shall be deemed a continuing offer by said party to purchase or sell, as the case may be, until Monday, ~~June 16, 2008~~ June 30, 2008 at 5:00 p.m. If executed and unaltered acceptance hereof is not returned to the address noted herein of said offer by said time, such offer shall be deemed withdrawn.

6-30-08

[Signatures on Next Page]

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Signature Page to Real Estate Sales Contract.

Signed, sealed and delivered in the presence of:

As to Purchaser

Witness

Date by Purchaser: June 10, 2008

R&B PARTNERS, LLC

By:
Renee R. Brookinton
It's: Manager
176 Croghans Spur
Suite 202
Charleston, SC 29407

As to Seller

Witness

Witness

Date by Seller: 6-26-08

BETTY V. ROLLER
c/o Simon Fraser
FRASER & ALLEN, LLC
10 Palmetto Business Park, Suite 102 (29928)
P.O. Box 5098
Hilton Head Island, SC 29938

WILBERT ROLLER, JR.
c/o Simon Fraser
FRASER & ALLEN, LLC
10 Palmetto Business Park, Suite 102 (29928)
P.O. Box 5098
Hilton Head Island, SC 29938

Exhibit A

Preliminary Subdivision Plan

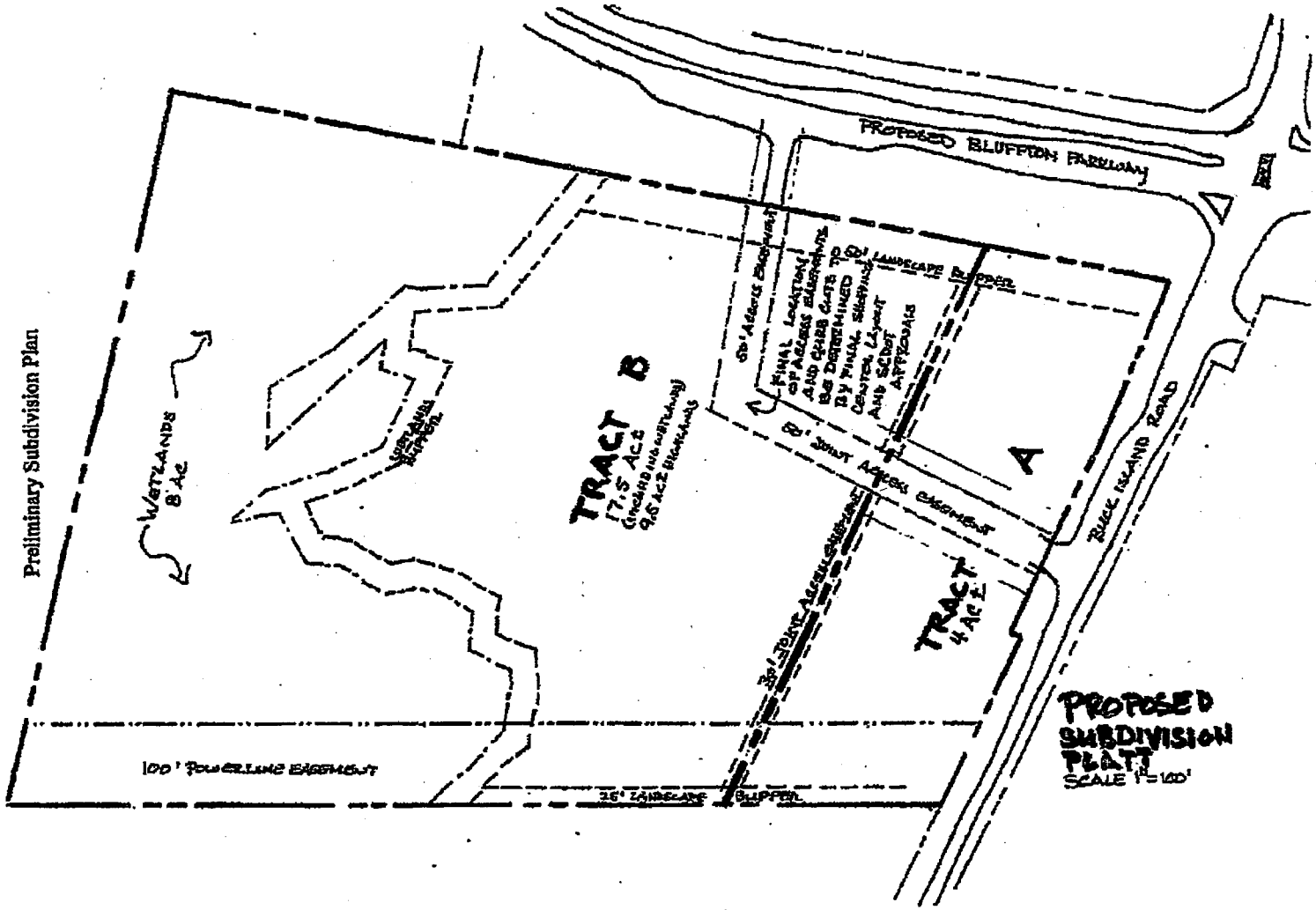


Exhibit B
Preliminary Site Plan

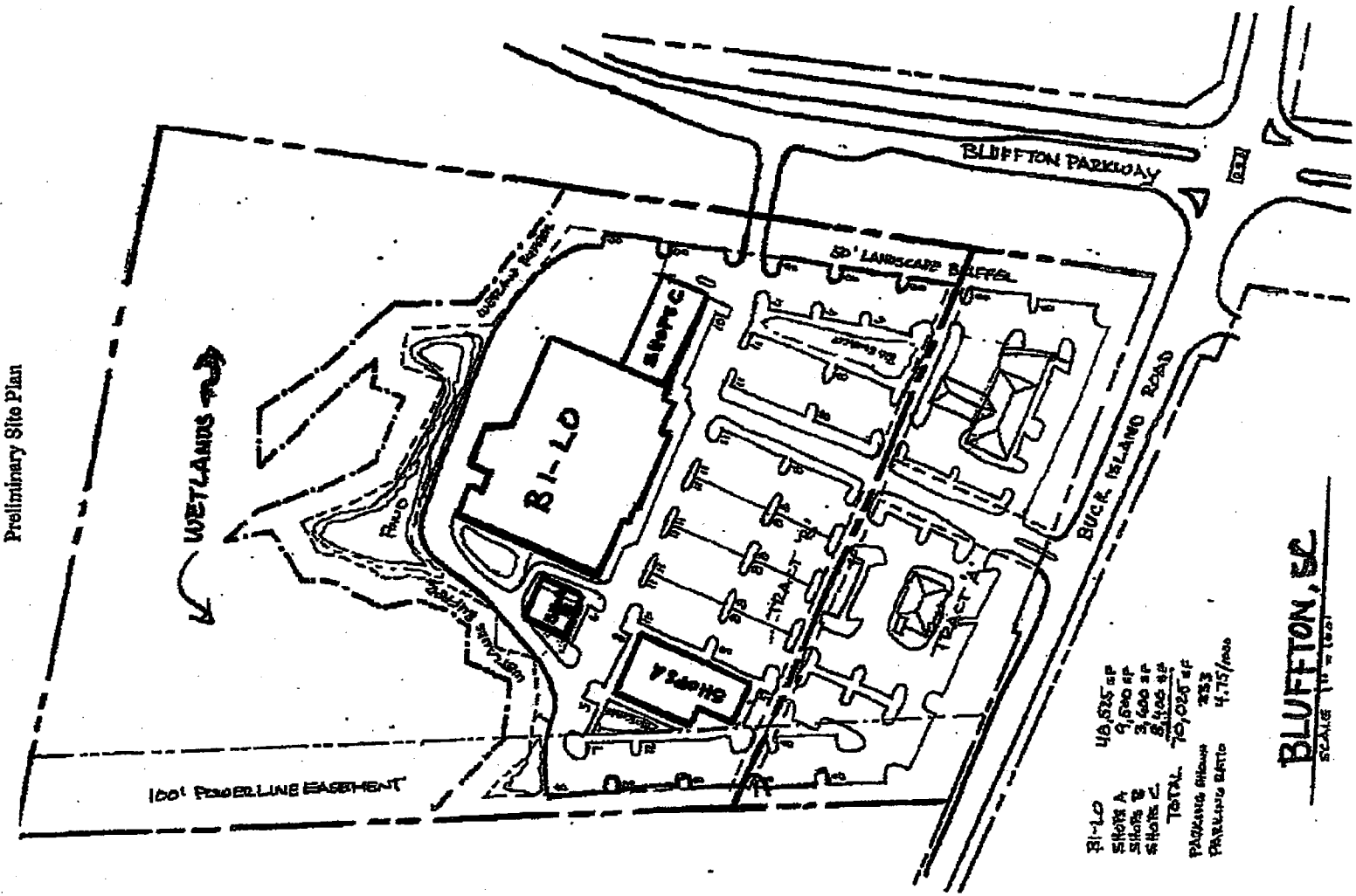
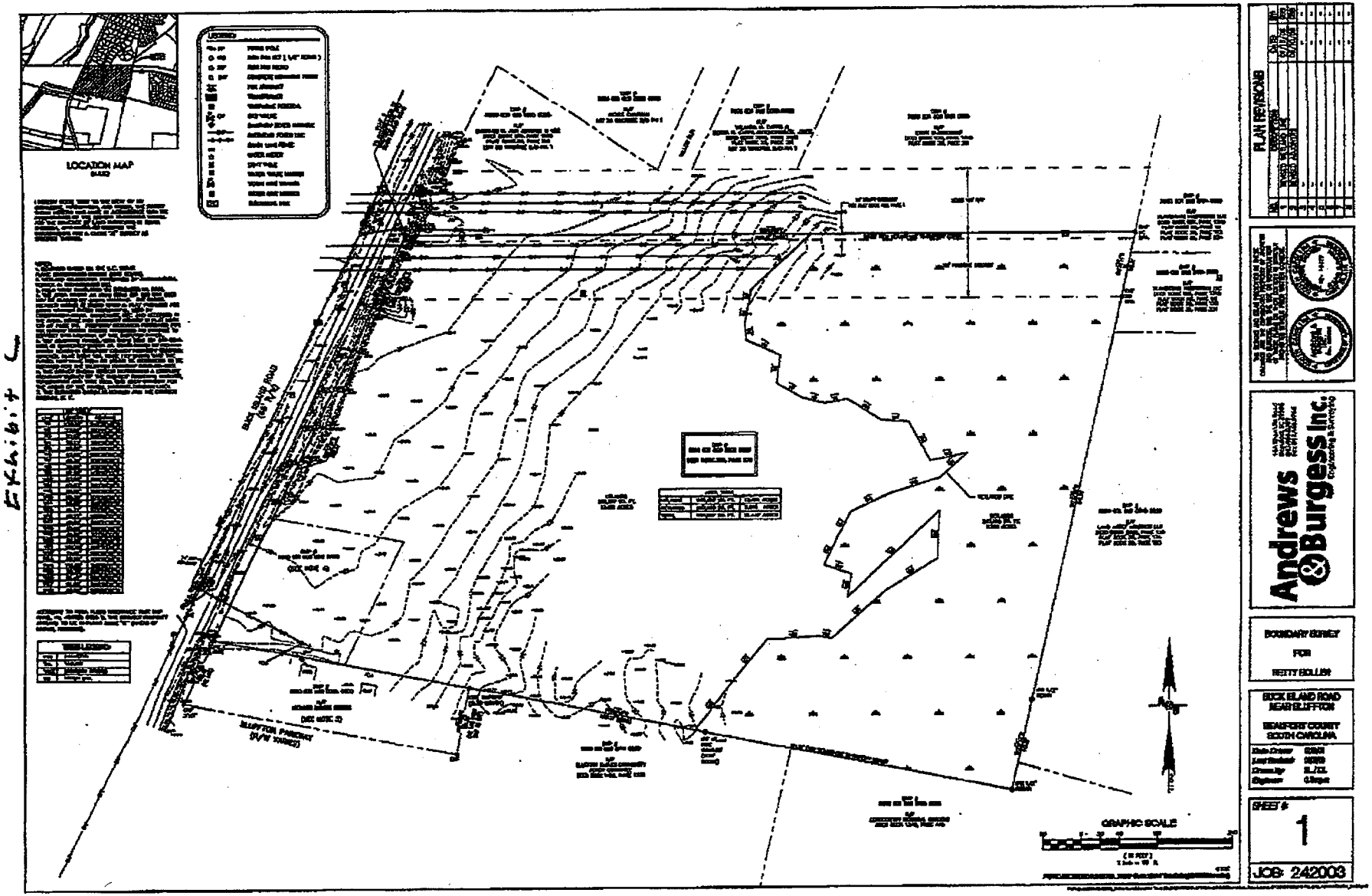


Exhibit C


LOCATION MAP
PLAN REVISIONS
Andrews & Burgess Inc.
BOUNDARY SURVEY
FOR
BUCK ISLAND ROAD
NEAR BLUFFTON
BEAUFORT COUNTY
SOUTH CAROLINA
SHEET #
1
JOB: 242003
GRAPHIC SCALE

Raveneł
DEVELOPMENT CORPORATION

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June 30, 2008

Mr. Simon Fraser
Fraser and Allen, LLC
10 Palmetto Business Park
Suite 102
Hilton Head Island, SC 29928

Re: Contract on approximately 17.5 acre site located near the northeast corner of Buck Island Road and the Bluffton Parkway, Bluffton, SC

Dear Simon:

Enclosed, please find one copy of the executed contract of the above referenced property and an earnest deposit check of ten thousand and no/100's dollars ($10,000.00) to be held in your firm's escrow account. As discussed, the due diligence period will begin on July 1st, 2008.

Please keep me abreast of any and all conversations in regard to the rezoning of this tract.

Most sincerely,

Renée Brockinton

Mrs. Renee Brockinton

P.O. Box 420
Charleston, SC
29402-0420
843-723-6605
Fax 843-723-6635
www.raveneldevelop.com

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Appraisal of:

Beaufort County Parcel R610 031 000 0002 0000

For

Mr. Thomas R Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Ave
Charleston, SC 29405-7644

Effective: September 26, 2016

By

Halpin Appraisal

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Halpin Appraisal

19 Anchorage Point
Hilton Head Island, SC 29928
843-341-5022 phone
halpinappraisal@gmail.com

September 26, 2016

Mr. Thomas R Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Ave
Charleston, SC 29405-7644

Re: Wilbert Roller; Beaufort County Parcel R610 031 000 0002 0000

Dear Mr. Goldstein:

Pursuant to your request, we have evaluated the referenced property, Beaufort County SC tax assessor parcel R600-031-000-0002-0000; researched the applicable market; and have prepared the attached appraisal report. The purpose of this appraisal is to estimate the market value of the noted property pursuant to its estimated highest and best use; the function is for use in legal proceedings. This report considers the physical analysis of the land, a location analysis of the market area, and an economic analysis of the market for properties like the subject.

The "Appraisal Assumptions and Limiting Conditions" and "Certification", are customary for this type of assignment, and are included in the report. All value estimates are subject to these items, which should be reviewed prior to use of, or reliance upon, the report. This letter of transmittal precedes the "Narrative Appraisal Report - Complete Appraisal", which describes the approaches to value utilized and the resulting conclusions. The attached full report contains the pertinent data, reasoning, and opinions leading to the value estimates. This report is intended to comply with the current regulations of the Federal Government, as furnished to, and published by, the major Professional Appraisal Groups, as of the effective appraisal date.

The subject land is vacant. The appraisal considers the referenced land with no building or site improvements but with uses consistent with the current Residential General zoning and the estimated Highest and Best Use of the land.

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Pursuant to this estimated Highest and Best Use of the subject property and considering the market data discovered and analyzed, the estimated "as is" market value of the noted property, as of September 26, 2016 is:

Two Million Fifty Thousand Dollars:

$2,050,000.00

The market value estimate and all other opinions expressed in the report result from pertinent market data analysis; however, they may not occur, in part or at all, and are not a represented fact or guarantee of any kind and should not be construed as such.

This appraisal evaluates the value of the property as currently zoned. When the Roller's acquired the property, it was zoned for commercial use, and if that zoning classification were restored, we would have to perform a separate analysis, but the value would be higher than as it is currently zoned."

Sincerely,

Respectfully submitted,

Michael P Halpin
SC Certified Residential Appraiser CR1661

Gary Beaver
SC Certified General Appraiser CG1463

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SUMMARY OF SALIENT DATA

Property Assessor Key#:	00496323
County Map Number:	R600-031-000-0002-0000
Site Size:	21.447 acres
Location:	On Buck Island Road, about .75 miles south of US 278, aka Fording Island Road and just north of Bluffton Parkway
Access:	Buck Island Road
Current Zoning:	Residential General
Flood Zone:	FEMA Map #4500250085D, dated 09/29/86, Zone C
Purpose of Appraisal:	Estimate Market value "as is"
Function of Appraisal:	For use in a legal proceeding
Property Interest:	Fee simple estate
Property Ownership:	D & R Investments Properties Deed book 3502, page 1361
Consideration:	$421,000.00 (Foreclosure sale)
Grantor:	Betty V Roller c/o Carolina Estates
Prior Transfer:	01/01/80
Marketing Time:	1 year or less
Exposure Time:	1 year or less
Market Value Estimate:	$ 2,050,000.00

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CONTINGENT AND LIMITING CONDITIONS

1. The author/appraisers liability extends only to stated client, not subsequent parties or users, and is limited to the fee amount paid to the author/appraiser. Acceptance of, and/or use of, this appraisal report by the stated client or any third party, constitutes acceptance of this and the following conditions of its use.

2. This analysis and appraisal is being prepared at the direction and for the benefit of the client: Thomas R Goldstein, esq., the court, and/or parties designated by this beneficiary, with the intended use of estimating its market value for use in a court proceeding. No other party, agent, attorney, person, or organization may use this report unless the author/appraiser's written consent has been given.

3. This intent of this Appraisal Report is compliance with the reporting requirements of Standard Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP) for an Appraisal Report. It:

   (i) states the identity of the client, unless the client has specifically requested otherwise; state the identity of any intended users by name or type;

   (ii) states the intended use of the appraisal;

   (iii) summarizes information sufficient to identify the real estate involved in the appraisal, including the physical, legal, and economic property characteristics relevant to the assignment;

   (iv) states the real property interest appraised;

   (v) states the type of value and cites the source of its definition;

   (vi) states the effective date of the appraisal and the date of the report;

   (vii) summarizes the scope of work used to develop the appraisal;

   (viii) summarizes the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

   (ix) states the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal;

   (x) when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;

   (xi) clearly and conspicuously
   * states all extraordinary assumptions and hypothetical conditions; and
   * states that their use might have affected the assignment results; and

   (xii) includes a signed certification in accordance with Standards Rule 2-3.

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4. Title to the property is assumed to be good and marketable unless otherwise stated in the report. The sales history of the subject property required by USPAP does not reflect a title search. A title search is beyond the scope of this appraisal.

5. The property is appraised free and clear of any or all mortgages, liens and encumbrances (except typical utility and access easements, governmental zoning, and restrictive and deed covenants) unless otherwise stated in this report.

6. The appraisal and all opinions expressed (including the opinion of estimated market value) presume responsible and competent property management and ownership unless otherwise stated.

7. This report presumes illustrative material and all information provided by others included to be substantially accurate; however, the expressed or implied accuracy has no guarantee unless specifically stated in this report.

8. All engineering is assumed to be correct. Any plot plans, drawings, sketches and illustrative material included in this report may show approximate dimensions and are provided to assist the reader in visualizing the property. No guarantee as to accuracy is expressed or implied unless otherwise stated in this report. We have made no survey for the purpose of this report.

9. This report assumes that no soil or subsoil problems, utility deficiencies, noxious weeds, insect infestation, methane gas, lead in water or paint, toxic waste, Radon - a gas which comes from the natural breakdown (radioactive decay) of uranium, or any environmental hazard of any nature (discovered or undiscovered) are present on, or in any way affect the subject priority. We are unqualified to recognize such conditions or hazards. The client and authorized report recipients, if any, with questions or concerns about such impacts have the option, at their discretion and cost, to obtain competent advice and protect their interests, as they deem prudent, before any involvement in, or with, the appraised property.

10. We assume no responsibility for arranging engineering studies or payment of fees for consultants, studies, or any advice concerning environmental issues, planning, entitlements, zoning matters, surveys, engineering, and other services not specifically included in the written scope of this appraisal report.

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CONTINGENT AND LIMITING CONDITIONS, continued

11. The property being appraised is presumed to comply with all applicable zoning and use regulations and restrictions, and that any required development permits, other legislative or administrative permits needed from any local, state, or national governmental, or private entity or organization, licenses, and/or certificates of occupancy can be obtained or renewed for any use on which the value estimates contained in this report are based.

12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations, news media, sales, or other media without the written consent and approval of the author, particularly as to value conclusions, the identity of the author/appraiser, or any reference to licensing held by the author/appraiser.

13. The scope of the appraisal services contemplated in this report is limited to the report. Other services, including, but not limited to, testimony, deposition, or any court appearance with reference to this property, by reason of this report, is not included unless other specific arrangements for these services have been made. Such services are available, if needed, at an additional fee.

14. Value estimates presume typical marketing means and conditions.

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CERTIFICATE OF APPRAISAL

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.

2. I have personally viewed the subject property on September 26, 2016.

3. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions; they are my personal, unbiased professional analyses, opinions, and conclusions.

4. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

5. Neither my compensation, nor employment, is contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

6. My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute and also complies with the requirements of the State of South Carolina for state certified real estate appraisers. This appraisal also conforms to the Uniform Standards of Professional Appraisal Practice ("USPAP") adopted by the Appraisal Standards Board of the Appraisal Foundation.

7. I do not authorize the out-of-context quoting from, or partial reprinting of, this appraisal report. Further, neither all, nor any part, of this appraisal report shall be disseminated to the public by the media for public communication without the prior written consent of the author.

8. The use of this report is subject to the requirements of the State of South Carolina, relating to review by the commission.

9. The value conclusion, as well as other opinions expressed herein, is not based on a requested minimum value, a specific value, approval of a loan, or the occurrence of any particular event.



Michael P. Halpin
SC Certified Residential Appraiser CR1661

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CERTIFICATE OF APPRAISAL

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.

2. I have personally viewed the subject property on various occasions; however, none was in conjunction with this report.

3. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions; they are my personal, unbiased professional analyses, opinions, and conclusions.

4. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

5. Neither my compensation, nor employment, is contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

6. My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute and also complies with the requirements of the State of South Carolina for state certified real estate appraisers. This appraisal also conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation.

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9. The value conclusion, as well as other opinions expressed herein, is not based on a requested minimum value, a specific value, approval of a loan, or the occurrence of any particular event.

Gary Beaver,
South Carolina Certified General Appraiser CG1463

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DEFINITIONS

Appraisal:

An appraisal is the act or process of developing an opinion of value; an opinion of value of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

As Is Value:

The term "as is" value means the appraised property is evaluated based on its status and physical condition (including entitlements) existing on the appraisal effective date; no changes to the property, hypothetical, or contingent conditions are contemplated.

Client:

An appraisal client is the party or parties who engage an appraiser (by employment or contract) in a specific assignment. The client identified by the appraiser in an appraisal, appraisal review, or appraisal consulting assignment (or in the assignment work-file) is the party or parties with whom the appraiser has an appraiser-client relationship in the related assignment, and may be an individual, group, or entity.

Cost Approach:

A set of procedures in which an appraiser derives a value indication by estimating the current cost to reproduce or replace the existing structure, deducting for all accrued depreciation in the property and adding the estimated land value.

This approach is "... *reasoning that a purchaser will not normally pay more for a property than the cost to purchase comparable land and have improvements of comparable utility constructed on that land without undue delay.*

To apply the cost approach an appraiser estimates the cost of reproducing or replacing the existing structure with a new building, deducts an appropriate amount for the loss in value caused by accrued depreciation in the existing structure, and then adds the depreciated value of the improvements to an estimate of the value of the land".

Direct Sales Comparison Approach:

The approach in appraisal analysis basis is the concept that an informed purchaser would pay no more for a property than the cost of an existing property with the same utility. The approach is applicable when an active market provides sufficient reliable verifiable data. It is unreliable or questionable in inactive markets, when meaningful comparable sales data is unavailable, and absent reasonable sales data verification.

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This is the *"approach through which an appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison and making adjustments, based on the elements of comparison, to the sales price of the comparables".*

Discounted Cash Flow (DCF) Analysis:

A set of procedures where an appraiser specifies the quantity, variability, timing and duration of periodic income, as well as the quantity and timing of reversions, and discounts each to its present value at an estimated yield rate.

Discounting:

The procedure used to convert periodic income and reversions into present value; based on the assumption that benefits received later are worth less than the same benefits received now.

Discount Rate:

The discount rate is the return commensurate with the perceived risk used to convert future payments of receipts to present value.

Economic Base:

Externally stimulated trade is the economic base, and is *"the economic activity of a community to attract income from outside its borders".* The economy of any given area includes the commerce that occurs within the area, but originates from outside its boundaries and its traditional internal trade (normal exchange of goods and services that occurs within any community).

Exposure Time:

Exposure time precedes the effective appraisal date; it reflects the estimated offering time of the appraised property on the market prior to its hypothetical market value sale on the effective appraisal date. This estimate is a retrospective opinion based on an analysis of past events assuming a competitive and open market.

The reasonable exposure concept encompasses adequate, sufficient, and reasonable time and adequate, sufficient, and reasonable effort.

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Fee Simple Interest:

Absolute ownership unencumbered by any other interest or estate; a fee simple ownership is subject only to the limitations of eminent domain, escheat, police power and taxation. A fee simple estate is an inheritable estate.

Final Value Estimate:

The conclusion (reconciliation) resulting from the respective appraisal valuation methods pursuant to the definition of value sought (i.e. market value, investment value, insurance value, etc.).

Gross Retail Value Estimate:

Gross Retail Value is the *"price/value likely realized from the individual, immediate sale of a specific property to a ready, willing, and able purchaser who can close its sale as of the appraisal effective date (in which case there would be no protracted marketing, holding, carrying, or closing costs)"*. The Gross Retail (Market) Value presumes a single retail sale within the estimated marketing time.

Highest and Best Use:

The Highest and Best Use is the reasonable, probable, and legal use of vacant land or improved property that is physically possible, appropriately supported, financially feasible and which results in the highest value.

Income Capitalization Approach:

The Income Approach is essentially the *"appraisal procedure that converts anticipated benefits (money or amenities), of the property ownership into a value estimate."*

This approach is a set of procedures that indicate value of an income property by converting anticipated benefits (cash flows and reversions) into property value; by:

Capitalizing one year income expectancy or an annual average of multiple year income expectancies at a market-derived capitalization rate or a capitalization rate that reflects a specific income pattern, return-on-investment, and change in value of the investment; or, discounting annual cash flows for the holding period and the reversion based on a specified yield rate".

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Legal Description:

The Legal Description identifies real property according to a system established or approved by law and enables the property to be located and identified.

Marketing Time:

The reasonable marketing time is an opinion of the reasonable time needed to sell real or personal property at the concluded market value during the period immediately after the effective appraisal date. The reasonable marketing time is a function of price, time, use, and, anticipated market conditions, like changes in the cost and availability of funds, and is not an isolated opinion of time alone.

Market Value:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

https://www.fanniemae.com

Neighborhood:

Neighborhoods are "a group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises". A neighborhood includes various reasonable alternatives for any of its properties. Depending upon the nature of the property, its neighborhood could be local, confined to a few blocks; or, conversely, of a regional or national scale extending beyond county and state boundaries.

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Scope of the Appraisal:

The appraisal scope encompasses the collection, confirmation, analysis, and reporting of the type and extent of research and analyses in an assignment.

Uniform Standards Of Professional Appraisal Practice (USPAP)

The USPAP is a code of professional standards, promulgated (declared officially and formally as a governing rule, law or decree) by the Appraisal Foundation, that appraisers belonging to certain appraisal organizations are expected to follow in preparing appraisal reports.

Zoning:

The public regulation of the character and intensity of real estate uses through police power; accomplished by establishing districts or areas with uniform restrictions relating to improvements, structure heights, areas, bulk, density of population and other limitations of the use and development of private property.

Please note: The noted definitions address some of the basic and more common real estate words and terms. Please consult such sources as The Dictionary of Real Estate, published by the Appraisal Institute or websites like www.realestatewords.com/ or www.propertywords.com/ for other definitions.

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USPAP COMPLIANCE

Appraisal Report:

This document is an appraisal report intended to comply with all requirements of the Uniform Standards of Professional Appraisal Practice. It considers supporting documentation concerning the data, reasoning, and analyses, whereby the opinions of value estimates result. This market data is presented in summary form herein. The information contained in this report is specific to the needs of the client and for the intended purpose, function, and use stated below.

Appraisal Purpose and Function:

The appraisal purpose is to estimate the market value of the subject, as of the appraisal effective date, September 26, 2016. The intended report user and client is Thomas R. Goldstein; Belk, Cobb, Infinger & Goldstein, P.A. and the court. The intended appraisal function is for use in a legal matter. The stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report format, and Definition of Market Value, governs the report and resulting opinion of value estimate.

Property Rights Appraised:

The property rights appraised in this report are the leased fee estate; the present worth of anticipated benefits expected to accrue from long-term property ownership. This is without limitation to the fee to any particular class of heirs or restrictions, except any existing easements (recorded or unrecorded) and applicable land use regulations.

Scope of the Appraisal:

The "Scope of the Appraisal" encompasses the collection, confirmation, analysis, and reporting of the data on which the report is based. This is pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Foundation.

The Scope of work includes, but is not limited to, the following factors:

- The degree to which the property is inspected or identified
- The extent of research into applicable physical and economic factors
- The extent of data research
- The type and extent of analysis applied to arrive at opinions or conclusions; and
- The use and purpose of the report

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USPAP COMPLIANCE, continued

Public records identified the subject property and ownership history. Public records provide sales confirmations. The flood data source is the FEMA web site. Non-confidential data from past appraisal files; on-site observations; and data provided by the client and market participants are additional data sources; all of which the report presumes to be reliable.

Market activity and influences determined the reasonable geographic market area and reasonable alternative properties. The appraisal purpose and function, and the appraised property features and status determined the applicable appraisal valuation methods. The report process included detailed market research and data analysis. The report makes all efforts to comply with the USPAP.

The Highest and Best Use considers the estimated value of the subject property. This analysis considers the current and/or prospective status; and the physical possibility, legality, economic feasibility, and maximum productivity of potential uses. This analysis considers reasonable alternative land uses with the highest and best use of the property being that use resulting in the highest return to the land.

Valuation Approaches Described:

Real estate valuation utilizes three distinct methods; the cost of a similar, readily available property (Cost Approach); the value of alternatives to the subject (Direct Sales Comparison Approach); and the value based on the capitalized net operating income (Income Approach). The type property appraised and specific appraisal purpose and function determine the applicable techniques.

The Cost Approach is effective for special use, recent, or proposed improved properties; however, this approach is usually invalid for older dated buildings as their reproduction is unlikely. This approach considers the replacement or reproduction costs plus the "as vacant" site value estimate. The Cost Approach does not apply to a vacant land appraisal where there are no contemplated building improvements and is not valid for this report.

The Direct Sales Comparison Approach compares alternative properties (those with reasonable appeal and utility) as the subject property; its basis is the substitution principle (the concept that an informed purchaser acting prudently will pay no more for a property than the cost of a readily available alternative with like utility). This comparison process requires reasonable market activity of similar properties of the specific property type appraised to provide reliable results. Otherwise, this process tends to produce conjecture and speculation and may not be valid in those cases.

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USPAP COMPLIANCE, continued

Relevant market data indicates the reasonable market area geography; market areas are not arbitrary. Reasonable market areas are often larger geographically it the analysis of special purpose, larger, and unique properties than for those more basic. Geographic market areas considered in an appraisal should be sufficiently broad and include adequate reasonably similar data that provides meaningful bases in all cases.

The Income Approach evaluates a property based on its estimated periodic, recurring net operating income and yield (an equity value change during the estimated ownership term). This approach is most relevant for investment properties and is not usually applicable to non-income consumer properties and vacant land and is not applicable in this report.

Each valuation approach considers the appraised property from a distinct perspective and provides a value indication based on a theory independent of the other approaches. Relevance of these value indications relate to their applicability to the appraisal purpose and function based on the data quantity and quality considered; and the nature of the appraisal assignment and objective. The most relevant value indication(s) is (are) given the most credence and the reconciled result is generally reported as the "Gross Retail Value" or "Market Value" estimate.

This report addresses these appraisal valuation methods relative to the subject. Generic comments appear in blue text with those specific to the subject in black text.

The Cost Approach is (not applicable to vacant land appraisals) relevant for improved properties; special use; and, unique properties) and is most reliable when the report considers recent, new, and/or proposed improvements with current design and construction preferences. This approach initially considers the "as vacant" land value, evaluated by valuation methods including;

- Direct sales comparison of vacant land parcels; the most similar vacant land sales (and offerings) available are considered for their relevance to the subject. *(The Direct Sales Comparison Approach comments further describe this comparison process).*

- Allocation; with the site value estimated based on the typical ratio of land value to the total property value for the subject type property;

- Extraction; with land values estimated from improved property sales deducting the estimated contribution of improvements from the total value;

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USPAP COMPLIANCE, continued

- Subdivision Development; where the estimated land value equates to the amount at which the underlying land could be purchased, the development built, all costs paid; and an adequate return to warrant the development realized. Development costs (including entrepreneurial and investment returns) are deducted from the total gross estimated retail value of the completed hypothetical development inventory; then the remainder is discounted (since the anticipated revenue from sales that occur later in the marketing term have less worth than more immediately received sales proceeds) to reflect the estimated marketing time for the inventory sellout.

- Residual Analysis: a concept akin to the Subdivision Development analysis; the land value estimate is the discounted amount remaining after deduction of all estimated costs (including applicable fees and investment returns) from the estimated Gross Retail (Market) Value; and,

- Ground rents (where land leases are typical) with the lease market income capitalized based on an overall market derived rate.

Improvement costs, considered next, estimates result from historic local data, and/or cost services like Marshall & Swift (a widely used cost service). Materials, labor, and installed component costs; derived from current Marshall & Swift subscribers; Dodge building construction reports; phone, field and mail surveys; product catalogs and trade publications; building construction trade associations; government statistics and reports; contractors; architects; lending institutions; labor organizations; and material suppliers and updated periodically, provide the cost basis. This data provides specific incremental base costs, refined for time, location, and design factors by multipliers derived by the cost service research.

Market data is usually adequate to estimate costs; however, in markets with limited reported data; shortages for quality material and/or labor; and atypically high site preparation and/or transportation, the cost service data may be unreliable and local cost data may be more accurate.

Improvement costs (quantified as Replacement Costs (similar utility) or Reproduction Costs (exact duplicate) and entrepreneurial returns to attract the expertise, involvement, and investment required for development are recognized and reasonable business costs and are included in the cost estimate. All construction costs (including entrepreneurial profits) are the "as complete" cost value of new or proposed improvements.

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USPAP COMPLIANCE, continued

Existing improvements typically show physical depreciation (estimated improvement effective age, relative to its estimated total economic life). For example, a structure with a 10-year estimated effective age and total 50-year economic life has an estimated remaining 40-year economic life and is approximately 20% depreciated. Monetary depreciation, subtracted from the reconstructed value new, indicates the "as is" depreciated contributory improvement value.

Costs for site improvements, paving, utilities, and landscaping also experience depreciation; their estimated contributory values (cost less depreciation) also apply to the Cost Approach. The final site and building improvements contribution value estimate is added to the "as vacant" land value estimate to result in the indicated Cost Approach Value.

The Direct Sales Comparison Approach basis is the principle of substitution; concept that an informed purchaser acting prudently would pay no more for a given property than the cost of acquiring an existing alternative with the same utility. This approach is a process of correlation and analysis of similar sold and available properties. The reliability of this technique depends on:

(a) The degree of comparability of each property to the appraised property;
(b) The time of sale;
(c) The verification of the sale; and,
(d) The absence of unusual conditions affecting the sale

The Direct Sales Comparison Approach considers market activity of reasonable alternative properties to the appraised subject. Essentially, this process attempts by adjustment (the addition and/or subtraction to the sales or offered price of an alternative property for its quantified price/value difference with the subject) to equate it to the subject. Comparable property features perceived (or indicated by market data) to be superior to the subject result in a minus adjustment to the comparable property. In the alternative, interior aspects of a comparable property warrant its upward adjustment.

Specific "paired sales" (of a property at different times or similar properties at different times) may show value changes over time. Sales pairings indicating a specific feature value may result if (similar properties with a distinct difference) occur at similar times.

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USPAP COMPLIANCE, continued

Such "paired sales" are the most reliable and objective indicator of value changes over time and quantified values of distinct property features paid in the marketplace. Specific market data (IF AVAILABLE) derived in this manner, isolates value for the identified difference and is the most desirable means to estimate adjustments. The examples below illustrate "paired sale" scenarios; case A is very basic and suggests distinct adjustments; but case B is complex and less conclusive, but more common.

Case A:

Subject: Level, moderately wooded, 200' x 250' tract with paved access

Sale 1: Level, moderately wooded, 200' x 250' tract, with paved access, adjoins the subject, on the east sold and closed for $60,000 the day before the appraisal

Sale 2: Level, moderately wooded 200' x 275' tract, with paved access, adjoins the subject on the west sold and closed for $65,000; on the same day as sale 1

Sale 3: Level, moderately wooded 200 x 225' tract, with paved access, located across the street, sold and closed for $55,000 the day before sales 1 and 2.

- The subject and sale 1 "pairing" suggests a $60,000 value for the subject.
- The sales 1 and 2 "pairing' suggests a minus $5,000 adjustment to sale 2 and a value of $60,000 for the subject ($65,000 - $5,000 = $60,000).
- The sales 1 and 3 "pairing' suggests a plus $5,000 adjustment to sale 3 and a value of $60,000 for the subject ($55,000 + $5,000 = $60,000).

Case B:

Subject: Level, moderately wooded, 200' x 250' tract with paved access

Sale 1: Level, moderately wooded, 200' x 250' tract, with paved access, adjoins the subject, on the east sold and closed for $60,000 the day before the appraisal

Sale 2: Level, moderately wooded 200' x 275' tract, with paved access, adjoins the subject on the west sold and closed for $65,000; on the same day as sale 1

Sale 3: Sloping, sparsely wooded 200' x 300' parcel, has unpaved access is 2 miles north, has a stream in back and sold six months earlier for $75,000.

- The "pairing" of sale 1 to the subject suggests a $60,000 value for the subject.
- The "pairing' of sales 1 and 2 a minus $5,000 adjustment to sale 2 a subject value of $60,000.
- The "pairing" of sale 3 and any other sale provides no specific values for individual features (larger size, location, time of sale and/or stream) that affect the sale 3 sales price.

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The example illustrates the comparison analysis theory, and shows a basic comparison scenario and the more common case where data is insufficient to use this technique. Such "paired sales" show clear adjustment estimates with distinct data; however, these cases usually lack the distinction needed to pair specific values and features. Therefore, subjective market data observations are the basis of most adjustment estimates.

The general adjustment categorization and order are:

1. Property Rights Conveyed:

Most property sales are fee simple estates meaning they include all property rights of real estate ownership or leased fee (when a property owner exchanges the property use right for income or other benefit). Only government authorities like zoning or typical deed covenants (for a similar property in the market area) restrict fee simple properties. Sale proceeds generally satisfy any existing mortgages allowing the fee simple transfer. The purchaser may concurrently exchange the "right to mortgage property" for funds unless the consideration paid is all cash. A mortgage given for a new loan transfers the grantee's fee simple "bundle of rights" received in the sale; however, the transferred property estate is fee simple. In such instances no property rights conveyance adjustment is necessary.

However, if a property has an atypical encumbrance or if its transfer excludes a typical fee simple property right, any difference to the sale price (relative to a similar property with so such impediment) might constitute a property right adjustment for that sale.

2. Terms-of-Sale:

Terms-of-sale addresses any abnormal or non-market financing that could affect the sales price in a transaction. A seller concession (like below market and/or preferential financing) resulting in a higher sales price for a property than for other properties of its type with no such concession would usually constitute a terms-of-sale adjustment.

3. Conditions of the Sale:

Conditions-of-the-sale adjustments address motives of transactional parties when abnormal or non-arm's length conditions affect a sales price (compared to typical similar property sales). Non-arm's length sales may include family member or related party transactions; a below market value lender REO (Real Estate Owned) sale; or any sale with a party acting under some type duress, including financial pressure.

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USPAP COMPLIANCE, continued

4. Sale Date:

Very recent sales and listings tend to indicate current market conditions. Dated sales; somewhat recent sales in volatile markets; and data from markets with unusual property inventory changes might warrant sale date adjustments. Representative properties having an initial sale and subsequent sale; or, from broader market activity where value changes over time are indicated by a number of sales may suggest sale date adjustments to be justified. The market data should support these adjustments with evident value changes over time; however, expressed opinions of observed market activity may also be reasonable to support sale date adjustment estimates.

5. Location and Physical Differences:

The comparable properties are also adjusted for physical differences with the subject (when a value estimate can be associated the difference). The "paired sales" analysis may suggest reasonable adjustments if indicative data is available. However, as illustrated, market data usually indicates no specific price/feature relationships. Consequently, most adjustment estimates result from subjective data analysis.

Adjustments expressions may be as incremental units of measure; or as a total amount. An incremental size/quantity adjustment to a property smaller than the subject is usually a minus as market data suggests that a smaller, or less dense property, usually sells for more per increment (but less) than an otherwise similar larger or denser property. Prices tend to decrease with larger quantities and upward adjustment estimates are typical for larger properties considered incrementally.

Conversely, comparisons based on total values, usually suggest upward adjustments for smaller properties (that often sell for less, but more per increment or measured unit, than an otherwise similar larger property). Likewise, minus adjustments are typical for a comparable property larger than the subject if value estimates reflect a total amount.

The adjustment process produces a value range. Individual values receive emphasis relative to their applicability to the subject. Their reconciliation y ultimately provides the specific gross value estimate from this approach.

If appraisals were controlled scientific experiments, the market data analysis and adjustment process could more effectively replicate the subject and determine its exact value. Adjustments could be more precise and less subjective.

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USPAP COMPLIANCE, continued

However, real estate transactions involve human actions and motives, that range widely, tend to be fluid, and include myriad and often unclear factors. In real estate appraisals, market data relationships to the subject are perceived; not systematically scientifically derived. Therefore, the conclusions resulting from appraisal research and data analysis presented in the Direct Sales Comparison Approach are subjective opinion estimates. These estimates are not guarantees or facts.

The Income Approach entails estimating the economic (market) income; subtracting the estimated operating expenses for the type property being appraised; and, capitalizing the net income into an estimated value via an overall market-extracted rate. The Income Approach includes:

- An analysis considering comparable rental data, and/or the potential earning capacity of the appraised property to estimate its gross income potential;
- An analysis of available comparable operating expenses to estimate the reasonable market operating expenses of the appraised property;
- Comparable data analysis to estimate capitalization and/or discount rates; and,
- Anticipated rent and/or income and expenses estimates based on reasonably clear and appropriate evidence.

This formula deals with income production only; other value components (like excess land) are not recognized. Then the Income Approach must also add the estimated value of the non-income property to accurately address the full market value.

This process (indicates value to an investor response for income producing properties and investments) in the marketplace; is based on estimated periodic, recurring net operating income and yield (equity change during the estimated ownership term); is relevant for income rather than consumer oriented properties; and directly considers the income/economics of a property.

Value Reconciliation:

The respective valuation approaches culminate in the reconciled "Gross Retail" also the "Market Value" which directly represents a vacant site; single "as is" improved property; or rental property, occupied at, or above, stabilized market levels. The Gross Retail (Market) Value presumes a single retail sale within the estimated marketing time.

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Multiple properties (that need individual retail sales) to attain the Gross Retail Value or a rental property occupied and rented at below market-stabilized levels (needing increased rents to reach their market levels) require a contingent event to justify their Gross Retail/Market values. The additional time and cost reduces the "Gross Retail Value" and the (value loss) from the cost and revenue decrease lowers the retail value; this estimated amount, is discounted, than deducted from the "Gross Retail Value" (accounts for these losses). Discounting embodies the "time value of money" concept where money possession and use has value; and that money in hand or received sooner than later has more worth pursuant to basic banking principles where the use of funds warrant interest payment.

Market data including returns from alternative investments in the local marketplace and from national published data (like www.RealtyRates.com) can indicate discount (mortgage and investment) rates. The anticipated income discounted over the estimated absorption time reflects the estimated discounted present value.

Valuation Approaches; (applicability to the subject):

The land is evaluated "as is" via comparison of recent land sales adjusted as described in this report. The respective adjusted value estimates of the comparable properties are weighted and provide basis for a specific value estimate. This land valuation technique is considered to provide viable value indications for the subject land and result in the land value estimate.

The Income Approach based on traditional capitalization methods indicates the value at which a subject property could be marketed and provide the return on borrowed funds required by the lender and the return on investment equity acceptable to an investor/purchaser. This approach considers recurring market income produced by the subject of the appraisal report. The property appraised in this report is vacant land considered "as is" that would produce one time point of sale income rather than periodic recurring rental income. Therefore, the Income Approach to value is not valid in this report.

The Cost Approach deals with the value of the vacant site plus contributory value of improvements added to the land. Since this appraisal is for the current "as is" vacant parcel with no improvements contemplated, the Cost Approach is not applicable.

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The Gross Retail Value for the "as is" parcel, is defined as that price/value likely to be realized from the sale of the presently vacant tract to a purchaser who is ready, willing, and able to purchase and close this parcel intact as of the appraisal effective date (in which case there would be no marketing, holding, carrying, or closing costs).

Considering this appraisal assignment is to evaluate the "as is" vacant land, only the Direct Sales Comparison Approach is relevant in this appraisal.

Competency Disclosure:

"The appraiser(s) have the prerequisite knowledge, proper licensure and professional experience to accept, perform, complete, and deliver the appraisal report on the subject property in accordance with required governmental requirements and applicable professional standards."

Personal Property/Non-Realty Transfers:

No value is given to non-realty items in the valuation estimate.

Property Ownership History:

Property Ownership:	D & R Investments Properties Deed book 3502, page 1361
Consideration:	$421,000.00 (Foreclosure sale)
Grantor:	Betty V Roller c/o Carolina Estates
Prior Transfer:	01/01/80

Exposure time/marketing time:

The estimated marketing time (to market the property at the estimated market value after the effective appraisal date) is ten to twelve months.

The estimated exposure time (offering period prior to a hypothetical market value sale presumed as of the effective appraisal date) is also ten to twelve months.

Additional Comments:

My analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice. Employment of the appraiser(s) was not conditional upon the appraiser(s) producing a specified value or a value within a given range. Future employment prospects are not dependent upon the appraiser producing a specified value. Employment of the appraiser and payment of the fee is not based on whether a loan application is approved or disapproved.

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SUBJECT PROPERTY

The subject property is shown on a site development plan prepared by Andrews Burgess Inc, Engineering & Surveying, dated 09/08/04 and revised on 10/25/06 as having 21.447 acres; 7.986 acres in wetlands and 13.461 acres in uplands. This plan is incorporated into this report by reference.

Identification:
County Assessor: R600-031-000-0002-0000
County Tax Key: 00496323
Address: TBD Buck Island Road, Bluffton, SC

Site area:
21.447 acres
Wetland: 7.986 acres; 37%
Upland: 13.461 acres; 63%

Location:
The subject land is located about .75 miles south of US Highway 278, aka Fording Island Rd and just north of Bluffton Parkway in Bluffton SC.

Access:
Buck Island Road provides paved access and extends north to US Highway 278. US Highway 278 is a four-lane major highway that runs in an east-west direction, traversing the area between Interstate 95 and Hilton Head Island and is the sole traffic artery giving access to Hilton Head Island, SC.

Dimensions:
The parcel shape is irregular. The west boundary is Buck Island Road, the north boundary is Windtree Subdivision; the east boundary n/f Rose Hill Plantation land; and on the south by Beaufort County lands.

Property features:
The subject is vacant land with relatively flat terrain, typical for this area. The total tract is 21.447 acres; 13.461 acres of which are upland areas (63%) and 7.986 acres are wetlands (37%). This wetland area is typical for the area and provides natural drainage as well as a potential view amenity.

Vegetation on the site is typical of plant life found in this region. Native grasses, brush, trees, and other plant life are found on the site.

Present use:
The current use of the subject is vacant land.

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SUBJECT PROPERTY, continued

Zoning: The subject zoning is Residential General (RG). Per the Town of Bluffton Zoning Code, the RG zone is:

"intended to provide for moderate density residential neighborhoods. This district will include a range of dwelling types in an integrated neighborhood setting with other civic and recreational uses. The regulations are designed to promote neighborhood character and accommodate a variety of dwelling types."

For single-family residential development within this zoning district, four (4) dwelling units per acre are allowed.

FEMA: Community panel #4500250085D, 09/29/86, zone C defined as "areas of minimal flooding". Flood insurance is not usually required in "C" zones.

Utilities: Beaufort-Jasper Water and Sewer Authority provides water and sewer to the area. Natural Gas is available from SCE&G. Electric service is provided by the Palmetto Electric Co-operative. Hargray Telephone Company provides telephone service.

Soils contamination: The subject vacant land and show no evident environmental hazards. Therefore, negative environmental impacts are unlikely based on observations made during the property visit as no adverse or unusual environmental factors were noted at that time.

Surrounding Uses: The subject is part of the Bluffton area that has experienced significant residential, commercial, and support service development.

Easements: There are two adjacent power line R/W easements along the rear of the subject tract that cover approximately 5.131 acres. One power line R/W easement encumbers 2.686 acres of the subject tract and the other encumbers 2.627 acres.

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SUBJECT PROPERTY, continued

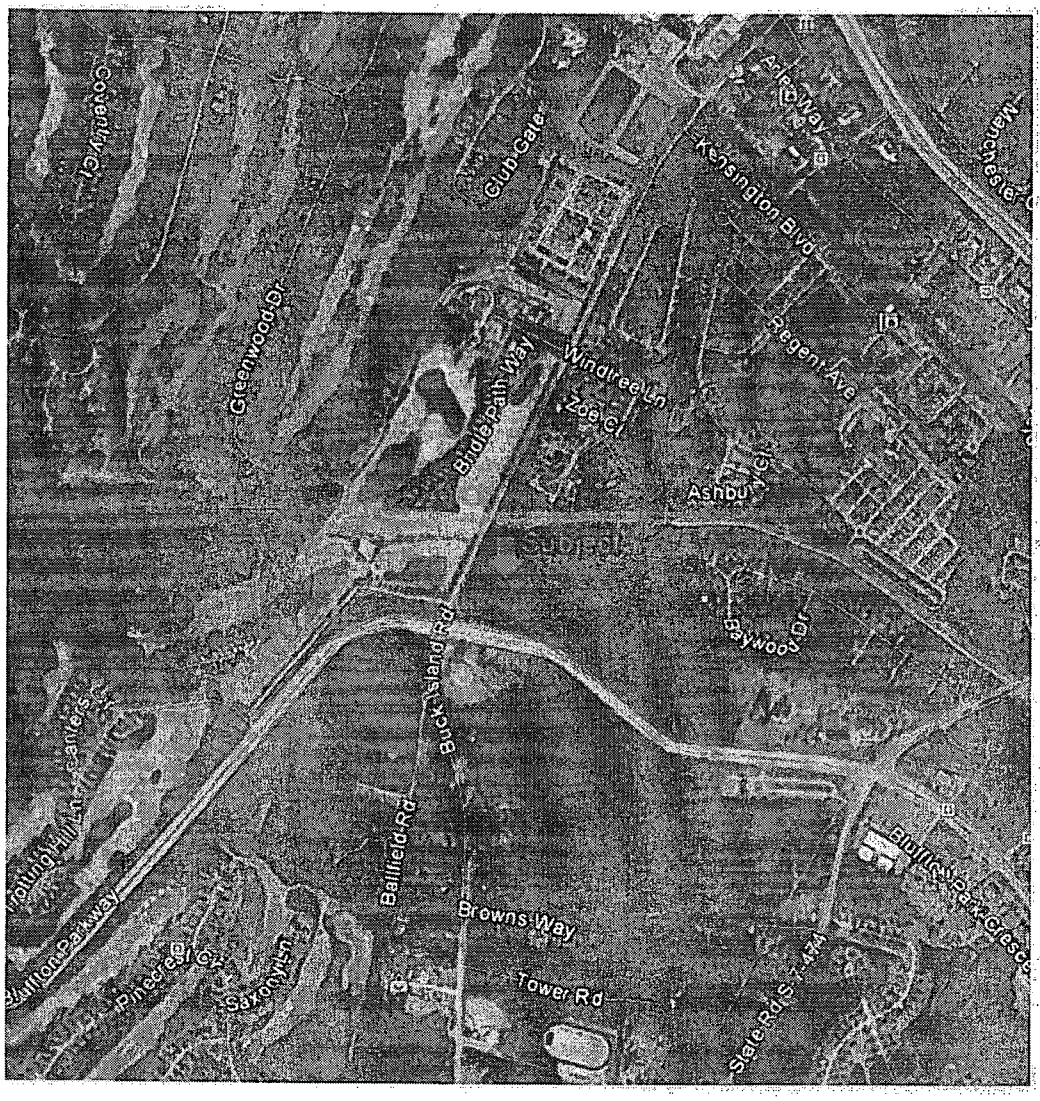
Development: The subject is appraised "as is" as vacant land.

Summary: The subject land is located in a high growth area and is adequate for development as allowed by zoning.

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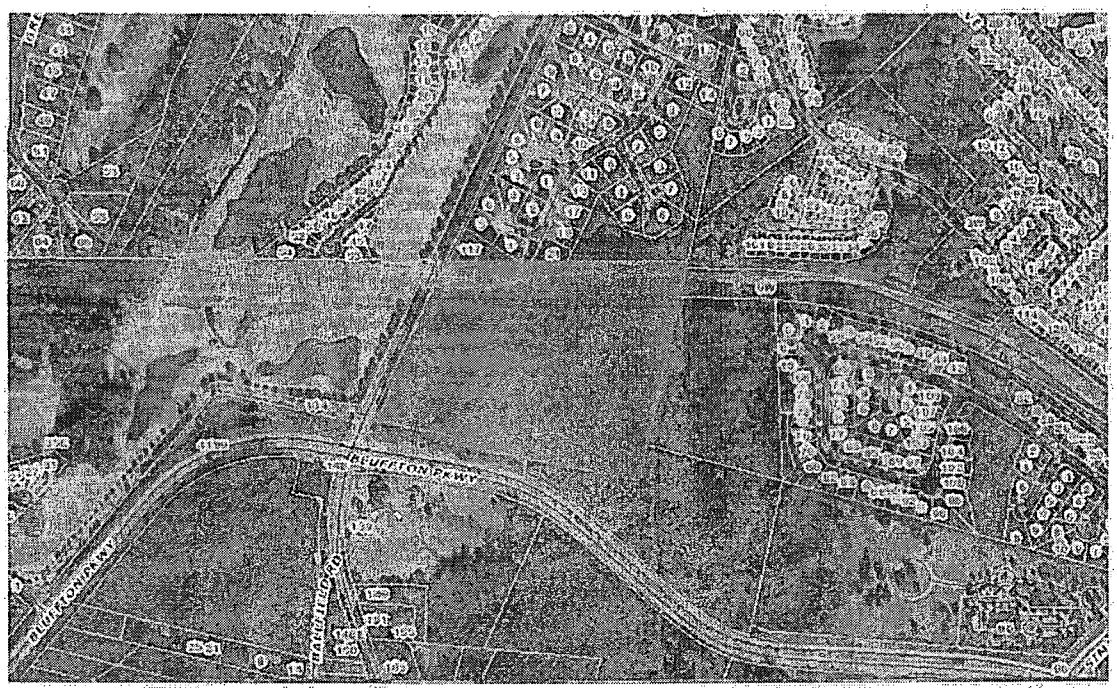
SUBJECT PROPERTY

Location Map



SUBJECT PROPERTY, continued

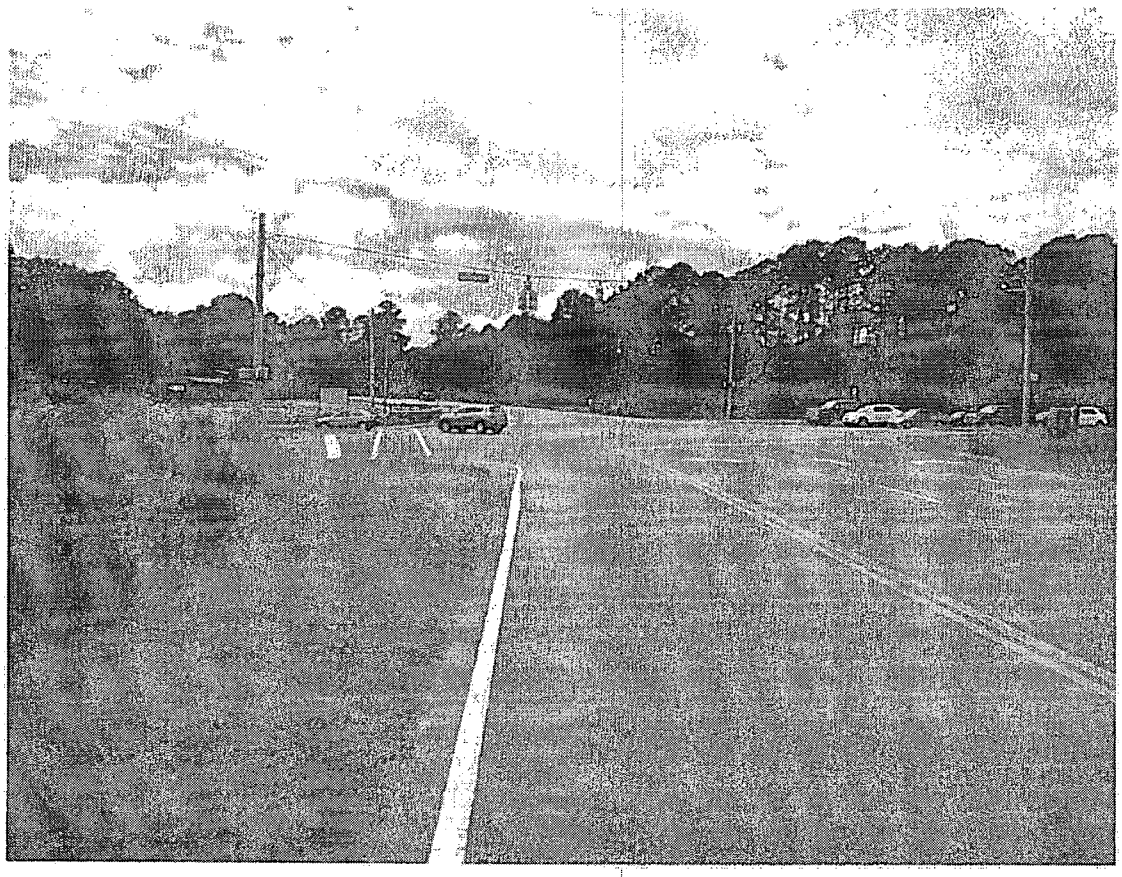
COUNTY TAX MAP



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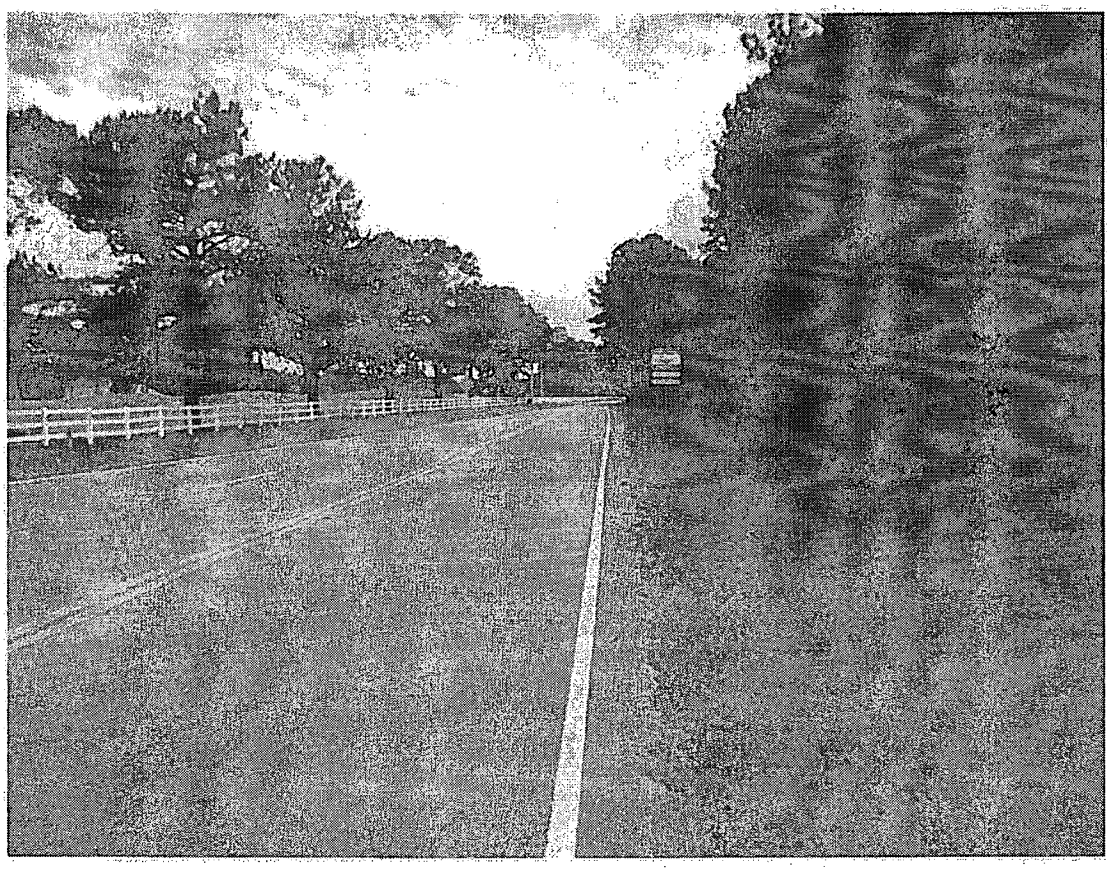
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PHOTOGRAPHS



Photograph of Buck Island Road in front of the subject land looking south

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Photograph of Buck Island Road in front of the subject land looking north

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SUBJECT PROPERTY, continued



Photograph of the front of the subject land

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MARKET IDENTIFICATION

The characteristics, content and geography of a particular real estate market are generally determined by the expectations, capabilities, motivations and actions of the majority of its market participants. The market for any type property generally includes reasonably sufficient options for a valid comparison and selection process.

Real estate markets are generally grouped as neighborhoods, defined as "a group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises". By definition, a neighborhood includes various reasonable alternatives for any of its properties.

Depending upon the nature of the property, its neighborhood could be very local, confined to a few blocks; or, conversely, of a national or international scale extending beyond state and national boundaries. The economy of any given area includes its traditional internal trade (normal exchange of goods and services which occurs within any community) and the commerce that occurs within the area but which originates from outside its boundaries. This externally stimulated trade is the economic base, defined in the Dictionary of Real Estate Appraisal, 3rd Edition, Appraisal Institute, 1993 as: "the economic activity of a community to attract income from outside its borders".

The quantity, quality, and durability of an area economy are largely dependent upon the strength of its economic base. A new industry or large employer in a community has a satellite impact; other business growth such as suppliers and contractors to serve the new industry; the likely population growth for new employment opportunities; new home construction for the additional housing need; and the typically concurrent increased sales of consumer goods may occur. Conversely, a plant closing or other negative event might reduce economic activity and the applicable economic base.

Factors that attract outside commerce include the natural amenities of an area such as the climate and ocean in coastal areas or the mountains and snow in ski-oriented communities. Attractions to an area also include man-made attributes such as a new plant or industry stimulating job growth; tourism from visits to a theme park, amusement park, or sporting event; the ongoing commerce from an airport, interstate highway, or rail line; and jobs from an industry, governmental facility or service, and/or a financial and/or entertainment center.

The subject of this appraisal is a vacant land parcel. The market description and dynamics considered to be applicable as they pertain to this subject property are addressed in both generally and more specifically on the next pages.

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MARKET AREA PROFILE

The defined neighborhood is an area considered to influence the subject property. The market area is defined as "an area of similar market influences which include living environment, appeal, and access to services, conveniences, roads, and means of travel".

The specific market area being examined is considered to be areas of Beaufort and Jasper counties in SC generally bounded by Interstate 95, and Jasper County towns Hardeeville and Ridgeland on the west; the New River to the south; the Intracoastal Waterway to the east; and the Broad River to the north. This area includes the US Highway 278 corridor running east from the Interstate 95 Exit 8 to Hilton Head Island; the SC Highway 170 corridor extending its intersection with US Highway 17 near the GA/SC border northeast where it crosses the Broad River; the Okatie community; and, the Town of Bluffton (the fastest growing municipality in SC).

Historically, this area served as a bedroom community for Hilton Head Island, a posh nationally renowned barrier island resort located across the Intracoastal Waterway from the mainland. The general consensus is that the modern development of the area began on the island around 1957 with the Sea Pines Plantation, located on some 5,000 acres at the south end of Hilton Head. Prior to that time there was no bridge connecting the island to the mainland and the primary land uses on the island were timber, agriculture, and moderate residential development. Sea Pines set the development trend in the area as a private, gated community with high architectural standards. Successive higher quality communities developed both on Hilton Head Island and the mainland and maintained similar development standards.

From the late 1950's until the mid 1990's most of the development in the area occurred on Hilton Head Island. However, In the mid 1990's new development increased on the mainland and near Bluffton. The town of Bluffton annexed significant land areas (and became the fastest growing municipality in the state). The SC Department of Transportation also extended US Highway 278 from its intersection with SC/170 to Interstate 95. This new road replaced SC 462 and SC 170 (which were two-lanes and often over burdened with heavy slow traffic) as the main access to the market area. This safer, more convenient access has boosted the area appeal and is significant for the recent growth.

Bluffton had been a small village for nearly 150 years occupying one square mile and the surrounding area was sparsely populated. Residential and commercial areas were intermittent among large wooded areas, many of which have since been developed with the recent new communities in the area.

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MARKET AREA PROFILE, continued

Most of the market area is located in Beaufort County. Jasper County, the western part of this general market area covers about 662 square miles, much of which is wetlands and vast woodlands owned by timber companies. Historically, growth in Jasper County has trailed other nearby areas.

Most of the commercial development in the area is clustered along primary traffic corridors with residential development primarily occurring along the water frontage or on off-road, buffered, woodland tracts.

The land in the area is mostly flat terrain with a mixture of high ground and protected wetland areas. Many parts of the area have central water and sewer services from municipal, quasi-governmental, or private utilities. All utilities are generally available to most areas.

Conclusions:

This demonstrated population growth and concurrent economic activity results in the need for housing, restaurants, services, and commercial buildings. The subject market area/neighborhood is the primary growth community of the Beaufort and Jasper County area. There are ample utility services and infrastructure to accommodate the continued development of the area. Therefore, no adverse marketing impacts for the subject property due to the market area economy are anticipated.

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HIGHEST AND BEST USE

The Highest and Best Use of a property must be physically possible, legal, financially feasible, and that which returns the most value to the land and is the potential eligible use that meets these criteria, rather than an actual use. The Highest and Best Use analysis considers an appraised property "as vacant" (the actual use in vacant land appraisals; a hypothetical use in an improved property appraisal; and a prospective use in appraisals based on a contingency or proposal). The analysis of Highest and Best Use "as improved" is also included in appraisals of improved properties and for vacant land with specific proposed or prospective uses (that are included in the value estimate).

Highest and Best Use estimates consider:

- The use must be physically possible, considering the location, access, size, shape, topography, and the characteristics of surrounding development;
- The use must be legal and not prohibited by law, deed restrictions, or zoning;
- The use must be financially feasible and provide an adequate return to justify investment in the land; and
- The use must be maximally productive and return the greatest value to the land of all eligible uses during the expected holding/ownership period.

Physically Possible Uses:

Factors like the land size, shape, terrain, available utilities, access and location determine potential land use possibilities. Small tracts may be inadequate for some land uses. Regularly shaped parcels with acceptable soils have superior utility (meaning fuller and more efficient site utilization) than properties with narrow widths, irregular shapes, wetlands, and/or poor soils. Therefore, the physical characteristics of a property significantly determine the possible use type and density. The type, quality, and quantity of utility services also determine possible uses. Therefore, physical characteristics and services determine (and eliminate) some potential uses.

The appraised property is an individual site with a desirable location and good access; its use for residential improvement is consistent with the surrounding neighborhood and is physically possible.

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Legally Permissible:

Legal uses that are currently (or reasonably available from a zoning change) are the only potential highest and best uses in any case. The subject land is zoned Residential General (RG), a residential zone that limits density to 4 dwelling units per acre. The zoning is conducive to residential improvement of this land on this basis and appears to be legal.

Economically Feasible and Maximally Productive:

Financial feasibility of a land use (whether existing or contemplated) examines its economic result for the property being appraised. A financially feasible land use must produce sufficient returns to induce capital investment, either from the initial purchase or as an improvement (renovation, construction, subdivision, or other development). Returns on investment may include; recurring rental income; market value appreciation over the ownership term; a value increase higher than the cost to add improvement to the property; or, development and the retail sale of developed inventory for a profit.

The subject land due to the location and access are most suited for residential uses; also considered as a financially feasible use.

Maximum productivity considers the utilization that is likely to provide the greatest return to the land within the aforementioned parameters. Returns occur from the existing land use or from a possible alternative (to its current use) with the use (either current or hypothetical) that provides the greatest total value to the land being the maximally productive use.

The subject land is part of a primarily residential area and is accessible to services, conveniences, and major residential areas. Due to the neighborhood profile and its highly desirable location, the subject land is suited for single family residential development, which is also the maximally productive, and the Highest and Best Use.

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THE APPRAISAL PROCESS

In appraising real estate, an appraiser follows an orderly methodology to arrive at a final value estimate. This summary of the process is:

- Define the problem
- Make a preliminary analysis of the scope of the appraisal and form an appraisal plan
- Collect and analyze specific as well as general data
- Apply the three recognized approaches to value (cost, market, and income) to the data available
- Reconcile the value indications obtained via the three approaches to value
- Present the final value estimate per the defined value

This process implies an analysis based on the three major valuation approaches; Cost, Direct Sales Comparison, and Income Approaches.

The Cost Approach basis is the principal of substitution where an informed, prudent person with typical motivates will pay no more for a property than the cost of purchasing a comparable site and constructing, without undue delay, improvements of equal desirability and utility. The Cost Approach process is:

- To estimate the "as vacant" land value;
- To estimate appropriate (reproduction or replacement) costs;
- To estimate accrued depreciation, expressed in dollar terms from;
  a. Physical deterioration -
  b. Functional deficiencies or super-adequacies -
  c. Adverse external influences -
- To deduct the estimated depreciation from the total cost to indicate the depreciated improvement contribution to overall value; and
- To add the estimated land value and depreciated improvement value to result in the cost approach value indication

The **Cost Approach** is most reliable when improvements are relatively new and represent the highest and best land use; and adequate land sales that provide a reliable land value indication are available. The Cost Approach becomes reliable when applied to older improvements that are susceptible to the various forms of depreciation.

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The **Direct Sales Comparison Approach** basis is also the substitution principal (presuming a prudent person will pay no more to buy or rent a property than the cost to acquire an equally desirable substitute) by the process of:

- Discovery and verification of pertinent data including recent sales; their sales prices; similar current offerings; rents; and, expenses of alternative properties;
- Research of this data as to motivation of the parties involved and the sales terms;
- Comparing the attributes of the alternative properties to those of the subject in terms of time, location, physical factors, and sales terms;
- The emphasis and consideration of differences in these attributes and their reasonable impacts on price relative to the market; and,
- Development of an opinion of the estimated value for the appraised property as compared to the alternative properties analyzed.

The **Direct Sales Comparison Approach** produces a value indication by comparing alternatives to the subject property; estimating adjustments to these alternatives for their quantifiable differences with the subject; and reconciling the adjusted data to indicate the value. The formula for this process is:

Sales Price of the Comparable
± Or - Adjustments
Indicated Value by the Sales Comparison Approach

The strength and reliability of the value indicated by the comparison process is relative to the adequacy and similarity of the available data, and the magnitude and number of adjustments to the alternative properties.

Comparison analyses based on the relationship of gross annual income to sales price for income properties may also indicate value for an income producing property. This type of economic comparison does not include expenses and therefore, is most applicable to properties with similar net income ratios. Certain property types directly reflect rental income as a market function, expressed as a gross income multiplier.

$$\text{Gross Income Multiplier} = \frac{\text{Sales Price}}{\text{Effective Gross Annual Income}}$$

The reliability of the multiplier analyses is relative to the similarity of the properties considered and adequacy of meaningful data.

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The **Income Approach** basis is the relationship of expected income of a property to its market value expressed as a capitalization rate. The applicable steps are to:

- Estimate the potential gross income of a property (after repairing physical and functional depreciation) based on full occupancy;
- Estimate and subtract vacancies, rent loss costs, and turnover allowances to indicate the estimated effective gross income;
- Deduct fixed and operating expenses (excluding income taxes, depreciation and debt service) to indicate the net operating income;
- Subtract replacement reserve estimates for short-lived items; and,
- Capitalize the net operating income at the indicated capitalization rate.

The rental histories of the appraised and similar alternative properties provide this data. The nature, type, and magnitude of the subject property contribute to the risk and the involvement needed for its successful operation, and which affects the reasonable estimated overall rate. Capitalization rates are generally proportional to the risk and involvement of the property; lower risk and involvement tends to reflect a lower overall rate; which, in turn, indicates investor acceptance of lower income for less risk.

Properly developed and applied overall rates from the marketplace reflect the market value to income relationship and are most reliable when the properties analyzed are similar:

- In operating expenses relative to income (operating expense ratios)
- In their land and building contributory value ratios to the overall property value
- In terms of their remaining economic lives
- Uses

Real property appraisals consider and develop the approaches to value applicable to the specific appraised property. This assignment is to evaluate vacant land.

The Cost Approach is not relevant in vacant land appraisals that contemplate no improvements and is not warranted in this report. Since the subject land is vacant with no improvements to generate income (and none contemplated within the scope of this report) the Income Approach is not applicable. In this report only the Direct Sales Comparison Approach is relevant.

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THE DIRECT SALES COMPARISON APPROACH

The Direct Sales Comparison Approach utilizes the substitution principal, where a prudent purchaser will pay no more for any property than the cost of a readily available substitute with equal quality. The Direct Sales Comparison Approach is a process of correlation and analysis of market activity. Its reliability depends upon the:

- Comparability of the alternative properties to the appraised property
- Time relevance
- Verification of the data
- Absence of unusual sales conditions

The direct sales comparison approach includes an adjustment process that is intended to relate reasonable alternative properties to the appraised subject. Adjustments to the alternative properties generally address differences for; property rights transferred; terms of the sale; conditions of the sale; the date of sale (and appreciable market conditions differences when the alternative property sales occurred and the effective appraisal date); and any distinct physical differences between the alternative property and the subject. The estimated adjustments are to the compared properties; the subject property is the standard and never adjusted.

This process addresses major differences of these alternative properties and subject. The alternative properties with actual or perceived superior features, amenities, or attributes, relative to the appraised subject, warrant minus adjustment. Conversely, those with perceived or actual inferior characteristics, compared to the subject receive plus or upward adjustment. Adjustment estimates either result from clear market extractions according to the market data quality and quantity; or, they are based on subjective observations of the available market data.

The direct sales comparison approach usually provides the means to estimate a distinct and clear value indication but is most reliable with adequate similar market data. The market decline during the recession reduced market activity in general; however, recently market sales have increased and provide a reasonable basis for this approach.

Discussions of the adjustment factors relative to the alternative properties include:

1. Property Rights Conveyed:

The data research indicates the sales to transfer fee simple ownership property rights; therefore, no property rights conveyance adjustments are required.

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2. Terms of Sale:

The data research indicates the sales to have been for market terms, cash or cash equivalency to the seller. Therefore, no terms of sale adjustments are required.

3. Conditions of the Sale:

The parties to the sales were unrelated and they included no apparent abnormal or duress conditions; however, sale 3 was a REO sale from a lender. Such transactions are made by lenders seeking to clear real estate holdings they have acquired via foreclosure or a deed in lieu of foreclosure from their books. (Carrying such properties is generally seen as a negative factor to lenders and sales of such properties by lenders are usually perceived in the marketplace as vary attractive). Consequently, only sale 3 is adjusted for its conditions of sale.

4. Sale Date:

As noted earlier, the Beaufort area was the 13th fastest growth US metropolitan area (from 2013 to 2014). The *Island Packet* March 26, 2015 article reported that *"the region's population grew 2.4 percent, ranking its growth 13th in the country, according to the U.S. Census Bureau, which released the July 1, 2013, to July 1, 2014"*.

This growth has stimulated demand for well-priced real estate and recent price increases over time. Considering the likelihood that new development will increase demand for vacant development land (coupled with the lack of vacant land suited for development). The sales occurred in 2015 and need no time adjustment; however, comparable property 4 (listing) is minus adjusted (discounted) as it may likely sell for less than the list price.

5. Location and Physical Differences:

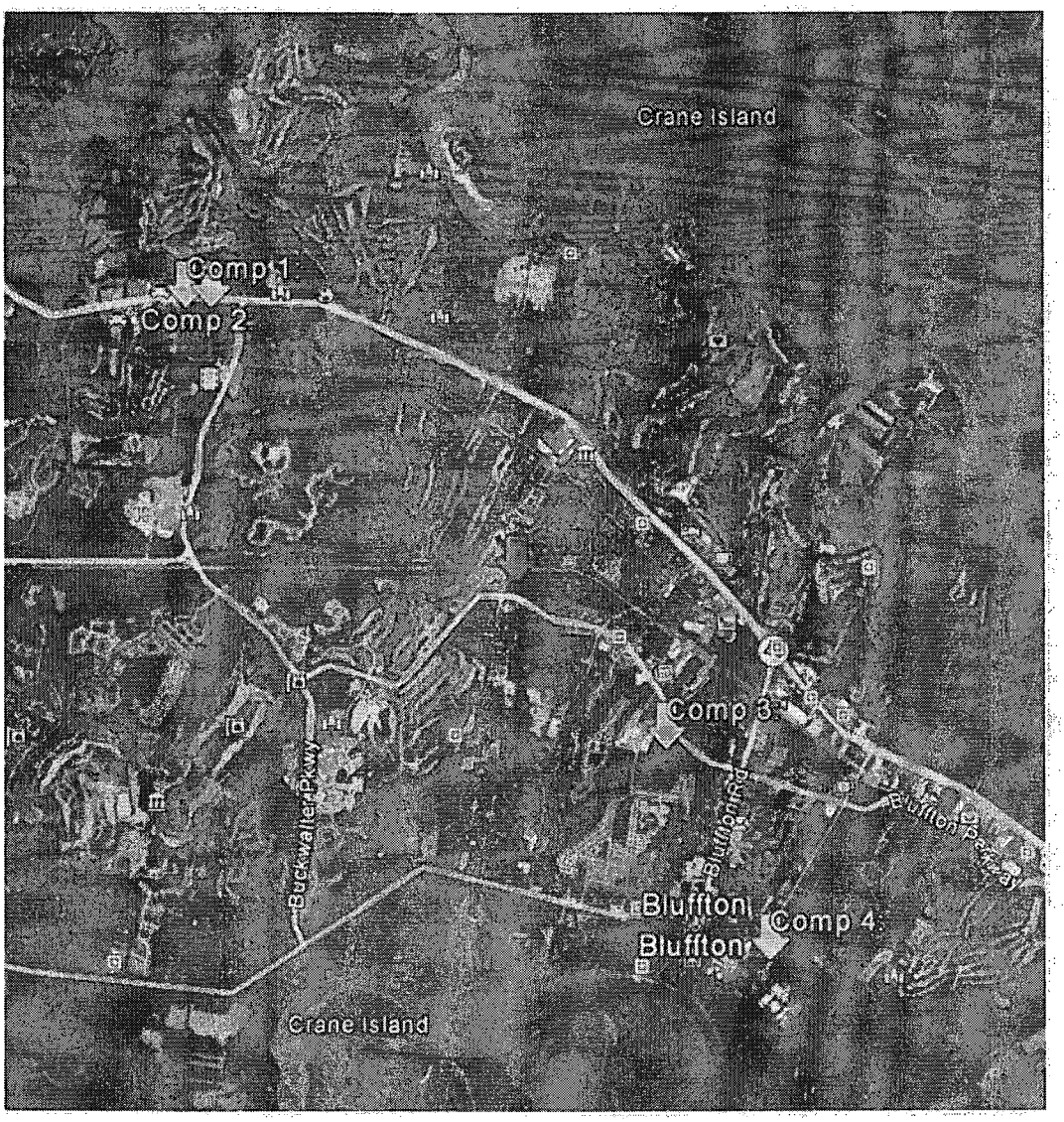
Physical (tangible) differences are factors like location, size, access, and site conditions, which warrant adjustments if they affect the marketability, sales price, or value of an alternative property relative to the subject. Essentially, the adjustment process attempts to equate the alternative (by the addition or subtraction to its price) for its quantified value/feature differences with the subject.

However, the myriad variables and influences inherent in the market render even the clearest indications derived by appraisal research and analysis to be somewhat subjective. Therefore, the adjustments are estimates which are expressed as opinions based on comprehensive data analysis and market observation.

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The properties evaluated in this report are individual vacant parcels and are the most recent sales of parcels similar to the subject discovered in the marketplace. Consequently, the adjusted value indications they provide are reasonable as a basis for the Direct Sales Comparison Approach. These parcels are shown on the Map (below) and are profiled on the following pages.

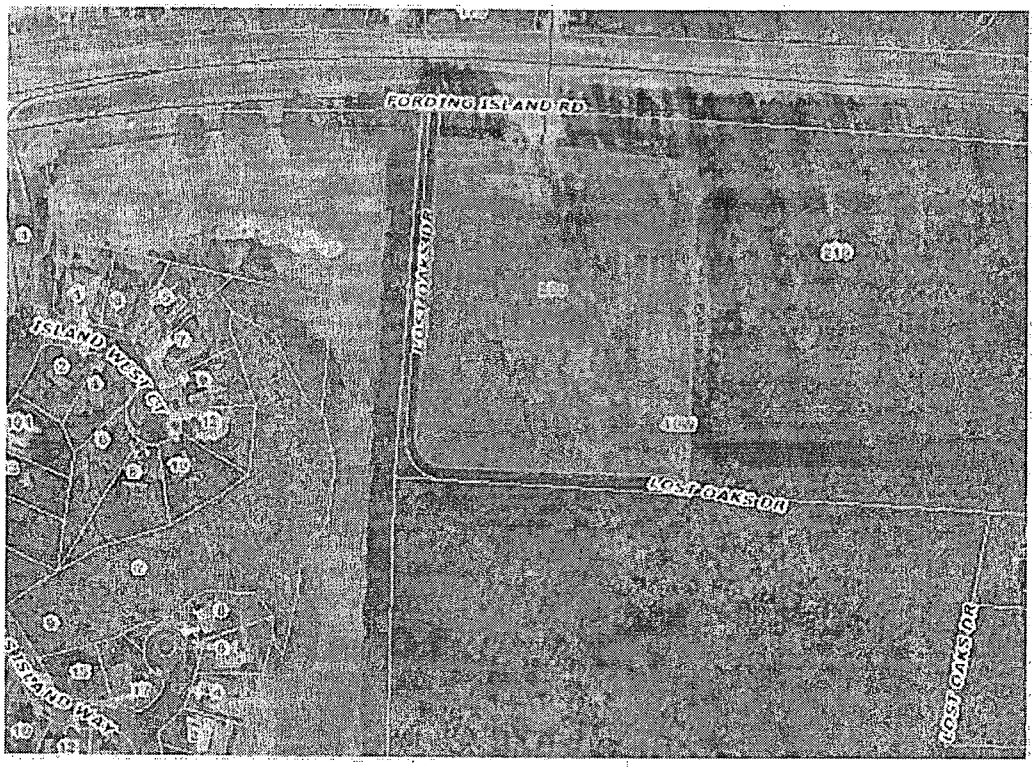
SALES LOCATION MAP



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THE DIRECT SALES COMPARISON APPROACH, continued

Sale 1:	Us Highway 278/Fording Is Rd
Tax map number:	R610 022 000 0575
Sale date:	12/29/2015
Sales price:	$1,185,000
Acreage:	5.96
Wetlands/easement acres:	0
Uplands acres:	5.96
Price/total acreage:	$198,826.00
Price/uplands acres:	$198,825.00
Access:	Superior; frontage on US 278 & Bluffton Road
Seller:	MFLP Bluffton
Buyer:	JJL INC
Deed:	Book 3453, page 2674



Minus adjustments for superior location, smaller size and superior site conditions (no wetlands)

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Sale 2:	Us Highway 278/Fording Is Rd
Tax map number:	R610 022 000 0576
Sale date:	12/29/2015
Sales price:	$2,765,000
Acreage:	13.82
Wetlands/easement acres:	1.91 acres
Uplands acres:	11.91 acres
Price/total acreage:	$200,072.00
Price/uplands acres:	$232,158.00
Access:	Superior; frontage on US 278
Seller:	WTS Bluffton LLC
Buyer:	JJL INC
Deed:	Book 3453, page 2683

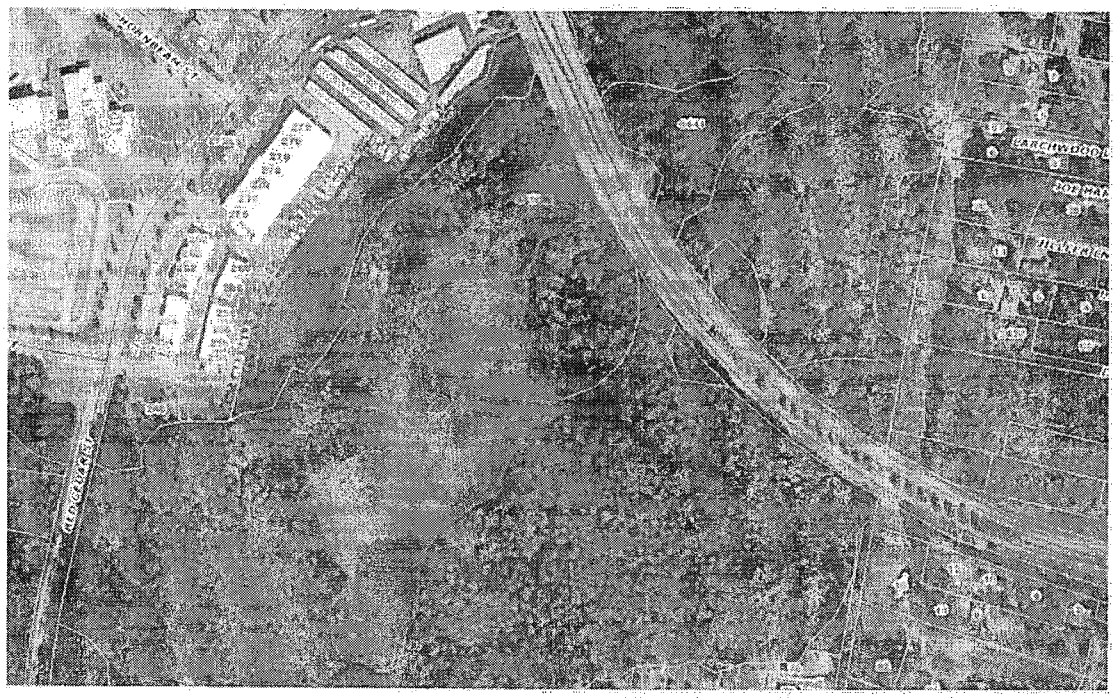


Minus adjustments for superior location, and superior site conditions (minimal wetlands).

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THE DIRECT SALES COMPARISON APPROACH, continued

Sale 3:	Bluffton Parkway Parcel D-2
Tax map number:	R610 031 000 1571
Sale date:	08/06/2015
Sales price:	$500,000
Acreage:	9.69
Wetlands acres:	1.37
Uplands acres:	8.22
Price/total acreage:	$52,138.00
Price/uplands acres:	$60,857.00
Access:	Typical
Seller:	South State Bank
Buyer:	Bluffton Park D-2 LLC
Deed:	Book 3421, page 1464



The parcel shape is highly irregular making it difficult to develop.

Plus adjustment for the inferior site conditions.

Upward adjusted for REO sale.

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Sale 4 (LISTING):	139 Burnt Church Rd
Tax map number:	R616 040 000 0800 0000 also 0253, 0811
Sale date:	Listing-Sperry Van Ness
Sales price:	$2,099,500
Acreage:	20.00
Wetlands/easement acres:	About 3.75 acres
Uplands acres:	16.28 acres
Price/total acreage:	$104,818
Price/uplands acres:	$ 128,962
Access:	Direct
Seller/owner:	Burnt Church Development LLC
Buyer:	N/A
Deed:	N/A



The property consists of 20 acres zoned for 68 residential lots (patio) and a retail/commercial site fronting Burnt Church Road. The retail portion is approximately 3 acres of the total site. This comparable is minus adjusted for its retail use.

It is also minus adjusted as it is a listing and may sell for under the listed price.

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THE DIRECT SALES COMPARISON APPROACH, continued

Sales Adjustment Grid

I. Data	Subject	Comp 1	Comp 2	Comp 3	Comp 4
Location:	Buck Is Road	US 278/Fording Is Rd	US 278/Fording Is Rd	Bluffton Pkway	Burnt Ch Rd
Area:	Bluffton	Bluffton	Bluffton	Bluffton	Bluffton
Sale date:	N/A	12/29/15	12/29/15	08/06/15	Listing
Sale price:	N/A	$ 1,185,000	$ 2,765,000	$500,000	$2,099,500
Land size, acres:	21.45	5.96	13.82	9.59	20.03
Price/ acre:	N/A	$198,826	$200,072	$52,138	$104,818
Wetlands, easements:	7.99	0.00	1.91	1.37	3.75
Approximate uplands:	13.46	5.96	11.91	8.22	16.28
Price/total acre:	N/A	$198,826	$200,072	$52,138	$104,818
Price/upland acre:	N/A	$198,826	$232,158	$60,857	$128,962
Access	Typical	Superior	Superior	Typical	Typical
Grantor	N/A	MFLP Bluffton	WTS Bluffton LLC	South State Bank	Burnt Ch Dev Co
Grantee	N/A	JJL INC	JJL INC	Bluffton Park D-2 LLC	N/A
Book/Page	N/A	Bk 3453, pg 2674	Bk 3453, pg 2683	Bk 3421, pg 1464	N/A
II. Adjustments:	Subject	Sale 1	Sale 2	Sale 3	Sale 4
a. Property Rights:	Fee Simple	Fee Simple	Fee Simple	Fee Simple	N/A
Adjustment:	N/A	0.00%	0.00%	0.00%	0.00%
b. Terms:	N/A	Cash	Cash	Cash	N/A
Adjustment:	N/A	0.00%	0.00%	0.00%	0.00%
c. Conditions of sale:	N/A	Typical	Typical	REO	Listing
Adjustment:	N/A	0.00%	0.00%	25.00%	0.00%
d. Sale Date:	N/A	12/29/15	12/29/15	08/06/15	Listing
Adjustment %:	N/A	0.00%	0.00%	0.00%	-5.00%
Adjustment $:	N/A	$0	$0	$0	-$4,979
Subtotal adjustment %:	N/A	0.00%	0.00%	25.00%	-5.00%
Subtotal $ adjustment:	N/A	$0	$0	$13,034	-$5,241
Indicated per acre:	N/A	$198,826	$200,072	$65,172	$99,577
e. Location:	N/A	-30.00%	-30.00%	0.00%	0.00%
Adjustment:	N/A	-$59,648	-$60,022	$0	$0
f. Use:	N/A	0.00%	0.00%	0.00%	-5.00%
Adjustment:	N/A	$0	$0	$0	-$4,979
g. Size:	N/A	-10.00%	0.00%	0.00%	0.00%
Adjustment:	N/A	-$19,883	$0	$0	$0
h. Site Conditions:	N/A	-15.00%	-15.00%	25.00%	0.00%
Adjustment:	N/A	-$29,824	-$30,011	$16,293	$0
i. Site Utility:	N/A	0.00%	0.00%	0.00%	0.00%
Adjustment:	N/A	$0	$0	$0	$0
Subtotal adjustment %:	N/A	-55.00%	-45.00%	25.00%	-5.00%
Subtotal $ adjustment:	N/A	-$109,354	-$90,033	$16,293	-$4,979
Indicated per acre:	N/A	$89,471	$110,040	$81,465	$94,598
III. Summary:	Subject	Sale 1	Sale 2	Sale 3	Sale 4
Indicated per acre:	N/A	$89,471	$110,040	$81,465	$94,336
Rounded per acre:	N/A	$90,000	$110,000	$82,000	$95,000
IV. Reconciliation:					
Value estimate:	$2,058,912				
Rounded:	$2,050,000				

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THE DIRECT SALES COMPARISON APPROACH, continued

The comparable properties represent recent market activity for similar parcels and suggest an adjusted per acre value range of from $82,000.00 to $110,000.00, rounded; the mean is $94,250.00 per acre and the median of the range is $96,000.00 per acre. No sale is particularly relevant, therefore, all indications are considered (reflected by the median indication) and suggest a total value of $2,058,912.00; rounded to:

$2,050,000.00;

Two Million Fifty Thousand Dollars

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Resume, Gary Beaver

Appraisal, Brokerage, and Development Experience

04/1997-Present: Real Estate Appraisal; General residential and commercial real estate appraisal.

Dallas, TX
Aspen, Colorado area
Hilton Head Island-Bluffton, South Carolina area
St. Simons Island, Georgia area
New Mexico (1997-1999)

07/1993-1997: Real Estate Appraisal, Durango, Colorado. Durango Appraisal Inc, which began as an individual practice, grew to six appraisers and three support staff persons and became the one of the largest volume appraisal companies in the area that served a twelve (12) county area in CO and NM.

1987-1997: Real Estate Appraisal, Hilton Head Island, SC: Commercial staff appraiser. The appraisal activities included cases for government agencies, FDIC, the former RTC, commercial, national, regional, and local lenders.

1982-1987: Real Estate Development and Consulting; Hilton Head Island, SC, Atlanta, GA; Winston Salem, NC.

Hilton Head, SC: Developed a single family complex in Sea Pines Plantation, a residential townhouse complex in Shipyard Plantation; permitting a multi use property; development of commercial office buildings and single family custom homes.

Atlanta, GA: Re-zoned and obtained entitlements for residential properties (two cases) for commercial office development

Winston Salem, NC: Developed a twenty (20) lot residential subdivision.

1980-1982: Real Estate Broker with Sea Pines Plantation Resort, Hilton Head Island, SC; General brokerage acting as a broker-in-charge for a satellite Sea Pines sales office.

1972-1982: Real estate brokerage, residential home construction; owned and managed rental homes in Statesville, NC

2. Education and Appraisal Courses

Catawba Valley Technical Institute, Hickory, North Carolina 1972-1973. Real Estate, Economics, English, Business Administration.
Technical College of the Low Country, Economics, Accounting, 1990.
Technical College of the Low Country, South Carolina Residential Home Builders License, 1990.

Appraisal courses:

Realtors Education Foundation, South Carolina Board of Realtors:

Real Estate Analysis, 11/09/91
Sales Comparison Application, 11/23/91
Cost and Income Approach, 12/14/91

Appraisal Institute:

101	Introduction to Appraising Real Property, 09/27/92
210	Residential Case Study, 05/06/93
310	Capitalization Theory & Technology, Part A, 05/18/92
410	Standards of Professional Practice, Part A, 09/05/91
420	Standards of Professional Practice, Part B, 09/05/91
510	Advanced Income Capitalization, 06/13/93
500	Advanced Residential Form, Narrative Report Writing, 02/11/95
Seminar	Small Residential Income Property Appraisal Report, 04/11/94
Seminar	Understanding Limited Appraisals and Reporting Options- Residential, 01/20/95
Seminar:	How to Appraise FHA Property; 02/22/95
Seminar:	Online Appraising Manufactured Housing; 05/30/2004
Seminar:	Online Residential Design & Functional Utility; 05/31/2004
410	National USPAP 15 Hour Class; 07/21/2004
Seminar:	The Professional's Guide to the Uniform Residential Appraisal Report; 05/09/2005

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The Citadel:

- Basic Income Property Appraisal, 05/09/92
- Advanced Income Property Capitalization, 11/09/92
- Appraising Income Properties; Practical Applications, 11/22/92

The University of Colorado at Boulder:

- Standards of Professional Practice, 06/13/98
- Property Inspection, 12/0798
- Appraisal Reporting, 09/29/98

South Carolina School of Real Estate: USPAP, 02/12/01

3. Licenses & Certifications:

Georgia Certified General Real Property Appraiser, 02/99
Colorado General Appraiser Certificate, 07/93
South Carolina General Appraiser Certificate, 05/93
North Carolina Real Estate Sales License, Issued 1974
North Carolina Real Estate Brokers License, Issued 1975
South Carolina Real Estate Brokers License, Issued 1979
South Carolina Residential Contractors License (passed examination on 12/27/90)

4. Types of commercial appraisals completed:

Feasibility Studies, Bluffton, SC and Fort Myers, FL area
Conservation Easements, Durango, CO
Dance Club, Durango, CO
18,000 acre ranch, New Castle, CO
Mini Warehouses, Hilton Head, S.C. and Farmington, NM
Mobile Home Park, Bluffton, SC
Marinas, Jacksonville, FL & Savannah, GA
Alcohol Drug & Rehabilitation facility, Hilton Head Island, SC
Ski resort property, Taos, NM; Granby, CO; and Winter Park CO
Golf Course, Beaufort, SC
Planned Unit Development, Spokane, WA
Planned Unit Development, Gulf Shores, AL
Restaurant properties, Hilton Head SC and Durango CO
Shopping Centers, Richmond Hill GA Hilton Head SC
Office Buildings, Hilton Head Island, SC and Ft Myers, FL
Ranches, Durango, CO
Veterinarian Clinic, Hilton Head Island, SC
Miniature Golf Course, Hilton Head Island, SC
Apartments, Raleigh, NC and Charlotte, NC and Carolina, SC
Residential Subdivisions, New Castle, CO; Bluffton, SC and Beaufort, SC
Resort Hotel, Hilton Head, SC
Assisted Living Facility, Durango, CO; Savannah, GA
Drag Strip, Greer, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**MEMORANDUM IN OPPOSITION TO SUBMISSION OF DEFENDANT WILBERT ROLLER**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

On August 20, 2018, Defendant Wilbert Roller submitted the affidavit of Wilbert Roller Jr., presumably in opposition to the Board of Appraisers return (the "Return") filed on July 27, 2018. *Exhibit 1*, Board of Appraisers Return. The Board of Appraisers valued the subject property at $900,000 as of the date of foreclosure. Mr. Roller takes issue with this value, and provides his lay opinion that the property is worth $2,500,000.

1. Mr. Roller's affidavit is untimely.

S.C. Code § 29-3-750 provides that "[t]he petitioner or the judgment creditor may appeal from the return of the appraisers upon notice stating the ground of such appeal served upon the other party ***within ten days*** after notice of the filing of the return." Even if the Court considers Mr. Roller's affidavit to be an appeal, it is untimely. The Return was electronically filed and delivered to counsel for Mr. and Mrs. Roller on July 27, 2018. Mr. Roller's affidavit was not filed within ten days. Therefore, the appeal is untimely and the Court should direct the Clerk of Court to enter the Return as a judgment in accordance with S.C. Code § 29-3-740.

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2. **Mr. Roller's affidavit fails to set forth any basis upon which to order a new appraisal.**

Even assuming that Mr. Roller's affidavit is an appeal and was timely (both of which it was not), it fails to provide the Court with any basis upon which to order a new appraisal. Mr. Roller is not a licensed real estate appraiser. He merely provides his lay opinion, by which he second-guesses the findings of the Board of Appraisers appointed by the parties and the Court. His conclusions are not based on any recognized methodology, nor does he specify the date on which he values the property. In sum, Mr. Roller second guesses all of the certified appraisers that are on the board, including his own. This is not a basis upon which the Court may order a new appraisal. Therefore, the Court should confirm the Return and direct the Clerk of Court to enter the Return as a judgment in accordance with S.C. Code § 29-3-740.

WOMBLE BOND DICKINSON (US) LLP

S// Matt Tillman
Matthew Tillman (S.C. Bar No. 70358)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax

Attorneys for Plaintiff

August 21, 2018
Charleston, South Carolina

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CERTIFICATE OF SERVICE

This is to certify that on August 21, 2018, a copy of the foregoing **MEMORANDUM IN OPPOSITION TO SUBMISSION OF DEFENDANT WILBERT ROLLER** was served, via electronic filing and delivery, to the following parties:

Thomas R. Goldstein, Esq.
Goldstein & Cobb Law Firm
PO Box 71121
Charleston SC 29415-1121

Attorneys for Roller Defendants

WOMBLE BOND DICKINSON (US) LLP

s/Matt Tillman

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Valbridge
PROPERTY ADVISORS
Atlantic Appraisals, LLC

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843-884-1266 phone
800-477-1215 toll-free
843-881-7532 fax
valbridge.com

July 17, 2018

Judge Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Beaufort County Courthouse
102 Ribaut Road, Room 1228
Beaufort, SC 29901

EXHIBIT
1

RE: Roller Property Appraisals

Dear Judge Dukes,

The Board of Appraisers met via conference call at 2:00 PM on April 9, 2018. The Board consisted of Gary W. Schwab, Gary Beaver and myself. Messrs. Schwab and Beaver had made appraisals of the property and I acted as a reviewer/mediator.

Some background on the time it took to constitute this Board and arrange a meeting (conference call) may be helpful to understand my later explanation for the lack of Mr. Beaver's signature.

The appraisal done for Mr. Thomas R. Goldstein was under the auspices of Halpin Appraisal with co-signatories of Michael P. Halpin and Gary Beaver. Mr. Halpin, in my opinion, was the logical choice to participate as a member of the Board of Appraisers since it was his firm on the letterhead and his was the first signature on the letter of transmittal. Repeated attempts to contact Mr. Halpin were made, but I received no returned calls or emails. I finally made contact with Mr. Halpin, but he refused to be on the Board of Appraisers saying that we should talk to Mr. Beaver. Ultimately, Messrs. Tillman and Goldstein agreed that Mr. Beaver could substitute for Mr. Halpin and I was given Mr. Beaver's contact information. It should be noted that Mr. Beaver, since his participation in the Roller appraisal, had moved to Texas.

My calls and emails to Mr. Beaver were also fruitless. It finally took Mr. Goldstein's intervention to make contact with Mr. Beaver and set up the conference call.

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valbridge.com

The results of the conference call are described in the Affidavit of Board of Appraisers attached with this letter. The Board unanimously agreed on a value for the Roller property of $900,000. It was my understanding that since the Board was in unanimous agreement all members of the Board must sign (with notary) the Affidavit. Mr. Schwab and I have signed the Affidavit, but repeated attempts to call and email Mr. Beaver have failed. In the absence of his cooperation, therefore, I am submitting the Affidavit of Board of Appraisers without his signature. I hope this is satisfactory.

Respectfully Submitted,

Christopher T. Donato, MAI CCIM
South Carolina Certified General Real Estate Appraiser
SC CG 292

cc: Mr. Matthew Tillman
Email - mtillman@wcsr.com

Mr. Thomas Goldstein
Email - tgoldstein@cobblaw.net

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AFFIDAVIT OF BOARD OF APPRAISERS

State of South Carolina
County of Charleston

The undersigned, Christopher D. Donato, Gary Beaver, and Gary W. Schwab, being duly sworn, hereby deposes and says:

1. We represent the Board of Appraisers in estimating the value of Beaufort County land hereinafter known as The Roller Property,
2. We are all licensed and/or certified appraisers in the State of South Carolina,
3. Mr. Beaver made an appraisal of the Roller Property for Mr. Thomas R. Goldstein of Belk, Cobb, Infinger & Goldstein, P.A., Mr. Schwab made an appraisal of the same property for TD Bank, and Mr. Donato was appointed by the court to mediate between the two appraisers.
4. Mr. Beaver estimated a value of $2,050,000 for the Roller Property and Mr. Schwab estimated a value of $600,000.
5. The Board of Appraisers met by conference call at 2:00 PM on April 9, 2018.
6. Both Mssrs. Beaver and Schwab used a sales comparison approach as the principal method of estimating value and both used a unit of comparison of dollars per acre. However, Mr. Beaver used the gross area of the property of 21.447 acres and Mr. Schwab used the net area of 10.8 acres.
7. Mr. Donato stated that the Roller Property had 37% unusable acreage and Mr. Beaver's comparable sales had unusable land ranging from 0% to 18.75%, but no adjustments made. This skewed his estimated value to an unreasonably high number.
8. All appraisers ultimately agreed that the proper area of the subject was 10.8 acres (usable area only) and everyone ultimately agreed on a value for The Roller Property of $900,000.

I declare that, to the best of my belief and knowledge, the information herein is true, correct and complete.

Executed this 30th **day of** May, 2018

Christopher D. Donato, MAI

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NOTARY ACKNOWLEDGEMENT

STATE OF South Carolina, COUNTY OF Charleston, SC

Teresa M Scott
Notary Public

Teresa M. Scott
Name

My Commission Expires: 4/21/2021

Executed this _____ day of _____, 2018

_____
Gary Beaver

NOTARY ACKNOWLEDGEMENT

STATE OF _____, COUNTY OF _____, TX

_____
Notary Public

_____
Name

My Commission Expires: _____

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ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

Executed this 12 day of June 2018

Mary W. Smith

NOTARY ACKNOWLEDGEMENT

STATE OF SC COUNTY OF Charleston

Notary Public

Name

My Commission Expires: 1/25/2027

ANN S GRIZZLE NOTARY PUBLIC SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-340**
CAROLINA FIRST BANK,	)	
Plaintiff,	)	
versus	)	**MOTION TO VACATE DEMAND FOR DEFICIENCY § 29-3-680**
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
Defendants.	)	

TO: CAROLINA FIRST BANK n/k/a T.D.BANK:

PLEASE take notice that the defendants, Wilber Roller, Jr. and Betty V. Roller, move for an Order of the Court vacating the plaintiff's demand for deficiency judgment, or in the alternative, construing the plaintiff's failure to provide a witness and financial information solely in the control of the plaintiff, which evidence will demonstrate that the value of the property foreclosed equals or exceeds the amount of the plaintiff's claim. This motion is based on the following grounds:

As set forth in the plaintiff's January 20, 2011, complaint, ¶ 6, the defendants executed a Promissory Note to Carolina First Bank in the principal amount of $2,300,000.00. Over the course of years, the defendants paid the interest and principal on the Note, causing the principal amount to decrease over time. The defendants secured the Note with pledges of collateral located in Bluffton, South Carolina and Hilton Head, South Carolina.

At some point in time during the pendency of this case, Carolina First Bank merged with T. D. Bank, although T. D. Bank has never been properly substituted as a party plaintiff.

During the course of this 7-year litigation, neither Carolina Bank nor its putative successor, T. D. Bank, produced a witness or document to the Court demonstrating its valuation of the subject property as a condition of making a loan to the Rollers. This evidence is crucial to an equitable determination of deficiency, and this evidence is in the sole and exclusive control of the plaintiff.

This Court can take judicial knowledge that banks do not loan money to debtors secured by real estate collateral without first conducting an appraisal of the property to determine if the loan is secured by sufficient collateral, but at no time in this case has either Carolina Bank or T. D. Bank disclosed its internal appraisal and now seeks to avoid producing a witness even though it is the party carrying both the burden of production and the burden of persuasion. In fact, the plaintiff seeks to perpetrate a fraud by omission on the Court by securing a deficiency judgment without having to meet its burden of proof.

In South Carolina, when a party plaintiff refuses to produce a witness or evidence under its sole control, the Court is authorized to draw an adverse inference from the lack of the production:

> Appellant. . . contends . . . respondent's failure to produce Mr. Lake as a witness for him rises the inference that his testimony, if he were examined, would be unfavorable to the respondent, and that this was given no consideration by the lower court.
>
> No authority is cited in the brief but apparently reference is had to the rule which is stated in 31 C.J.S. Evidence, 156a, p. 847 as follows: "In the absence of explanation, the failure or refusal of a party to produce evidence may create an adverse inference where such evidence is within his knowledge, and within his power to

produce, is not equally accessible to his opponent, and is such as he would naturally produce if it were favorable to him." The most recent example of application of the rule by this court is in *Amer. Mut. Fire Ins. Co. v. Green*, 233 S.C. 588, 196 S.E.2d 265 (1958). Another recent case is *Matthews v. Nat. Fid. Ins. Co.*, 228 S.C. 124, 89 S.E.2d 95 (1955), citing *Robinson v. Duke Power Co.*, 213 S.C. 185, 48 S.E.2d 808 (1948). There is a note to the Matthews case in 8 *S. C. Law Quarterly*, 470. Other of our similar decisions will be found in 9 *West's S.C. Digest*, Evidence, § 77, p. 57 *et. seq.*. Many cases from other jurisdictions are collected in the annotations in 135 A.L.R. 1384, and 5 A.L.R.2d 905. Generally, the rule is applied when the uncalled witness is an agent, employee, relation, or associate of the party failing to call him, or within some degree of control of said party. It is said in *20 Am. Jur. 193*, Evidence § 189, "It is a general rule that a party is not to be prejudiced by his failure to call a witness who is equally available to the other party." But this may not always be true; it depends upon the particular circumstances of the case at hand. See the cited texts and annotations.

Davis v. Sparks, 253 S.C. 326, 111 S.E.2d 545 (1959)

The particular circumstances of this case are that the Bank misleads this Court and disadvantage the defendants by avoiding its obligation to carry its burden of production and persuasion by suppressing evidence only available to the bank. One is not required to be a student of history or economics to be aware of the massive taxpayer bailout of banks brought about due to the unbridled greed and unlawfulness of banks' conduct. (And it cannot escape mention that in the greatest irony of capitalism, malefactor banks receiving taxpayer bailouts used the money to acquire other banks, which is like using taxpayer money to rehabilitate an arsonist by buying her a new building to burn down!) By not producing a witness and opting out of the deficiency judgment process, for all we know either Carolina Bank or T. D. Bank may have been already made whole by receipt of T.A.R.P. funds and may not necessarily be the real party in interest. The point is that the Bank cannot escape scrutiny by adopting the simple expedient of opting out of the judicial process while suppressing evidence in a Court of Equity. ("Court of Equity. A court which has jurisdiction in equity, which

administers justice and decides controversies in accordance with the rules, principles and precedents of equity, . . ." *Black's Law Dictionary,* Fifth Ed.)

The Bank's preemptive strike to facilitate a fraud on the Court is two-fold: first, to deny that Roller may have an opinion on the value of the land, and two that an "appeal" is untimely.

As to the first, South Carolina law has always recognized an owner's right to have an opinion as to the value of his property.

"Ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert." *Barton*, 309 S.C. at 494, 424 S.E.2d at 526; *Whisenant,* 277 S.C. at 13, 281 S.E.2d at 796 (noting that ordinarily a property owner, who is familiar with his property and its value, may give his estimate of its value or the damage inflicted upon it even though he is not an expert); *Abercrombie v. Abercrombie*, 372 S.C. 643, 647, 643 S.E.2d 697, 699 (Ct. App. 2007) (recognizing general rule in South Carolina that a property owner is competent to offer testimony as to the value of his property); *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 598, 493 S.E.2d 875, 881 (Ct. App. 1997) ("The rule that a property owner is competent to present an opinion as to the property's value is well recognized."). "Unless the property owner's lack of knowledge of the value of his property is so complete so as to render it worthless, it is for a jury to assess the probative value of his testimony." *Barton*, 309 S.C. at 494, 424 S.E.2d at 526.
Austin v. Stokes-Craven Holding Corp., S. C. S.E.2d (2010)

Second, the Rollers are not "appealing" a decision of the Court; they are raising an objection to the record being incomplete, and because the objection is based on an allegation of a fraudulent suppression of relevant evidence, the Rollers could raise the objection for up to one year after judgment is entered. See Rule 60(b)(3) of the *South Carolina Rules of Civil Procedure.* The defendants are raising the objection at the earliest possible time and seek nothing more than the right to create a full and fair record of the Court's decision.

In short, no one involved in this case fails to understand that the Bank conducted an appraisal of the property as a condition of making a loan, and it cannot escape the plaintiff's burdens by watching the case from its Wall Street heights and suppressing evidence to prevent the Court from evaluating the pre-loan appraisal it conducted as a condition of making a loan. The Bank's appraisal is material and relevant evidence to the subject now before the Court. Likewise, the Bank cannot escape its obligation to tell the truth as a litigant in a South Carolina Court as to whether it is even the real party in interest in this case. Both of these issues are critical and fundamental to the relief being requested, and for that reason, the Court should set a deficiency hearing so that the Bank is required to appear with its evidence and be cross examined about its appraisal and about whether it has already received payment for the loan extended to the Rollers.

Respectfully submitted,

August 28, 2018

/s/ Thomas R. Goldstein
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RULE 11 CERTIFICATE

I certify that prior to filing this motion, I consulted with opposing counsel and was unable to resolve the issue raised by this motion.

August 28, 2018

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar # 2186

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION TO VACATE DEMAND FOR DEFICIENCY**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

Defendants' August 29, 2018 Motion to Vacate Demand for Deficiency ("Motion to Vacate") is an odd pleading. It is not clear whether the motion is in support of the August 20, 2018 Affidavit of Defendant Wilbert Roller – itself an odd and meaningless document, an appeal of the July 27, 2018 return of the appraisal board, or a motion for relief from judgment. The Defendants make numerous false allegations of fraud and misconduct, which, if not contained in a pleading, would be defamatory. Nevertheless, it is clear that the Defendants no longer have any viable arguments and are engaging in tactics of delay. In response to the Motion to Vacate, Plaintiff offers the following:

1. **The Defendants' motion is untimely.**

   a. **Rule 60 motion.**

If the Defendants' motion is filed pursuant to Rule 60, SCRCP, it may be construed as a motion to vacate one of three orders. The first is the Master in Equity's Order of Bifurcation and Judgment of Foreclosure and Sale, which was entered by the Court on July 3, 2014 – over four years ago. *Exhibit 1*, Foreclosure Order. The Foreclosure Order was entered after a contested

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case hearing at which the Defendants were free to raise any argument they wished to raise. *Id.* The Foreclosure Order established the Defendants' debt at $2,563,396.24, ordered the sale of the subject property, and specifically provides that the Plaintiff does not waive its right to deficiency judgment. *Id.* The second is the Consent Order to Supplement and Amend Judgment, filed on May 25, 2016, which increases the total judgment to $2,924,228.70.[1] *Exhibit 2*, Supplemental Order. The third is the Master's Report on Sale, filed on August 29, 2016, which confirmed the sale of the subject property for $421,000 to a third party bidder. *Exhibit 3*, Report on Sale.

Rule 60(b), SCRCP provides that a motion to vacate a judgment – in this case, a deficiency judgment, must be brought within one year of judgment. All three orders that the Defendants may or may not be attacking were entered well over one year prior to the Motion to Vacate. Therefore, the Plaintiff's Motion is untimely.

b. Appeal of appraisal board return.

As set forth in previous filings, S.C. Code § 29-3-750 provides that "[t]he petitioner or the judgment creditor may appeal from the return of the appraisers upon notice stating the ground of such appeal served upon the other party ***within ten days after notice of the filing of the return***." The Return was electronically filed and delivered to counsel for Mr. and Mrs. Roller on July 27, 2018. *Exhibit 4*, Return of Appraisers. The Motion to Vacate was not filed within ten days. Therefore, the appeal is untimely and the determination of the appraisal board is final. The Court should direct the Clerk of Court to enter the Return as a judgment in accordance with S.C. Code § 29-3-740.

[1] As the title of the document indicates, the Defendants consented to this Order.

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2. The Court does not have discretion to vacate the judgment.

South Carolina law is clear: the Court does not have the discretion to vacate the deficiency judgment awarded to the Plaintiff based on equitable principles. *Am. Gen. Fin. Servs. v. Brown*, 376 S.C. 580, 658 S.E.2d 99 (2008). *Exhibit 5*, Brown case. In *Brown*, the trial court refused to enter a deficiency judgment because doing so "would not be equitable." *Id.* The Supreme Court of South Carolina held that a Master-in-Equity does not have the discretion to deny a deficiency judgment unless the creditor expressly waived the claim for a deficiency. *Id.* at 583, 658 S.E.2d at 100. Here, the Plaintiff did not waive its right to the deficiency judgment, so the Court has no discretion to refuse the request for a deficiency or vacate the judgment.

3. The Defendants cannot prove a fraud on the Court.

To the extent the Defendants seek to vacate any judgment based on fraud on the Court, their false and unsupported allegations come far short of the standard required. The standard for vacating a judgment is a high bar:

> [N]ot every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered; intrinsic fraud is not sufficient for equitable relief. In 31 Am. Jur., *Judgments*, Section 655, page 232, it is stated: "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.

Bryan v. Bryan, 220 S.C. 164, 167-168, 66 S.E.2d 609, 610 (1951). There is no evidence of fraud by the Plaintiff, and certainly no evidence that the Plaintiff prevented the Defendants from presenting their case.

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The Defendants appear to argue that the Plaintiff never produced the pre-loan appraisals. First, the Defendants never requested this information. Second, this is wholly irrelevant to any question in the case. The appraisal rights statute provides that the property shall be appraised as of the date of sale. S.C. Code Ann. § 29-3-700. Therefore, pre-loan appraisals have no bearing on the valuation of the property for purposes of reduction of the deficiency judgment.

The Defendants also argue the Plaintiffs did not provide information concerning the receipt of T.A.R.P. funds. First, that information was not requested in discovery, and not raised at trial. Defense counsel did not request this information until after the deadline to appeal the appraisal rights determination had passed. Second, it is completely irrelevant:

> Absent grounds to set aside the decree of foreclosure, there is no discretion to cut off the right to a deficiency after sale where (1) the complaint in the foreclosure action asks for personal judgment, (2) the amount of the debt is fixed in the foreclosure decree, and (3) the sale is insufficient to satisfy the entire debt.

Brown, 376 S.C. at 584, 658 S.E.2d at 101. Even if the Plaintiff received T.A.R.P. funds (and there is no evidence in the record that it did), there is no provision in South Carolina law which permits the Court to set off a deficiency judgment for funds received. Indeed, all that is required is that the Plaintiff request a deficiency judgment in the complaint, and the sale funds are insufficient to satisfy the debt. Those elements are satisfied here.

CONCLUSION

For the reasons set forth below, the Court should deny Defendants' Motion to Vacate and enter a deficiency judgment for the amount of the debt, less the $900,000 appraisal amount returned by the board of appraisers. That amount, as of August 30, 2018, is $2,566,334.12, as set forth in the table below:

Roller Judgment		
Judgment on April 19, 2016	$	2,924,228.70
Per diem through confirmation ($489.70*96 days)	$	47,011.20
Judgment Amount on confirmation (8/29/16)	$	2,971,239.90
Post Judgment Interest (through 1/14/17 at 7.5%)	$	84,252.97
Post Judgment Interest (through 1/14/18 at 7.75%)	$	236,800.70
Post Judgment Interest (through 8/30/18 at 8.5%)	$	174,040.56
Total Judgment (as of 8/30/18)	$	3,466,334.12
Appraisal Amount	$	900,000.00
Net Judgment	**$**	**2,566,334.12**

The Plaintiff reserves the right to petition the Court for an award of post-judgment attorneys' fees and costs.

WOMBLE BOND DICKINSON (US) LLP

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Attorneys for Plaintiff

September 5, 2018
Charleston, South Carolina

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CERTIFICATE OF SERVICE

This is to certify that on September 5, 2018, a copy of the foregoing **MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION TO VACATE DEMAND FOR DEFICIENCY** was served, via electronic filing and delivery, to the following parties:

Thomas R. Goldstein, Esq.
Goldstein & Cobb Law Firm
PO Box 71121
Charleston SC 29415-1121

Attorneys for Roller Defendants

WOMBLE BOND DICKINSON (US) LLP

S// Matthew E. Tillman



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**MASTER IN EQUITY'S ORDER OF BIFURCATION AND JUDGMENT OF FORECLOSURE AND SALE**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	**(Deficiency Demanded Against Defendants Wilbert Roller, Jr. and Betty V. Roller)**
Defendants.	)	

2014 JUL -3 PM 3:54
BEAUFORT COUNTY, SC
CLERK OF COURT

This Court took up the contested case hearing in this foreclosure action on April 29, 2014. Matthew Tillman of Womble Carlyle Sandridge & Rice, LLP, attorneys attended the hearing for the Plaintiff, and Tommy Goldstein, of Belk, Cobb, Infinger and Goldstein, P.A. attended as attorney for Defendants Wilbert Roller, Jr. and Betty V. Roller ("Roller Defendants"). Ron Williams, who is not an attorney, but the defendant's, James Williams' son, appeared for defendant James Williams. According to Mr. Williams, the defendant, James Williams, is elderly and in poor health and not able to appear in court.

The plaintiff made James Williams a party to this action because Mr. Williams claims title to a portion of the property that is the subject of this dispute. Thus, because there is an issue requiring an Order quieting title as well as an Order evaluating the foreclosure action, this Court bifurcated the foreclosure and quiet title claims asserted by the Plaintiff.

The Court took up the foreclosure portion of the case on April 29, 2014, and rescheduled the quiet title portion of the case for May 30, 2014, to allow the defendant, James Williams, to retain counsel if he desired and to consider Plaintiff's application to quiet title at that time. ①

① Mr. Williams has retained Robert Mathison, on

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On January 14, 2011, the plaintiff filed a summons and complaint, seeking foreclosure of the property commonly referred to as the Roller tract. On March 23, 2011, the Rollers filed an Answer to the Complaint and on December 8, 2011, the Rollers filed an Answer to the First Amended Complaint. These pleadings interposed several defenses, novation, fraud in the inducement, and tortious interference with prospective business relations. The defendants, Rollers, also demanded an appraisal as provided for by § 29-3-680, S. C. Code, ann. ("In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.")

Benjamin Roper Jenkins, III, testified on behalf of the plaintiff, and Wilbert Roller testified on behalf of the defendants. The Court also reviewed the documentary evidence produced by the parties. Based on this evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Home Affordable Modification Program does not apply because this foreclosure action involves a mortgage encumbering commercial real estate. As commercial real estate, the mortgaged property is not an owner-occupied dwelling as defined in the Administrative Order issued by the South Carolina Supreme Court on May 2, 2011 (the "Administrative Order"). As a result, the Administrative Order does not apply to this foreclosure action as evidenced by the Certificate of Exemption filed on August 1, 2011.

2. The plaintiff filed the *Lis Pendens*, Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint, with Exhibits in the office of the Clerk of Court for Beaufort County on January 24, 2011.

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3. The plaintiff thereafter filed the Certificate of Exemption from May 2, 2011 Administrative Order ("Certificate of Exemption") in the office of the Clerk of Court for Beaufort County on August 1, 2011.

4. After the plaintiff discovered there might exist a claim as to a portion of the property, the plaintiff amended its complaint and filed the Summons and First Amended Complaint in the office of the Clerk of Court for Beaufort County on October 26, 2011. The plaintiff filed the Second *Lis Pendens* in the office of the Clerk of Court on November 7, 2011. For the convenience of the reader, the Court refers to the *Lis Pendens*, Civil Action Coversheet, Summons, Complaint, and the Second *Lis Pendens*, Second Summons and First Amended Complaint collectively as the "Pleadings."

5. The plaintiff served these Pleadings on Simon Fraser, an attorney for the Roller Defendants, on February 2, 2011. (See the Acceptance of Service filed in the office of the Clerk of Court for Beaufort County, South Carolina on May 6, 2011.)

6. The plaintiff served these Pleadings personally on the defendant, James Williams, on December 9, 2011. The plaintiff filed this Affidavit of Personal Service in the office of the Clerk of Court for Beaufort County, South Carolina on December 28, 2011.

7. The Roller Defendants timely filed and served an answer and counterclaim to the original Complaint on March 23, 2011 and to the First Amended Complaint on December 8, 2011.

8. The Roller Defendants are not individuals entitled to protection under the Service Members Civil Relief Act, 50 USCS §§ 501 *et seq.*

9. For value received, on or about August 9, 2007, the Roller Defendants executed and delivered to Carolina First Bank a promissory note in the original principal amount of Two Million Three Hundred Thousand and 00/100ths ($2,300,000.00) Dollars (the "Original Note").

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10. To secure payment of the Original Note and the debt evidenced thereby, the Roller Defendants executed and delivered to Carolina First Bank a Mortgage dated August 9, 2007 ("Original Mortgage"), whereby the Roller Defendants mortgaged to Plaintiff the property described in Exhibit 1 (the "Subject Property" or the "Roller tract").[1] Carolina First Bank recorded this mortgage on August 14, 2007 in the Beaufort County Register of Deeds ("ROD") at Mortgage Book 2612, at Pages 521-529.

11. On or about September 23, 2008, the Roller Defendants executed a renewal promissory note in favor of Carolina First Bank in the amount of One Million Eight Hundred Fifty Thousand and 00/100ths ($1,850,000.00) Dollars ("First Renewal Note"), under which the Roller Defendants promised to pay the amounts outstanding under the Original Note on terms set forth in the First Renewal Note. Pursuant to the First Renewal Note and the Original Mortgage, the Roller Defendants agreed that their payment obligations under the First Renewal Note would continue to be secured by the Original Mortgage.

12. On or about April 10, 2009, the Roller Defendants executed a renewal promissory note in favor of Carolina First Bank in the amount of One Million Eight Hundred Fifty Thousand and 00/100ths ($1,850,000.00) Dollars (the "Second Renewal Note"), under which the Roller Defendants promised to pay the amounts outstanding under the Original Note, as amended by the First Renewal Note, on terms set forth in the Second Renewal Note. Pursuant to the Second Renewal Note and the Original Mortgage, the Roller Defendants agreed that their payment obligations under the Second Renewal Note would continue to be secured by the Original Mortgage.

[1] The Court will determine the exact description of the property to be sold at the subsequent foreclosure sale following the May 30, 2014, hearing on Plaintiff's quiet title action. Therefore, the property description is subject to modification.

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13. On or about November 27, 2009, the Roller Defendants executed a renewal promissory note in favor of Carolina First Bank in the amount One Million Eight Hundred Fifty Thousand and 00/100ths ($1,850,000.00) Dollars (the "Third Renewal Note"), under which the Roller Defendants promised to pay the amounts outstanding under the Original Note, as amended by the First Renewal Note and Second Renewal Note, on terms set forth in the Third Renewal Note. Pursuant to the Third Renewal Note and the Original Mortgage, the Roller Defendants agreed that their payment obligations under the Third Renewal Note would continue to be secured by the Original Mortgage.

14. Under the terms of the Third Renewal Note, and to further secure payment of the Third Renewal Note and the debt evidenced thereby, the Roller Defendants executed and delivered to Carolina First Bank a Mortgage dated November 27, 2009, additional security secured by a separate parcel of real property. (For convenience, the Court will refer to this additional security as the "Additional Mortgage"). The Roller Defendants mortgaged to Plaintiff additional property ("Second Mortgaged Tract"). The Additional Mortgage was recorded in the ROD in Mortgage Book 2912, at Pages 291-299.

15. Thereafter, on or about December 14, 2012, the Rollers paid to Carolina First a lump sum payment of $100,000 to be applied to principal and interest. In exchange for this payment, the Plaintiff executed and delivered a Release of the Additional Mortgage, by which it released and satisfied its encumbrance on the Second Mortgaged Tract. The plaintiff recorded this Release of Mortgage in the ROD on January 11, 2013 at Book 3206, Pages 1692-1694.

16. At the close of the plaintiff's case, the defendants, Rollers moved for an Involuntary Non-Suit with or without prejudice under Rule 41(b) of the *South Carolina Rules of Civil Procedure* on the ground that the plaintiff failed to demonstrate that it had standing to bring

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the action.[2] The plaintiff's witness, Benjamin R. Jenkins, III, testified that Carolina First merged with the plaintiff on June 17, 2010. He claimed that the new entity holds the Notes. In response the defendants, Rollers, argued that the plaintiff failed to produce the best evidence of the Notes under Rule 1002 of the South Carolina Rules of Evidence. ("To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided these rules or statute.") The Court agrees with the defendants that the best evidence of a Note is always the original, but also notes that the inquiry does not stop there as the following Rule, Rule 1003, provides that the admissibility of a duplicate is proper unless (1) a genuine question is raised as to the authenticity of the original, or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. For this reason, the Court overruled the objection to the failure to produce the originals.

17. The standing issue is more difficult. Nationwide this issue has come up frequently in the wake of the collapse of the housing market in 2008, brought about by unscrupulous transactions on Wall Street. It is true that the plaintiff failed to produce any documentary evidence of the merger, relying instead on the testimony of its witness. When faced with this exact question, the Court of Appeals of Indiana found that the witness's testimony was sufficient. *CFS, LLC v. Bank of America*, N.E.2d (2012). On the same issue, the Supreme Court of Maine went in the opposite direction, holding that without documentary proof showing the plaintiff held the Note, the Bank could not foreclose on the property. See *Wells Fargo Bank, N.A. v. deBree*, 2012 ME 34 (Me. 2012). The Supreme Court of South Carolina has not determined this issue. This Court concludes that the witness's testimony is

[2] "After the plaintiff in an action tired by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief."

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sufficient to establish the standing of the plaintiff to foreclose and therefore denies the defendants', Rollers', motion for involuntary non-suit under Rule 41(b).[3]

18. The plaintiff is entitled to its reasonable attorneys' fees and costs of collection under the term of the Third Renewal Note. Due to the existence of the title issue and the work associated with it, the parties agreed to confer after the hearing to determine a fair amount of attorneys' and costs to assign to plaintiff's collection efforts and add to the judgment in this matter. The parties have informed the court that they agreed that $25,000.00 is an appropriate amount to assign for attorneys' fees and costs.

19. The Original Mortgage constitutes a valid first priority mortgage lien covering the Subject Property.

20. Plaintiff is the current holder as the successor to Carolina First Bank of all notes and the Original Mortgage.[4]

21. Payments due on the Third Renewal Note have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amounts due thereon and has placed the Third Renewal Note and Original Mortgage in the hands of its attorneys for collection.

22. The following amounts are due and owing on the Notes and Mortgage as of April 29, 2014, including costs and expenses of collection and attorneys' fees:

Principal	$1,762,913.86
Interest	$744,469.04
Late Charges	$28,453.34
Fees	$2,560.00
Escrow Tax	$0.00

[3] Both parties timely renewed motions at the close of the case. The Court granted plaintiff's motion on defendants' causes of action for fraud in the inducement and novation for failure to prove the elements by a preponderance of the evidence.

[4] As set forth above, the Court appreciates the defendants', Rollers', argument that merger must be proved to obtain standing to foreclose, but the Court finds plaintiff's witness is competent to testify as to the merger and that plaintiff acquired all assets of Carolina First Bank, including the Note that is the subject of this action.

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Escrow Insurance	$0.00
Escrow MPP	$0.00
Attorneys' Fees and Costs	$25,000.00
Total Net Payoff	$2,563,396.24

Interest continues to accrue after April 29, 2014 at the default rate of 10.00% per annum, as set forth in the Third Renewal Note (which is a *per diem* of $489.69829).

23. Plaintiff seeks to foreclose the Original Mortgage and does not waive the right to a personal or deficiency judgment against the Roller Defendants for the full amount found to be due to Plaintiff under the Third Renewal Note and Original Mortgage, with the right to enter a personal deficiency judgment against the Roller Defendants for any deficiency in this action remaining after the sale of the Subject Property. The amount of any deficiency, if any, will be calculated after appraisal by the method set forth in § 29-3-700, S. C. Code, ann.

24. The defendants, Rollers, previously demanded an appraisal by their verified pleading, and the Court finds that this verified prayer for appraisal contained in their verified answer is sufficient under § 29-3-680. Should the property fail to bring at judicial sale sufficient to satisfy the amount of the debt, the Court will determine whether appraisal is warranted under the facts of the case and, if so, appoint three appraisers using the procedure required by § 29-3-700, S. C. Code, ann.

CONCLUSIONS OF LAW

I conclude that the Original Mortgage is not subject to modification under the Home Affordable Modification Program, that this foreclosure proceeding is exempt from the Administrative Order, that the Plaintiff should have judgment of foreclosure of the Original Mortgage and the Subject Property should be ordered sold at public auction after due

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advertisement. The Subject Property shall be sold at the foreclosure sale conducted by the Master in Equity for Beaufort County at a date to be determined.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court shall hold a hearing on ~~May 30~~ June 26th 3:00, 2014, at ~~1:00~~ PM for the purpose of ruling on Plaintiff's quiet title cause of action against James Williams. The order issued at or shortly after this hearing shall establish the property description of the Subject Property to be sold.

2. The Home Affordable Modification Program does not apply because this foreclosure action involves a mortgage encumbering commercial real estate.

3. The Subject Property is not an owner-occupied dwelling as defined in the Administrative Order, and the Administrative Order does not apply to this foreclosure action as evidenced by the Certificate of Exemption.

4. There is due to the Plaintiff on the Third Renewal Note set forth in the First Amended Complaint the sum of $2,563,396.24, including attorneys' fees and costs, as of April 29, 2014, and Plaintiff is entitled to judgment for this amount.

5. The amount due in the preceding paragraph shall bear interest hereafter until paid on the Third Renewal Note at the rate of 10.00% *per annum* (*per diem* of $489.69829) from April 29, 2014 until the entry of judgment and at the statutory post-judgment rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the Subject Property after April 29, 2014 and before the sale of the Subject Property, these advances may be added to the total judgment debt.

6. The Roller Defendants are liable for the aforesaid debt. On or before the date of sale of the Subject Property the Roller Defendants may pay to the Plaintiff's attorneys the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

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7. On default of payment at or before the time herein indicated, the Subject Property (2) will be sold by the Beaufort County Master in Equity or his agent, at public auction, at the Beaufort County Courthouse, Beaufort, South Carolina on some convenient sales day hereafter on the following terms:

> The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Beaufort Master in Equity, or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments. Purchaser shall pay all costs of recording the deed.

8. Plaintiff seeks to foreclose the Original Mortgage and does not waive the right to a personal or deficiency judgment against the Roller Defendants.

9. After advertisement according to law, giving notice of the time and place of such sale, and the terms thereof, the Beaufort County Master in Equity will convey to the purchaser, or purchasers, a deed to the Subject Property; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the Subject Property sold under this Report and hereinafter more fully described.

 (2) subject to the quiet title portion of the case.

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Under South Carolina Code § 12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

10. The proceeds of the sale will be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action.

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

THIRD, any surplus proceeds to be held subject to further order of the Court.

11. Upon the making of the sale of the Subject Property, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the purchaser or purchasers will be let into possession of the premises on production of the deed, and Sheriff or Beaufort County shall put the holder of the deed into possession of the premises.

12. Each defendant and all persons whosoever claiming under any of them will be forever barred and foreclosed of all right, title and interest and equity of redemption in the Subject Property so sold, or any part thereof.

13. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, adjusting the judgment in light of the appraisal, if necessary, and disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

14. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales date.

15. The Court further acknowledges that the Roller Defendants repeatedly sought to rezone the Subject Property.[5] The rezoning request may have led to an increased value of the Subject Property, such that the Roller Defendants could have sold the Subject Property for an amount close to or exceeding the outstanding debt. However, the Town of Bluffton denied the rezoning request on multiple occasions. The Roller Defendants did not waive any claim they may have against the Town of Bluffton.

Marvin Dukes III
Beaufort County Master in Equity

May 30, 2014
Beaufort, South Carolina

[5] When the Rollers acquired the tract, the property was in Beaufort County and zoned commercial. While they were in Texas, the Town of Bluffton annexed the property and downzoned it to residential.

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EXHIBIT 1 (3)

ALL those certain pieces, tracts or parcels of land situate, lying and being within Bluffton Township, Beaufort County, South Carolina, shown and described as Phase 2A, 16.698 Ac., Power Line R/W, 2.686 Ac. (Proposed), and Power Line R/W 2.267 Ac. (Existing), on a plat entitled "Windtree Subdivision:, prepared by Carol B. Baughman, RLS# 3717, dated February 11, 1986, and revised on March 26, 1986, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 193. For a more detailed description as to location, courses, metes, bounds, distances, etc., reference to the said recorded plat may be had.

This being a portion of the same property conveyed by Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Record Book 228 at Page 1549 and Deed Book 256 at Page 579.

Beaufort County PIN Number: R610-031-000-0002-0000

(3) see footnote 2, page 10

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-0340

TD Bank, N.A., Successor by Merger to Carolina First Bank, 2018 JUL 3 3:54 Wilbert Roller, Jr., Betty V. Roller and James Roller

PLAINTIFF(S)

BEAUFORT COUNTY, S.C. CLERK OF COURT

DEFENDANT(S)

Submitted by: Matthew E. Tillman Womble Carlyle Sandridge & Rice, LLP 5 Exchange Street Charleston, SC 29401	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
T.D. Bank, N.A., Successor by Merger to Carolina First Bank	Wilbert Roller, Jr. and Betty V. Roller	$2,563,396.24
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

ELECTRONICALLY FILED - 2018 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

/s/ MARVIN H. DUKES III — Circuit Court Judge

Judge Code

7-3-14 — Date

For Clerk of Court Office Use Only

This judgment was entered on the 3rd day of July 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 7th day of July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ELECTRONICALLY FILED - 2018 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

ELECTRONICALLY FILED - 2016 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	CONSENT ORDER TO SUPPLEMENT AND AMEND JUDGMENT
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS	)	
Defendants.	)	

EXHIBIT 2

By operation of the Master in Equity's Order of Bifurcation and Judgment of Foreclosure and Sale executed on May 30, 2014 and recorded on July 3, 2014, this Court entered a judgment against Defendants Wilbert Roller, Jr. and Betty V. Roller in the amount of 2,563,396.24. The Plaintiff now seeks to supplement and amend this judgment to include additional interest, fees and costs incurred in this matter.

Upon consent of the parties to this action, the Court hereby grants Plaintiff's request and enters an amended judgment in the amount of $2,924,228.70 as of April 19, 2016, broken down as follows:

Principal	$1,762,913.86
Interest	$1,097,541.50
Late Charges	$ 28,453.34
Appraisal Fees	$ 5,320.00
Attorneys Fees and Costs	$ 30,000.00
Total	$2,924,228.70

WHEREFORE, it is hereby ordered that the judgment against Wilbert Roller, Jr. and Betty V. Roller is now Two Million Nine Hundred Twenty Four Thousand Two Hundred Twenty Eight and 70/100 Dollars ($2,924,228.70), with interest accruing at a per diem rate of

ELECTRONICALLY FILED - 2018 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

$489.70 from April 19, 2016 through the date of confirmation of the sale of the subject property pursuant to the Notice of Sale entered in this action.

Marvin Dukes, Beaufort County Master in Equity

April ____, 2016
Beaufort, South Carolina

WE CONSENT:

Rob Mathison by Matt Tillman 4pm

Robert V. Mathison, Jr., Esq.
Law Offices of Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29938

Attorneys for James Williams

WOMBLE CARLYLE SANDRIDGE & RICE PA

Matt

Daniel Q. Orvin (S.C. Bar No. 13744)
Matthew Tillman (S.C. Bar No. 70358)
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400 Main
(843) 723-7398 Fax

Attorneys for Plaintiff

Thomas R. Goldstein, Esq. (S.C. Bar No. 2186)
Belk, Cobb, Infinger & Goldstein, P.A.
PO Box 71121
Charleston SC 29415-1121
Business Phone: (843) 554-4291

Attorneys for Wilbert Roller, Jr. and Betty Roller

ELECTRONICALLY FILED - 2018 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS CASE NO.: 2011-CP-07-0340
TD Bank, N.A. as successor in interest to Carolina First Bank, Plaintiff, vs. Wilbert Roller Jr., Betty V. Roller and James Williams, Defendants.	**MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

2018 MAY 25 PM 12:35
JEAN ROSEBEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiff's Attorney:	Defendant's Attorney:
Matthew E. Tillman, SC Bar No. 70338 WOMBLE CARLYLE SANDRIDGE & RICE, LLP P.O. Box 999 [5 Exchange Street, 29401] Charleston, SC 29402-0999 Main: (843) 722-3400; Fax.: 843-723-7398 mtillman@wcsr.com *Attorneys for Plaintiff TD Bank, N.A. as successor in interest to Carolina First Bank*	Robert Mathison, Jr., Esq. PO Box 5271 Hilton Head Island, SC 29938 *Attorneys for Defendant James Williams*

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

SECTION I: Hearing Information

Nature of Motion: Order for Judgment
Estimated Time Needed: None Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — May 9, 2015 Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

JUDGE CODE ____
Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-0340

TD Bank, N.A., Successor by Merger to Carolina First Bank, , PLAINTIFF(S)

Wilbert Roller, Jr., Betty V. Roller and James Roller, DEFENDANT(S)

2016 MAY 25 PM 12:35

BEAUFORT COUNTY, S.C.
CLERK OF COURT

Submitted by: Matthew E. Tillman
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29401

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
T.D. Bank, N.A., Successor by Merger to Carolina First Bank	Wilbert Roller, Jr. and Betty V. Roller	$2,924,228.70
		$
		$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge	Judge Code	Date

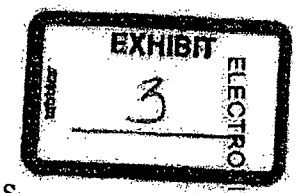
For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2011-CP-07-0340
	)	
TD BANK, N.A., SUCCESSOR BY MERGER TO CAROLINA FIRST BANK,	)	
Plaintiff,	)	
v.	)	**MASTER'S REPORT ON SALE**
WILBERT ROLLER JR., BETTY V. ROLLER AND JAMES WILLIAMS,	)	
Defendants.	)	

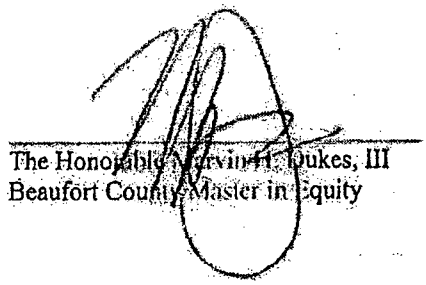
2016 AUG 29 PM 3:52

UNDER AUTHORITY of a Master in Equity's Order of Bifurcation and Judgment of Foreclosure and Sale filed on July 3, 2014, and upon further order set forth in the Order Granting Motion to Enforce Settlement Agreement filed in this action on April 8, 2016, and after due notice and advertisement, I offered for sale, to the highest bidder for cash, at public auction conducted on June 6, 2016, the real property which is the subject to this suit, and received a high bid from Ryan Hillyer in the sum of Four Hundred Twenty One Thousand and 00/100 ($421,000.00) Dollars.

Ryan Hillyer, as the successful bidder, having paid the costs and expenses as provided in said Order, I have executed and delivered to Ryan Hillyer a good and sufficient deed of conveyance of said real property, and bill of sale of said personal property.

IT IS THEREFORE ORDERED that the said sale and the Master's Report on Sale is hereby confirmed by this Court.

IT IS SO ORDERED.



The Honorable Marvin H. Dukes, III
Beaufort County Master in Equity

Beaufort, South Carolina
August 22, 2016

11-340

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ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

Valbridge
PROPERTY ADVISORS
Atlantic Appraisals, LLC

1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843-884-1256 phone
800-477-1210 toll-free
843-881-7632 fax
valbridge.com

July 17, 2018

EXHIBIT
4

Judge Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Beaufort County Courthouse
102 Ribaut Road, Room 1228
Beaufort, SC 29901

RE: Roller Property Appraisals

Dear Judge Dukes,

The Board of Appraisers met via conference call at 2:00 PM on April 9, 2018. The Board consisted of Gary W. Schwab, Gary Beaver and myself. Messrs. Schwab and Beaver had made appraisals of the property and I acted as a reviewer/mediator.

Some background on the time it took to constitute this Board and arrange a meeting (conference call) may be helpful to understand my later explanation for the lack of Mr. Beaver's signature.

The appraisal done for Mr. Thomas R. Goldstein was under the auspices of Halpin Appraisal with co-signatories of Michael P. Halpin and Gary Beaver. Mr. Halpin, in my opinion, was the logical choice to participate as a member of the Board of Appraisers since it was his firm on the letterhead and his was the first signature on the letter of transmittal. Repeated attempts to contact Mr. Halpin were made, but I received no returned calls or emails. I finally made contact with Mr. Halpin, but he refused to be on the Board of Appraisers saying that we should talk to Mr. Beaver. Ultimately, Messrs. Tillman and Goldstein agreed that Mr. Beaver could substitute for Mr. Halpin and I was given Mr. Beaver's contact information. It should be noted that Mr. Beaver, since his participation in the Roller appraisal, had moved to Texas.

My calls and emails to Mr. Beaver were also fruitless. It finally took Mr. Goldstein's intervention to make contact with Mr. Beaver and set up the conference call.

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Valbridge
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1250 Fairmont Avenue
Mt. Pleasant, SC 29464
843-884-1266 phone
800-477-1218 toll-free
843-881-7532 fax
valbridge.com

The results of the conference call are described in the Affidavit of Board of Appraisers attached with this letter. The Board unanimously agreed on a value for the Roller property of $900,000. It was my understanding that since the Board was in unanimous agreement all members of the Board must sign (with notary) the Affidavit. Mr. Schwab and I have signed the Affidavit, but repeated attempts to call and email Mr. Beaver have failed. In the absence of his cooperation, therefore, I am submitting the Affidavit of Board of Appraisers without his signature. I hope this is satisfactory.

Respectfully Submitted,

Christopher J. Donato, MAI CCIM
South Carolina Certified General Real Estate Appraiser
SC CG 292

cc: Mr. Matthew Tillman
Email - mtillman@wcsr.com

Mr. Thomas Goldstein
Email - tgoldstein@cobblaw.net

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AFFIDAVIT OF BOARD OF APPRAISERS

State of South Carolina
County of Charleston

The undersigned, Christopher D. Donato, Gary Beaver, and Gary W. Schwab, being duly sworn, hereby deposes and says:

1. We represent the Board of Appraisers in estimating the value of Beaufort County land hereinafter known as The Roller Property,
2. We are all licensed and/or certified appraisers in the State of South Carolina.
3. Mr. Beaver made an appraisal of the Roller Property for Mr. Thomas R. Goldstein of Belk, Cobb, Infinger & Goldstein, P.A., Mr. Schwab made an appraisal of the same property for TD Bank, and Mr. Donato was appointed by the court to mediate between the two appraisers.
4. Mr. Beaver estimated a value of $2,050,000 for the Roller Property and Mr. Schwab estimated a value of $600,000.
5. The Board of Appraisers met by conference call at 2:00 PM on April 9, 2018.
6. Both Mssrs. Beaver and Schwab used a sales comparison approach as the principal method of estimating value and both used a unit of comparison of dollars per acre. However, Mr. Beaver used the gross area of the property of 21.447 acres and Mr. Schwab used the net area of 10.8 acres.
7. Mr. Donato stated that the Roller Property had 37% unusable acreage and Mr. Beaver's comparable sales had unusable land ranging from 0% to 18.75%, but no adjustments made. This skewed his estimated value to an unreasonably high number.
8. All appraisers ultimately agreed that the proper area of the subject was 10.8 acres (usable area only) and everyone ultimately agreed on a value for The Roller Property of $900,000.

I declare that, to the best of my belief and knowledge, the information herein is true, correct and complete.

Executed this 30th **day of** May, **2018**

Christopher D. Donato, MAI

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ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

NOTARY ACKNOWLEDGEMENT

STATE OF South Carolina, COUNTY OF Charleston, SC

Teresa M Scott
Notary Public

Teresa M. Scott
Name

My Commission Expires: 4/21/2021

Executed this _____ day of _____, 2018

_____
Gary Beaver

NOTARY ACKNOWLEDGEMENT

STATE OF _____, COUNTY OF _____, TX

_____
Notary Public

_____
Name

My Commission Expires: _____

ELECTRONICALLY FILED - 2018 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

ELECTRONICALLY FILED - 2018 Jul 27 10:11 AM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340

Executed this 13 day of June, 2018

Mary W Schwab

NOTARY ACKNOWLEDGEMENT

STATE OF SC

COUNTY OF Charleston

Notary Public

Ann S. Grizzle

Name

My Commission Expires: 6/25/2021

ELECTRONICALLY FILED - 2018 Sep 05 3:06 PM - BEAUFORT - COMMON PLEAS - CASE#2011CP0700340



Cited
As of: August 30, 2018 7:24 PM Z

Am. Gen. Fin. Servs. v. Brown

Supreme Court of South Carolina

February 21, 2008, Submitted; February 27, 2008, Filed

Opinion No. 26445

Reporter
376 S.C. 580 *; 658 S.E.2d 99 **; 2008 S.C. LEXIS 56 ***

American General Financial Services, Inc., f/k/a American General Finance, Inc., Appellant, v. Kimberly Dawn Brown f/k/a Kimberly Dawn Tate, Respondent.

Prior History: [***1] Appeal From Spartanburg County. Gordon G. Cooper, Master-in-*Equity*.

Disposition: REVERSED AND REMANDED.

Core Terms

deficiency judgment, foreclosure, mortgage, demanded, court of *equity*, mortgagee

Case Summary

Procedural Posture

Appellant, the assignee of a mortgage, brought a foreclosure action against respondent mortgagor. A master in *equity* in Spartanburg County (South Carolina) denied the assignee's request for a *deficiency judgment* under *S.C. Code Ann. § 29-3-660* (2007). The assignee appealed.

Overview
In its foreclosure action, the assignee specifically demanded a deficiency judgment. After the master ordered the property to be sold, the assignee submitted a bid on the property, but was outbid by a third party. The master denied a *deficiency judgment* on the ground that it would not be *equitable*. The court held that the master erred. Absent grounds to set aside a decree of foreclosure, there was no discretion to cut off the right to a deficiency after sale when the complaint asked for personal judgment, the amount of the debt was fixed in the foreclosure decree, and the sale was insufficient to satisfy the entire debt. The assignee had not waived its right to a deficiency judgment, but had specifically demanded a deficiency judgment. Accordingly, as the assignee met the criteria, the master was bound to award a deficiency judgment.

Outcome
The court reversed the denial of the deficiency judgment and remanded the case to the master for an order consistent with the court's opinion.

LexisNexis® Headnotes

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

HN1[] **Foreclosures, Deficiency Judgments**

See *S.C. Code Ann. § 29-3-660* (2007).

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

HN2[] **Foreclosures, Deficiency Judgments**

A mortgage represents security for an obligation, but not full payment thereof. Thus, the general rule is that if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency. Moreover, a mortgagee is not denied the full amount due him merely because he elects initially to pursue his remedy by foreclosure. An action for a deficiency judgment as a sequel to foreclosure is taken as a matter of course.

MATTHEW TILLMAN

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

HN3[] **Foreclosures, Deficiency Judgments**

The legislature intended for a deficiency judgment to be denied only when it has been expressly waived.

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

HN4[] **Foreclosures, Deficiency Judgments**

Absent grounds to set aside a decree of foreclosure, there is no discretion to cut off the right to a deficiency after sale where (1) the complaint in the foreclosure action asks for personal judgment, (2) the amount of the debt is fixed in the foreclosure decree, and (3) the sale is insufficient to satisfy the entire debt.

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

Real Property Law > Financing > Foreclosures > General Overview

HN5[] **Foreclosures, Deficiency Judgments**

The foreclosure statutes regarding appraisal give the defendant in a foreclosure action--the mortgagor--a right to apply for an order of appraisal which could possibly result in a ***deficiency judgment*** being adjusted or extinguished. *S.C. Code Ann. §§ 29-3-680* and *29-3-740* (2007). Furthermore, there are guidelines for an ***equity*** court to set aside a foreclosure sale. Although inadequacy of price generally is not enough to allow the court to set aside a sale, if the sale price is so gross as to shock the conscience, the court may interfere with the sale.

Counsel: W. Reid Cox, Jr., of Cox and Ferguson, of Laurens, for Appellant.

Kimberly Dawn Tate, of Spartanburg, Pro se, Respondent.

Judges: JUSTICE WALLER. TOAL, C.J., MOORE and PLEICONES, JJ., concur. BEATTY, J., not participating.

Opinion by: WALLER

Opinion

[*581] [99] JUSTICE WALLER:** In this foreclosure action, appellant American General Financial Services, Inc. appeals from the Master-in-***Equity***'s decision to deny its request for a ***deficiency judgment***. We reverse and remand.

FACTS

In 1999, respondent Kimberly Dawn Tate executed a mortgage in the amount of $ 53,600.00, which was assigned to **[*582]** appellant in 2000. In 2005, appellant brought a foreclosure action against respondent. A ***deficiency judgment*** was specifically demanded in the complaint.

On November 28, 2005, the Master-in-***Equity*** entered a judgment of foreclosure and an order for sale of the real property. The total debt due was found to be $ 61,763.90. [1] The order also stated that appellant **[**100]** had demanded the right to a deficiency judgment.

Appellant submitted a bid on the property for $ 25,000.00, but a third party was the highest bidder in the amount of $ 25,001.00. Appellant thereafter requested a ***deficiency judgment*** against respondent for $ 39,087.99. The Master-in-***Equity***, however, denied the request.

In his written order denying the ***deficiency judgment***, the Master-in-***Equity*** stated as follows:

> As a Court of ***Equity***, it is this Court's position that it may take into consideration all of the facts and circumstances surrounding a foreclosure sale. When it does not appear that it is ***equitable*** to grant a ***deficiency judgment*** in a given situation it may exercise its discretion and deny the request for the entry of a deficiency judgmenta....
>
> To grant [appellant] a ***deficiency judgment*** after consideration of the facts of this case would not be ***equitable***.

Appellant moved for reconsideration, but the Master-in-***Equity*** maintained his position that a court of ***equity*** "has the discretion to deny the request for the entry of a ***deficiency judgement*** if the granting of such appears inequitable." Therefore, he denied the motion for reconsideration.

ISSUE

[1] Although respondent defaulted on the complaint, she appeared at the November 17, 2005, foreclosure hearing. At this hearing, she did not contest that the total **[***2]** debt amount was $ 61,763.90.

MATTHEW TILLMAN

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Where a ***deficiency judgment*** was demanded in the complaint and [***3] not thereafter waived, did the Master-in-***Equity*** err by denying appellant the requested ***deficiency judgment***?

[*583] DISCUSSION

Appellant argues the Master-in-***Equity*** did not have the discretion to deny its request for a ***deficiency judgment*** because a ***deficiency judgment*** was specifically demanded in the complaint and acknowledged in the foreclosure order. We agree.

The right to a deficiency judgment is provided by statute:

> HN1[↑] In actions to foreclose mortgages the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage.

S.C. Code Ann. § 29-3-660 (2007).

Although the Master-in-***Equity*** interpreted this statutory section as giving an ***equity*** court the discretion to determine whether to grant a ***deficiency judgment***, we find this interpretation clearly conflicts with South Carolina case law on this issue.

We have explained that HN2[↑] a mortgage "represents security for an obligation, [but] not full payment thereof." *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978)*. Thus, [***4] the general rule is that "if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency." *Id.* (citation omitted). Moreover, "a mortgagee is not denied the full amount due him merely because he elects initially to pursue his remedy by foreclosure. An action for a deficiency judgment as a sequel to foreclosure is taken as a matter of course." *Id. at 341, 242 S.E.2d at 408*.

Looking at the applicable South Carolina foreclosure statutes, the *Braun* Court found HN3[↑] the Legislature intended for a deficiency judgment to be denied only when it has been "expressly waived." *Id. at 343, 242 S.E.2d at 409; see also Bartles v. Livingston, 282 S.C. 448, 319 S.E.2d 707 (Ct. App. 1984)* ("a mortgagee whose debt remains unsatisfied after sale of the property is entitled to a deficiency judgment, unless the right to a deficiency has been waived."). Consequently, the [*584] Court in *Braun* held that although a ***deficiency judgment*** had not been specifically demanded in the foreclosure complaint, the ***equity*** court properly granted [***5] the mortgagee the ***deficiency judgment***.

[**101] In *Bartles v. Livingston, supra*, the Court of Appeals reversed the circuit court's denial of a deficiency judgment for the mortgagee. The *Bartles* court stated the following:

> HN4[↑] Absent grounds to set aside the decree of foreclosure, there is **no discretion** to cut off the right to a deficiency after sale where (1) the complaint in the foreclosure action asks for personal judgment, (2) the amount of the debt is fixed in the foreclosure decree, and (3) the sale is insufficient to satisfy the entire debt.

282 S.C. at 461, 319 S.E.2d at 715 (emphasis added).

We find the Master-in-***Equity*** erred in the instant case by denying appellant the requested ***deficiency judgment***. Appellant had not waived its right to a ***deficiency judgment***, but instead specifically demanded a deficiency. Certainly, appellant met the criteria set out in *Bartles*, and therefore, the Master-in-***Equity*** was bound to award the ***deficiency judgment*** in the amount of $ 39,087.99.[2]

Accordingly, we reverse the denial of the ***deficiency judgment*** and remand to the Master-in-***Equity*** for an order consistent with this opinion.

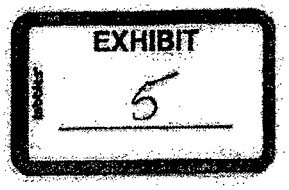
REVERSED AND REMANDED

TOAL, C.J., MOORE and PLEICONES, JJ., concur. BEATTY, J., not participating.

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[2] We note HN5[↑] the foreclosure statutes regarding appraisal give the defendant in a foreclosure action - the mortgagor - a right to apply for an order of appraisal which could possibly result in the ***deficiency judgment*** being [***6] adjusted or extinguished. *See S.C. Code Ann. §§ 29-3-680 &; -740* (2007). Furthermore, there are guidelines for an ***equity*** court to set aside a foreclosure sale. Although inadequacy of price generally is not enough to allow the court to set aside a sale, if the sale price "'is so gross as to shock the conscience,'" the court may interfere with the sale. *Investors Sav. Bank v. Phelps, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct. App. 1990)* (quoting *Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)*). In *Investors Sav. Bank v. Phelps*, the Court of Appeals affirmed the Master's decision to set aside the sale where the bid amount was only slightly more than 1% of the original amount of the mortgage. Here, however, appellant's bid was approximately 47% of the original amount of the mortgage.

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Cited
As of: August 30, 2018 7:24 PM Z

Am. Gen. Fin. Servs. v. Brown

Supreme Court of South Carolina

February 21, 2008, Submitted; February 27, 2008, Filed

Opinion No. 26445

Reporter
376 S.C. 580 *; 658 S.E.2d 99 **; 2008 S.C. LEXIS 56 ***

American General Financial Services, Inc., f/k/a American General Finance, Inc., Appellant, v. Kimberly Dawn Brown f/k/a Kimberly Dawn Tate, Respondent.

Prior History: [***1] Appeal From Spartanburg County. Gordon G. Cooper, Master-in-*Equity*.

Disposition: REVERSED AND REMANDED.

Core Terms

deficiency judgment, foreclosure, mortgage, demanded, court of *equity*, mortgagee

Case Summary

Procedural Posture

Appellant, the assignee of a mortgage, brought a foreclosure action against respondent mortgagor. A master in *equity* in Spartanburg County (South Carolina) denied the assignee's request for a *deficiency judgment* under *S.C. Code Ann. § 29-3-660* (2007). The assignee appealed.

Overview
In its foreclosure action, the assignee specifically demanded a deficiency judgment. After the master ordered the property to be sold, the assignee submitted a bid on the property, but was outbid by a third party. The master denied a *deficiency judgment* on the ground that it would not be *equitable*. The court held that the master erred. Absent grounds to set aside a decree of foreclosure, there was no discretion to cut off the right to a deficiency after sale when the complaint asked for personal judgment, the amount of the debt was fixed in the foreclosure decree, and the sale was insufficient to satisfy the entire debt. The assignee had not waived its right to a deficiency judgment, but had specifically demanded a deficiency judgment. Accordingly, as the assignee met the criteria, the master was bound to award a deficiency judgment.

Outcome
The court reversed the denial of the deficiency judgment and remanded the case to the master for an order consistent with the court's opinion.

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Real Property
Law > Financing > Foreclosures > Deficiency Judgments

HN1[] **Foreclosures, Deficiency Judgments**

See *S.C. Code Ann. § 29-3-660* (2007).

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

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A mortgage represents security for an obligation, but not full payment thereof. Thus, the general rule is that if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency. Moreover, a mortgagee is not denied the full amount due him merely because he elects initially to pursue his remedy by foreclosure. An action for a deficiency judgment as a sequel to foreclosure is taken as a matter of course.

MATTHEW TILLMAN

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

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The legislature intended for a deficiency judgment to be denied only when it has been expressly waived.

Real Property
Law > Financing > Foreclosures > Deficiency Judgments

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Counsel: W. Reid Cox, Jr., of Cox and Ferguson, of Laurens, for Appellant.

Kimberly Dawn Tate, of Spartanburg, Pro se, Respondent.

Judges: JUSTICE WALLER. TOAL, C.J., MOORE and PLEICONES, JJ., concur. BEATTY, J., not participating.

Opinion by: WALLER

Opinion

[*581] [99] JUSTICE WALLER:** In this foreclosure action, appellant American General Financial Services, Inc. appeals from the Master-in-***Equity***'s decision to deny its request for a ***deficiency judgment***. We reverse and remand.

FACTS

In 1999, respondent Kimberly Dawn Tate executed a mortgage in the amount of $ 53,600.00, which was assigned to **[*582]** appellant in 2000. In 2005, appellant brought a foreclosure action against respondent. A ***deficiency judgment*** was specifically demanded in the complaint.

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Appellant submitted a bid on the property for $ 25,000.00, but a third party was the highest bidder in the amount of $ 25,001.00. Appellant thereafter requested a ***deficiency judgment*** against respondent for $ 39,087.99. The Master-in-***Equity***, however, denied the request.

In his written order denying the ***deficiency judgment***, the Master-in-***Equity*** stated as follows:

> As a Court of ***Equity***, it is this Court's position that it may take into consideration all of the facts and circumstances surrounding a foreclosure sale. When it does not appear that it is ***equitable*** to grant a ***deficiency judgment*** in a given situation it may exercise its discretion and deny the request for the entry of a deficiency judgmenta....
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> To grant [appellant] a ***deficiency judgment*** after consideration of the facts of this case would not be ***equitable***.

Appellant moved for reconsideration, but the Master-in-***Equity*** maintained his position that a court of ***equity*** "has the discretion to deny the request for the entry of a ***deficiency judgment*** if the granting of such appears inequitable." Therefore, he denied the motion for reconsideration.

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[*583] DISCUSSION

Appellant argues the Master-in-***Equity*** did not have the discretion to deny its request for a ***deficiency judgment*** because a ***deficiency judgment*** was specifically demanded in the complaint and acknowledged in the foreclosure order. We agree.

The right to a deficiency judgment is provided by statute:

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S.C. Code Ann. § 29-3-660 (2007).

Although the Master-in-***Equity*** interpreted this statutory section as giving an ***equity*** court the discretion to determine whether to grant a ***deficiency judgment***, we find this interpretation clearly conflicts with South Carolina case law on this issue.

We have explained that *HN2*[↑] a mortgage "represents security for an obligation, [but] not full payment thereof." *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978)*. Thus, [***4] the general rule is that "if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency." *Id.* (citation omitted). Moreover, "a mortgagee is not denied the full amount due him merely because he elects initially to pursue his remedy by foreclosure. An action for a deficiency judgment as a sequel to foreclosure is taken as a matter of course." *Id. at 341, 242 S.E.2d at 408*.

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We find the Master-in-***Equity*** erred in the instant case by denying appellant the requested ***deficiency judgment***. Appellant had not waived its right to a ***deficiency judgment***, but instead specifically demanded a deficiency. Certainly, appellant met the criteria set out in *Bartles*, and therefore, the Master-in-***Equity*** was bound to award the ***deficiency judgment*** in the amount of $ 39,087.99.[2]

Accordingly, we reverse the denial of the ***deficiency judgment*** and remand to the Master-in-***Equity*** for an order consistent with this opinion.

REVERSED AND REMANDED

TOAL, C.J., MOORE and PLEICONES, JJ., concur. BEATTY, J., not participating.

End of Document

[2]We note *HN5*[↑] the foreclosure statutes regarding appraisal give the defendant in a foreclosure action - the mortgagor - a right to apply for an order of appraisal which could possibly result in the ***deficiency judgment*** being [***6] adjusted or extinguished. *See S.C. Code Ann. §§ 29-3-680 &; -740* (2007). Furthermore, there are guidelines for an ***equity*** court to set aside a foreclosure sale. Although inadequacy of price generally is not enough to allow the court to set aside a sale, if the sale price "'is so gross as to shock the conscience,'" the court may interfere with the sale. *Investors Sav. Bank v. Phelps, 303 S.C. 15, 17, 397 S.E.2d 780, 781 (Ct. App. 1990)* (quoting *Poole v. Jefferson Standard Life Ins. Co., 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)*). In *Investors Sav. Bank v. Phelps*, the Court of Appeals affirmed the Master's decision to set aside the sale where the bid amount was only slightly more than 1% of the original amount of the mortgage. Here, however, appellant's bid was approximately 47% of the original amount of the mortgage.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-00340**
CAROLINA FIRST BANK,	)	
Plaintiff,	)	
versus	)	**MOTION FOR RECONSIDERATION RULES 59, 60, S. C. R. C. P. § 29-3-680**
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
Defendants.	)	

TO: CAROLINA FIRST BANK n/k/a T.D.BANK:

PLEASE take notice that the defendants, Wilber Roller, Jr. and Betty V. Roller, move for an Order of the Court amending and altering the Court's Order entering deficiency judgment dated October 26, 2018, and received by counsel October 26, 2018. The motion is based on the following grounds:

1. Scrivener's error in Conclusion

The conclusion (page 5) of the Order holds: "Further, the court credits the $900,000.00 value assigned by the appraisal board and reduces the deficiency judgment against the defendants to $2,566,334.12 as of August 30, 3018." It will be undisputed that the date should be corrected to "2018."

2. Rule 60 Motion

Rule 60 of the *South Carolina Rules of Civil Procedure* provides in applicable part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);[1]

(3) fraud, misrepresentation, or other misconduct of an adverse party. . .

The Court's October 26th Order under review misapprehends the defendants' legal position. The Court evaluates the case on a procedural analysis that the defendants are too late to "appeal" the appraiser's report. This misstates the defendants' position. The defendants' legal position, under both Rules 59 and 60, is that the Master-in-Equity is a court of equity and the plaintiff is perpertrating a fraud on the Court by suppressing evidence that it controls and preventing the appraisers from having the applicable data on which to base their decision. The defendants legal position is based on a spoiliation of evidence and due process analysis; to wit, that by being deprived to cross-exam the Bank's representive on its claims, the Bank is perpretrating a fraud. In 1986, the South Carolina Supreme Court took up a similar issue in *South Carolina National Bank v. Central Carolina Livestock Market, Inc.*, 289 S.C. 309, 345 S.E.2d 485 (1986). There the South

[1] Because this is a non-jury trial, and because the Court entered its Order establishing the deficiency on October 26, 2018, the defendants, Rollers, are entitled to move for a new trial under Rule 59. Since the grounds for a new trial under Rule 59 are indistinguishable from grounds to set aside a judgment under Rule 60, the defendants promote judicial economy by treating them together. The only practical difference between Rules 59 and 60 is a pleading requirement that a motion for new trial be made within ten days "after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered." Rule 60 allows up to one year. As the Order under review correctly notes, the Court entered the judgment on July 3, 2014, but the amount of judgment was unsettled until October 26, 2018.

Carolina National Bank appealed the trial court's setting aside a deficiency judgment. In affirming the circuit court's decision to set aside the deficiency judgment, the Supreme Court said:

> The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965). Due process does not mandate any particular form of procedure. *South Carolina Ports Authority v. Kaiser*, 254 S.C. 600, 176 S.E.2d 532 (1970). Instead, due process is a flexible concept, and the requirements of due process in particular cases are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur. *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. ____, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985); *Hewitt v. Helms*, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983)
>
> . . .
>
> Under the Act, a judge clearly has the discretion to allow a full trial on the issue of value which would include the presentation of evidence and the cross-examination of witnesses. By analogy to the condemnation cases, such a hearing would provide a party with a meaningful opportunity to be heard even though the judge is limited to either confirming the appraisal or ordering a new appraisal. Therefore, we hold that the Act is not unconstitutional on its face since it may be applied in a manner consistent with the due process clauses of both the state and federal constitutions.
>
> There remains the question of whether the Bank was denied due process in the application of the Act. We have previously condemned the use of affidavits to determine disputed issues of fact. See *Simonds v. Simonds*, 232 S.C. 185, 101 S.E.2d 494 (1967); *Lathaam v. Town of York*, 210 S.C. 565, 43 S.E.2d 467 (1947); *Union Savings Bank v. Hubbard*, 138 S.C. 328, 136 S.E. 481

(1927); *Team v. Bryant*, 71 S.C. 331, 333, 51 S.E. 148, 149 (1903). If the judge had remained steadfast in his initial ruling which limited the hearing on appeal to affidavits alone, this ruling, though permitted by the act, would have denied the parties a meaningful opportunity to be hears.

South Carolina National Bank v. Central Carolina Livestock Market, Inc., supra.

Here, the circumstances are graver because the foreclosing plaintiff, a successor to the creditor bank, prevented the appraisers from access to its own information about the property being appraised, which is tantamount to a spoliation of evidence. When a party hides, destroys, or fails to produce material evidence solely within its possession, the Court is authorized to impose sanctions up to an including dismissal:

Whatever sanction is imposed should serve to protect the rights of discovery provided by the rules. Downey v. Dixon, 294 S.C. 42, 45 362 S.E.2d 317, 318 (Ct. App. 1987). The burden is upon the appealing party to show that the trial court abused its discretion. Dunn v. Dunn, 298 S.C. at 501, 381 S.E.2d at 735. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of the appellant, thereby amounting to an error of law. Darden v. Witham, 263 S.C. 183, 209 S.E.2d at 502, 381 S.E.2d at 735.

Kershaw County Board of Education v. United States Gypsum Company, 302 S.C. 390, 396 S.E.2d 369 (1990) (Court approved jury instruction of adverse inference based on defendant's destruction of asbestos ceiling panels.)

The defendants' challenge here is not directed at the appraisals but at the Court's denial of fundamental due process in allowing a plaintiff to perpetrate a fraud on the Court by hiding

material evidence and preventing the defendants from producing the evidence for the Court in deciding whether to accept the appraisers' report. It is the Court, not the appraisers who enters the deficiency judgment; the appraisal is evidence only. If the Bank is going to assert that the defendants waived the right to enter additional evidence in the record by failing to appeal timely the appraisers' report, the Court has the jurisdiction under either Rule 59 or 60 or both to reopen the record to compel the plaintiff to produce the evidence in its sole control.

3. The post judgment misconduct of the Bank

Following the sale of the property, the current owners detected what they believe to be a title defect in their chain of title. The current owners' lawyer, Walter Nester of the McNair Law Firm contacted defendants' counsel about the defect, and as the parties were negotiating for a transfer of interest to the third-party owner, their lawyer sent the following e-mail on September 10, 2018:

> **From:** Nester, Walter <WNester@MCNAIR.NET>
> **Sent:** Monday, September 10, 2018 1:49 PM
> **To:** Simon Fraser <sfraser@fraserallen.com>
> **Cc:** Symons, Janet <JSymons@mcnair.net>
> **Subject:** Roller - Gore Parcel Buck Island and Bluffton Parkway
>
> Simon – I have also spoken with TD Bank about the gore parcel created by the incorrect legal description in the mortgage of Wilbert & Betty Roller to Carolina First Bank **(BK 2612 / P 521)**. TD Bank asserts that the Gore was a part of the parcel mortgaged and therefore also part of the property foreclosed. TD Bank is not willing to join in any agreement where your client is to receive any consideration for the gore strip. They will agree to quit claim any rights they may have remaining so long as Roller also signs and no consideration paid.
>
> The other method to clear title is to bring a quiet title action and all that it involves for all the parties.

My client prefers a simple quit claim. Please see if Mr. Roller is willing to sign. Thank you.

MCNAIR
ATTORNEYS

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Shareholder
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This post judgment conduct is shocking in and of itself, but more so when considered against the backdrop that the same bank interfering in the Rollers' negotiations is the same party attempting to perpetrate a fraud on a Court of Equity. As this Court said in its October 26th Order under review: "[N]ot every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic[2] or collateral to the question examined and determined in the action in which the

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[2] Since the 1951 *Bryan* decision on which the Court relied, the dichotomy between extrinsic and intrinsic fraud is on life support. See Judge Hearn's dissent in *Mr. G. v. Mrs. G.* S.C, 320 S.C. 305, 465 S.E.2d 101 (1995): The ostensible rationale behind the Throckmorton dichotomy is that intrinsic fraud is discoverable through the ordinary processes of the trial itself but that extrinsic fraud never enters the judgment. *Lockwood v. Bowles*, 46 F.R.D. 625 (D.D.C.1969). This distinction has been thoroughly criticized by courts and commentators as "difficult to understand and apply." 11 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2861 (1973).[3]

In refusing to follow this short-sighted logic, one court has said: "We believe truth is more important than the trouble it takes to get it." *Publicker v. Shallcross*, 106 F.2d 949, 952 (C.C.A.3 1939). The same sentiment was even more cogently expressed by Judge (later Justice) Brennan for the New Jersey Supreme Court:

Nevertheless, upon principle, we hold that relief for fraud upon the court may be allowed under our rule whether the fraud charged is denominated intrinsic or extrinsic. *107 The notion that repeated retrials of cases may be expected to follow the setting aside of judgments rendered on false testimony will not withstand critical analysis.... We prefer to

judgement was rendered; intrinsic fraud is not sufficient for equitable relief." Order under review at page 3, citing *Bryan v Bryan*, 220 S.C. 164, 167-168, 66 S.E.2d 609 (1951). As the comments to Rule 60 make clear, the Rule makes **no distinction** between the two: "Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by motion under amended subdivision (b)." *1948 Advisory Committee Note to Rule 60(b)* Here the Bank's fraud is extrinsic—spoiliaiting evidence is extrinsic; interfering in third party conduct is extrinsic. "An act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgment due to extrinsic fraud. *Ray v. Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007) The Bank's conduct has deprived the defendants of a meaningful opportunity to be heard. In short, the Bank submits itself to the jurisdiction of the Court for purposes of obtaining the relief it seeks, but refuses to submit to the jurisdiction of the Court to be examined under oath about its conduct. In short, it becomes a super plaintiff—in court to get what it wants but not in court to be examined. The plaintiff seeks to shift the inquiry to a timeliness argument, arguing that the defendants waived the right to confront the Bank by failing to "appeal" the appraisal. The defendants are not attacking the appraisers; they seek to confront the Bank in open court in order to examine the Bank's conduct both pre and post-sale in order to cast doubt on the validity of the Bank's claim for relief.

No matter how the Court chooses to evaluate the plaintiff's conduct, whether under a due process analysis, a spoliation of evidence analysis, or an extrinsic fraud analysis, the plaintiff is asking this Court to impose an enormous deficiency judgment against the defendants based on an incomplete record brought about by the plaintiff's misconduct. As for the Bank's September,

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follow the equity of the matter and to take away an unjust judgment obtained by vital perjury when the injustice and inequity of allowing it to stand are made evident. See *Mr. T. v. Mrs. T.*, 378 S.C. 127, 662 S.E.2d 413 (Ct. App. 2008)

2018, decision to interfere in the Rollers' negotiations with a third party, the defendants are willing to address those activities by way of a new civil action, but the defendants are aware that as soon as they do so, the plaintiff bank will interpose a procedural objection that the action is germane to this case. The defendants are content to address the Bank's recent course of conduct in this action or in a new action, but do not wish to be placed in a procedural cul-de-sac for failure to raise the issue here.

4. Rule 60(b)(5), *S. C. Rules of Civil Procedure* provides a fail-safe remedy to prevent a miscarriage of justice.

The most powerful rule in the *Rules of Civil Procedure* is Rule 60(b)(5) because it is here that the framers guarantee that all courts possess the inherent authority to prevent miscarriages of justice. Rule 60(b)(5) says:

> On motion, and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: . . . (5) it is no longer equitable that the judge should have prospective application.

As discussed in the preceding sections, the plaintiff in this case has not only refused to appear in Court, but also suppressed evidence, denied the plaintiff the right to confront the plaintiff and cross-exam the Bank's representative on the validity of its claim for deficiency. The Bank's effort to hide behind a wall of impenetrability deprives the defendants of property without due process of law. It is no defense to a Vth Amendment violation to say that the defendants could have deposed the plaintiff's representative for every party to every suit is entitled to rely on the right to be heard in meaningful manner, and the plaintiff cannot shift the economic burden to impoverished litigants to absolve it from its fundamental burden of proof and burden of production as the party seeking judicial relief.

Conclusion

For the reasons set forth above, the defendants request the Court to grant the defendants a new trial on the issue of the deficiency judgement and afford them the minimal due process to confront the plaintiff's representative about its in-house appraisal and about its post-sale conduct, or, in the alternative, to impose such sanction as the Court finds proper for the Bank's spoliation of evidence, and to allow the defendants to amend their Answer to set forth Counterclaims against the foreclosing bank for interfering in their prospective business relations with the third party purchaser.

Respectfully submitted,

November 2, 2018

/s/ Thomas R. Goldstein
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. **2011-CP-07-00340**
CAROLINA FIRST BANK,	)	
Plaintiff,	)	
versus	)	**AFFIDAVIT OF WILBERT ROLLER**
WILBERT ROLLER JR. AND BETTY V. ROLLER,	)	
Defendants.	)	

Personally appeared before me, Wilbert Roller, who being duly sworn does depose and say:

I am offering this affidavit to demonstrate that the foreclosure sale of the subject property for $421,000.00 on July 3, 2016 is an unconscionable sales price, and that the Bank is withholding critical information only it possesses from both the appraisers and the Court. As I stated in my August 16, 2018, affidavit, I acquired the 22-acre parcel on Buck Island Road in 1980 for the purchase price of $421,000.00. In 1980, when I purchased the property, the parcel was located in Beaufort County and zoned commercial. During my absence from the State of South Carolina during the years 1994 and 1995, while I was living in Texas, the City of Bluffton annexed the parcel and downzoned it from commercial to residential. I am sure that the City posted the property prior to annexation but the City made no effort to contact me personally in Texas to notify me of its intent to (1) annex my property, and (2) downzone it.

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The parcel is unique in Bluffton as it remains the only **undeveloped** large tract on Buck Island Road. All the other corners on Buck Island Road are developed and consist of shopping malls with large anchor tenants.

In 2007, when I acquired a line of credit up to 2.3 million dollars from Carolina First Bank, the Bank was happy to loan me the money. The Bank knew the property was worth more than the amount of loan because the Bank conducted an independent appraisal of the property, a cost which the Bank required that I cover. My Promissory Note says:

6. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable fees and charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Survey. A(n) Survey fee of $2,200 payable from separate funds on or before today's date.

Loan Origination. A(n) Loan Origination fee of $11,500.00 payable from separate funds on or before today's date.

Appraisal. A(n) Appraisal fee of $1,800 payable from separate funds on or before today's date.

When the Bank lent me the money in 2007, it was well aware of the zoning problem and aware that I was using the money to provide the necessary infrastructure and architectural design work to develop the property as a commercial site with a large anchor tenant. The Bank never showed me a copy of the appraisal it obtained, but as part of the negotiations leading up to the loan, the Bank informed me that its appraisal justified the loan. To this date, the Bank has never let me see or have a copy of the appraisal it had done even though I paid for it.

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Not long after Carolina First Bank made the loan to me, on June 10, 2008, I received an offer to purchase 17.5 acres for $325,000.00 per acre or roughly 5.7 million dollars. I previously filed a copy of that contract with the Court, but for convenience I am attaching it here again. That proposed purchase contemplated BI-LO grocery store as the anchor tenant. As a part of the effort to prepare the parcel for development, I hired Michael Kronimus of K.R.A. Associates, the leading architecture firm in the area to handle the presentation to the Town of Bluffton. The Town of Bluffton refused to restore my zoning due to the objections of a small group of Bluffton residents who demanded that I provide certain things for them as a condition of going forward. They demanded that I build a community civic center and a ballfield for them, and make a financial contribution to their neighborhood association, which I declined to do.

As a result, the tract retains its current zoning classification of "residential general," which would not allow the BI-LO to locate there, but which does allow dense multi-family development on the property, a fact overlooked by the court-appointed appraisers. For example, as the property is currently zoned, it could accommodate a large condominium development, apartment complex, or mobile home park. Moreover, the council members who advocated so hard against the restoration of my zoning are no longer on City Council, and their departure combined with the explosive growth of Bluffton make the parcel worth even more than the 5.7 million dollar offer I received in June of 2008. The court appointed appraisal gives none of these future uses any consideration, and the Bank withheld its appraisal—which I paid for—from the appraisers. In short, the appraisers not only ignore the property's highest and best use,

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but also the Bank specifically withheld critical evidence from them. I have a more fundamental complaint with the Bank's application for deficiency judgment.

As it currently exists with its present zoning, the property is worth in excess of two million dollars as supported by the original September 26, 2016, appraisal prepared by Mark Halpern, which I previously filed with the Court. Nearly forty years have elapsed since I acquired the property for $421,000.00 in 1980. Houses acquired in Bluffton in 1980 are selling for ten or twenty times their 1980 value today. Any readily available inflation calculator—and there are thousands—demonstrates that the annualized inflation rate from 1980 to the present is 3.12%. This means that $100.00 in 1980 is equal to $321.41 today. Real estate values have climbed faster than the inflation rate. But the Bank is attempting to practice a fraud on the Court by suppressing its own appraisal, which would have made a material difference to the appraisers in making their report. And even if it did not, the Bank cannot come into this Court and ask for an extraordinary deficiency judgment to be entered against me while at the same time suppressing a document that only it has access to. The Bank really does not dispute that the property is worth millions because while the Bank conducted its own appraisal of the property as a condition of making a loan to me and determined that the collateral value of the land was sufficient to secure a $2,300,000.00 loan in 2007, it refuses to allow the Court to see it. Property values have not gone down in the last 11 years. (I recognize that real estate absorbed a huge hit in 2008 due to the misconduct of various investment banks, but real estate values today are higher than they were in 2007, before the crash.)

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In short, the value of the collateral is worth far more than the debt, even as currently zoned. Mr. Halpern's appraisal of $2,050,000.00 is low because it fails to consider the large number of residential units that can be constructed on the property as it is currently zoned. As currently zoned, the value of the property is at least $2,500,000.00, and if the Town of Bluffton would restore the zoning I had when I acquired the parcel, the 22 acres is worth in excess of six million dollars.

I am not a lawyer by any means, but I know an unconscionable sale when I see one, and the sale of this property for $421,000.00 is unconscionable.

Finally, in recent months, the new purchaser discovered a strip of land adjacent to the subject property here. This small parcel is still in my name and not encumbered by a mortgage to the foreclosing Bank. The purchaser contacted me, and as we were in negotiations for me to convey my interest for an agreed upon amount, the Bank interfered and informed the purchaser that if it paid any consideration to me for relinquishment of my interest that it would not release any supposed claim it had on the small parcel. Naturally, the purchaser broke off negotiations with me. The Bank's interference in these negotiations is further evidence of the lengths of the Bank's inequitable conduct, so much so that it will reach to interfere in business matters even though such negotiations might possibly have led to a resolution that benefitted the Bank. Because of the Bank's inequitable conduct and refusal to provide me access to the appraisal that it charged me for, the Bank should not be rewarded for such obvious inequitable conduct.

Further your deponent says not.

Wilbert Roller

SWORN TO BEFORE ME THIS
3RD DAY OF ~~NOVEMBER~~ December, 2018.

Notary Public for South Carolina
My Commission expires: 8/5/2026

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REAL ESTATE SALES CONTRACT

State of South Carolina

County of Beaufort **Tuesday, June 10, 2008**

6/13/08

This Real Estate Sales Contract (the "Contract") is made and entered into by and among the undersigned Sellers whose mailing address appears below their signatures (herein called collectively "Seller") and the undersigned Purchaser whose mailing address appears below her signature (herein called "Purchaser"). In consideration of the agreements herein contained, the parties hereto agree as follows:

1. CONVEYANCE:

Subject to the terms and conditions herein, Seller agrees to sell and convey and Purchaser agrees to purchase and take title to approximately 17.5 acres ("Property") located near the northeast corner of Buck Island Road and Bluffton Parkway, Bluffton, Beaufort County, SC. The Property includes a part of Beaufort County DMP # R610 031-000-002-000. The Property is delineated as Tract B on the attached Proposed Subdivision Platt attached hereto and made a part hereof. A survey of the combined Tract A and Tract B is attached as Exhibit C.

2. PAYMENT OF PURCHASE PRICE:

a. The "Purchase Price" of Property shall be Three Hundred Twenty Five Thousand and No/100 Dollars ($325,000.00) per acre contained within the parcel designated Tract B, including the acreage of any of such land (i) that has been or will be dedicated for municipal roads, (ii) that has been or will be designated a wetland buffer, but excluding any acreage that is wetlands, all as shall be determined by a final survey, site plan, and/or wetlands delineation to be agreed upon by Purchaser and Seller. The Purchase Price of Property shall be paid in cash or collected funds at Closing.

b. Upon full execution of this contract Ten Thousand and No/100 Dollars ($10,000.00) (the "Earnest Money") shall be deposited by Purchaser's check into an escrow account of the Seller's choosing. Earnest Money shall be applied toward the Purchase Price due at Closing.

c. If Buyer does not terminate this Agreement as and when permitted by paragraph 3 c below, then Buyer shall within five (5) business days after the later of (i) the end of the Inspection Period, or (ii) the date on which Buyer has all binding agreements and approvals (including without limitation wetlands-related approvals) as are necessary for the construction, maintenance, and operation of the access road for ingress and egress to and from the Property and Bluffton Parkway, and a right-in/right-out curb cut into Bluffton Parkway in connection with such access road, all as set forth more fully in Section 15 a below, deposit Purchaser's check into an escrow account of the Seller's choosing an additional Ninety Thousand and No/100 Dollars ($90,000), which shall be deemed part of the Earnest Money and shall be applied toward the Purchase Price due at Closing.

3. INSPECTION PERIOD:

a. During the period (the "Inspection Period") commencing the first business day after the Effective Date and continuing through the one hundred fiftieth (150th) day after delivery of the Seller Due Diligence Items (as defined below), the Purchaser shall be permitted to perform such inspections and evaluations of the Property and to conduct studies thereon as Purchaser may elect. If the end of the Inspection Period falls on a Saturday, Sunday or legal holiday, the end of the Inspection Period shall be automatically extended to the end of the next business day.

b. During the Inspection Period, Purchaser, its employees and its agents shall have the right to unlimited access to the Property to make such studies, investigations, tests, reviews and inspections of the

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Property, including such soil, engineering, planning, environmental, permitting, zoning or other studies and investigations as Purchaser shall deem appropriate in its sole discretion. Purchaser shall pay all costs incurred by Purchaser in making any such inspections and investigations and shall indemnify, defend and hold the Seller harmless from any liens, claims, losses and liabilities arising out of the Purchaser's exercise of such right and privilege to go upon the Property and shall restore as nearly as practicable the Property substantially in its condition prior to such investigations.

c. If during the Inspection Period, the Purchaser determines for any reason that the Property is not suitable for Purchaser's purposes in Purchaser's sole and absolute discretion, the Purchaser may terminate this Contract by delivering written notice of such determination to Seller on or before 5:00 pm Beaufort County, South Carolina time on the first business day after the final day of the Inspection Period. If Purchaser fails to timely give such notice of termination to Seller, this Paragraph shall be of no further force and effect, and Purchaser shall have no further right to terminate this Contract pursuant to this paragraph 3. If Purchaser does give notice of termination to Seller on or before the expiration of the Inspection Period, then the Earnest Money shall be refunded to Purchaser, and the parties hereto shall have no further rights, duties or obligations under this Contract, except that Purchaser shall, within ten (10) days after such termination, deliver to Seller copies of all feasibility studies, surveys, engineering reports and all other information obtained by Purchaser with respect to the Property, and this obligation shall survive termination of this Agreement.

4. SURVEY:

a. Purchaser, its agents, and contractors shall have the privilege of going on Property any time prior to Closing to make surveys (collectively, the "Survey") and soil tests of Property and the parties performing such survey or test shall have the right to cut brush and limbs necessary to survey the lines of Property and to make soil borings. Purchaser agrees to indemnify and hold Seller harmless against any property damage or personal injury or claim of lien against Property resulting from the activities permitted by this paragraph on Property.

b. Any such survey shall be performed by a South Carolina Registered and Licensed Surveyor selected by Purchaser, at Purchaser's sole expense, with the survey so made indicating the total number of acres in Property to the nearest one hundredth of an acre, exclusive of the rights-of-way of public roads and cemeteries. Any recent surveys commissioned by Seller shall be made available to Purchaser at no cost.

c. Seller shall bear the cost and responsibility of subdividing Property in accordance with Exhibit A. The subdivision plat will be submitted to Purchaser sixty days prior to Closing for Purchaser's review and approval, which shall not be unreasonably withheld.

5. CLOSING:

The closing (the "Closing") of the transaction contemplated by this Contract shall be by delivery of a properly executed general warranty deed (the "Deed") to Purchaser against receipt by Seller of the Purchase Price and upon performance of all other obligations of Seller hereunder, on a date (the "Closing Date") and at a place designated by Purchaser in southern Beaufort County, South Carolina, giving notice thereof at least 5 business days prior to the selected time, but in no event later than ninety (90) days after the end of the Inspection Period. If that date that is ninety (90) days after the end of the Inspection Period falls on a Saturday, Sunday or legal holiday, the last day for Closing shall be automatically extended to the end of the next business day.

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6. TITLE:

Purchaser shall have until thirty (30) days after the expiration of the Inspection Period to give Seller written notice of any defects or objections affecting the title to the Real Property or the use thereof by Purchaser disclosed by Purchaser's title examination and/or Survey. If the end of the thirty-day period falls on a Saturday, Sunday or legal holiday, the end of the such period shall be automatically extended to the end of the next business day. In addition, Purchaser may from time to time update the effective date of such title examination or Survey, and Purchaser may give notice to Seller of all defects or objections appearing subsequent to the effective date of its previous title examination or Survey, as the case may be. Seller shall have ten (10) business days after receipt of notice of title defects or objections from Purchaser to advise Purchaser in writing as to which of such title defects or objections Seller does not intend to satisfy or cure; provided, however, Seller hereby agrees that Seller shall satisfy or cure any such defects or objections consisting of past due taxes, mortgages, deeds of trust, tax liens, mechanic's or materialmen's liens, or other such monetary encumbrances. If Seller fails to give such written advice to Purchaser within said 10-business day period, then Seller shall be deemed to have agreed to satisfy or cure all such defects or objections set forth in Purchaser's notice. If any defect or objection is such that it is not reasonably susceptible of cure, or if Seller shall advise Purchaser in writing that Seller does not intend to satisfy or cure any specific non-monetary encumbrances, then Purchaser may elect either (a) to terminate this Contract by written notice to Seller, in which event the Earnest Money shall be immediately refunded to Purchaser and this Contract shall be of no further force or effect and Purchaser and Seller shall have no further rights, obligations or liabilities hereunder, or (b) to accept title subject to such specific non-monetary encumbrances. Seller shall have until the Closing to satisfy or cure all such defects and objections which Seller shall have agreed (or shall have been deemed to have agreed) to satisfy or cure as provided above. If Seller fails or refuses to cure any defects and objections which Seller shall have agreed or have been deemed to agreed to cure or which are required herein to be satisfied or cured by Seller prior to the Closing, then, at the option of Purchaser, (i) Purchaser may terminate this Contract by written notice to Seller, in which event the Earnest Money shall be immediately refunded to Purchaser, and this Contract shall be of no further force and effect and Purchaser and Seller shall have no further rights, obligations or liabilities, (ii) if any such defect consists of past due taxes, mortgages, deeds of trust, tax liens, mechanic's or materialmen's liens, or other such monetary encumbrances, Purchaser may cure such defect or objection at or prior to Closing out of the Purchase Price at Closing or by way of a reduction in Purchase Price in an amount equal to the actual cost and expense incurred by Purchaser in connection with the curing of such defect or objection, (iii) Purchaser may accept title to the Real Property subject to such defects and objections, or (iv) any combination of items (ii) and (iii). If Purchaser elects to cure any such defects and objections pursuant to item (ii) hereof, then Purchaser at its option, upon giving notice to Seller, may extend the Closing until the date which is ten (10) days after the curing of such defects or objections or sixty (60) days from and after the last date set forth herein for the Closing (as the same may be extended pursuant to this Contract), whichever shall first occur. If any defect or objection shall not have been cured within such period, then Purchaser may exercise its option under either item (i) or (ii) hereof.

7. TAX AND OTHER APPORTIONMENTS:

Ad valorem taxes on Property, user fees, and other assessments with respect to the Property for the year in which the Closing occurs shall be prorated as of the Closing Date. If the Closing shall occur before the tax rate or the assessed valuation of the Property is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate and the assessed valuation of the Property are fixed for the year in which the Closing occurs, the parties agree to adjust the pro-ration of taxes and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment.

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8. ROLL BACK TAXES:

If Purchaser notifies Seller that the Property is or will be subject to "Roll-Back" taxes, within ten (10) days of receipt of such notice, Seller agrees to request rollback tax bills for the Property from the tax assessor or other appropriate authority for Beaufort County, South Carolina. To the extent rollback tax bills are available at Closing, Seller shall pay the rollback taxes for the Property at Closing. To the extent that roll back tax bills are not available at Closing, Seller agrees that the Purchaser shall be given a credit against the Purchase Price for the estimated amount of roll-back taxes. In the event that the credit given to Purchaser at Closing exceeds the actual roll-back taxes when they are assessed, then Purchaser shall refund the excess amount to Seller. In the event that the credit given to Purchaser at Closing is less than the actual roll-back taxes when they are assessed, then Seller agrees to deliver additional funds to Purchaser at the time that the taxes are assessed.

9. EXTENSIONS OF CLOSING DATE:

Two (60) day extension periods to the Closing are available to Purchaser for $10,000.00 each, with extension money being non-refundable ~~but applicable to the Purchase Price~~ and not applied to the Purchase Price. Payment must be made in advance directly to Seller.

10. ACCESS ROAD AND UTILITIES EASEMENT:

Purchaser and Seller shall prior to Closing enter into an easement agreement (the "Easement Agreement") providing for an infrastructure spine for utilities, including water distribution, waste water collection, main stormwater collection retention, and for a paved road (the "Road") connecting Buck Island Road and Bluffton Parkway over the approximate area (the "Easement Area") shown and designated on Exhibit A as "50' Joint Access Easement" and "50' Access Easement." The parties acknowledge that the exact location of the Easement Area may change as necessary to conform to governmental and permitting requirements; provided, however, that the final location shall be subject to the reasonable approval of the parties. The easement agreement shall be recorded and shall provide for a non-exclusive, commercial, perpetual reciprocal access and general utility easement for the Road and utilities over, under, and across the Easement Area for the benefit of the Seller's residual Tract (Tract A on Exhibit A) and the Purchaser's tract (Tract B on Exhibit A). The easement shall be appurtenant to the respective parcels for the benefit of Purchaser and Seller as the owners of Tract A and Tract B, their respective successors in title to Tract A and Tract B as to all or any portion of such tracts, and the respective tenant(s) or occupant(s) of such tracts or any portion thereof, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the owners of such tracts from time to time and/or (ii) such tenant(s) or occupant(s) of such tracts from time to time. Purchaser and Seller shall obtain from their respective mortgagees such subordinations and joinders as may be necessary to insure marketable title to the Easement Area free and clear of the claims of such mortgagees.

The Road shall be constructed over and across the Easement Area by a contractor to be chosen by the Purchaser and completed within one year of Closing. Seller and Purchaser shall contribute their pro rata share of this cost, calculated based on the relative high ground acreage of (i) the Property conveyed to Purchaser pursuant to this Contract; and (ii) the residual property retained by Seller (the "Residual Property"). Prior to Closing the Purchaser shall secure no less than three bids to perform the construction described herein above and at Closing Purchaser and Seller shall each cause their pro rata share of the cost of the lowest bid shall be placed in Escrow to pay for said work. The easement referred to above shall obligate Purchaser and Seller and their respective successors in title to pay their pro rata share (determined as set forth above) of the cost of the maintenance of the Road and other spine facilities, including without limitation landscaping. The Seller shall also pay any incremental costs to include the Residual Property in the storm water retention system to be constructed on the Property. The Seller shall also pay the incremental costs of bringing the water and sewer to the boundary of the Residual Property so that those systems will also serve the Residual Property.

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There shall be no cross-easements for parking. Without limiting the generality of the foregoing, there shall be no parking easement or parking rights over the Property for benefit of the Residual Property, and there shall be no parking easement or parking rights over the Residual Property for benefit of the Property.

II. SELLER'S OBLIGATIONS AT THE CLOSING.

At the Closing, Seller shall deliver to Purchaser each of the following documents:

a. The Deed conveying fee simple marketable record title to the Property to Purchaser free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances whatsoever, excepting only those matters of record (the "Permitted Exceptions") as to which Purchaser has not given Seller notice of objection and which do not materially, adversely affect the marketability of title as determined Purchaser in its sole discretion, and which are acceptable to Purchaser in its reasonable discretion;

b. The Easement Agreement, executed by all parties necessary to convey marketable title to that portion of the Easement Area located on the Residual Property, together with a joinder or subordination executed by any mortgagees of that portion of the Easement Area located on the Residual Property, and appropriate resolutions and incumbency certificates establishing the authority of the grantors of the Easement with respect to to that portion of the Easement Area located on the Residual Property to grant the Easement, in a form and substance deemed reasonably necessary by Purchaser and Purchaser's title insurance company;

c. An Affidavit of Seller in form reasonably acceptable to Purchaser's title insurance company which has as its subject matter averments that, with respect to the Property, there are no rights or claims of parties in possession not shown by the public records and that there are no liens, or rights to a lien, for services, labor or materials furnished and/or imposed by law and not shown by the public records;

d. An Affidavit of Seller stating that Seller is not a "foreign person", as that term is defined in 7 C.F.R. Section 781.2 of the Rules and Regulations promulgated under the Agricultural Foreign Investment Disclosure Act of 1978 and is not required to file any reports under said Act and its supporting rules and regulations, and further stating that Seller is not a "foreign person", as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and otherwise in form and content sufficient to eliminate Purchaser's withholding obligations under said Section 1445 with respect to the sale and purchase of the Property;

e. If the Seller is a legal entity, a current appropriate resolutions and incumbency certificates establishing Seller's authority to consummate the transaction contemplated herein in a form and substance deemed reasonably necessary by Purchaser and purchaser's title insurance company;

f. Such information as is required for Purchaser and/or the closing attorney to file IRS Form 1099-S;

g. If the Seller is a legal entity, a current certificate of existence from the Secretary of State of South Carolina as to the existence of the Seller;

h. If the Seller is a legal entity, a current tax compliance letter from the South Carolina Department of Revenue;

i. If the Seller is a legal entity, copies of the organizational documents of the Seller; and

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j. Any and all other documents reasonably deemed necessary by Purchaser, purchaser's title insurance company, or other governmental requirements to consummate the transaction contemplated herein in accordance with the terms of this Contract.

12. PURCHASER'S OBLIGATIONS AT THE CLOSING.

At the Closing, Purchaser shall deliver to Seller the following:

a. The balance of the Purchase Price by certified check or wire transfer of immediately available U.S. funds;

b. The Easement Agreement, executed by all parties necessary to convey marketable title to that portion of the Easement Area located on the Property, together with a joinder or subordination executed by any mortgagees of that portion of the Easement Area located on the Property, and appropriate resolutions and incumbency certificates establishing the authority of the grantors of the Easement with respect to to that portion of the Easement Area located on the Property to grant the Easement, in a form and substance deemed reasonably necessary by Seller and Seller's title insurance company;

c. A closing statement, to be prepared by Purchaser's attorney, setting forth the allocation of closing costs, purchase proceeds, etc.;

d. If the Purchaser (or its assignee) is a legal entity, a certificate stating that the entity is, as of the date of Closing, in existence and in good standing in the state of its formation;

e. If the Purchaser (or its assignee) is a legal entity, such consents and authorizations as Seller may reasonably deem necessary to evidence authorization of Purchaser for the purchase of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Purchaser in connection with Closing; and

f. Such other documents as may be reasonable and necessary to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Contract.

13. NO MATERIAL CHANGES.

Seller hereby covenants and agrees that, from and after the Effective Date hereof until the date of the Closing, Seller shall not, without the prior written consent of Purchaser, (i) change or alter the physical condition of the Property or remove any trees, (ii) grant or otherwise create or consent to the creation of any easement, restriction, lien, assessment or encumbrance affecting the Property or any portion or portions thereof, (iii) pursue or consent to the pursuit of any rezoning of the Property or any portion or portions thereof (other than the required zoning change provided for in paragraph 16 below), or (iv) market the Property for sale to any other party.

14. POST INSPECTION PERIOD CHANGES.

If at any time after the Inspection Period and prior to the Closing there shall occur a change in the status of the zoning regulations applicable to the Property (other than the required zoning change provided for in paragraph 16 below, or in the conditions imposed by applicable governmental authorities for the grant of building permits, or in the availability of utilities, including water, sanitary sewer, storm sewer, natural gas, electricity and telephone, to service the Property (e.g., a sewer moratorium), any of which prohibits or inhibits, or would cause a delay of, the immediate development and use of Purchaser's intended use of the Property, then Purchaser shall have the right to postpone the final date for the Closing until the earlier of (i) the date which is ten (10) business days after the lifting or removal of the impediment to the immediate development and use of the Property, or (ii) the date which is sixty (60) days after the date for

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the Closing. If the impediment to the immediate development and use of the Property has not been removed or lifted on or before the last day of such postponement period, then Purchaser shall have the right to terminate this Contract by written notice to Seller, whereupon the Earnest Money shall be returned to Purchaser and this Contract shall be of no further force or effect.

15. CONTIGUITY WITH AND ACCESS TO BLUFFTON PARKWAY

Notwithstanding anything in this Contract to the contrary, Purchaser's obligation to complete Closing under this Contract is contingent upon the following:

a. Ingress Egress Road. Purchaser is able, at a price acceptable to Purchaser, to obtain on or before Closing either an easement or such title (including without limitation any necessary wetland crossing permit) as is necessary to construct, maintain, use, and operate an access road for ingress and egress to and from the Property and Bluffton Parkway and a permit from the South Carolina Department of Transportation or other applicable authority for a right-in/right-out curb cut into Bluffton Parkway in connection with such access road, at a location acceptable to Bi-Lo, LLC, as a potential anchor retail tenant of the Property, or any comparable successor potential anchor retail tenant of the Property, as applicable. Purchaser agrees that Seller may be involved in the negotiations and applications for the foregoing as and to the extent desired by Seller, and that such negotiations and applications shall be conducted in a manner reasonably acceptable to Seller.

b. Sight Line Requirements. Evidence satisfactory to Purchaser as to governmental plans for landscaping, buffers, walls, etc. along Bluffton Parkway, sufficient to insure that the Property will have adequate sight lines from Bluffton Parkway in accordance with customary retail anchor tenant requirements.

c. Termination Right. Notwithstanding anything in this Contract to the contrary, if the foregoing conditions precedent in this paragraph 15 are not satisfied on or before Closing (whether before or after the expiration of the Expiration Period), Purchaser may terminate this Contract by written notice to Seller. If Purchaser gives notice of termination to Seller pursuant to this subparagraph, then the Earnest Money shall be refunded to Purchaser, and the parties hereto shall have no further rights, duties or obligations under this Contract, except that Purchaser shall, within ten (10) days after such termination, deliver to Seller copies of all feasibility studies, surveys, engineering reports and all other information obtained by Purchaser with respect to the Property, and this obligation shall survive termination of this Agreement.

16. ZONING CONDITIONS AND OBLIGATIONS

Notwithstanding anything in this Contract to the contrary, Purchaser's obligation to complete Closing under this Contract is contingent upon the following conditions being satisfied prior to and at the Closing:

a. Zoning. This Contract is expressly contingent upon the rezoning of the Property for Purchaser's intended use as a commercial retail development as shown on the preliminary site attached as Exhibit B hereto. ~~The Seller covenants and agrees to cause such rezoning on or before Closing at Seller's sole cost and expense.~~* If necessary, the Closing Date shall be extended as required to secure the proper zoning without the payment of any additional extension fees. Application shall be made in the name of either Seller or Purchaser as required under governing law. If such zoning and/or annexation is not obtained on or before the date of Closing, then Purchaser may, at its option, cancel this Contract, and the Earnest Money, including extension payments, if any, shall be returned to the Purchaser.

b. Governmental Approvals. This Contract is expressly conditioned upon the receipt of (i) all approvals, permits and licenses issued by township, county, state, federal or other public authorities that are deemed necessary by Purchaser for its use of the Property as a commercial, retail facility, and (ii)

6-30-08

* Seller has and will continue with an application to have Property rezoned for commercial retail Development and will diligently pursue the rezoning. If the rezoning to commercial retail Development is denied, Purchaser may terminate this Contract.

(ii) any and all subdivision approvals necessary to convey the Property to Purchaser (the "Governmental Approvals"). Seller shall, in all ways, fully cooperate with Purchaser in the pursuit of the Governmental Approvals including, without limitation, executing any application necessary to obtain each and every Governmental Approval. "Final Approval" of the Governmental Approvals shall be the date when all of the Governmental Approvals have been reviewed and finally approved by the appropriate governmental agencies. If Final Approval has not occurred on or before the Closing, Purchaser may, at its option, either (a) continue this Contract in full force and effect until the same has occurred without the payment of additional extension fees, (b) terminate this Contract, in which case this Contract shall be of no further force and effect, and Escrow Agent is instructed to return to Purchaser the Earnest Money, or (c) waive some or all parts of this contingency (with or without imposition of further conditions not involving additional dollar expense by Seller) at Purchaser's sole and absolute discretion, and proceed with the Closing.

c. Termination Right. Notwithstanding anything in this Contract to the contrary, if the foregoing conditions precedent in this paragraph 16 are not satisfied on or before Closing (whether before or after the expiration of the Expiration Period), Purchaser may terminate this Contract by written notice to Seller. If Purchaser gives notice of termination to Seller pursuant to this subparagraph, then the Earnest Money shall be refunded to Purchaser, and the parties hereto shall have no further rights, duties or obligations under this Contract, except that Purchaser shall, within ten (10) days after such termination, deliver to Seller copies of all feasibility studies, surveys, engineering reports and all other information obtained by Purchaser with respect to the Property, and this obligation shall survive termination of this Agreement.

17. GENERAL CONDITIONS TO CLOSING.

The following conditions shall be satisfied on or before the Closing Date and Seller shall duly perform all obligations required to be performed by them to satisfy each condition, or the Purchaser shall have no further obligations or responsibilities under this Contract, and this Contract shall be, at the option of Purchaser, null and void. Purchaser may waive any and all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Purchaser of any of its other rights or remedies at law or equity if Seller shall be in default under this Contract.

a. All conditions precedent to Purchaser's obligations set forth in this Contract shall have been satisfied, including without limitation those set forth in the paragraph 15 relating to the Bluffton Parkway and paragraph 16 relating to the required zoning change.

b. Seller shall have performed and complied with all obligations conditions contained in this Contract to be performed by Seller;

c. There shall have occurred no material adverse change in the physical condition of the Property, the presence or absence of hazardous or regulated materials on the Property, the status of title to the Property, or the scope or delineation of wetlands on the Property, between the end of the Inspection Period and the Closing Date; and

d. No portion of the Property shall have been condemned.

e. Seller's representations and warranties contained in this Contract, including without limitation those set forth in Paragraph 18 of this Contract shall be true and correct at Closing;

f. Seller shall not have made an assignment for the benefit of creditors or admitted in writing its inability to pay its debts as they mature or been adjudicated as bankrupt or filed a petition in voluntary bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors

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under the federal bankruptcy law or any other similar law or statute of the United States or any state, and no such petition shall have been filed against it; and

g. Seller shall have executed and delivered all instruments and documents required by this Contract to be delivered by Seller; provided, however, that the Seller may condition the delivery of the Deed upon the simultaneous payment of the Purchase Price by Purchaser, and may tender delivery of the limited warranty deed subject to that condition, without breaching the terms of this Contract.

18. SELLER'S REPRESENTATIONS AND WARRANTIES.

To induce Purchaser to purchase the Property from Seller, Seller represents and warrants to Purchaser to the best of Seller's knowledge as follows:

a. There are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, pending or threatened against Seller or the Property, or any portion or portions thereof, or relating to or arising out of the ownership of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, including, without limitation, any condemnation or eminent domain proceedings.

b. No person, firm, corporation or other legal entity whatsoever has any right or option whatsoever to acquire the Property or any portion or portions thereof or any interest or interests therein.

c. Seller has not received any notice that the Property or any portion or portions thereof is or will be subject to or affected by any special assessments, whether or not presently a lien thereon.

d. Seller is not in violation or breach of any ordinance, code, law, rule, requirement or regulation applicable to the Property.

e. Seller has not used or operated the Property or any portion of the Property in any manner for the storage, use, treatment, manufacture or disposal of any hazardous materials or regulated substance, and to the best of Seller's knowledge, neither the Property nor any portion of the Property has ever been used or operated for the storage, use, treatment, manufacture or disposal of any hazardous materials or regulated substances.

f. To the best of Seller's knowledge, there are not now and never have been underground storage tanks located on the Property.

g. To the best of Seller's knowledge and belief, there are no actions, suits, proceedings or proposals of any kind or nature whatsoever pending or being considered relating to any proposed changes to the highways, roadways and/or access ways adjoining or adjacent to the Property, including, without limitation, the widening thereof, construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts, proposed or pending installation or removal of traffic lights or any other changes or proposed changes in traffic patterns or management of traffic flow thereover.

h. Any and all actions, if any, required by Seller to authorize the execution and delivery of this Contract and the consummation of the transaction contemplated herein have heretofore been taken, and this Contract shall constitute a valid and binding agreement, enforceable against Seller in accordance with the terms hereof.

19. PURCHASER'S REPRESENTATIONS AND WARRANTIES.

To induce Seller to sell the Property to Purchaser, Purchaser represents and warrants to Seller to the best of

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Purchaser's knowledge as follows:

a. Purchaser is duly created and validly existing pursuant to the laws of the jurisdiction of its organization and is duly qualified to do business in the jurisdiction in which the Property is situated if and to the extent that such qualification is required.

b. Purchaser has the capacity and authority to execute this Contract and perform the obligations of Purchaser under this Contract. All action necessary to authorize the execution, delivery and performance of this Contract by Purchaser has been taken, and such action has not been rescinded or modified. Upon the execution of this Contract, this Contract will be legally binding upon Purchaser and enforceable against Purchaser in accordance with all of its provisions. If Purchaser (or its assignee) is a legal entity, the person signing this Contract on behalf of Purchaser has been duly authorized to sign and deliver this Contract on behalf of Purchaser.

c. Purchaser is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency that would limit or restrict Purchaser's right to enter into and carry out this Contract.

d. Neither the execution of this Contract nor the consummation of the transactions contemplated herein by Purchaser will constitute a breach under any contract or agreement to which Purchaser is a party or by which Purchaser is bound or affected.

e. No consent or approval of any third party (including, without limitation any governmental authority) is or was required in connection with Purchaser's execution and delivery of this Contract or its consummation of the transaction contemplated herein.

20. CLOSING COSTS:

Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, all of the cost of the preparation of the Deed and customary Seller affidavits and certifications, any deed transfer taxes and Purchaser shall pay, on the Closing Date, the cost of any title insurance policies or commitments, the cost of a title search or abstract of the Property, all recording costs, the cost of any inspections and any other customary charges and costs of Closing. Except as otherwise provided herein, each party shall pay its own attorneys' fees.

21. BROKERAGE COMMISSION:

Purchaser shall pay a real estate commission of 3.5% to Engard Real Estate Company at Closing. Except for the foregoing, no Broker's Fees (as hereinafter defined) have been paid or are due and owing to any person or entity by the Seller and the Purchaser. As used herein, **"Broker's Fees"** shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property including real estate commissions, selection fees, nonrecurring management and startup fees, development fees or any other fee of similar nature. Seller and Purchaser, each hereby agrees to indemnify and hold harmless the other from and against any and all claims for Broker's Fees or similar charges with respect to this transaction other than those set forth above, arising by, through or under the indemnifying party, and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this paragraph. This indemnification agreement of the parties shall survive the Closing.

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22. MISCELLANEOUS:

a. This Contract constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings and agreements heretofore and between these parties are merged herein. No representation, promise or inducement not included herein shall be binding upon any party hereto. The terms "Seller" and "Purchaser", shall be construed in the plural and the appropriate gender shall be read into all pronouns used herein to reference any of said parties whenever the sense of this Contract so requires.

b. This Contract may not be changed orally, but only by an agreement in writing signed by Purchaser and Seller.

c. Notices given pursuant to this Contract shall be in writing, delivered in person or by overnight courier service or by certified mail, return receipt requested, addressed to the mailing address given herein. The time of postmark shall be deemed the time of receipt of mailed notices.

d. The provisions of this Contract shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors and assigns and the legal representatives of their estates, as the case may apply.

e. The word "Closing" or words of similar import as used in this Contract shall be construed to mean the originally fixed time and Closing Date specified herein or any adjourned time and date provided herein or agreed to in writing by the parties.

f. Seller and Purchaser agree that such papers as may be legally necessary to carry out the terms of this Contract shall be executed and delivered by such parties at Closing.

g. Seller shall be responsible for all utility bills, if any, incident to Property as of the date prior to Closing.

h. All agreements herein which must, by implication or necessity, survive the Closing, shall be deemed to so survive as the sense of this Contract requires and will be noted by separate agreement at Closing.

i. Possession of Property shall be granted to Purchaser upon Closing.

j. Purchaser shall have the right to assign this Contract to any person or persons, partnership, corporation, limited liability company, or any other entity, including without limitation an entity to be formed hereafter, and the sale contemplated by this Contract shall be consummated in the name of such assignee and the assignment may be made by the Purchaser at any time prior to Closing.

k. Purchaser hereby discloses that Thomas J. Ravenel and Renee Brookinton, principals of the Purchaser, are Licensed South Carolina Real Estate Brokers.

l. The term "Effective Date" shall mean the date upon which this Contract has been fully executed by Seller and Purchaser and each of Seller and Purchaser has received a fully executed counterpart hereof.

23. BREACH BY SELLER.

If Seller fails to comply with or perform any of the covenants, agreements and obligations to be performed

by Seller under the terms and provisions of this Contract, then, at Purchaser's option: (i), Purchaser shall be entitled to sue for specific performance; or (ii) Purchaser shall be entitled, upon giving written notice to Seller as herein provided, to terminate this Contract and to receive the return of the Earnest Money and receive reimbursement from Seller for Purchaser's actual out-of-pocket due diligence costs pertaining to this transaction (including attorneys' fees) (collectively, "Purchaser's Due Diligence Costs"); provided, however, such reimbursement obligation shall in no event exceed Ten Thousand and No/100 Dollars ($10,000.00), and such payment shall be Purchaser's full liquidated damages for such default, and the parties hereto acknowledging that it is impossible to more precisely estimate the damages to be suffered by Purchaser upon Seller's default. Upon any such termination pursuant to option (ii) the above, all Earnest Money shall be immediately returned to Purchaser, Seller shall pay Purchaser's Due Diligence Costs within ten (10) days of receipt of a written accounting thereof, whereupon this Contract and all rights and obligations created hereunder shall be deemed of no further force or effect.

24. BREACH BY PURCHASER.

If Purchaser fails to purchase the Property in accordance with the terms of this Contract, then Seller shall, upon written notice to Broker and Purchaser specifying the default of Purchaser hereunder, be entitled to obtain and retain the Earnest Money as full liquidated damages. Under no circumstances shall Seller be authorized to (i) seek any additional damages, (ii) seek specific performance of this Contract, or (iii) seek any other remedy against Purchaser, and the sole remedy of Seller be limited to the delivery to Seller of Earnest Money.

THIS AGREEMENT has been executed first by R&B Partners, LLC and shall be deemed a continuing offer by said party to purchase or sell, as the case may be, until Monday, ~~June 16, 2008~~ June 30, 2008 at 5:00 p.m. If executed and unaltered acceptance hereof is not returned to the address noted herein of said offer by said time, such offer shall be deemed withdrawn.

6-30-08

[Signatures on Next Page]

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Signed, sealed and delivered in the presence of:

As to Purchaser

Witness

Date by Purchaser: June 10, 2008

R&B PARTNERS, LLC

By:

Renee R. Brockinton
It's: Manager
176 Croghans Spur
Suite 202
Charleston, SC 29407

As to Seller

Witness

Witness

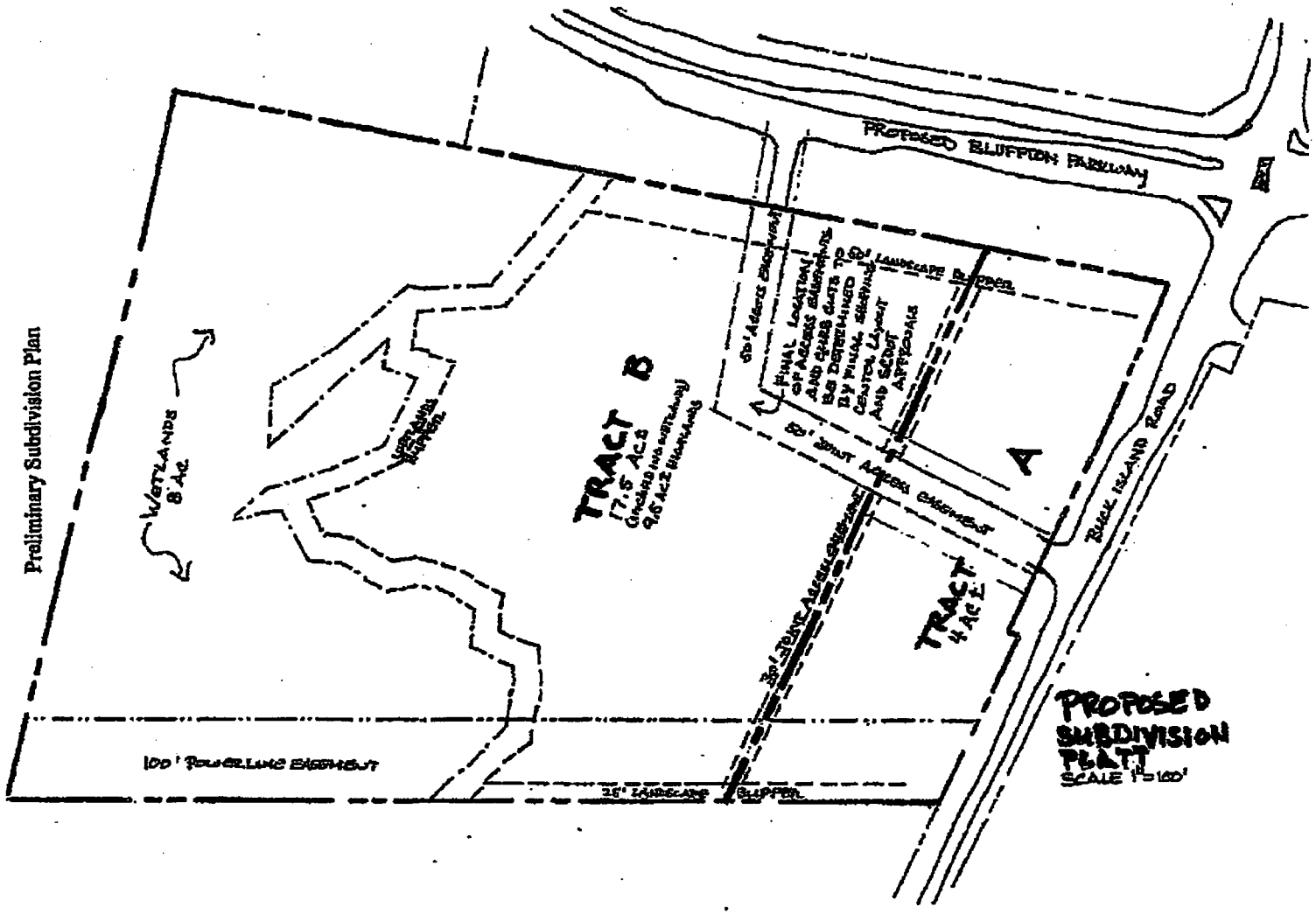
Date by Seller: 6-26-08

BETTY V. ROLLER
c/o Simon Fraser
FRASER & ALLEN, LLC
10 Palmetto Business Park, Suite 102 (29928)
P.O. Box 5098
Hilton Head Island, SC 29938

WILBERT ROLLER, JR.
c/o Simon Fraser
FRASER & ALLEN, LLC
10 Palmetto Business Park, Suite 102 (29928)
P.O. Box 5098
Hilton Head Island, SC 29938

Exhibit A

Preliminary Subdivision Plan



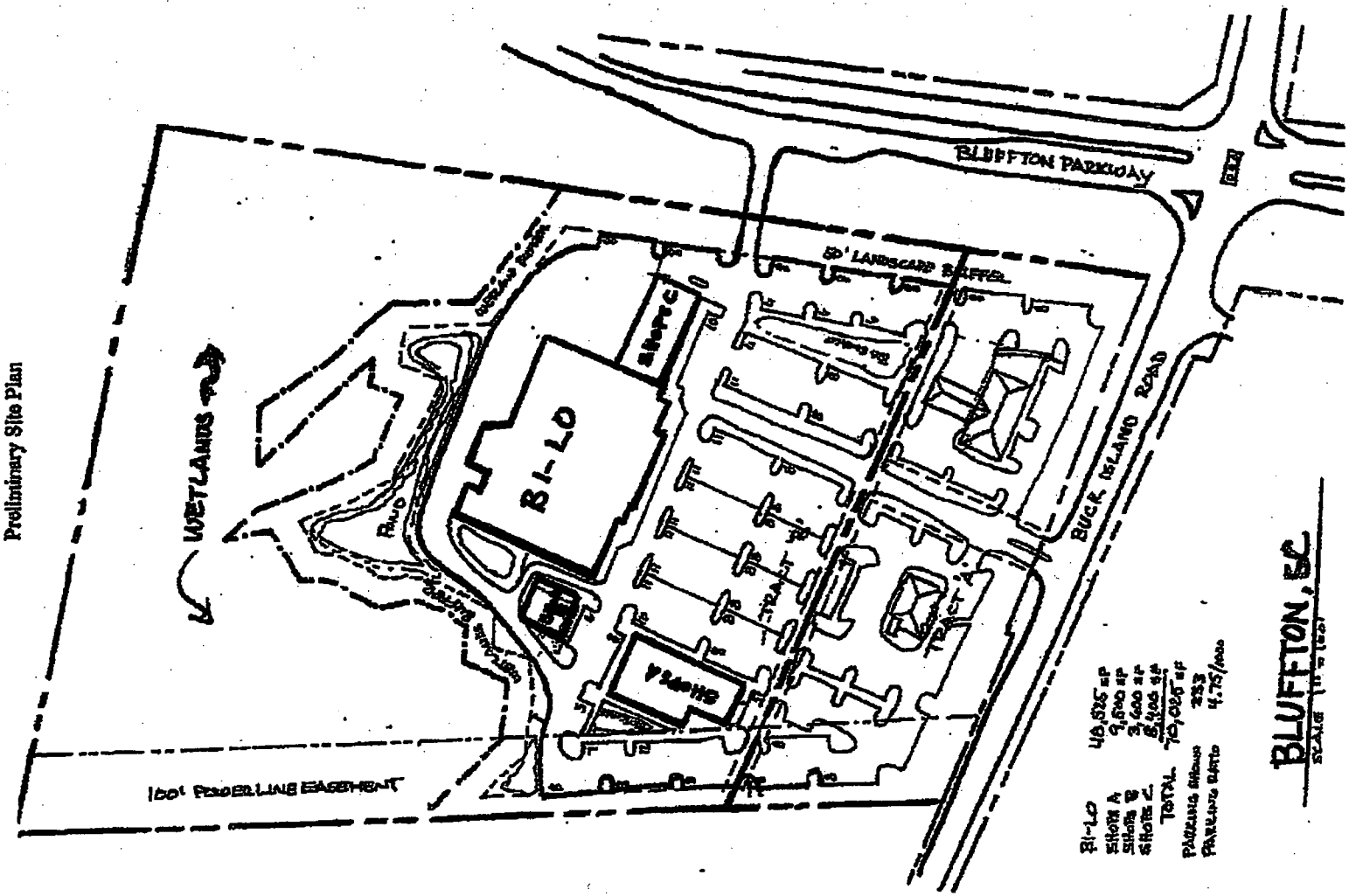
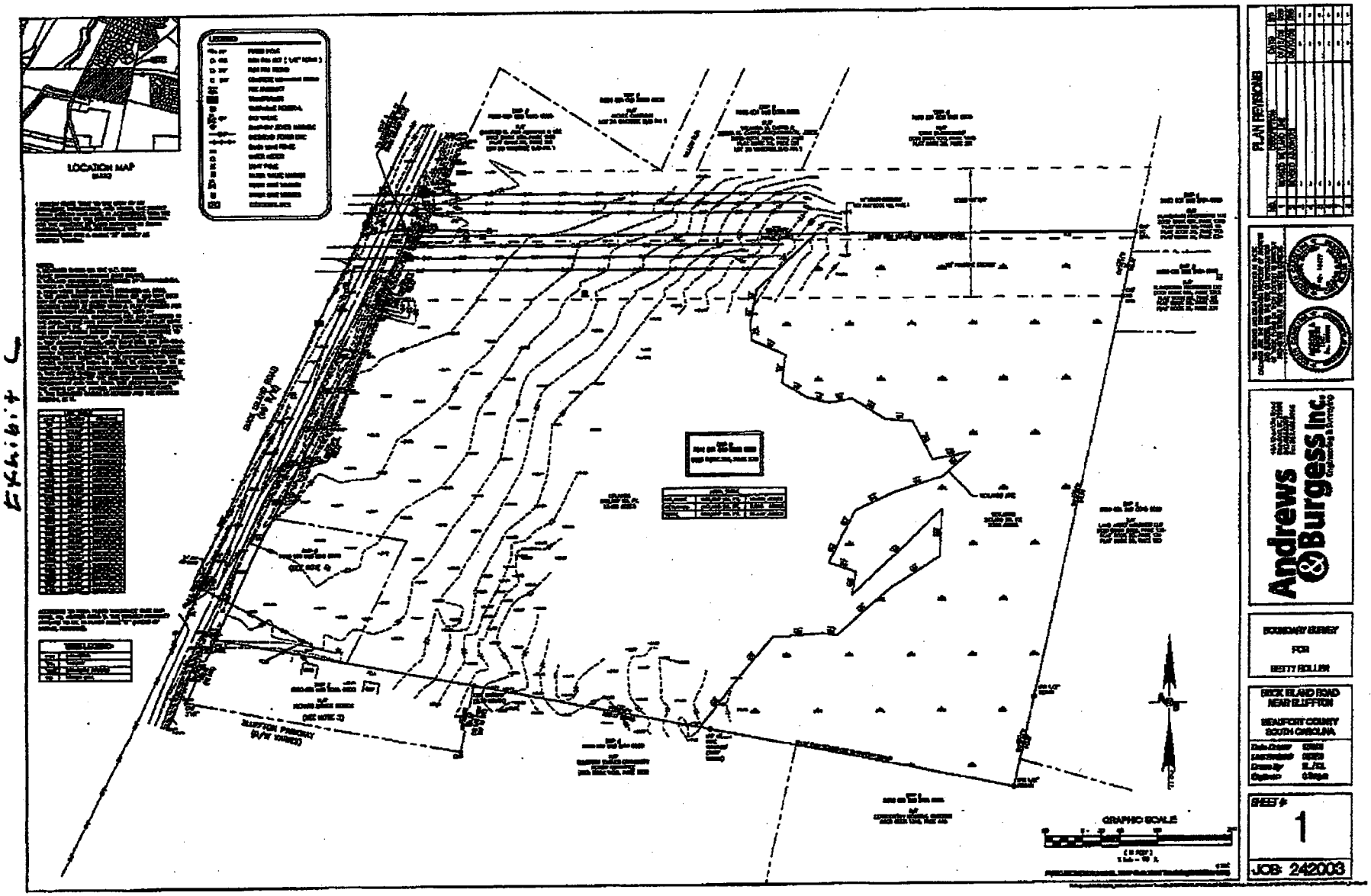

Exhibit B
Preliminary Site Plan
BLUFFTON PARKWAY
BUCK ISLAND ROAD
WETLANDS
BI-LO
100' POWERLINE EASEMENT
BLUFFTON, SC

Exhibit C


LOCATION MAP
PLAN REVISIONS
Andrews Burgess Inc.
BOUNDARY SURVEY
FOR
BETTY ROLLER
RICK ELAND ROAD
NEAR BLUFFTON
BEAUFORT COUNTY
SOUTH CAROLINA
SHEET #
1
JOB: 242003
GRAPHIC SCALE

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Raveneł
DEVELOPMENT CORPORATION

June 30, 2008

Mr. Simon Fraser
Fraser and Allen, LLC
10 Palmetto Business Park
Suite 102
Hilton Head Island, SC 29928

Re: Contract on approximately 17.5 acre site located near the northeast corner of Buck Island Road and the Bluffton Parkway, Bluffton, SC

Dear Simon:

Enclosed, please find one copy of the executed contract of the above referenced property and an earnest deposit check of ten thousand and no/100's dollars ($10,000.00) to be held in your firm's escrow account. As discussed, the due diligence period will begin on July 1st, 2008.

Please keep me abreast of any and all conversations in regard to the rezoning of this tract.

Most sincerely,

Renée Brockinton

Mrs. Renee Brockinton

P.O. Box 420
Charleston, SC
29402-0420
843-723-6605
Fax 843-723-6635
www.raveneldevelop.com

RECEIVED
DEC 17 2014
SC Court of Appeals
M4496

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Master in Equity

Case No. 2011-CP-07-0340

Wilbert Roller Jr. and Betty V. Roller..... Defendants,

vs.

TD Bank, N.A.,
Successor by merger to Carolina First Bank, ... Respondent,

of whom

Wilbert Roller Jr. and Betty V. Roller are the..... Appellants.

NOTICE OF APPEAL

Wilbert Roller Jr. and Betty V. Roller appeal the Order Granting Foreclosure signed May 30, 2014, and filed July 3, 2014, and the Order Denying Defendants' Motion for Reconsideration of the Honorable Marvin H. Dukes, III, Master in Equity, filed November 18, 2014, and received by counsel on November 24, 2014.

December 3, 2014

Thomas R. Goldstein, #2186.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 71121
N. Charleston, South Carolina 29415-1121
(843) 554-4291 (843) 554-5566 (fax)
E-mail: tgoldstein@cobblaw.net

Other counsel of Record:

Mr. Matthew E. Tillman
Womble Carlyle Sandridge & Rice, PLLC
P.O. Box 999
Charleston, SC 29402

Robert V. Mathison, Jr., Esq.
Law Offices of Mathison & Mathison
P.O. Box 5271
Hilton Head Island, S.C. 29938

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Master in Equity

Case No. 2011-CP-07-0340

Wilbert Roller Jr. and Betty V. Roller..... Defendants,

vs.

TD Bank, N.A.,
Successor by merger to Carolina First Bank, ... Respondent,

of whom

Wilbert Roller Jr. and Betty V. Roller are the..... Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, TD Bank, N.A., Successor by merger to Carolina First Bank, by depositing a copy of it in the United States Mail, postage prepaid, on December 12th, 2014, addressed to the attorneys of record, Matthew E. Tillman, P.O. Box 999, Charleston, SC 29402, and Robert V. Mathison, Jr., P.O. Box 5271, Hilton Head Island, S. C. 29938.

December 12, 2014

Thomas R. Goldstein, #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
843-554-4291; 843-554-5566 fax
Attorneys for the Appellants

RECEIVED
DEC 17 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Master in Equity

Case No. 2011-CP-07-0340

Wilbert Roller Jr. and Betty V. Roller..... Defendants,

vs.

TD Bank, N.A.,
Successor by merger to Carolina First Bank, ... Respondent,
of whom

Wilbert Roller Jr. and Betty V. Roller are the..... Appellants.

NOTICE OF APPEAL

Wilbert Roller Jr. and Betty V. Roller appeal the Order Entering Deficiency Judgment entered May 30, 2014, and Orders denying motion to vacate judgment entered October 26, 2018, and Order denying reconsideration entered December 12, 2018.

January 8, 2019

Thomas R. Goldstein, #2186.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 71121
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Marvin H. Dukes, III, Master in Equity

Case No. 2011-CP-07-0340

Wilbert Roller Jr. and Betty V. Roller..... Defendants,

vs.

TD Bank, N.A.,
Successor by merger to Carolina First Bank, ... Respondent,

of whom

Wilbert Roller Jr. and Betty V. Roller are the..... Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, TD Bank, N.A., Successor by merger to Carolina First Bank, by depositing a copy of it in the United States Mail, postage prepaid, on January 8, 2019, addressed to the attorneys of record, Matthew E. Tillman, P.O. Box 999, Charleston, S. C. 29402.

January 8, 2019

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State of South Carolina) Court of Common Pleas
)
County of Beaufort) No.: 2011-CP-07-0340

TD Bank, N.A., Successor by Merger to Carolina First Bank,

Plaintiff,

vs.

Wilbert Roller, Jr., Betty V. Roller and James Williams

Defendants.

HEARING

April 29, 2014

Hearing reported by Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina; said hearing held before the Honorable Marvin H. Dukes, III, Beaufort County Master in Equity and Special Circuit Court Judge in accordance with the South Carolina Rules of Civil Procedure, at the Beaufort County Courthouse, 102 Ribaut Road, Room 212, Beaufort, South Carolina, on April 29, 2014, at the 10:55 a.m.

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This hearing is taken in accordance with the South Carolina Rules of Civil Procedure.

JUDGE DUKES: We are here on case 11-CP-07-340, TD Bank versus Roller. This matter comes to me pursuant to an order of reference heretofore filed January 6th, 2014.

We've had some off-the-record discussions specifically related to Mr. James Williams, who is a defendant in this case. There is a question of title with regard to a piece of property that is asserted to be within the mortgaged premises.

Mr. Ronald Williams, who is Mr. James Williams' -- Mr. Ronald Williams is James Williams' son. And what we've decided or at least spoken about off the record, and I'll get everyone to tell me their thoughts on the record, is that we will bifurcate this proceeding and hear on another day, on an expedited basis as quickly as we can, the issue of title of the I believe it's .98-acres which is that claimed by Mr. James Williams, and also, of course, determine whether or not that falls within the mortgaged premises that we are here today about.

Mr. Ronald Williams is here in person and is going to immediately seek out counsel for his father with regard to this matter. Mr. Williams, do

you have any questions at all?

MR. R. WILLIAMS: No, not at this time.

JUDGE DUKES: Okay. Okay. Good. Good. And you understand no one in this room can give you any legal advice. That has to come from your father's own attorney.

MR. R. WILLIAMS: Yes, sir.

JUDGE DUKES: Okay. Because your father, I believe, is the owner. And, just for the record, I understand that he's at least 90 years old. And that is why he's not with us today. I'm happy to hear thoughts of counsel on the bifurcation.

I've forgot one part. So what that leaves for today would be the establishment of the debt, the establishment, if it can be shown by the Plaintiff of default, and any affirmative defenses or counterclaims. Basically everything other than the quiet title action and the establishment of the total mortgaged premises which of course would need to be determined in the quiet title action. So let me ask counsel if you all have any thoughts or anything to add to that or anything?

MR. GOLDSTEIN: Tommy Goldstein on

behalf of the Defendants Roller. I understand Your Honor's decision regarding bifurcation. As I stated in pretrial conference, I think that the Rollers are prejudiced by the undetermined nature of title because the Plaintiff is seeking a deficiency judgment in this case. And therefore should the court grant the order of foreclosure and order the property sold, the Rollers would be prejudiced if part of the 23-acres is not being offered for sale in order to satisfy whatever debt the court finds as being due, if any.

So for that reason on behalf of the Rollers I would respectfully ask that the quiet title action be heard prior to the foreclosure action so that we are all on the same page as to what is or is not being foreclosed.

JUDGE DUKES: All right. And I'm happy to hear your thoughts on any of that.

MR. TILLMAN: Matt Tillman for Plaintiff TD Bank. My -- really they aren't concerns. They are just statements. Number One, by agreeing to this course of action we -- TD Bank will not be waiving or in any way being prejudiced by its argument that Mr. Williams is in default on this matter.

In addition, this action has been proceeding for about two and a half years. The amendment adding Mr. Williams and a quiet title action was done about two years and three months ago. And although I heard from Mr. Williams one time, there has never been any serious effort to defend the quiet title portion of this action until yesterday when Mr. Williams' son called me.

I'm perfectly happy with allowing for a short amount of time to retain an attorney to see if the Williams can present a defense in this case, but I would ask that the hearing on the quiet title action be set as quickly as possible as my client is anxious to proceed with the foreclosure sale.

As it relates to postponing the foreclosure hearing today, I believe we can handle any issues with the effect of this small partial on the deficiency after the sale and as part of the appraisal process. I believe the court in its equitable jurisdiction can conduct a hearing on that matter and assign additions or deductions as the case may be to the -- both the debt and the value of the property at that time.

JUDGE DUKES: All right. And I guess in our discussions I didn't make at least what I was

thinking we were doing clear which was we would establish the debt, if any, if the Plaintiff could show that. And the Defendant, of course, would be able to present whatever they were going to present. I understand there might be a counterclaim or something.

And we would establish the -- we, the Plaintiff, would attempt to establish the default, but I don't believe that we could begin the publication of the property. I think probably, assuming the Plaintiff prevails, it could be established that the mortgaged premises, which is yet to be determined, should be sold, this would be obviously if the Plaintiff prevailed, to satisfy as much of this debt as possible, but I think with the caveat that that mortgaged premises has not yet been determined and would need to be determined in that subsequent hearing which we would have as quickly as possible because I do share I think Mr. Goldstein's concerns that if we just sell it without this it will bring -- it would be very difficult to determine whether or not -- what the appropriate amount of money was. I think it's probably if either this property is included or not included. And if it is not included that may be a subject of

certain equitable actions between the parties at some point with regard to the deficiency.

If it is included, I don't know. I mean, we will figure it out, but, I mean, I think that is for another day. So my thought was today, at least as far as what the Plaintiff would try to show would be to establish the debt, establish the default under whatever the appropriate documents are. Obviously whatever defenses the Defendant may have, whatever counterclaims the Defendant may have.

And then we would simply stop right there pending an establishment of this .98 acres and whether or not it's encumbered by the mortgage. And then -- and then assume it is not, and assuming the Plaintiff had been able to show entitlement to a sale of the property, then it would be noticed for whatever the property description would be minus this .98 acres. If it is, well, then it would be with that property. And I feel sure there would be follow-up hearings if it's not. So that would be my thought for today.

Does that satisfy your concerns? Your concern would not -- my understanding of your concern is what is sold would dramatically affect what your client owed. If we are not even talking

about selling anything, if we are just establishing the debt, I don't see that your concerns -- or I don't see that the same concerns that you stated earlier would be present, but maybe I'm missing something.

MR. GOLDSTEIN: No, I think Your Honor has summarized it perfectly. The prejudice to the Defendants is of course we deny that there is a default, but that is probably putting the cart before the horse.

JUDGE DUKES: Yeah. I tried to say every time assuming the Plaintiff can show it, but I was just going through scenarios, but I understand you have defenses and counterclaims.

MR. GOLDSTEIN: Okay.

JUDGE DUKES: But, again, I was just trying to come up with different scenarios that we might see. All right. Well, let's do that then. So do you have any questions, sir?

MR. R. WILLIAMS: Not at this time.

JUDGE DUKES: So you are going to -- we've got your telephone number, at least I think so. (843)227-0924?

MR. R. WILLIAMS: Yes, sir.

JUDGE DUKES: That sounds like a

South Carolina phone number. Are you --

MR. R. WILLIAMS: Yeah, I work over here every day.

JUDGE DUKES: Okay. So that is a cell number?

MR. R. WILLIAMS: Yes, sir.

JUDGE DUKES: Okay. All right. But that is the number through which you can --

MR. R. WILLIAMS: I can be reached.

JUDGE DUKES: -- be reached. But really what I'm hoping is your new attorney, your father's new attorney, would contact these lawyers as quickly as possible.

MR. R. WILLIAMS: Okay.

JUDGE DUKES: But we are going to try to come up with a date for Part 2 of this. And it's going to be -- it's going to happen pretty quickly. So whoever you hire, ask them to please call the court or these attorneys.

MR. R. WILLIAMS: Okay.

JUDGE DUKES: Do you all have cards that you could share? I think you said that you were out of cards.

MR. TILLMAN: I just gave my last one, but I'll write all of my contact information

down. Let me see if I have a card.

JUDGE DUKES: Okay. I just want to make sure whoever he hires, Mr. Williams hires, has both of your information as quickly as possible.

MR. GOLDSTEIN: Your Honor, what was that telephone? It was (843)227.

JUDGE DUKES: 0924.

MR. GOLDSTEIN: Okay. Thank you.

JUDGE DUKES: Is that right, Mr. Williams?

MR. R. WILLIAMS: Yes, sir.

JUDGE DUKES: Okay. Maybe you can just write it on paper.

MR. TILLMAN: Yes, sir.

JUDGE DUKES: And if you don't mind, write that case number down, too, just so that they can --

MR. TILLMAN: 2011-CP --

JUDGE DUKES: 07.

MR. TILLMAN: -- 07 --

JUDGE DUKES: 0340. And you got your original back of the documents?

MR. R. WILLIAMS: Yes, sir.

JUDGE DUKES: Okay. Good. Good. Do you still have a copy of the summons and complaint?

MR. R. WILLIAMS: Yes, sir.

JUDGE DUKES: Have you got that with you by chance?

MR. R. WILLIAMS: No, I didn't bring that today.

JUDGE DUKES: Okay. Well --

MR. GOLDSTEIN: I've got a copy if you need it.

MR. R. WILLIAMS: I've got two of them.

JUDGE DUKES: But, I mean, in case you go straight to the lawyer's office today, they are going to want to see that. So do you need another one today?

MR. R. WILLIAMS: I have one -- I have two at home. And when I go see him today I'll take him one with all of that information.

JUDGE DUKES: Okay. Good. Good. Good. I think you've probably got everything you need then. All right. Mr. Williams, you are welcome to stick around or go, whatever you would like to do. We will be back in touch with a date for Part 2 of this. Well, let's do this. Maybe we'll try to lock that in right now. That probably is not a bad idea.

Let's go off the record for a second.

(Recess 11:06 to 11:22.)

JUDGE DUKES: Back on the record. During the break Mr. Ronald Williams has left. And, of course, we bifurcated the portion that had to do with his father's property. So we are on to the Plaintiff's case with regard to those issues that don't have to do with the .98 acres. And I'm happy to hear from you, sir. Do you want to -- I guess your witness can sit right there. Does that work with you? So anything before you begin or you just want to --

MR. TILLMAN: Just before we begin, this started out as a loan for the property we are talking about, the 22-acres secured by a mortgage. There was a first renewal note, second renewal note, third renewal note. With the third renewal note another piece of property, which happened to be a boat slip, got added as collateral with a separate mortgage.

Mr. Roller was able to get some money to pay to TD Bank to secure the release of that property, so that property is no longer involved. It is simply the 22 acres that we've been talking about all morning. So --

JUDGE DUKES: All right.

MR. TILLMAN: And that is really it. All the rest of it is just establishing the debt and the counterclaims and so forth.

JUDGE DUKES: Okay. Well, then do you swear or affirm to tell the truth, the whole truth, and nothing but the truth so help you God?

MR. JENKINS: I do.

JUDGE DUKES: All right. Please state your full name for the record and answer any questions your lawyer may have.

THE WITNESS: Full name is Benjamin Roper Jenkins, III.

WHEREUPON:

BENJAMIN ROPER JENKINS, III, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

BY MR. TILLMAN:

Q. Mr. Jenkins, where do you work?

A. TD Bank.

Q. And how long have you worked there?

A. I've worked with TD Bank since the merger with Carolina First in 2009. And prior to that I

was with Carolina First Bank.

Q. And how long were you with Carolina First?

A. Since February of 2007.

Q. Are you familiar with the loan that Carolina First and now TD Bank made to Wilbert and Betty Roller?

A. Yes.

Q. And how are you familiar with it?

A. I handled special assets for the bank. And it was one of the loans and relationships that was transferred to me to be managed going forward.

Q. Can you just generally describe your duties at the bank, please.

A. It's actually the Work-Out Department is the official name of the department I work in. We handle all loans, whether they are in default or have the potential to have issues. We do everything from monitor property tax payments, collect payments, renegotiate, enter into forbearance agreements, foreclose, or even for lack of a better term rehabilitate loans and put them back to whence they came.

Q. Are you familiar with the issues involved in this lawsuit today?

A. Yes.

Q. Are you familiar with the loan documents?

A. Yes.

Q. Are you familiar with the mortgage involved?

A. Yes.

Q. When did TD Bank become the successor in interest to Carolina First Bank?

A. 2009 the merger was announced. And on June 17th of 2010, the merger took place with signage, et cetera.

Q. Is TD Bank the present holder of the notes and mortgages or the notes and mortgage related to the Roller property being foreclosed?

A. Yes.

Q. Okay. I'm going to hand you a piece of paper which is a property description. And ask if that appears to be the property description secured by the mortgage given by the Rollers?

A. Yes.

MR. TILLMAN: Okay. Your Honor, I would like to move that be marked as Exhibit 1.

JUDGE DUKES: All right. No objection?

MR. GOLDSTEIN: I don't think there is an objection. Are we looking at the same thing?

MR. TILLMAN: Yeah, it's all the same. That is just a copy.

MR. GOLDSTEIN: Okay. Well, mine says A so --

MR. TILLMAN: I'm sorry. This is from my complaint.

MR. GOLDSTEIN: Okay. So we are going to call it 1?

MR. TILLMAN: I'm going to put it over that, yeah.

JUDGE DUKES: Actually it will be Plaintiff's 1. All right.

MR. GOLDSTEIN: No objection.

COURT REPORTER: May I have the document, please? I'll mark it. I need to put it on my list here.

(MARKED PLAINTIFF'S EXHIBIT NO. 1.)

BY MR. TILLMAN:

Q. Mr. Jenkins, I'm going to hand to you a document entitled promissory note dated August 9th, 2007, and ask that you let me know if you recognize that document?

A. Yes.

Q. Does this appear to be a true and accurate copy of a note given by Wilbert and Betty Roller to

Carolina First Bank on or about August 9th, 2007?

A. Yes.

Q. And does this note evidence a loan -- an actual loan Carolina First made to the Rollers?

A. Yes.

Q. And what was the purpose of this loan?

A. The original purpose of the loan, and I'll have to recall from memory and reading the description of the transaction, as I understand it it was for -- the property was offered as collateral for a loan for funds to be used for the construction or renovation, remodeling of a restaurant building.

Q. Okay. And if you look at Paragraph 9 of Exhibit 2, does it appear that this loan was also used to refinance an existing loan?

A. Yes, that is correct.

Q. Okay. And in Paragraph 7, can you please tell me what the payment terms are on the note?

A. Let's see here. Installments of accrued interest beginning September 15th, 2007, on the 15th day of each month thereafter I agree to pay the entire unpaid principal, any accrued but unpaid interest on August 15th, 2008.

Q. Okay. And is the failure to pay the required amount set forth in that paragraph in the

event of default under Paragraph 11-A?

A. Yes.

Q. Did the Rollers pay the amounts owed or the amounts evidenced by this note in accordance with the terms of the note?

A. No.

Q. And in Paragraph 14, did the remedies available for default under the note include acceleration of all amounts owed?

A. Yes.

Q. Do they include the right of the lender to make insurance and tax payments and add those to the amount owed?

A. Yes.

Q. Do they include the right to seek any remedies available under Federal and State law?

A. Yes.

Q. In Paragraph 15 does the note provide for the collection of attorneys fees and expenses in enforcing collection of the debt?

A. Yes.

MR. TILLMAN: Your Honor, I would like to move to have the August 9th, 2007, note marked as Exhibit 2.

MR. GOLDSTEIN: The objection would

be on best evidence rule. Apparently he's offering a copy. I ask that the original be offered in order to prove that the foreclosing bank is actually in possession of the note being submitted as authority for foreclosure.

JUDGE DUKES: Do you have the original?

MR. TILLMAN: I've got the original of that one, yes, Your Honor.

JUDGE DUKES: All right. Well, let me let defense counsel look at the original, but I'll allow him to substitute as far as the exhibit, the copy. Take a look at the original?

MR. GOLDSTEIN: Yes, sir. Thank you.

MR. GOLDSTEIN: Your Honor, Plaintiff's Exhibit 2 appears to be an accurate copy. No changes. And therefore based on an opportunity to review the original, I withdraw the objection to the copy as Plaintiffs Exhibit 2.

JUDGE DUKES: All right. Thanks. So that will be Plaintiff's 2 without objection.

(MARKED PLAINTIFF'S EXHIBIT NO. 2.)

BY MR. TILLMAN:

Q. Mr. Jenkins, I've handed you a document entitled Mortgage and dated August 9th, 2007. Are

you familiar with this document?

A. Yes.

Q. Is it a true and accurate copy of the mortgage delivered to you by the Rollers to secure the loans evidenced by the note we discussed as Exhibit 2?

A. Yes.

MR. TILLMAN: Your Honor, I would move to introduce the August 9th, 2007, mortgage as Exhibit 3.

MR. GOLDSTEIN: Your Honor, if it has the recording -- oh, it does have the recording information on it, therefore I do not require the original to be -- so without objection.

JUDGE DUKES: All right. Thank you.

(MARKED PLAINTIFF'S EXHIBIT NO. 3.)

BY MR. TILLMAN:

Q. Does this mortgage encumber the property we discussed as Exhibit 1?

A. Yes.

Q. And to the best of your knowledge does this mortgage constitute a lien on the property described in Exhibit 1?

A. Yes.

Q. Mr. Jenkins, I've handed you a promissory

note dated September 23rd, 2008. Do you recognize this document?

A. Yes.

Q. Is this a true and accurate copy of the note delivered to you by the Rollers on or about September 23rd, 2008?

A. Yes.

Q. Is this a renewal of the prior note referred to -- or excuse me -- marked as Exhibit 2?

A. Yes.

Q. What is the principal sum owed under this note set forth in Paragraph 2?

A. $2,300,000.

Q. If you could look at the line below that and let me know whether that is --

A. That was the -- I'm sorry. That was the note -- the original note that was renewed. It references the original date, loan number, and loan amount. And below it is the remaining balance of this note listed in the table above is $1,871,200 -- I believe that is 18.66.

Q. Okay. And if you would just look through this promissory note and let me know if it appears to have the same default provisions and remedies that we discussed in the Exhibit 2 note?

A. Yes, it does.

Q. Does this note have a future advances provision?

A. Yes.

Q. Okay. And in Paragraph 8, what are the payment terms on this note?

A. Noted installments. I agree to pay this note in installments of accrued interest beginning October 23rd, 2008, and on the 23rd day of each month thereafter I agree to pay the entire unpaid principal and any accrued but unpaid interest on March 23rd, 2009.

Q. Did the Rollers pay the amounts required under the payment terms set forth in this note?

A. No.

MR. TILLMAN: Your Honor, I move that the September 23rd, 2008, note, be admitted into evidence as Exhibit 4.

MR. GOLDSTEIN: Objection, Your Honor. I would like to see the original. When he was reading from his copy I think I must have a different document or I was in the wrong paragraph. It didn't seem to match with what I have.

JUDGE DUKES: All right. What originals do you have with you other than --

MR. TILLMAN: The only one I've got is the one that I've brought, but Mr. Jenkins has testified that Carolina First is the original holder of the notes and mortgage. And Mr. Goldstein is welcome to cross examine him about that.

JUDGE DUKES: What was the paragraph maybe that --

MR. GOLDSTEIN: I thought that he was reading from Paragraph 8. Did I misunderstand? Maybe I misunderstood what paragraph he was reading from.

MR. TILLMAN: He was reading from Paragraph 8 on the payment terms.

MR. GOLDSTEIN: Well, mine says October 23rd, 2008. And I think he said March.

MR. TILLMAN: Let me re-ask the question.

MR. GOLDSTEIN: Did I mishear that?

THE WITNESS: Yes.

MR. GOLDSTEIN: Oh, okay.

JUDGE DUKES: Okay. And there are several more of these, I think, right?

MR. TILLMAN: March is the end date?

MR. GOLDSTEIN: I see. March 23rd, 2009, is the end date. Okay. Objection for failure

to produce the best evidence which would be the original.

JUDGE DUKES: All right. I'll allow the exhibit in.

(MARKED PLAINTIFF'S EXHIBIT NO. 4.)

BY MR. TILLMAN:

Q. Mr. Jenkins, I've handed you a document entitled promissory note dated April 10th, 2009. Do you recognize this document?

A. Yes.

Q. Is this a true and accurate copy of the note delivered to you by the Rollers on or about -- excuse me. April 10th, 2009?

A. Yes.

Q. And is this a renewal of the earlier note we marked as Exhibit 4?

A. Yes.

Q. In Paragraph 2 what is the principal sum owed under this note?

A. $1,850,000.

Q. And if you will please review this note and let me know whether this note appears to have the same default provisions and remedies set forth in the notes we previously marked as Exhibit 2 and Exhibit 4?

A. Yes, it does.

Q. And in Paragraph 7 can you please testify as to the payment terms under this note?

A. Yes. Paragraph 7 states, "I agree to pay this note in installments of accrued interest beginning May 10th, 2009, and then on the 10th day of each month thereafter. I agree to pay the entire unpaid principal and any accrued but unpaid interest on October 10th, 2009."

Q. And did the Rollers comply with the payment terms set forth in Paragraph 7 of this note?

A. No.

MR. TILLMAN: Your Honor, I would ask that the April 10th, 2009, promissory note be admitted into evidence as Exhibit 5.

MR. GOLDSTEIN: Same objection.

JUDGE DUKES: Okay. I'll allow Exhibit 5.

(MARKED PLAINTIFF'S EXHIBIT NO. 5.)

BY MR. TILLMAN:

Q. Mr. Jenkins, I've handed you a document entitled promissory note dated November 27th, 2009. Are you familiar with this document?

A. Yes.

Q. Is this a true and accurate copy of the

promissory note delivered by the Rollers to Carolina First Bank on or about November 27th, 2009?

A. Yes.

Q. And is this a renewal of the note we marked as Exhibit 5?

A. Yes.

Q. In Paragraph 2 what is the principal sum owed under this note?

A. $1,850,000.

Q. In Paragraph 4 what is the interest rate on this note?

A. Paragraph 4 states that interest will accrue on the unpaid principal balance of this note at a rate of six percent until November 28th, 2009, after which time it may change as described in the variable rate subsection.

Q. And in Paragraph 4-E, can you please explain to the court what the variable rate subsection provides?

A. The interest rate may change during the term of this transaction. And it goes on to describe the date on which it would change, what the interest rate is based on. Means the interest rate announced from time to time by Carolina First Bank at its principal office in Greenville, South

Carolina. The current index is the most recent index figure available and each change date. And then it goes on to explain the change date as November 28th, 2009. And then it goes on to describe the calculation of the change. And then there is a limitation that the interest rate will never be less than six percent.

Q. Okay. Please review this note and let the court know whether it appears to have the same default provisions and remedies as we discussed in the notes marked as Exhibit 2, Exhibit 4, and Exhibit 5.

A. Yes, it does.

Q. In Paragraph 15 of this note does it provide for the collection of attorneys fees and costs in the event that Carolina First Bank has to collect amounts owed under this note?

A. Yes, it does.

Q. Are those attorneys fees and costs secured by the mortgage?

A. Yes.

Q. Did the Rollers comply with the payment terms set forth in Paragraph 7 of this note?

A. No.

Q. Are they currently in default on the

November 27th, 2009, note?

A. Yes.

Q. Have they ever cured that default?

A. No.

MR. TILLMAN: Your Honor, I would ask that the November 27th, 2009, note be admitted into evidence as Exhibit 6.

MR. GOLDSTEIN: Same objection. Best evidence rule.

JUDGE DUKES: Okay. Thanks. And I'll allow it.

(MARKED PLAINTIFF'S EXHIBIT NO. 6.)

BY MR. TILLMAN:

Q. Mr. Jenkins, Carolina First also received additional property as security for the loan evidenced by the November 27th, 2009, note; is that correct?

A. Correct.

Q. And at some point Carolina First released that property from its mortgage; is that correct?

A. Correct.

Q. And how much did Carolina First receive in order to release that additional property from the mortgage?

A. If memory serves me correct, it was

$100,000. I don't know the exact to the penny figure, but I believe that is what the amount was.

Q. And TD Bank is not seeking to foreclose on that mortgage; is that correct?

A. Correct.

Q. And TD Bank has credited that $100,000 payment to the amount owed by the Rollers under the November 27th, 2009, note; is that correct?

A. Correct.

Q. Mr. Jenkins, I've handed you two letters dated August 19th, 2010. And I would ask that you review them and let me know if you are familiar with those letters.

A. Yes.

Q. Did TD Bank have its attorneys send these -- well, first of all, are these default demand letters sent to Wilbert Roller and Betty Roller, respectively?

A. Yes.

Q. Did TD Bank have its attorney send these default demand letters to Wilbert Roller and Betty Roller?

A. Yes.

Q. Are these true and accurate copies of the demand letters sent by TD Bank's attorneys to

Wilbert Roller and Betty Roller?

A. Yes.

Q. Did the Rollers ever cure their default after receiving -- after these letters were sent?

A. No.

Q. Has TD Bank --

MR. TILLMAN: Your Honor, I would ask that the August 19th, 2010, letter to Wilbert Roller and August 19th, 2010, letter to Betty Roller be admitted as Exhibit 7.

MR. GOLDSTEIN: No objection.

JUDGE DUKES: All right. Thank you.

(MARKED PLAINTIFF'S EXHIBIT NO. 7.)

BY MR. TILLMAN:

Q. Have the Rollers ever cured their default under the loan from Carolina First?

A. No.

Q. Has TD Bank elected to exercise its rights and remedies under the terms of the loan documents?

A. Yes.

Q. Has TD Bank as holder of the notes elected to declare the entire amount of the notes due and payable at once pursuant to its rights?

A. Yes.

Q. Is the entire balance of the notes now

immediately due and payable?

A. Yes.

Q. Does the amount owed continue to carry interest at the rates set forth in the November 27th, 2009, note?

A. Yes.

Q. Mr. Jenkins, I'm going to hand to you a spreadsheet document entitled payoff statement, Roller loan. Did you go back and investigate the current balance as of April 29th, 2014, owed under the Roller note?

A. Yes.

Q. And how did you do that?

A. Our system, all you do is you go into the loan and you go to the screen to quote a payoff figure. You enter in the date and it's calculated. And it calculates a total net payoff.

Q. And does that system accurately reflect the amount of principal, interest, late charges, and fees owed under the note?

A. Yes.

Q. And this document that I've handed you entitled payoff statement, is that an accurate depiction of the amounts owed and the various categories as of April 29th, 2014?

A. Yes.

Q. And let me rephrase that. Is that an accurate statement showing the amounts owed by the Rollers under the November 2009 note as of April 29th, 2014?

A. Yes.

MR. TILLMAN: Okay. Your Honor, I would like to offer this payoff statement as Exhibit 8.

MR. GOLDSTEIN: Objection. Self-serving declaration. He can certainly use it to refresh his recollection and to give his testimony as to what the outstanding balance is, but it is a self-serving document and doesn't reflect any of the payments received by the bank by the rollers. And so it's inherently unreliable.

JUDGE DUKES: I'll let you cross examine him as to payments and that sort of thing. I'll allow it.

(MARKED PLAINTIFF'S EXHIBIT NO. 8.)

BY MR. TILLMAN:

Q. Mr. Jenkins, how much do the Rollers owe under the loan as of April 29th, 2014?

A. The total net payoff figure is $2,538,396.24.

Q. And in accordance with the terms of the November 2009 note, does interest continue to accrue after today on the outstanding principal balance at a per diem rate?

A. Yes.

Q. What is that per diem?

A. $489.70.

Q. Does TD Bank have a right to accelerate and declare the note and all other enumerated sums secured by the mortgage marked as Exhibit 3 to be due and payable in full?

MR. GOLDSTEIN: Objection. Calls for a legal conclusion and invades the province of the court.

JUDGE DUKES: What is the question again? I'm sorry.

MR. TILLMAN: I'll withdraw the question.

BY MR. TILLMAN:

Q. Does TD Bank wish to exercise its rights to foreclose on the mortgage we've previously marked as Exhibit 3?

A. Yes.

Q. Is TD Bank seeking a deficiency judgment against Wilbert Roller and Betty Roller?

A. Yes.

Q. Is it your position that TD Bank's lien is a valid first lien on the subject property?

MR. GOLDSTEIN: Objection to the form of the question. It invades the court's province and calls for a legal conclusion.

JUDGE DUKES: Yeah, I guess it probably does. Rephrase it.

BY MR. TILLMAN:

Q. Is TD Bank entitled to recover as a component of -- excuse me. Is TD Bank entitled to recover all attorneys fees and costs associated with collection under the terms of the November 2009 note?

MR. GOLDSTEIN: Same objection. Invades the province of the court. Calls for a legal conclusion.

JUDGE DUKES: Well, I suppose he could point out if it exists in the contract.

MR. GOLDSTEIN: We will stipulate that it exists in the contract and that the court has the authority to award attorneys fees. I don't think it's proper for the witness to state that it's proper for the court to award attorneys fees.

JUDGE DUKES: I agree. It's

technical, but I agree with you. So anyway, and you all have stipulated that it's in the contract, so we will get to that when we get to it.

BY MR. TILLMAN:

Q. Has TD Bank retained the law firm of Womble Carlyle Sandridge & Rice for the purpose of instituting and prosecuting the action?

A. Yes.

Q. And has TD Bank calculated the amount of attorneys fees and costs incurred in the collection portion of its dispute with the Rollers?

MR. GOLDSTEIN: Objection. Witness lacks -- it would call for speculation on behalf of the witness. As a courtesy to counsel, I have no objection to him submitting his attorneys fees. And I know counsel and the firm and they have the highest reputation for honesty and ethicacy. And if he wishes to submit his attorneys bills I have no objection to the court considering them.

JUDGE DUKES: That is probably a better way to do it.

MR. TILLMAN: That is fine.

JUDGE DUKES: All right.

MR. TILLMAN: There is more than one way to skin a cat.

JUDGE DUKES: All right.

BY MR. TILLMAN:

Q. Okay. And does TD Bank seek to recover its attorneys fees and costs incurred in the collection portion of its relationship with the Rollers?

A. Yes.

Q. Okay. Sitting here today, how much do the Rollers owe TD Bank under the November 2009 note?

A. $2,538,396.24.

MR. TILLMAN: Okay. Your Honor, that is all the questions I have for the witness.

JUDGE DUKES: That number would be exclusive of any attorneys fees?

MR. TILLMAN: That's correct.

JUDGE DUKES: Okay. And what was that number again? Two --

THE WITNESS: $2,538,396.24.

JUDGE DUKES: Okay. All right. Please answer any questions Mr. Goldstein has for you.

MR. GOLDSTEIN: Thank you, Your Honor. May it please the court. Judge, I know this may strike you as idiosyncratic and a little strange --

JUDGE DUKES: Nothing really does that anymore to me, but go ahead.

MR. GOLDSTEIN: But Tully Kimerlane told me when you are in court you -- in addressing a witness you always stand up, so --

JUDGE DUKES: Oh, no. That is fine. However you are comfortable.

MR. GOLDSTEIN: Well, I would feel like I would be not giving Judge Kimerlane his due if I remained in my seat because I promised him I would never do that.

JUDGE DUKES: All right.

MR. GOLDSTEIN: So if you don't mind, judge -- if it bothers you I will sit down because it's your court.

JUDGE DUKES: I don't mind a bit. However you are comfortable.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q. All right. I just have a couple questions for you.

MR. GOLDSTEIN: And you don't mind if I stand? It's just the way I was taught.

MR. TILLMAN: It doesn't matter me at all. I probably should have done it.

BY MR. GOLDSTEIN:

Q. I was looking for my notes. Mr. Jenkins, I don't know that you -- maybe you did and I just didn't write it down. Did you tell us your title?

A. I did not.

Q. Well, can I ask what it is?

A. I'm a commercial workout officer with a vice president title much like everyone else.

Q. Okay. And as part of the workout program or workout philosophy you try to save loans that are in distress or try to work things out to avoid having to come to this hearing here today. Is that a fair summary?

A. That is our preferred course of action.

Q. Okay. Because it's better for everybody if you can reach a resolution than sell the property which will generate generally a distressed sale once you take possession of the property, correct?

A. It could be.

Q. Okay. Now, throughout your testimony all of the -- I looked at the documents that you put into evidence. I do not see any document in evidence that would demonstrate to the court that TD Bank -- TD Bank, what does it stand for?

A. Toronto Dominion.

Q. Toronto Dominion. And where is Toronto Dominion's home office?

A. Our home office in the U.S. is in Cherry Hill, New Jersey.

Q. Cherry Hill, New Jersey. And Toronto Dominion acquired Carolina First; is that correct?

A. Uh-huh.

Q. You didn't bring any of those documents with you here today?

A. No.

Q. The acquisition documents. Do you know how Toronto Dominion came to acquire Carolina First Bank?

A. Through talks and negotiations.

Q. Do you know what year that transaction was completed?

A. June 30th, 2010.

Q. Okay. And do you know if Toronto Dominion used any Tarp Funds or Federal Reserve Funds borrowed at the Federal window to acquire Carolina First?

A. No.

Q. Okay. So your answer is you don't know or you know --

A. They did not.

Q. Okay. What was the source of the funds that TD Bank used to acquire Carolina First?

A. Cash and stocks.

Q. Okay. So you are saying it was an arms-length transaction as far as you know?

A. Uh-huh.

Q. Not using any government bail out funds?

A. No.

JUDGE DUKES: Mr. Jenkins, I've got to get you to answer yes or no rather than uh-huh and uh-uh if you don't mind.

THE WITNESS: I apologize.

JUDGE DUKES: That's all right.

BY MR. GOLDSTEIN:

Q. Sorry. I should have prompted you. That was my fault. The reason I ask is there is no evidence in this record today that would allow a court to determine or someone looking at this record to determine that in fact TD Bank actually acquired Carolina First other than your testimony. Is that a fair summation of the record?

A. Yes.

Q. Okay. Now let's go to Plaintiff's Exhibit 8. Do you have it in front of you or the court reporter has them. I have a copy. You put

into evidence over my objection Plaintiff's Exhibit 8.

MR. GOLDSTEIN: Your Honor, I think the rules allow me to cross examine on a document --

JUDGE DUKES: Oh, absolutely.

MR. GOLDSTEIN: -- without waiving my objection.

JUDGE DUKES: Absolutely. Go ahead.

BY MR. GOLDSTEIN:

Q. So reserving my objection, the payoff statement, you compiled this, correct?

A. I did it personally.

Q. Yeah. Based on the information provided to you through your job as a vice president of TD Bank, correct?

A. Yes.

Q. In other words, you didn't delegate it to somebody. Like you just said, you did it yourself?

A. I pull all payoff statements personally.

Q. Right. What you did not show, however, is all of the payments that the Rollers made over the course of the years; is that correct?

A. There is not a payment history, that is correct.

Q. Well, there is a payment history. You

just didn't bring it?

A. There is not a payment history included in this document.

Q. Correct. But just so the court understands, they were making payments for a time, $9,000 a month, correct?

A. When I was involved -- when I got involved with the loan -- any payments made other than the referenced $100,000 consideration for the release of the boat slip I wasn't involved with the loan. I'm not saying they didn't make them. They just weren't made to me. And I wasn't involved at that point.

Q. Okay. Well, the court is being called upon by you as a litigant to make a judgment to order this collateral sold to satisfy a debt. You understand that?

A. Yes.

Q. That that is why we are here today. And there is no way to look at Plaintiff's 8 and determine the accuracy of it because you didn't provide any payment history. And so we can't determine how any credits were applied, correct?

A. You can when you look at what the principal is now versus the original note amount. As the note amounts decrease obviously there is the

application of payments.

Q. Right. And just so we understand each other, when people borrow money, the repayment is amortized out so that each month's payment reduces principal by some amount and the rest is applied to interest, correct?

A. Not in this case because, if you, recall all the payments were interest only.

Q. Were interest only? All right. So the Rollers were making -- well, they couldn't have been interest only because from the first note to the second note went down by almost $500,000. How did that happen? The first note was for $2,300,000, correct?

A. Correct.

Q. And then the second note the balance had decreased to 1.85 million, correct?

A. That is correct.

Q. Okay. So they had made some payments on principal?

A. Those payments could have been with extensions or renewals of notes. There can be a principal pay down required. It doesn't necessarily mean that the payments were amortized -- the payments were not scheduled to be amortized.

However, if someone makes a payment above and beyond the regularly scheduled payment --

Q. Sure.

A. -- thus the principal -- there are several ways that the principal can be reduced, but these were not amortizing payments.

Q. Okay. And I'm not trying to be flippant or funny or anything, but I got a beat up mobile home up at Lake Moultrie. And I've got to pay 478 a month is what I pay. And sometimes I put in an extra 500 bucks. And so when I make that payment, the 478 goes to principal and interest and then that stray 500 I put in an envelope goes to principal, correct?

A. Correct.

Q. Okay. So in this case looking at the documents that you put into evidence we can deduce that at least about $500,000, roughly, had been applied to reduce principal, just doing the math?

A. Correct.

Q. Okay. So, in other words, the Rollers weren't deadbeats. I mean, they were paying interest and they were also reducing principal, correct?

A. For a period of time.

Q. For a period of time. Okay. And then 2008 came. And we all know what happened in 2008. I assume that you all were affected by it like everybody else. Is that a fair statement?

A. The entire economy was, correct.

Q. The entire economy crashed. Okay. And so they have been struggling to work things out with the bank. For example, you testified in your direct that they came up with 100,000 and paid it and you all released the boat slip?

A. Correct.

Q. Okay. And they've been trying very hard to market the property. You are aware of that?

A. Yes.

Q. Okay. And you are aware that -- of the legal troubles that they had with the Town of Bluffton and the zoning and all of that and they had to hire a lawyer to try to solve that?

A. Just what I was told. I don't have any firsthand knowledge of it.

Q. All right. And then let me ask you, so going back over your testimony, without a payment history produced by the bank, there is no way that this court can conclude today what the exact amount of principal is. Isn't that a fair statement?

A. No, because that is the payoff statement to include all payments posted.

Q. Based on your testimony?

A. Correct.

Q. Correct? Okay. But we don't have -- you didn't bring up any backup documentation to demonstrate how you arrived at those figures?

A. No.

Q. Okay. Do you recall when the last payment they made was?

A. The $100,000.

Q. Was the last payment you got?

A. Correct.

Q. And that -- do you remember when that was? Not --

A. Two years ago.

Q. Okay. And that was the last payment you got?

A. Correct.

Q. Is that based on your recollection?

A. That is the only payment because I was involved because we had to agree to release the collateral upon receipt of the payment.

Q. Okay. Which you all did?

A. Correct.

Q. Okay. And the $100,000 went to principal or it went to --

A. It was a principal reduction.

Q. Principal reduction. Okay. Well, I was going to put into evidence evidence of the $100,000 payment on -- I'm looking for the date, but I guess you said two years ago. Oh, here it is. December 14th, 2012. Does that sound about right?

A. Yes.

Q. Okay. So I don't need to put this into evidence. We agree that they made a $100,000 payment sometime in December 2012. You released the boat slip and it reduced the principal?

A. Correct. And I apologize for the misdating the payment. It's been awhile.

Q. I wasn't trying to trick you on the date. It doesn't matter. I don't expect you to remember the dates. It's not a memory test.

Q. Okay. Well, we don't need that document then. Now, let me show you what has been marked as Defense Exhibit Number 1. And I only have one copy, so I'm going to show it to your counsel first.

A. Okay.

Q. And then after he's looked at it he's going to hand it to you?

MR. TILLMAN: Your Honor, I'm going to object to the introduction of any documents that haven't been produced in discovery. I sent Mr. Goldstein discovery requests back in October of last year and asked for a follow-up in December. I've got the e-mail. And never received those documents and they were never produced. And that is the first time I've ever seen that document. I haven't had a chance to discuss it with my client.

MR. GOLDSTEIN: Carolina First --

JUDGE DUKES: What is it?

MR. GOLDSTEIN: This is a contract that actually I received today. I asked Mr. Frasier to -- you were kind enough to let us use your e-mail for me to receive it. I think I can lay enough of a foundation for it to show its relevance. And the bank was certainly aware of it as it was part of the negotiations of this contract.

JUDGE DUKES: Why don't we do this. You haven't seen it before. Do you want to take a minute to look at it before we -- if that is the only copy or maybe make some extra copies.

THE WITNESS: May I look at it as well?

JUDGE DUKES: Yeah, please.

THE WITNESS: Because I've never seen it.

JUDGE DUKES: We will go off the record for a second.

(Discussion off the record.)

JUDGE DUKES: You are still under oath, sir. Proceed whenever you would like.

MR. GOLDSTEIN: Is there any -- is there still an objection?

MR. TILLMAN: I would just like to continue to log my objection for the record. It wasn't produced in discovery.

JUDGE DUKES: All right. My understanding is it's brand new. It's just occurred. It's a new contract.

MR. GOLDSTEIN: That's correct.

JUDGE DUKES: Yeah. I'll allow it.

BY MR. GOLDSTEIN:

Q. And, Mr. Jenkins, you may not have seen it before. Have you seen it?

A. I've never seen this.

Q. Okay. Well, then I won't ask you any questions about it. I'll wait for Mr. Roller then.

MR. TILLMAN: That was much ado about nothing.

BY MR. GOLDSTEIN:

Q. You were generally aware, however, that there was a contract for the property by a purchaser who was planning on putting a Bi-Lo there. You were aware of that?

A. I was aware that there was an interest from a third-party that was interested in the party for a Bi-Lo, but I've never seen a contract or heard any negotiations about it.

Q. Okay. And you are aware that there was some controversy with the Town of Bluffton concerning the zoning?

A. Yes.

Q. Okay. And were you getting regular updates and reports on that effort to get the property rezoned?

A. No.

Q. Okay. How is it that you were aware then of the status of it? Who -- where were you --

A. When I met with Mr. Roller --

Q. Okay.

A. -- years ago at one of our offices, he explained the situation with the property. And that is how I came to know about it.

Q. Okay. And wasn't there an agreement with

Mr. Roller that in exchange for forbearance that when he sold the property he would split the profits with the bank?

A. No, sir.

Q. You've never heard that before?

A. Unless there is a document that can be produced titled forbearance agreement that speaks specifically to that executed by a bank employee, then no.

Q. Okay. Was it discussed?

A. No.

Q. Okay. Let me ask you the notes that you put into evidence, the renewal notes, of course you all would not have been renewing the notes year after year after year if they had not been making payments, correct?

A. I wasn't involved with the original note or the subsequent extensions, but typically an extension would be granted if there were some consideration or there was a plan in place or there was, you know, something that was going to be done with the property, but I wasn't a party to those conversations.

Q. Okay. But you all did renew the note -- according to the evidence that you've put in, you

all renewed the note four times, correct?

A. Correct.

Q. Okay. And other than the two exhibits you've produced here today, which were the certified letters marked as Plaintiff's Exhibit 7 dated August 19th, 2010, there were no written demands for payment issued by the bank other than those two letters, correct?

A. I cannot answer that because I don't know if there were letters issued prior to my involvement.

Q. Okay. Did you bring your entire file with you today?

A. No.

Q. All right. The only documents you brought are the documents that have been put into evidence?

A. I personally didn't bring anything with me.

Q. Okay. So there is no way to tell the court the payment history and determine the amount of payments made to the bank and when they were made, correct?

A. Not right now today, no.

Q. Okay.

A. But it can be -- payment history is

something that is easily produced.

Q. Okay.

A. I just have to request it.

MR. GOLDSTEIN: Thank you. That is all the questions I have.

JUDGE DUKES: All right. Any follow-up questions?

MR. TILLMAN: Yes.

REDIRECT EXAMINATION

BY MR. TILLMAN:

Q. Mr. Jenkins, in the normal course of TD Bank's business do they account for payments made by borrowers?

A. Yes, we have to.

Q. And does the bank -- did the bank credit all of the payments or to your knowledge did the bank credit all of the payments made by the Rollers on this loan?

A. Yes.

Q. Okay. And Mr. Goldstein didn't show you any canceled checks or bank statements evidencing any of those payments today; is that correct?

A. Correct.

Q. So to the best of your knowledge this amount reflected on Exhibit 8 as the amount owed is

the correct amount; is that correct?

A. Correct.

MR. GOLDSTEIN: Objection. Leading.

JUDGE DUKES: Yeah, that is leading. If you can --

BY MR. TILLMAN:

Q. To the best of your knowledge how much is owed as of today's date when taking into account all of the payments made by the Rollers since the inception of the first loan?

A. As of April 29th it was $2,538,396.24. I could provide a payoff today with my calculator and include the per diem if you would like.

MR. TILLMAN: That won't be necessary. Thank you.

JUDGE DUKES: Anything else?

MR. GOLDSTEIN: Nothing further.

JUDGE DUKES: All right. Thank you very much. Did you want to wait with regard to the attorneys fees at the conclusion of the case? Happy to do it however you all want to proceed in that matter. You might not have totally calculated it yet. I don't know.

MR. TILLMAN: Well, I haven't, but I'm fine with waiting until the end of Tommy's case.

JUDGE DUKES: Is that all right with you?

MR. GOLDSTEIN: I've known Mr. Tillman and his firm for many years. And I'm sure that whatever affidavit or itemized bill he provides will be true and accurate. I mean, I don't know what his hourly rate is and I don't know, there might be some stuff in his bill that was related to collateral matters that shouldn't be considered, but other than that, I wouldn't have any objection to him submitting his bills to you. I don't require that he testify or anything.

JUDGE DUKES: All right. Well, we could perhaps do it in affidavit form and allow the record to remain open if necessary for you to cross examine if you decided to.

MR. TILLMAN: And Tommy, there is my affidavit if you want to look at it?

JUDGE DUKES: Okay. Take a minute and look at it and see.

MR. GOLDSTEIN: I don't have any objection to the affidavit. Just by way of legal argument, I don't see the hourly rate. Is the hourly rate in here and I'm just not seeing it?

MR. TILLMAN: It is not in there, no.

MR. GOLDSTEIN: Okay. I would just reserve the right to address the hourly rate, whatever it is. And, see, he says he has 232 hours in the case. I have no doubt that that is 100 percent correct, and I wouldn't question that, but some of that 232 hours may have been related to the collateral matters surrounding this case which would not be appropriate for an attorneys fee award on a foreclosure. Does that make sense? Because there have been other issues surrounding this case?

MR. TILLMAN: And I think what I did, Your Honor, in the interest of full disclosure, what I did is I went and took the time from the demand letters forward. So, in other words, all of the renegotiation of the notes and so forth would have happened before that. So all of those attorneys fees would have been included in the -- now, if Tommy wishes that I go back and itemize it, I can itemize it. That is fine. I just --

JUDGE DUKES: What are the collateral matters you are talking about?

MR. GOLDSTEIN: The quiet title action, matters involving renegotiation of the note and the loan. That would be sort of --

JUDGE DUKES: So the renegotiation

part would not be in there, but the quiet title would?

MR. TILLMAN: It would. And that is a fair point.

JUDGE DUKES: Okay.

MR. TILLMAN: That is a fair point.

MR. GOLDSTEIN: And as you can see, Your Honor, 232 hours, I mean, that is just -- that is an impossible figure. That is just not humanly possible to have 232 hours in this case. That is just -- so it has to include the other ancillary matters.

JUDGE DUKES: Well, let me ask this. And maybe we can leave the record open for this just in case -- it sounds like it might be certainly an issue for the Defendant. Is it possible to carve out the quiet title action again reserving the issue of whether or not it is an appropriate thing to bill for. I don't know if it is or not. I'm not prepared to rule on it, but I mean I think it's certainly a fair argument at least that perhaps the option should be given that collection and foreclosure part and the title part --

MR. TILLMAN: I could certainly go back through the bills and do that although you know

the amount of time that would take -- it may be that we can just come to a number. And why don't we just reserve that portion of it?

JUDGE DUKES: All right. Why don't we do that?

MR. GOLDSTEIN: But I have no objection to the affidavit.

JUDGE DUKES: All right. Well, we will put the affidavit in without objection but reserving all the rights we just spoke of to analyze the records further and allow you to make whatever argument you would like in the event that you can't reach a number that everyone is happy with.

MR. TILLMAN: All right.

(MARKED PLAINTIFF'S EXHIBIT NO. 9.)

JUDGE DUKES: All right. Anything else?

MR. TILLMAN: That is all.

JUDGE DUKES: The Plaintiff rests?

MR. TILLMAN: Yes, sir.

JUDGE DUKES: Okay. All right. Do you want to take a break or lunch --

MR. GOLDSTEIN: No. Well, I will do whatever the court --

JUDGE DUKES: No, I'm good.

MR. GOLDSTEIN: But first I want to make -- and next time you see Judge Young I want you to tell him that Goldstein said involuntary non-suit without prejudice, as lawyers call it directed verdict, in a non-jury trial that is his pet peeve.

JUDGE DUKES: Oh, I've got to remember that.

MR. TILLMAN: I learned something today, too.

MR. GOLDSTEIN: Yeah, that is big with Judge Young. I am moving for an for an involuntary non-suit without prejudice. Not with prejudice. Without prejudice. I'm moving for an involuntary non-suit on the ground that there has been a failure to produce any proof that TD Bank is, in fact, the owner and has the standing to bring this action.

It may be that they do and it may be that they don't, but there has been no evidence produced that they own the right to bring this action.

The second ground for involuntary non-suit without prejudice is that there has been a failure of evidence to show payments made. And so therefore the court is -- there is insufficient evidence in the record to allow the court to determine the

fair -- not the fair. The true and accurate balance of the unpaid amount. In other words, the witness testified that, yeah, I went to my computer and I pulled it up. And this is what the amount is.

But we don't what payments have been credited or how they've been applied, so there is insufficient evidence to arrive. So for those reasons, those two reasons, I'm moving for an involuntary non-suit without prejudice because -- without prejudice because obviously they can go back and correct it and, you know, put up the proper evidence.

JUDGE DUKES: Okay. Happy to hear from you, sir.

MR. TILLMAN: On Number One, the failure to produce proof that TD Bank has the right to bring the case, this is a situation -- this is not a situation where the note and mortgage were assigned at any point. This was simply a merger. The documents all reflect Carolina First which, as the witness has testified, were merged into TD Bank. There won't be any assignment documents or any other documents evidencing a transfer of the right or of the notes and the right to bring this action.

The witness testified that he's

knowledgeable as to the event of the merger. He also confirmed that TD Bank is the current holder of the notes. And, frankly, I don't know who else would -- I mean, if Mr. Goldstein was concerned that the note had been assigned or the mortgage had been assigned, you would certainly want to go and look in the R.M.C. office to see if that has been filed or send me discovery on that or something like that, but that is not the case.

My client testified that TD Bank is the proper holder at this point. And I would ask the court to deny that part of the motion.

And then on the insufficient evidence for payments made, again that is very similar to the argument I just made. My client is familiar with the systems of the bank. He does this all the time. He pulls payoff statements. He testified that it's the practice of the bank to credit payments made.

He also testified unequivocally that the $100,000 payment was credited to the amount. Mr. Goldstein could have cross examined him with actual payments, canceled checks, bank statements and so forth. He didn't do that.

And I do believe that my client's testimony as to the method in which he received the

information or gathered the information and the method in which the bank accounts for that information is sufficient to support the debt that we placed on the record.

JUDGE DUKES: All right. Thank you very much. And, of course, I've listened to Mr. Jenkins' testimony. There is, I think, the original note in evidence which, of course, is good evidence of ownership of the loan between Mr. Jenkins' testimony, his testimony with regard to his knowledge of the file itself and the method of accounting for payments, I'm going to deny Parts 1 and 2 of the motion. So thank you very much.

MR. GOLDSTEIN: Okay. Thank you, Your Honor. May it please the court, I'm going to call Wilbert Roller.

JUDGE DUKES: All right. He can remain, I think, if it's all right with Deborah right there unless you would like to move him somewhere.

MR. GOLDSTEIN: No. Maybe I'll go --

JUDGE DUKES: Yeah. Go ahead.

MR. GOLDSTEIN: -- over here so I can face him.

JUDGE DUKES: Perfect. Whatever you

would like to do. Mr. Roller, can you hold your right hand up for me, please. You don't need to stand. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth so help you God?

MR. ROLLER: Yes, sir, I do.

JUDGE DUKES: Okay. Please answer any questions your lawyer may have.

WHEREUPON:

WILBERT ROLLER, being duly sworn and cautioned to speak the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. All right. You are Wilbert Roller?

A. Correct.

Q. You are the Defendant in this case?

A. Yes, sir.

Q. You have been sued in this case for foreclosure on the -- what is the slang for the Bluffton property?

A. Twenty-three acres.

Q. Twenty-three acres. Can I just refer to it as the 23 acres?

A. Yes.

Q. And you will know what I'm talking about?
A. Yes.
Q. All right. When did you acquire that property?
A. Back in the '70s.
Q. And for what purpose did you acquire it?
A. I bought 300 acres, and that piece was in it.
Q. All right. And when you originally purchased the property was it in the town of Bluffton or --
A. It was in the County.
Q. It was in the County?
A. Beaufort County.
Q. And when you bought it --
A. It was commercial. D.D. they called it back then.
Q. Okay. Well, you anticipated my next question which is what was it zoned?
A. Yeah. Either way. I think that is what D.D. stood for back then.
Q. Okay.
A. Residential or commercial.
JUDGE DUKES: Development.
THE WITNESS: Uh-huh.

BY MR. GOLDSTEIN:

Q. And how did the property come to be in the Town of Bluffton?

A. Well, they annexed it in. I was living in Texas at the time. And they annexed it in without us knowing.

Q. Okay. You anticipated my next question which was were you afforded notice of the annexation?

A. Right. Correct.

Q. Were you afforded notice?

A. No, I wasn't.

Q. Okay. So did it come as a surprise to you?

A. Yeah. When I moved back here it was.

Q. All right. And when you moved back did you hire a lawyer to try to get the zoning restored?

A. Yes, I did.

Q. Who did you hire?

A. I don't remember. You or David Tanner. I think it was you.

Q. Okay. And tell the court how that worked out for us.

A. Well, we went to court. I mean, we went to the hearing several times. And it was a

black-and-white type deal. They just didn't want me down there. They wasn't getting anything. They said -- the community said, what are we getting? And I said, we ain't getting nothing. I'm trying to build a shopping center. They said, if we don't get nothing out of it, you ain't getting it.

Q. Okay.

A. And that is what happened.

Q. Did you file a lawsuit over the zoning?

A. Yes, we did.

Q. Okay. And you filed that where, do you remember?

A. Not --

Q. Was it in Federal Court?

A. Yeah.

Q. Okay. Now, would you say that you used your reasonable best efforts to get the property rezoned?

A. Oh, absolutely. I spent $90,000.

Q. Okay. Now, you heard Mr. Jenkins testify about the various promissory notes and so forth?

A. Right.

Q. Okay. Were you making payments on --

A. Yes. We was making interest payments and principal.

Q. Okay. And how much would you pay --
A. I think it was 9,000 a month.
Q. Okay.
A. They wouldn't have been renewing these notes if I wouldn't have been giving them any money.
Q. Okay.
A. I don't think.
Q. All right. And did you also reduce the principal?
A. Yes, I did.
Q. All right. And did you keep the bank informed of what you were doing?
A. I did. And that is where I messed up at. I told the bank that I had a contract for $3.2 million.
Q. All right. Well, let me -- you are getting me off my outline a little bit.
A. Okay. Excuse me.
Q. But that's okay. Let's just jump to the contract. Let me show you what has been marked as your Defendant Roller Number 1 and ask you if you can identify that document?
A. Yes, I do.
Q. What is it?
A. It's where I had a contract with a group

in Charleston. What was the lady's name? Ravenel. She was buying the property for Bi-Los.

Q. Okay.

A. And she was giving me $3,250,000 for it. And put up a check and met with me -- Renee did, met with Simon and myself several times. And the bank kept calling me. What have you got? What have you got? I said, I've got it sold to a lady. And I told them who it was. And they called the lady and tried to undercut me and sell it -- they would sell it instead of me selling it.

Q. Okay.

A. And she called me about it, me and Simon. And I went to them and asked them, what are you all doing? Have we got a partnership? They said, well, it kind of looks like it. You haven't done any moving it. I said, I've done everything I can do. I'm fighting the County -- I mean the Town every day with lawyers and architects, run up to $90,000 just on doing the plans, renewing it for her and trying to get it passed. And they just -- everybody went against me.

And Carolina First knew about it. I shouldn't have showed it to them because it blew up after I showed it to them because they thought they

could sell it to her. They called her theirself.

Q. Well, did you enter into an agreement with Carolina that you would modify the repayment terms in exchange for --

A. I told them after I got mad and I said, well, you sell it, me sell it, we will just split the profits.

Q. Okay. And how did they receive that?

A. Well, they didn't. They said, get it sold. And I said, well, you are selling it. You called her and undercut me. You sell it and we'll split the profits.

Q. Okay.

A. And that is the way I left it.

Q. All right. And what happened as a result of that contract?

A. It just went away. She got tired of fooling with it.

Q. Okay. Now, to be fair -- to be fair to everybody, including the bank, you were also fighting with the Town of Bluffton, correct?

A. Exactly.

Q. Okay.

A. Right.

Q. And is that what you meant when you said

you felt like everybody was against you?

A. Well, every time that I would go to a hearing or something it was just put off. They wanted to know what they was getting out of the deal.

Q. Yeah.

A. And I told them they wasn't getting nothing out of the deal. And -- but Carolina First knew about -- I shouldn't have never showed this to them, but they kept on me wanting me to show them what I had, what I had. And I did. And that is when they would call Renee.

Q. Okay. So that transaction didn't close?

A. Didn't close.

Q. Do you have the property listed for sale now?

A. Yes, I do.

Q. Who is the agent?

A. Jerry Reeves.

Q. Do you know if Jerry Reeves has any prospects?

A. He had a customer that come to me about six or eight months ago and offered a 1.1 million for it and wanted to put down $20 for six months. And I said, I ain't looking to that.

Q. Yeah.

A. And then he wanted another option to tie it up.

Q. Yeah.

A. And I said, I'm not looking for that.

Q. Okay.

A. And then he called me and said he's got Wal-Mart. They are doing a special meet and gas station type deal and they are interested in it.

Q. Okay.

A. And this was in the last three or four weeks.

Q. Okay. Are you cautiously optimistic that that might --

A. Well, Jerry feels like he's going to have a contract in the next day or two.

MR. TILLMAN: Your Honor, I'm going to object to all of this -- this questioning on the basis of relevance.

JUDGE DUKES: Well, I'll let him go on a little bit, but --

MR. TILLMAN: Okay.

MR. GOLDSTEIN: Your Honor, I offer Defendant's Exhibit 1, or maybe I already did, into evidence.

JUDGE DUKES: Yeah, I think you already did, but maybe not. Is it already in?

MR. TILLMAN: It was -- you said enter it into evidence, but I don't think it was marked.

JUDGE DUKES: Oh, I'm sorry. Okay. Yeah, let's go ahead and --

MR. GOLDSTEIN: Okay. And I'm offering it now.

MR. TILLMAN: And, Your Honor, same objection I made earlier just for the record.

JUDGE DUKES: No, I understand. I'll allow it though. Go ahead. Defendant's 1.

(MARKED DEFENDANT'S EXHIBIT NO. 1.)

BY MR. GOLDSTEIN:

Q. All right. As you sit here today, do you know how much money you've paid Carolina First over the years?

A. Not really I don't.

Q. Okay. Do you know who TD Bank is?

A. I've never heard from them about this property. I've never got a letter from TD Bank about this property.

Q. When is the first time you ever heard the words TD Bank?

A. Well, I have an account with them.
Q. Okay.
A. When they took over.
Q. All right.
A. My checks came out TD Bank.
Q. Okay. Now let's go through your answer. You filed an answer in this case?
A. Yes, sir.
Q. Okay. Do you recall when you -- the last payment you made to the bank was?
A. No, I don't. 100,000.
Q. Okay. Mr. Jenkins testified that it was $100,000 and they released a boat slip?
A. Right.
Q. Do you recall approximately when that was?
A. About a year and four months I think it was, something like that.
Q. Okay. And you paid them $100,000?
A. Right.
Q. And that was applied to principal; is that correct?
A. I never did get a receipt back.
Q. Okay. Is that the last payment you made?
A. Yes.
Q. Okay. Well, then as you sit here today

then why shouldn't the Judge grant the Plaintiff's request for foreclosure? What explanation do you have to ask the court not to do that?

A. Well, I don't understand.

Q. Well, have you been making payments all along?

A. A year and four months ago I made 100,000. That is the last I made.

Q. Okay.

A. But I've never received a bill or any interest payment or nothing since then.

Q. Okay. All right. That was my question then.

A. Yes.

Q. So did the foreclosure just come out of the blue then?

A. In the last three days you called me.

Q. Okay. Well, that was the notice of hearing.

A. Okay.

Q. I'm talking about when they filed the foreclosure?

A. No, I haven't received anything.

Q. Okay. Now, you agree that you signed all the renewal notes that Mr. Jenkins took us through?

A. Right. Yes, I did.

Q. Okay. And you admit that you are obligated to repay those notes?

A. Correct.

Q. No question about that?

A. No question. And I paid them.

Q. All right. And as you told us, you were making payments or otherwise they would not have agreed to renew them?

A. I can't believe a bank would not do that.

Q. Okay. And did you enter into a new agreement with the bank once you got the $3.1 million contract that has been marked as Exhibit 1?

A. Well, that is when they was trying to sell it and I thought I was selling it.

Q. Okay.

A. And that is when I told them, we must have a partnership.

Q. Okay. Did you regard yourself as having a partnership at that time?

A. Well, I didn't realize I did, but it seems like they was taking care of my business.

Q. All right. And what were the terms? If the property had sold for 3.1 million --

A. We would pay it off and split it.

Q. Okay. And when you say pay it off, you are talking about paying all principal and interest?

A. What I owed.

Q. And then split the profits?

A. Correct.

Q. Okay. Now, in your answer, which is verified, you also requested, and I know we've got to do it over again, but you requested an appraisal?

A. Yes.

Q. Why did you request an appraisal?

A. Well, I really don't know what the property is worth at this date. And I would like to have an appraisal.

Q. Okay. Well, what do you think that it's worth?

A. Well, I have an appraisal for $6 million that I sold them 10 acres of it for 300 and -- 250. Back then it was $6 million.

Q. Okay. Now, you've also pled fraud and inducement. Do you know what that is? Do you know what fraud and inducement means?

A. No. Explain it.

Q. Okay. That is when somebody promises you something in order to get you to do something.

A. Right.

Q. All right. Did the bank promise to do something for you in exchange for a promise from you?

A. They just said, let's sell it.

Q. Okay.

A. And I haven't heard anything since.

Q. All right. And in exchange for that what were you going to give to them?

A. I was going to give them part of the profits.

Q. Okay. Would you have agreed do give them part of the profits if they had not agreed to forbear on the mortgage?

A. Well, they never did.

Q. Okay. Were you relying on that?

A. No. I was just -- they said they could sell it easier than I could.

Q. Okay.

A. And I was going to let them sell it.

Q. Okay. And did you acquiesce in that? Did you go along with that?

A. Yeah, I did.

Q. Okay. Well, if you went along with that, are you a little surprised to be sitting here today?

A. Well, really -- well, I hadn't heard from them in two years or -- I called them about paying the 100,000. They hadn't billed me or anything before that. And I said, you all got a lot. Why don't we just sell it and give you the money and knock the interest down. And they said, fine. Go ahead and do it.

Q. And they agreed to that?

A. Yes.

Q. And you did that?

A. And I did that.

Q. That was the $100,000?

A. $100,000.

Q. Okay. And is it your testimony here today that that was part of -- that was an indication of the agreement that you all had reached?

A. Well, I had signed what I would pay as I could.

Q. Okay. Now, you've also alleged a tortious interference in perspective business relations, and that arises out of this contract with Ms. -- I keep saying Ms. Ravenel, but I guess technically it was Mr. Ravenel.

MR. TILLMAN: Objection. The attorney is testifying.

MR. GOLDSTEIN: He's right. That was a bad question. I'll withdraw it.

BY MR. GOLDSTEIN:

Q. The Defendant's Exhibit Number 1, the contract that is in evidence --

A. Right.

Q. Was that an agreement that you signed?

A. Yes. Me and her signed the deal, yes.

Q. Okay. And you signed it?

A. Yes.

Q. And you were prepared to live with it?

A. Yes.

Q. Did the bank interfere in that contract in any way?

A. Later on they did.

Q. And how did --

A. They called her. Simon called me and said, why is the bank calling what is her name? I can't even recall it. Why are they calling Ms. Ravenel. And that is the first I heard about it. And then I called the bank and asked them what the hell they was doing.

Q. And what answer did you get?

A. They just said we just thought we would call. We hadn't heard anything.

MR. TILLMAN: Objection. Hearsay.

JUDGE DUKES: Yes. Sustained.

MR. GOLDSTEIN: Well, this is the bank, Judge, that he's quoting.

JUDGE DUKES: I'm sorry?

MR. GOLDSTEIN: This is the bank he's quoting, the Plaintiff.

MR. TILLMAN: He's named no individual from the bank.

THE WITNESS: There are several of them. I don't know if they are still there.

JUDGE DUKES: I thought this conversation was something Simon Frasier told him that someone told Simon Frasier.

MR. GOLDSTEIN: No. And then he went on and said he called the bank. And I'll start over.

THE WITNESS: Mr. Ravenel --

MR. GOLDSTEIN: Let me start over.

THE WITNESS: Okay.

BY MR. GOLDSTEIN:

Q. Did you call the bank?

A. I did call the bank.

Q. Do you remember who you spoke to?

THE WITNESS: What was the boy's

name, do you remember?

MS. ROLLER: Steven? Steven? Was that his name?

THE WITNESS: I can't remember. There was two of them in there I was talking to.

BY MR. GOLDSTEIN:

Q. Okay. And what did you tell them?

A. I just told them, what the hell are you all calling my client for.

MS. ROLLER: Don't curse.

THE WITNESS: Excuse me. I asked them, why are you calling my client?

BY MR. GOLDSTEIN:

Q. Okay. And what was the response?

A. They just said, well, we didn't hear anything from you and we thought we would call.

Q. Okay. As a result of that, did that cause any problems with the attempt to bring the contract to fruition?

A. Well, she called Simon and said, why is the bank trying to sell it to me.

Q. Okay?

JUDGE DUKES: Sustained on that part.

BY MR. GOLDSTEIN:

Q. Okay. Did the bank's activities cause you

any difficulty with the contract?

A. Yes. Cost me a sale.

Q. Okay. Would you have agreed to split profits with the bank if they had not agreed to hold off the mortgage foreclosure?

A. No, sir. They wasn't paying me interest payments.

JUDGE DUKES: Can you all do me a favor and just put a second between the answer and the question because I think Deborah is having a hard time. You all are talking over one another.

THE WITNESS: I'm sorry.

JUDGE DUKES: That's all right.

BY MR. GOLDSTEIN:

Q. Mr. Roller, let me finish my question before you give your answer.

A. Okay.

Q. Did you think you had a deal with the bank, an arrangement?

A. After the fact? After they went and talked with my client?

Q. Yes.

A. Yes, I did.

Q. What did you -- what were the terms?

A. We was just splitting the profit.

Q. Okay.

A. And they would give me more time to get it done.

Q. Did you rely on that?

A. I did.

Q. Did you think that you had the right to rely on that?

A. Well, I never did hear from them again. I felt like I did.

Q. Okay.

A. I never got a bill. I never got an interest note. And like the 100,000, I called them. They hadn't pressured me for anything.

Q. Okay. Well, you heard Mr. Jenkins testify about the amount that he claims you owe. Can you rely on that figure?

A. Well, I know the 100,000 plus I don't remember how many -- I know we paid payments monthly or they wouldn't have kept renewing this for me.

Q. Okay. Is it in the bank's best interest that the property be sold at the courthouse steps or is it in the bank's best interest that it be sold in an arm's length transaction?

MR. TILLMAN: Objection. He can't testify as to the bank's motivations.

JUDGE DUKES: Yes.

MR. GOLDSTEIN: I agree.

JUDGE DUKES: I mean, I know the answer, but I don't know if --

MR. TILLMAN: Well, that is why the question was asked, but anyway.

THE WITNESS: I mean, if we was still partners I would love to do it that way.

BY MR. GOLDSTEIN:

Q. Have you tried to fulfill your obligations to the bank and use your best efforts and good faith?

A. Yes, sir.

Q. Okay. The money you borrowed originally from the bank on this property, what was that money for?

A. To build a restaurant.

Q. Did you build a restaurant?

A. Yes.

Q. And is it existing today?

A. It's there.

Q. And it's up and running?

A. No.

Q. Well, your tenant left?

A. That's correct.

Q. Okay. Was it up and running until your tenant left?

A. Yes.

Q. Okay. I guess what I'm getting at is you didn't take the money and take a trip around the world or anything?

A. No, I didn't do that.

MR. GOLDSTEIN: Okay. All right. I think that is all the questions I have.

JUDGE DUKES: All right. Do you have any questions of --

MR. TILLMAN: I do. I need to find the -- I have somehow misplaced that contract. Here it is.

CROSS EXAMINATION

BY MR. TILLMAN:

Q. Mr. Roller, I'm going to hand you Defendant's Exhibit Number 1. And is that the contract that you are referring to that you received from Mr. Simon Frasier?

A. Yes, sir.

Q. And what is the date on that contract?

A. June 10th, '08.

Q. Okay. So is it accurate to say that that contract occurred before you entered into the

renewal note in November of 2009?

A. Yes.

Q. Is it accurate to say that that contract occurred before you entered into the renewal note on April 10th, 2009?

A. This was before, yes.

Q. Okay. And why would you enter into a renewal note with the bank in 2009 if you thought that they had stolen a sale from you?

A. Well, I mean, I still owed them.

Q. Would you agree with me that you knew as of --

A. This stayed in effect for two years -- three years. This contract did.

Q. Well, is TD Bank or Carolina First mentioned anywhere in that contract?

A. No.

Q. That is a contract between you and a prospective purchaser; is that correct?

A. Correct. But the lady left the contract -- left 25,000 down for three years.

Q. What was that lady's name?

A. Renee.

Q. Renee what?

A. What was her name?

Q. Was her name Renee Brockington?

A. Yeah.

Q. And I think you testified that Renee told you that the bank had contacted her regarding it buying the property?

A. Right. Her and her brother.

Q. All right. Did Renee ever tell you why Bi-Lo backed out of the project?

A. After three years they went into foreclosure. Bankruptcy, whatever.

Q. Do you have any documentation of that?

A. No, but Simon Frasier would.

Q. Did you bring it with you today?

A. No, I didn't.

Q. Okay. And I think you testified earlier that you said Renee told you that the bank actually wanted to sell the property to them; is that correct?

A. They told Simon and myself.

Q. Okay. And as of June 10th of 2008, did the bank own the property?

A. What do you mean?

Q. Had the bank instituted foreclosure proceedings?

A. No. Uh-uh.

Q. Then how could the bank sell her the property when this contract was entered into?

A. Well, they wasn't satisfied with me selling it. They wanted to get paid off.

Q. Well, how could the bank sell the property if they didn't own it at that time?

A. Well, they told me they could sell it. I said, you sell it. You might sell it quicker than I can after I found out what they was doing.

Q. Would you agree with me that only an owner of a piece of property can sell it?

A. I'll agree with you, but if you've got a mortgage on it and you can sell it quicker than I can, I'm going to let you. That is the way I did with them.

Q. I think you testified earlier that you never received a letter from TD Bank about the property; is that correct?

A. No, sir. In '10 I was bed-ridden and had a liver transplant two years ago. And I don't remember nothing to tell you the truth.

Q. In 2010 did you live at 40 Millwright Drive in Hilton Head, South Carolina?

A. Yes, I did.

Q. Do you recall receiving the letter marked

as Exhibit 7 from TD Bank?

A. No, I don't.

Q. Is that your correct address?

A. Yes, sir.

Q. Have you spoken with your wife about --

A. She didn't remember either.

Q. Did you ever try to contact TD Bank to discuss how to pay the property --

A. When I called them about the 100,000.

Q. Okay. But that was to -- for the Windmill Harbor property; is that correct?

A. Right. But that was giving them the money I out of it.

Q. How did you get the 100,000?

A. Sold the property. Borrowed money on the property.

Q. You refinanced -- you borrowed money from another bank to pay TD Bank; is that right?

A. Right. Yes.

Q. Okay. And you paid TD Bank 100,000?

A. Correct.

Q. And that 100,000 went to satisfy the mortgage on the Windmill Harbor boat slip; is that correct?

A. No, sir.

MS. ROLLER: No.

THE WITNESS: It went to --

BY MR. TILLMAN:

Q. Well, as a result of the -- paying the 100,000 they satisfied the mortgage on the Windmill boat slip; is that correct?

A. Yes.

Q. So at that point you owed the Windmill boat slip --

A. To another bank.

Q. -- to another bank?

A. Right. I was doing everything that I could do to get them some money.

Q. I think you testified that you had an agreement with someone from the bank to sell the property and split the money; is that correct?

A. Correct. With the bank.

Q. How did that deal come about? Who did you talk to?

A. I didn't know anything about it until those people called me and said, why is the bank trying to sell us the property.

Q. Who from the bank did you speak with?

A. One of the boys that I was dealing with every day.

Q. Did you get an e-mail from them about it?
A. No, I didn't.
Q. Did you send them an e-mail about it?
A. No, I didn't. I went in and talked to him.
Q. Do you have any documentation of that deal?
A. No, but he knows I went in to talk to him.
Q. When did this meeting occur?
A. I can't remember.
Q. Was it before or after the final renewal note was signed in November of 2009?
A. I just don't remember. This stayed in effect for about three years.
Q. And when you say this, that is a contract between you and a prospective purchaser?
A. Correct.
Q. That is not a contract between you and TD Bank?
A. Not a bit.
Q. And you didn't document this alleged deal between and you TD Bank in any way?
A. They asked me for a copy. I gave TD Bank a -- I mean Carolina First a copy. And I don't know what they did with it, but they knew to call her.

They had her name and all, and that is why they called her.

Q. Do you agree with me or do you contend that TD Bank has given up its right to foreclose on your property?

A. I don't understand. What do you mean?

Q. Do you think TD Bank has the right to foreclose on your property?

A. Well, I owe somebody, yes.

Q. Okay. Do you contend that the amount of money that Mr. Jenkins testified --

A. Well, I would like to see what I have paid.

Q. But is it accurate to say that you know what you've paid?

A. Well, I could dig back and look and see, yeah.

Q. Okay. But you didn't do that before today's hearing?

A. No, I didn't because I thought -- you know, I didn't know about --

Q. Okay.

A. I had a three-day notice. And we had all the paperwork in storage, so I wouldn't have -- I couldn't have found it in three days.

Q. Did you turn down a $2 million offer for this property in the last year?

A. Well, the man come up and said he would give 2.1 for it. And he wanted to put down like $20 or something similar to that. And he wanted six months, an option, and then another six months. And I said, no, I won't do it.

Q. When did that happen?

A. Last -- in the last seven or eight months. I wasn't giving the whole 23 acres away for $2 million.

MR. TILLMAN: Bear with me for just one moment, please.

BY MR. TILLMAN:

Q. Now, at the time that you entered into this deal with the bank to split the profits, you knew that they had a mortgage on the property; is that right?

A. Correct.

Q. Okay. Did you ask an attorney to look at that mortgage to determine whether you needed to somehow memorialize the agreement?

A. No. I just was dealing with the boys at the bank.

Q. Okay. Were you concerned with the wording

of the mortgage?

A. No. I didn't have a problem.

Q. Okay. Do you contend in any way that the mortgage is invalid?

A. I'm sure that it is valid.

Q. Okay. Do you deny that you owe the money that Mr. Jenkins testified to to the bank?

A. I don't know about the amount, but I do owe.

Q. Okay. And it's a significant sum of money; is that correct?

A. Correct.

Q. And sitting here today do you see any reason why the bank doesn't have a right to foreclose on your property?

A. No, sir. They can have the property. I'll give it to them.

MR. TILLMAN: Okay. That is all I've got, Your Honor. Thank you.

JUDGE DUKES: Anything else, Mr. Goldstein?

MR. GOLDSTEIN: Just a couple, Your Honor, if I may.

REDIRECT EXAMINATION

BY MR. GOLDSTEIN:

Q. You recall Mr. Tillman asking you a series of questions about what Renee Brockington said to you?

A. Right.

Q. Just a minute ago he asked you a series of questions about Renee Brockington. And he asked you what did she tell you?

A. She just told me that why would the bank be calling me trying to sell me the property.

Q. And what was your response to that?

A. I said, I really don't know, but I'll call Simon and we'll find out.

Q. Okay. And did Renee Brockington say anything about the bank wanting to own the property?

A. No. They just had the right to sell it.

MR. GOLDSTEIN: Okay. That is all I have. Thank you, Your Honor.

JUDGE DUKES: All right. Anything else --

MR. TILLMAN: No, sir.

JUDGE DUKES: -- on that? All right. Call your next witness.

MR. GOLDSTEIN: Defendant rests.

JUDGE DUKES: All right. Thank you very much. Now, let me think. You all may have

some motions, but we're going to hold this open with regard to the attorneys fee issue. I think we already got that on the record.

MR. GOLDSTEIN: Yes. Because there is no way it could be 232 hours. I think --

MR. TILLMAN: Well, that is -- I'll look into it. You are right. That has got some quiet title --

JUDGE DUKES: And all are going to talk after that --

MR. GOLDSTEIN: Right.

JUDGE DUKES: I don't even necessarily need to be a part of it. You all may talk --

MR. TILLMAN: I'm not even sure the bank will care that much. I mean, we could probably come to some agreement.

JUDGE DUKES: Okay. I'll let you all try that first. And then if we need to reopen with regard to that, we can certainly do it.

MR. TILLMAN: Okay.

JUDGE DUKES: All right. Anything else from either party?

MR. GOLDSTEIN: Your Honor, the law requires that I renew my motion for involuntary

non-suit. I mean, if I don't, I waive it. So I'm making it for the same -- making the same motion for the same basis as articulated earlier.

JUDGE DUKES: All right. Thank you for that. And I don't know if I need any further argument on it. I'll deny it for the same reasons as earlier. Anything else?

MR. TILLMAN: I would just like to make a motion for a directed verdict on their causes of action. I'm not sure that they pled joint venture, but they may have. It appears from the pleadings that you could interpret it that way. And a joint venture occurs when two or more persons unit in the joint execution of a common purpose which is each person has the authority, express or implied, to act for all in respect to the control of the means and the agencies employed to execute such a common purpose.

There is no evidence that the bank united with Mr. Roller. There is no evidence that they acted together to control the means and the agencies employed to execute the common purpose. Further, it's unclear exactly when this supposed joint enterprise was entered into, but there is an integration clause in the note that basically says

that, you know, this reflects all of the agreements between the bank and the Rollers. And that is in the November 2009 note that is in Paragraph 21.

As to the fraud and the inducement, I believe that Mr. Roller testified that he did not rely on any representations. He didn't testify as to any falsities stated to him by the bank. And he also has to prove that the person making the fraudulent statement intended somehow to deceive him.

I don't think there is any testimony that there was an intent to deceive. I think he testified that the bank told him, well, just sell the property and that is it. And then he claimed that there was some joint enterprise with them, but there was no testimony regarding some deceitful statement made by the bank or untruthful statement made by the bank on that front.

And then lastly on the tortious interference with the prospective business relationship, really there has been no injury to Mr. Roller on that. He admits he owes the money. He admits that the bank has a mortgage. He admits that he's in default. And he admits that the bank has the right to foreclose on that mortgage. So

there is certainly no evidence of damages on that particular cause of action nor did he put any evidence of his damages on the record for that cause of action.

And further -- I'm trying to remember the testimony, but I don't believe that there was testimony that -- I'll withdraw that. That concludes my argument.

JUDGE DUKES: Any response, sir?

MR. GOLDSTEIN: Judge, it's really not a fraud and inducement case. The real gist of the Defendant's affirmative defenses are novation and tortious interference. And there is plenty of evidence.

Of course, it's up to the court to decide how much you find believable and credible, but that is a credibility determination for the court. The evidence was that he had a contract for approximately 3.1 million bucks. That it was in the process -- the regular process when he received a call that the bank was interfering.

And his testimony was that he asked the bank, why are you -- why are you getting involved in my contract? And he says he went down and talked to officers of the bank, and that they told him that

they could sell it faster than he could. And he says he entered into an agreement with them that if they could sell it, that was fine. He would pay off the note and mortgage and they would split the profits.

So that same evidence could sustain either a novation in that they reached a new agreement which was to split profits. And I don't know if you want to call them novation or joint enterprise. It's probably closer to a novation than a joint enterprise.

And that there is certainly evidence if the court believes it that they interfered in an ongoing contract and the purchaser ultimately walked away. The damages are liquidated in the amount of the contract. I think it was 345,000 per acre or 395,000 per acre.

MR. ROLLER: Right.

MR. GOLDSTEIN: And so all you have to do is do the math and figure out what the damages are. Had that contract gone through, you know, the bank would have been paid in full and everybody would have made money. And his testimony is that the only reason the contract didn't go through was the interference of the bank.

JUDGE DUKES: I thought his testimony was Bi-Lo went bankrupt?

MR. ROLLER: Later on they did, but this went on for three years with the contract.

MR. TILLMAN: Can I respond?

JUDGE DUKES: Yeah, go ahead.

MR. TILLMAN: First of all, tortious interference is not a defense. It's an affirmative claim. So it's not a defense to the foreclosure action. I'm not sure whether Mr. Goldstein was arguing that or not.

I continue to argue that no evidence of damages was placed in the record. In addition, the argument regarding the novation is -- I think that should be thrown out because again with the Paragraph Number --

MR. GOLDSTEIN: Twenty-one.

MR. TILLMAN: -- 23 of the November 2009 note, it doesn't allow -- it basically says any modification of our relationship must be in writing. And Mr. Roller brought nothing in writing with him today other than this contract. So I believe the novation argument to have no validity. And that is all I have on that.

MR. ROLLER: What about Renee?

MR. GOLDSTEIN: Judge, we are not suing the bank for damages. We are interposing it as an affirmative defense to a foreclosure because foreclosure is an equitable remedy and it's brought in a court of equity.

And if it's inequitable for the bank to foreclosure on property where it created the dilemma bringing about the foreclosure, then it is a matter of inequitable conduct. It is barred to foreclosure.

The proper remedy is for the property to be sold. You know, we've got a real estate agent out there right now who is negotiating like crazy with Wal-Mart that we hope is going to produce something that is going to benefit everybody at this table, but if the property goes up for sale at the courthouse steps, well, we all know what kind of price that is going to bring. And it's not going to bring fair market value which is -- I understand why you have the appraisal statute.

So it's not that we are suing the bank for damages. We are interposing it as a bar to foreclosure which is a pretty drastic remedy.

JUDGE DUKES: All right. Anything else?

MR. TILLMAN: I'm sorry to keep belaboring this.

JUDGE DUKES: That's all right.

MR. TILLMAN: The theory seems to be changing a little bit. They didn't plead unclean hands in the answer. That is essentially what he's claiming now. I believe that defense is waived. And, you know, it's probably not relevant -- well, it's not relevant whether they can sell the property in two months or three months or six months. The fact of the matter, Your Honor, is that this foreclosure action has been going on since October 2011. The bank has bent over backwards to try to resolve this otherwise, but it's to the point now where they've got to get the property. They've got to get something out of it. And the time for deals that may or may not happen are over.

And I'm sorry. I know that is a tangent, but I felt like I needed to respond to that point.

JUDGE DUKES: And let me make sure you've got a counterclaim fraud and the inducement, and there is a directed verdict motion. And as I understand it you don't necessarily oppose it on fraud and the inducement as pled here.

MR. GOLDSTEIN: Yeah. I don't think

we've made out a case for fraud and the inducement. The defense is the bank's actions prevented this property from being sold in a profitable manner which would have benefited everybody at this table. So the inducement was the promise to forbear on the mortgage in exchange for splitting the profits. That was the inducement.

But again, fraud and inducement is a defense to vacate in a contract. The contract is vacated at initio, that there is no contract. And we don't have that in this case.

We acknowledge that there is a note and mortgage and that the note is secured by a mortgage, but the inducement was, if you will split the profits with me we will forbear. And clearly they did forbear on the mortgage foreclosure. I mean, Mr. Tillman just said that.

JUDGE DUKES: Of course the lender statute of frauds in paragraph whatever it was, 21 or 23, I mean, you know, all of that pretty much needs to be in writing if it's going to happen. And I don't think there is any evidence here.

I think as to the fraud and the inducement I'll grant your motion. As to the tortious interference counterclaim, I'm not going to grant

the motion, but I don't think I'm going to rule for the Defendant either. I think it's just mainly a failure of proof. I don't know that this contract fell apart as a result of anything the bank did. I just don't think there is proof that that happened.

You know, with regard to the Plaintiff's case, it doesn't really sound like there is -- other than not being shown to the Defendant's satisfaction that this is the exact amount due, I mean, the testimony is the testimony. That the $100,000 was credited and that certainly there is something due. And that foreclosure would be appropriate if there is a default, which I think there probably is.

I think Mr. Roller is very honest about that, that he owed something and that foreclosure would be appropriate if he owed something. Certainly I, as both attorneys know from our conference call and probably dealing with me in the past, I always want to see a settlement rather than a courthouse step sale because I agree, I think I could take judicial notice and we could all agree that they bring more for everyone if that is a possibility, you know. And I don't know -- there was some testimony that there is a contract waiting in the wings out there from Wal-Mart or something

like that. I agree with the Plaintiff that you just can't wait forever. Eventually something has to happen, but since we've got a little bit of delay with regard to this title issue on the one acre, I would certainly like to see the attorneys see what can be done.

And, of course, what can be done may very well depend on what happens with this one acre, if it really is the valuable acre. I don't know. I guess that is something for you all to talk about, but based on our bifurcation agreement I don't think we are ordering anything be sold today any way because we haven't quite figured it out.

So the delay that the Defendant asks for is inherent in the bifurcation. So I would urge you all and wish you the best of luck on trying to come up with some method other than a judicial sale that would minimize the deficiency as much as possible. And I will help you any way I can. Obviously we need to respect the rights of this individual who was here earlier and try to figure that part out, but I suppose a deal could involve somebody contacting them and perhaps buying whatever interest they may have if at all in trying to resolve this. So I'll let you all work on that.

So to the extent that we are coming up with a ruling on the bifurcated portion that we are hearing today, I would ask the Plaintiff's attorney to draft a draft order, Word format if you would, based on my comments a second ago. Run it by Mr. Goldstein. Once he's had an opportunity to comment on it, give it to me. And if you would just include in there that date, that second date, whatever it was, that we -- I've forgot what it is now. May something. For the second part of the trial.

MR. GOLDSTEIN: I can tell you what it is.

MR. TILLMAN: May 30th.

JUDGE DUKES: Thirtieth.

MR. TILLMAN: At 1:00 o'clock.

MR. GOLDSTEIN: May 30th at 1:00 p.m.

JUDGE DUKES: Yeah. I would love for you all to settle so I don't have to try something on a Friday afternoon, but --

MR. GOLDSTEIN: Well, we understand that there is higher authority who might --

(Discussion off the record.)

JUDGE DUKES: Anything else for this record?

MR. TILLMAN: No, Your Honor.

JUDGE DUKES: All right. Anything else, Mr. Goldstein?

MR. GOLDSTEIN: No, Your Honor.

JUDGE DUKES: All right. Thank you. That will conclude the record.

(Whereupon, the hearing was concluded at 1:28 p.m.)

Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of TD Bank versus Roller, et al, on the 29th day of April, 2014: and that the foregoing 110 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Matthew Tillman, Esquire, Womble Carlyle Sandridge & Rice, LLP, 5 Exchange Street, Charleston South Carolina.

In witness whereof I set my hand and seal this 28th day of September, 2014.

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

My Commission
expires 1/4/18



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CERTIFICATE OF COUNSEL

I certify that this designation Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 9, 2019

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