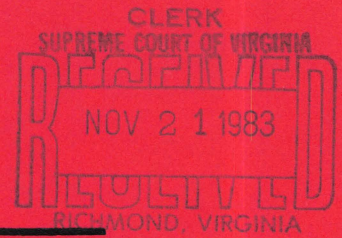


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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

\_\_\_\_\_  
RECORD NO. 821629  
\_\_\_\_\_

VIRGINIA CAPITAL BANK,

Appellant,

v.

THE AETNA CASUALTY & SURETY COMPANY,

Appellee.

\_\_\_\_\_  
JOINT APPENDIX  
\_\_\_\_\_

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Post Office Box 242  
Richmond, Virginia 23202

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Richmond, Virginia 23219

Counsel for Appellee



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## DECLARATIONS

THE AETNA CASUALTY AND SURETY COMPANY  
Hartford, Connecticut 06111  
(A Stock Company, Herein Called the Underwriter)

BANKERS BLANKET BOND  
STANDARD FORM NO. 24  
For

I. NAMED INSURED AND ADDRESS  
▶ Virginia Capital Bank  
1776 Staples Mill Road  
Richmond, Virginia 23230

BOND NUMBER

58 F 5087 BCA

2. BOND PERIOD

From noon on January 1, 1979 to noon  
(Month, Day, Year)  
on the effective date of the termination or cancellation of the Bond, standard time at the Principal Address as to each of said dates.

(Principal Address—Show Number and Street or RFD, City, County, State and Zip Code)

Item 3. Limit of Liability —

Subject to Section 7 hereof, the Limit of Liability is \$ 300,000.

Provided, however, that if any lesser amounts are inserted below opposite specified Insuring Agreements or Coverage, such lesser amounts shall be part of and not in addition to such Limit of Liability.

Amount applicable to:

Forgery or Alteration - Insuring Agreement D	\$ 300,000.
Securities - Insuring Agreement E	\$ 300,000.
	\$

(Insert Descriptive Title of Insuring Agreement or Coverage)

If "Nil", "Not Covered" or equivalent is inserted above opposite any specified Insuring Agreement or Coverage, such Insuring Agreement or Coverage and any other reference thereto in this Bond shall be deemed to be deleted therefrom.

Item 4. Offices Covered —

All the Insured's offices in existence at the time this Bond becomes effective are covered under this Bond except the offices located as follows: N/A

Item 5. The liability of the Underwriter is subject to the terms of the following riders attached hereto:

SR 5877a	SR 5884c	SR 5886c
SR 5923b	SR 5887c	SR 5930b
SR 6030a	SR 6014a	SR 6015
SR 6059	SR 6019	
SR 5609e	SR 6064	

Item 6. The Insured by the acceptance of this Bond gives notice to the Underwriter terminating or canceling prior bond(s) policy(ies) No.(s) Nil  
such termination or cancellation to be effective as of the time this Bond becomes effective.

Signed, sealed and dated (enter below)

January 23, 1979

THE AETNA CASUALTY AND SURETY COMPANY

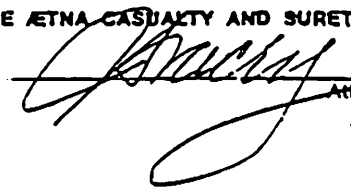
By  Attorney-in-Fact

EXHIBIT A  
1



# BANKER'S BLANKET BOND STANDARD FORM NO. 24

THE AETNA CASUALTY AND SURETY COMPANY  
Hartford, Connecticut 06115

The Underwriter, in consideration of an agreed premium, and subject to the Declarations made a part hereof, the General Agreements, Conditions and Limitations and other terms of this bond, agrees with the Insured, in accordance with the Insuring Agreements hereof to which an amount of insurance is applicable as set forth in Item 3 of the Declarations and with respect to loss sustained by the Insured at any time but discovered during the Bond Period, to indemnify and hold harmless the Insured for:

## INSURING AGREEMENTS

### FIDELITY

(A) Loss through any dishonest or fraudulent act of any of the Employees, committed anywhere and whether committed alone or in collusion with others, including loss, through any such act of any of the Employees, of Property held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor.

### ON PREMISES

(B) Loss of Property (occurring with or without negligence or violence) through robbery, burglary, common-law or statutory larceny, theft, false pretenses, hold-up, misplacement, ~~mysterious unexplainable disappearance~~, damage thereto or destruction thereof, and loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of Property, while the Property is (or is supposed to be) lodged or deposited within any offices or premises located anywhere, except in an office listed in Item 4 of the Declarations or amendment thereof or in the mail or with a carrier for hire, other than an armored motor vehicle company, for the purpose of transportation.

Loss of any of the items of property enumerated in the paragraph defining Property, in the possession of any customer of the Insured or of any representative of such customer, whether or not the Insured is liable for the loss thereof.

- (a) through any hazard specified in the preceding paragraph, while such property is within any of the Insured's offices covered hereunder, or
- (b) through robbery or hold-up while such customer or representative is actually transacting business with the Insured, at an outside window or other similar facility offered to the public for that purpose by the Insured, and attended by an Employee of the Insured, at any of the Insured's offices covered hereunder, or
- (c) through robbery or hold-up during banking hours while such customer or representative is in any building or on any driveway, parking lot or similar facility maintained by the Insured as a convenience for such customers or representatives using motor vehicles if such customer or representative is present in such building or on such facility for the purpose of transacting banking business with the Insured at any of the Insured's offices covered hereunder, provided such loss, at the option of the Insured, is included in the Insured's proof of loss, and excluding, in any event, loss caused by such customer or any representative of such customer.

### Offices and Equipment

(a) Loss of, or damage to, furnishings, fixtures, stationery, supplies or equipment within any of the Insured's offices covered under this bond caused by larceny or theft in, or by burglary, robbery or hold-up of, such office, or attempt thereof, or by vandalism or malicious mischief, or (b) loss through damage to any such office by larceny or theft in, or by burglary, robbery or hold-up of, such office or attempt thereof, or to the interior of any such office by vandalism or malicious mischief, provided, in any event, that the Insured is the owner of such offices, furnishings, fixtures, stationery, supplies or equipment or is liable for such loss or damage, - always excepting, however, all loss or damage through fire.

### IN TRANSIT

(C) Loss of Property (occurring with or without negligence or violence) through robbery, common-law or statutory larceny, theft, hold-up, misplacement, mysterious unexplainable disappearance, being lost or otherwise made away with, damage thereto or destruction thereof, and loss of subscription, conversion, redemption or deposit privileges through the misplacement or loss of Property, while the Property is in transit anywhere in the custody of any person or persons acting as messenger, except while in the mail or with a carrier for hire, other than an armored motor vehicle company, for the purpose of transportation, such transit to begin immediately upon receipt of such Property by the transporting person or persons, and to end immediately upon delivery thereof at destination.

### FORGERY OR ALTERATION

(D) Loss through FORGERY OR ALTERATION of, on or in any checks, drafts, acceptances, withdrawal orders or receipts for the withdrawal of funds or Property, certificates of deposit, letters of credit, warrants, money orders or orders upon public treasuries; or loss (1) through transferring, paying or delivering any funds or Property or establishing any credit or giving any value on the faith of any written instructions or advices directed to the Insured and authorizing or acknowledging the transfer, payment, delivery or receipt of funds or Property, which instructions or advices purport to have been signed or endorsed by any customer of the Insured or by any banking institution but which instructions or advices either bear the forged signature or endorsement or have been altered without the knowledge and consent of such customer or banking institution (telegraphic, cable or teletype instructions or advices, as aforesaid, sent by a person other than the said customer or banking institution purporting to send such instructions or advices shall be deemed to bear a forged signature), or (2) through the payment by the Insured of promissory notes which are payable at the Insured or which are or purport to be notes payable at the Insured under instructions of any depositor thereof, and which are actually paid by the Insured out of funds on deposit with it, and which prove to be forged or altered or which bear forged endorsements.

Any check or draft (a) made payable to a fictitious payee and endorsed in the name of such fictitious payee or (b) procured in a face transaction with the maker or drawer thereof or with one acting as agent of such maker or drawer by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one impersonated, shall be deemed to be forged as to such endorsement.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

### SECURITIES

(E) Loss (1) through the Insured's having, in good faith and in the course of business, whether for its own account or for the account of other, in any representative, fiduciary, agency or any other capacity, either gratuitously or otherwise, purchased or otherwise acquired, accepted or received, or sold or delivered, or given any value, extended any credit or assumed any liability, on the faith of, or otherwise acted upon, any securities, documents or other written instruments which prove to have been

- (a) counterfeited or forged as to the signature of any maker, drawer, issuer, endorser, assignor, lessee, transfer agent or registrar, acceptor, surety or guarantor or as to the signature of any person signing in any other capacity, or
- (b) raised or otherwise altered or lost or stolen, or

(2) through the Insured's having, in good faith and in the course of business guaranteed in writing or witnessed any signatures, whether for valuable consideration or not and whether or not such guaranteeing or witnessing is ultra vires the Insured, upon any transfers, assignments, bills of sale, powers of attorney, guarantees, endorsements or other documents upon or in connection with any securities, obligations or other written instruments and which pass or purport to pass title to such securities, obligations or other written instruments; EXCLUDING, in any event, loss through FORGERY OR ALTERATION of, on or in any checks, drafts, acceptances, withdrawal orders or receipts for the withdrawal of funds or Property, certificates of deposit, letters of credit, warrants, money orders or orders upon public treasuries; and excluding, further, loss specified in subdivisions (1) and (2) of Insuring Agreement (D) as printed in this bond, whether or not any amount of insurance is applicable under this bond to Insuring Agreement (D).

Securities, documents or other written instruments shall be deemed to mean

- (a) original (including original counterparts) negotiable or non-negotiable agreements in writing, other than as set forth in (b) and (c) below, having value which value is, in the ordinary course of business, transferable by delivery of such agreements with any necessary endorsement or assignment;

(b) a carbon copy of a bill of lading provided that the signature on such carbon copy of such bill of lading is an original signature or is a carbon copy impression of a signature, or

(c) original corporate, partnership or personal guarantees. Actual physical possession of such securities, documents or other written instruments by the Insured, its correspondent bank or other authorized representative is a condition precedent to the Insured's having relied on the faith of, or otherwise acted upon, such securities, documents or other written instruments.

The word "counterfeited" as used in this Insuring Agreement shall be deemed to mean only an imitation of a security, document or other written instrument, as set forth in (a) above, which is intended to deceive and to be taken for an original.

Mechanically reproduced facsimile signatures are treated the same as handwritten signatures.

## REDEMPTION OF UNITED STATES SAVINGS BONDS

(F) Loss through the Insured's paying or redeeming, or guaranteeing or witnessing any signature upon, any United States Savings Bonds, Series A to K inclusive, United States Savings Notes or Armed Forces Leave Bonds which shall have been forged, counterfeited, raised or otherwise altered, or lost or stolen, or on which the signature to the Request for Payment shall have been forged.

## COUNTERFEIT CURRENCY

(G) Loss through the receipt by the Insured, in good faith, of any counterfeited or altered paper currencies or coin of the United States of America or Canada issued or purporting to have been issued by the United States of America or Canada or issued pursuant to a United States of America or Canadian Statute for use as currency.

## GENERAL AGREEMENTS

### NOMINEES

A. Loss sustained by any nominee organized by the Insured for the purpose of handling certain of its business transactions and composed exclusively of its officers, clerks or other employees shall, for all the purposes of this bond and whether or not any partner of such nominee is concerned or implicated in such loss, be deemed to be loss sustained by the Insured.

### ADDITIONAL OFFICES OR EMPLOYEES — CONSOLIDATION OR MERGER

B. If the Insured shall, while this bond is in force, establish any additional office or offices, such office or offices shall be automatically covered hereunder from the dates of their establishment, respectively. No notice to the Underwriter of an increase during any premium period in the number of offices or in the number of Employees at any of the offices covered hereunder need be given and no additional premium need be paid for the remainder of such premium period, unless such increase shall result from the Insured's consolidation or merger with, or purchase of assets of, another institution.

### WARRANTY

C. No statement made by or on behalf of the Insured, whether contained in the application or otherwise, shall be deemed to be a warranty of anything except that it is true to the best of the knowledge and belief of the person making the statement.

## THE FOREGOING INSURING AGREEMENTS AND GENERAL AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

### DEFINITIONS

Section 1. The following terms, as used in this bond, shall have the respective meanings stated in this Section:

(a) "Employee" means one or more of the Insured's officers, clerks and other employees while employed in, at or by any of the Insured's offices while covered under this bond and one or more of the officers, clerks and other employees of any predecessor of the Insured whose principal assets are acquired by the Insured by consolidation or merger with, or purchase of assets of, such predecessor, and attorneys retained by the Insured to perform legal services for the Insured and the employees of such attorneys while such attorneys or the employees of such attorneys are performing such services for the Insured, and Guest Students pursuing their studies or duties in any of said offices.

Each natural person, partnership or corporation authorized by written agreement with the Insured to perform services as electronic data processor of checks or other accounting records of the Insured, herein called Processor, shall, while performing such services, be deemed to be an Employee as defined in the preceding paragraph. Each such Processor and the partners, officers and employees of such Processor shall, collectively, be deemed to be one Employee for all the purposes of this bond; excepting, however, the second paragraph of Section 11.

(b) "Property" means money (i.e., currency, coin, bank notes, Federal Reserve notes), postage and revenue stamps, U.S. Savings Stamps, bullion, precious metals of all kinds and in any form and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, bonds, securities, evidences of debts, debentures, scrip, certificates, receipts, warrants, rights, transfers, coupons, drafts, bills of exchange, acceptances, notes, checks, withdrawal orders, money orders, travelers' letters of credit, bills of lading, abstracts of title, insurance policies, deeds, mortgages upon real estate and/or upon chattels and upon interests therein, and

assignments of such policies, mortgages and instruments, and other valuable papers, including books of account and other records used by the Insured in the conduct of its business, and all other instruments similar to or in the nature of the foregoing, in which the Insured has an interest or in which the Insured acquired or should have acquired an interest by reason of a predecessor's declared financial condition at the time of the Insured's consolidation or merger with, or purchase of the principal assets of, such predecessor or which are held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor, and chattels which are not hereinbefore enumerated and for which the Insured is legally liable.

### EXCLUSIONS

Section 2. THIS BOND DOES NOT COVER:

- (a) loss effected directly or indirectly by means of forgery or alteration of, on or in any instrument, except when covered by Insuring Agreement (A), (D), (E), (F) or (G).
- (b) loss due to riot or civil commotion outside the United States of America and Canada; or loss due to military, naval or usurped power, war or insurrection unless such loss occurs in transit in the circumstances recited in Insuring Agreement (C), and unless, when such transit was initiated, there was no knowledge of such riot, civil commotion, military, naval or usurped power, war or insurrection on the part of any person acting for the Insured in initiating such transit.
- (c) loss, in time of peace or war, directly or indirectly caused by or resulting from the effects of nuclear fission or fusion or radioactivity; provided, however, that this paragraph shall not apply to loss resulting from industrial uses of nuclear energy.
- (d) loss resulting from any act or acts of any director of the Insured other than one employed as a salaried, pensioned or elected official or an Employee of the Insured, except

when performing any act within the scope of the usual duties of an Employee, or while acting as a member of any committee duly elected or appointed by resolution of the board of directors of the Insured to perform specific, as distinguished from general, directoral acts on behalf of the Insured.

- (e) loss resulting from the complete or partial non-payment of, or default upon,
  - (1) any loan or transaction in the nature of, or amounting to, a loan made by or obtained from the Insured, or
  - (2) any note, account, agreement or other evidence of debt assigned or sold to, or discounted or otherwise acquired by, the Insured whether procured in good faith or through trick, artifice, fraud or false pretenses unless such loss is covered under Insuring Agreement (A), (D) or (E); or loss resulting from payments made or withdrawals from any depositor's account by reason of uncollected items of deposit having been credited by the Insured to such account, unless such payments are made to, or withdrawn by, such depositor or representative of such depositor who is within the office of the Insured at the time of such payment or withdrawal, or unless such loss is covered under Insuring Agreement (A).
- (f) loss of Property contained in customers' safe deposit boxes unless such loss be sustained through any dishonest or fraudulent act of an Employee in such circumstances as shall make the Insured legally liable therefor.
- (g) loss through cashing or paying forged or altered travelers' checks or travelers' checks bearing forged endorsements, in whatsoever form drawn, unless fraud or dishonesty on the part of any of the Employees is involved; or loss of unsold travelers' checks placed in the custody of the Insured with authority to sell, where no fraud or dishonesty on the part of any of the Employees is involved, unless
  - (a) the Insured is legally liable for such loss of such checks and
  - (b) such checks are later paid or honored by the drawer thereof.
- (h) loss of Property or loss of privileges through the misplacement or loss of Property as set forth in Insuring Agreement (B) or (C) while the Property is in the custody of any armored motor vehicle company, unless such loss shall be in excess of the amount recovered or received by the Insured under (a) the Insured's contract with said armored motor vehicle company, (b) insurance carried by said armored motor vehicle company for the benefit of users of its service, and (c) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service, and then this bond shall cover only such excess.
- (i) loss of any chattel which is not specifically enumerated in the paragraph defining Property and for which the Insured is legally liable, if such chattel be specifically insured by other insurance of any kind and in any amount effected by the Insured. If any such chattel be insured by other insurance effected by one other than the Insured, this bond shall be only excess over such other insurance. This bond does not cover, in any event, any loss of any such chattel occurring more than sixty days after the Insured shall have become aware that it is liable for the safekeeping of such chattel. Nothing in this subsection shall apply to the loss of any such chattel when covered by Insuring Agreement (A) or by the third paragraph of Insuring Agreement (B).
- (j) shortage in any teller's cash due to error, regardless of the amount of such shortage; and any shortage in any teller's cash which is not in excess of the normal shortage in the tellers' cash in the office where such shortage shall occur shall be assumed to be due to error.
- (k) any person, who is a partner, officer or employee of any Processor covered under this bond, from and after the time that the Insured or any partner or officer thereof not in collusion with such person shall have knowledge or information that such person has committed any fraudulent or dishonest act in the service of the Insured or otherwise, whether such act be committed before or after the time this bond is effective.

### ASSIGNMENT OF RIGHTS

Section 3. This bond does not afford coverage in favor of any Processor, as aforesaid, and upon payment to the Insured by the Underwriter on account of any loss through fraudulent or dishonest acts committed by any of the partners, officers or employees of such Processor, whether acting alone or in collusion with others, an assignment of such of the Insured's rights and causes of action as it may have against such Processor by reason of such acts so committed shall, to the extent of such payment, be given by the Insured to the Underwriter, and the Insured shall execute all papers necessary to secure to the Underwriter the rights herein provided for.

### LOSS—NOTICE. ROOF—LEGAL PROCEEDINGS

Section 4. This bond is for the use and benefit only of the Insured named in the Declarations and the Underwriter shall not be liable hereunder for loss sustained by anyone other than the Insured unless the Insured, in its sole discretion and at its option, shall include such loss in the Insured's proof of loss. At the earliest practicable moment after discovery of any loss hereunder the Insured shall give the Underwriter written notice thereof and shall also within six months after such discovery furnish to the Underwriter affirmative proof of loss with full particulars. Legal proceedings for recovery of any loss hereunder shall not be brought prior to the expiration of sixty days after such proof of loss is filed with the Underwriter nor after the expiration of twenty-four months from the discovery of such loss, except that any action or proceeding to recover hereunder on account of any judgment against the Insured in any suit mentioned in General Agreement D or to recover attorneys' fees paid in any such suit, shall be begun within twenty-four months from the date upon which the judgment in such suit shall become final. If any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

### VALUATION

#### Securities

Section 5. The Underwriter shall settle in kind its liability under this bond on account of a loss of any securities, or at the option of the Insured shall pay to the Insured the cost of replacing such securities, determined by the market value thereof at the time of such settlement. In case of a loss of subscription, conversion, redemption or deposit privileges, as above set forth, the amount of such loss shall be the value of such privileges immediately preceding the expiration thereof. If such securities cannot be replaced or have no quoted market value, or if such privileges have no quoted market value, their value shall be determined by agreement or arbitration. Any loss under this bond of currency or funds of any country shall be paid in the currency or funds of such country or, at the option of the Insured, in the United States of America dollar equivalent thereof determined by the rate of exchange at the time of the payment of such loss. Any other loss sustained at any of the Insured's offices covered under this bond and payable in money shall be paid in the currency or funds of the country in which such office is located or, at the option of the Insured, in the United States of America dollar equivalent thereof determined by the rate of exchange at the time of the payment of such loss.

#### Books of Account and Other Records

In case of loss of, or damage to, Property consisting of books of account or other records used by the Insured in the conduct of its business, the Underwriter shall be liable under this bond only if such books or records are actually reproduced and then for not more than the cost of blank books, blank pages or other materials plus the cost of labor for the actual transcription or copying of data which shall have been furnished by the Insured in order to reproduce such books and other records.

#### Property other than Securities or Records

In case of loss of, or damage to, any Property other than securities, books of account or other records as aforesaid or damage to the Insured's offices covered under this bond, or loss of, or damage to, the furnishings, fixtures, stationery, supplies and equipment therein, the Underwriter shall not be liable for more than the actual cash value of such Property, or of such furnishings, fixtures, stationery, supplies and equipment, or for more than the actual cost of repairing such Property or offices, furnishings, fixtures, stationery, supplies and equipment, or of replacing same with property or material of like quality and value. The Underwriter may, at its election, pay such actual cash value, or make such repairs or replacements. If the Underwriter and the Insured cannot agree upon such cash value or such cost of repairs or replacements, such cash value or such cost shall be determined by arbitration.

### SALVAGE

Section 6. If the Insured shall sustain any loss covered by this bond which exceeds the amount of coverage provided by this bond plus the Deductible Amount, if any, applicable to such loss, the Insured shall be entitled to all recoveries made after payment by the Underwriter of loss covered by this bond, except from suretyship, insurance, reinsurance, security and indemnity taken by or for the benefit of the Underwriter, by whomsoever made, less the actual cost of effecting such recoveries, until reimbursed for such excess loss; and any remainder, or, if there be no such excess loss, any such recoveries shall be applied first in reimbursement of the Underwriter and thereafter in reimbursement of the Insured for that part of such loss within such Deductible Amount. The Insured shall execute all necessary papers to secure to the Underwriter the rights herein provided for.

### LIMIT OF LIABILITY

Section 7. Payment of loss under this bond shall not reduce the liability of the Underwriter under this bond for other losses whenever sustained; PROVIDED, however, that the total liability of the Underwriter under this bond on account of

- (a) loss caused by any one act of burglary, robbery or hold-up, or attempt thereof, in which no Employee is concerned or implicated, or
  - (b) loss with respect to any one unintentional or negligent act or omission on the part of any person (whether one of the Employees or not) resulting in damage to or destruction or misplacement of Property, or
  - (c) loss other than those specified in (a) and (b) preceding, caused by all acts or omissions by any person (whether one of the Employees or not) or all acts or omissions in which such person is concerned or implicated, or
  - (d) loss other than those specified in (a), (b) and (c) preceding, resulting from any one casualty or event
- is limited to the Limit of Liability stated in Item 3 of the Declarations of this bond or amendment thereof or to the amount of the applicable coverage of this bond if such amount be smaller, irrespective of the total amount of such loss.

### NON-ACCUMULATION OF LIABILITY

Section 8. Regardless of the number of years this bond shall continue in force and the number of premiums which shall be payable or paid, the liability of the Underwriter under this bond with respect to any loss specified in the PROVIDED clause of Section 7 of this bond shall not be cumulative in amounts from year to year or from period to period.

### LIMIT OF LIABILITY UNDER THIS BOND AND PRIOR INSURANCE

Section 9. With respect to any loss set forth in subsection (c) of the PROVIDED clause of Section 7 of this bond which is recoverable or recovered in whole or in part under any other bonds or policies issued by the Underwriter to the Insured or to any predecessor in interest of the Insured and terminated or canceled or allowed to expire and in which the period for discovery has not expired at the time any such loss thereunder is discovered, the total liability of the Underwriter under this bond and under such other bonds or policies shall not exceed, in the aggregate, the amount carried hereunder on such loss or the amount available to the Insured under such other bonds or policies, as limited by the terms and conditions thereof, for any such loss if the latter amount be the larger.

If the coverage of this bond supersedes in whole or in part the coverage of any other bond or policy of insurance issued by an Insurer other than the Underwriter and terminated, canceled or allowed to expire, the Underwriter, with respect to any loss sustained prior to such termination, cancellation or expiration and discovered within the period permitted under such other bond or policy for the discovery of loss thereunder, shall be liable under this bond only for that part of such loss covered by this bond as is in excess of the amount recoverable or recovered on account of such loss under such other bond or policy, anything to the contrary in such other bond or policy notwithstanding.

### OTHER INSURANCE OR INDEMNITY

Section 10. If the Insured carries or holds any other insurance or indemnity covering any loss covered by this bond, the Underwriter shall be liable hereunder only for that part of such loss which is in excess of the amount recoverable or recovered from such other insurance or indemnity. In no event shall the Under-

writer be liable for more than the amount of the coverage of this bond applicable to such loss; subject, nevertheless, to Section 7 of this bond.

### TERMINATION OR CANCELLATION

Section 11. This bond shall be deemed terminated or canceled as an entirety - (a) thirty days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond, or (b) immediately upon the receipt by the Underwriter of a written request from the Insured to terminate or cancel this bond, or (c) immediately upon the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, or (d) immediately upon the taking over of the Insured by another institution. The Underwriter shall, on request, refund to the Insured the unearned premium, computed pro rata, if this bond be terminated or canceled or reduced by notice from, or at the instance of, the Underwriter, or if terminated or canceled as provided in sub-section (c) or (d) of this paragraph. The Underwriter shall refund to the Insured the unearned premium computed at short rates if this bond be terminated or canceled or reduced by notice from, or at the instance of, the Insured.

This bond shall be deemed terminated or canceled as to an Employee - (a) as soon as the Insured shall learn of any dishonest or fraudulent act on the part of such Employee, without prejudice to the loss of any Property then in transit in the custody of such Employee, or (b) fifteen days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel this bond as to such Employee.

### RIGHTS AFTER TERMINATION OR CANCELLATION

Section 12. At any time prior to the termination or cancellation of this bond as an entirety, whether by the Insured or the Underwriter, the Insured may give to the Underwriter notice that it desires under this bond an additional period of twelve months within which to discover loss sustained by the Insured prior to the effective date of such termination or cancellation and shall pay an additional premium therefor. If this bond, terminated or canceled as an entirety by reason of the taking over of the Insured by a receiver or other liquidator or by State or Federal officials, such receiver or other liquidator or State or Federal officials shall have the rights of the Insured and be subject to the same limitations as set forth in this paragraph provided that such rights are exercised by notice to the Underwriter within thirty days after such Insured is taken over by such receiver or other liquidator or State or Federal officials and provided, further, that such Insured has not previously exercised such rights. Upon receipt of such notice from the Insured, from such receiver or other liquidator or State or Federal officials, the Underwriter shall give its written consent thereto provided, however, that such additional period of time shall terminate forthwith on the effective date of any other insurance

- (a) obtained by the Insured or its successors in business other than such receiver or other liquidator or State or Federal officials, replacing in whole or in part the insurance afforded by this bond, whether or not such other insurance provides coverage for loss sustained prior to its effective date, or
- (b) obtained by such receiver, liquidator or State or Federal officials replacing in whole or in part the insurance afforded by this bond but only if such other insurance provides coverage to some extent for loss sustained prior to its effective date, and in the event that such additional period of time is terminated, as herein provided, the Underwriter shall refund any unearned premium.

In witness whereof, the Underwriter has caused this bond to be executed on the Declaration page.

**RIDER**

To be attached to and form part of Blanket Bond, Standard Form No. 24 , No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:

1. The Underwriter shall not be liable for loss under Insuring Agreement (E) of the attached bond on account of any securities, documents or other written instruments accepted by another bank or other financial institution as collateral on a loan on which the Insured accepts a participation unless an Employee, prior to the acceptance by the Insured of such participation, has actual physical possession of such securities, documents or other written instruments.

2. This rider applies to loss sustained at any time but discovered after noon on **January 1, 1979.**

**The Aetna Casualty and Surety Company**

Accepted:

By:   
**Attorney-In-Fact**


**DELETE LOAN PARTICIPATION COVERAGE**

FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 5 AND 24, "DISCOVERY" FORMS, TO DELETE FROM INSURING AGREEMENT (E) OF THE BOND OF THE BANK PARTICIPATING IN A LOAN, COVERAGE FOR COLLATERAL ACCEPTED BY THE BANK ORIGINATING SUCH LOAN, REVISED TO JANUARY, 1975.

SR 5877a Printed in U.S.A.

REAL PROPERTY MORTGAGES AND ASSIGNMENTS THEREOF WHICH ARE DEFECTIVE BY REASON OF FRAUD WITH RESPECT TO THE SIGNATURE ON SPECIFIED INSTRUMENTS. SUCH INSURING AGREEMENT MAY BE ADDED IN FULL OR PARTIAL AMOUNT, BUT NOT LESS THAN THE MINIMUM AMOUNT OF BLANKET BOND REQUIRED OF THE INSURED. REVISED TO JANUARY, 1975.

SR 5609e Printed in U.S.A.

By:   
**Attorney-In-Fact**



# RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA  
in favor of Virginia Capital Bank

It is agreed that:

1. Anything in the attached bond to the contrary notwithstanding, the attached bond shall be deemed terminated or canceled as an entirety sixty days after the receipt by the Insured of a written notice from the Underwriter of its desire to terminate or cancel such bond.

2. This rider shall become effective as of noon on January 1, 1979.

The Etna Casualty and Surety Company

## CANCELATION RIDER

FOR USE WITH ALL FINANCIAL INSTITUTION BLANKET BONDS, "DISCOVERY" OR "LOSS SUSTAINED" FORM, TO PROVIDE FOR SIXTY DAYS NOTICE OF CANCELATION WHEN THE BOND IS CANCELED AS AN ENTIRETY BY THE UNDERWRITER.

NOTE: NOT APPLICABLE TO STANDARD FORM NO. 10.  
REVISED TO APRIL, 1974.

SR 5923b Printed in U.S.A.

By: 

Attorney-In-Fact

REAL PROPERTY MORTGAGES AND ASSIGNMENTS THEREOF WHICH ARE DEFECTIVE BY REASON OF FRAUD WITH RESPECT TO THE SIGNATURE ON SPECIFIED INSTRUMENTS. SUCH INSURING AGREEMENT MAY BE ADDED IN FULL OR PARTIAL AMOUNT, BUT NOT LESS THAN THE MINIMUM AMOUNT OF BLANKET BOND REQUIRED OF THE INSURED.  
REVISED TO JANUARY, 1975.

SR 5609e Printed in U.S.A.

By: 

Attorney-In-Fact

**RIDER**

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:


1. The Underwriter shall not be liable under the attached bond for any loss resulting directly or indirectly from trading, with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, and notwithstanding any act or omission on the part of any Employee in connection with any account relating to such trading, indebtedness, or balance.

In regard to Blanket Bonds Nos. 5, 22 and 24, this sub-section shall not apply to Insuring Agreement (D) or (E) if coverage is carried thereunder.

2. This rider applies to loss sustained at any time but discovered after 12:01 a.m. on **January 1, 1979** standard time as specified in the attached bond.

**The Etna Casualty and Surety Company**

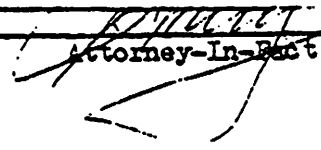
Accepted:

By:   
Attorney-In-Fact

**DELETE TRADING LOSS RIDER - DISCOVERY FORM**  
FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 5, 22, 24 AND 28  
"DISCOVERY" FORMS, TO DELETE TRADING LOSS COVERAGE  
REVISED TO JUNE, 1978  
SR 6030a Printed in U.S.A.

CAT. NO. 036625

**REAL PROPERTY MORTGAGES AND ASSIGNMENTS THEREOF WHICH ARE DEFECTIVE BY REASON OF FRAUD WITH RESPECT TO THE SIGNATURE ON SPECIFIED INSTRUMENTS. SUCH INSURING AGREEMENT MAY BE ADDED IN FULL OR PARTIAL AMOUNT, BUT NOT LESS THAN THE MINIMUM AMOUNT OF BLANKET BOND REQUIRED OF THE INSURED.**  
REVISED TO JANUARY, 1975.  
SR 5609e Printed in U.S.A.

By:   
Attorney-In-Fact

**EFFECTIVE TIME RIDER**

**ENDORSEMENT 203**  
(Edition of January, 1977)

To be attached to and form part of Policy or Bond No. 58 F 5087 BCA

issued to or in favor of **Virginia Capital Bank**

The time of inception and the time of expiration, termination or cancelation of this policy or bond and of any schedule, endorsement or rider attached or to be attached shall be 12:01 a.m. standard time.

To the extent that coverage in this policy or bond replaces coverage in other policies or bonds terminating at noon standard time on the inception date of this policy or bond, coverage under this policy or bond shall not become effective until such other coverage has terminated.

Effective as of **January 1, 1979.**

**The Etna Casualty and Surety Company**

By: \_\_\_\_\_

**Attorney-In-Fact**

FOR USE WITH ANY BOND AND THE COMPREHENSIVE 3-D AND BLANKET  
CRIME POLICIES TO CHANGE THE TIME OF INCEPTION OR TERMINATION  
FROM NOON TO 12:01 A.M.  
ADOPTED JANUARY, 1977.

SR 6059 (1) Printed in U.S.A.

REAL PROPERTY MORTGAGES AND ASSIGNMENTS THEREOF WHICH ARE  
DEFECTIVE BY REASON OF FRAUD WITH RESPECT TO THE SIGNATURE  
ON SPECIFIED INSTRUMENTS SUCH INSURING AGREEMENT MAY BE  
ADDED IN FULL OR PARTIAL AMOUNT, BUT NOT LESS THAN THE MINI-  
MUM AMOUNT OF BLANKET BOND REQUIRED OF THE INSURED.  
REVISED TO JANUARY, 1975.

SR 5609e Printed in U.S.A.

By: \_\_\_\_\_

**Attorney-In-Fact**

**RIDER**

To be attached to and form part of Blanket Bond, Standard Form No 24 , No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:

1. The attached bond is amended by inserting an additional Insuring Agreement as follows:

"Loss through the Insured's having, in good faith and in the course of business in connection with any loan, accepted or received or acted upon the faith of any real property mortgages, real property deeds of trust or like instruments pertaining to realty or assignments of such mortgages, deeds of trust or instruments which prove to have been defective by reason of the signature thereon of any person having been obtained through trick, artifice, fraud or false pretenses or the signature on the recorded deed conveying such real property to the mortgagor or grantor of such mortgage or deed of trust having been obtained by or on behalf of such mortgagor or grantor through trick, artifice, fraud or false pretenses."

2. The Loan Exclusion Clause, Section 2(e), shall not apply to the Insuring Agreement set forth in paragraph 1 of this rider.

3. The total liability of the Underwriter under such Insuring Agreement is limited to the

sum of **Three Hundred Thousand and 00/100** - - - - - Dollars (\$ 300,000.00 ), it being understood, however, that such liability shall be a part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations of the attached bond or amendment thereof.

4. This rider applies to loss sustained at any time but discovered after noon on **January 1, 1979** standard time as specified in the attached bond.

**The Etna Casualty and Surety Company**

By: \_\_\_\_\_

**Attorney-In-Fact**

**FRAUDULENT MORTGAGES RIDER — DISCOVERY FORM**  
FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 5, 22 AND 24, "DISCOVERY" FORMS, TO ADD AN INSURING AGREEMENT COVERING REAL PROPERTY MORTGAGES AND ASSIGNMENTS THEREOF WHICH ARE DEFECTIVE BY REASON OF FRAUD WITH RESPECT TO THE SIGNATURE ON SPECIFIC INSTRUMENTS. SUCH INSURING AGREEMENT MAY BE ADDED IN FULL OR PARTIAL AMOUNT, BUT NOT LESS THAN THE MINIMUM AMOUNT OF BLANKET BOND REQUIRED OF THE INSURED.  
REVISED TO JANUARY, 1975.

SR 5609e Printed in U.S.A.



**RIDER**

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:

1. The Underwriter shall not be liable under any of the Insuring Agreements of the attached bond on account of loss as specified, respectively, in subdivisions (a), (b), (c) and (d) of the Provided clause of Section 7 of the attached bond, unless the amount of such loss, after deducting the net amount of all reimbursement and/or recovery obtained or made by the Insured, other than from any bond or policy of insurance issued by a surety or insurance company and covering such loss, or by the Underwriter on account thereof prior to payment by the Underwriter of such loss, shall exceed the sum of

**Two Thousand Five Hundred and 00/100- - - - - Dollars (\$ 2,500.00 )**  
(herein called Deductible Amount), and then for such excess only, but in no event for more than the Limit of Liability stated in Item 3 of the Declarations of the attached bond or amendment thereof or the amount of the applicable coverage of such bond if such amount be smaller.

2. The Insured shall, in the time and in the manner prescribed in the attached bond, give the Underwriter notice of any loss of the kind covered by the terms of the attached bond, whether or not the Underwriter is liable therefor, and upon the request of the Underwriter shall file with it a brief statement giving the particulars concerning such loss.

3. This rider applies to loss sustained at any time but discovered after noon on **January 1, 1979** standard time as specified in the attached bond.

Accepted:

**The Etna Casualty and Surety Company**

By:   
**Attorney-in-Fact**

**EXCESS OR AGGREGATE DEDUCTIBLE — DISCOVERY FORM**  
FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 5, 14, 22 AND  
"DISCOVERY" FORMS, WHEN ISSUED AS EXCESS OVER AN UNDER  
WRITING AMOUNT, OR TO PROVIDE A DEDUCTIBLE AMOUNT UNDER ALL  
INSURING AGREEMENTS WITH THE FOREGOING DEDUCTIBLE APPLYING ON  
AN AGGREGATE BASIS  
REVISED TO JANUARY 1979  
5884c Printed in U.S.A.

## RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of Virginia Capital Bank

It is agreed that:

1. The attached bond is amended by adding after General Agreement B in the General Agreements section of the bond the following:

### NOTICE OF CHANGE OF CONTROL

B.1 Upon the Insured's obtaining knowledge of a transfer of its outstanding voting stock which results in a change in control of the Insured, the Insured shall within thirty days of such knowledge give written notice to the Underwriter setting forth,

1. the names of the transferors and transferees (or the names of the beneficial owners if the shares are registered in another name),
2. the total number of shares owned by the transferors and the transferees (or the beneficial owners), both immediately before and after the transfer, and
3. the total number of outstanding shares of voting stock.

As used in this General Agreement, control means the power to determine the management or policy of the Insured by virtue of voting stock ownership. A change in ownership of voting stock which results in direct or indirect ownership by a stockholder or an affiliated group of stockholders of ten per cent (10%) or more of the outstanding voting stock of the Insured shall be presumed to result in a change of control for the purpose of the required notice.

Failure to give the required notice shall result in termination of coverage of this bond, effective upon the date of stock transfer for any loss in which any transferee is concerned or implicated.

2. This rider shall become effective as of noon on January 1, 1979 standard time as specified in the attached bond.

Accepted:

The Etna Casualty & Surety Company

By: 

Attorney-in-Fact

#### NOTICE OF CHANGE OF CONTROL RIDER

FOR USE WITH BLANKET BONDS, STANDARD FORMS NO. 24, "DISCOVERY" OR "LOSS SUSTAINED" AND NO. 28, EXCESS BANK EMPLOYEE DISHONESTY BLANKET BOND (DISCOVERY FORM) TO REQUIRE NOTICE TO THE UNDERWRITER OF A CHANGE OF CONTROL OF THE INSURED.  
REVISED TO JULY, 1976.

SR 6014a Printed in U.S.A.

**RIDER**

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:

1. The attached bond is hereby amended by deleting Insuring Agreement (A) and by substituting in lieu thereof the following:

“(A) Loss resulting directly from one or more dishonest or fraudulent acts of an Employee, committed anywhere and whether committed alone or in collusion with others, including loss of Property resulting from such acts of an Employee, which Property is held by the Insured for any purpose or in any capacity and whether so held gratuitously or not and whether or not the Insured is liable therefor.

Dishonest or fraudulent acts as used in this Insuring Agreement shall mean only dishonest or fraudulent acts committed by such Employee with the manifest intent:

- (a) to cause the Insured to sustain such loss; and
- (b) to obtain financial benefit for the Employee, or for any other person or organization intended by the Employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment.”

2. In addition to the existing Exclusions in the attached bond, the Underwriter shall not be liable under any Insuring Agreement for:

- (i) Potential income, including but not limited to interest and dividends, not realized by the Insured because of a loss covered under this bond.
- (ii) All damages of any type for which the Insured is legally liable, except direct compensatory damages arising from a loss covered under this bond.
- (iii) All costs, fees and other expenses incurred by the Insured in establishing the existence of or amount of loss covered under this bond.
- (iv) Loss resulting from payments made or withdrawals from a depositor's account involving funds erroneously credited to such account, unless such payments are made to or withdrawn by such depositor or representative of such depositor who is within the office of the Insured at the time of such payment or withdrawal, or unless such loss is covered under Insuring Agreement (A).

3. This rider shall become effective as of noon on **January 1, 1979** standard time as specified in the attached bond.

**The Etna Casualty and Surety Company**

Accepted:

By: 

Attorney-In-Fact

**DEFINITION OF DISHONESTY - EXCLUSIONS**

FOR USE WITH BANKERS BLANKET BOND, STANDARD FORM NO. 24 "DISCOVERY" AND "LOSSES SUSTAINED" FORMS TO REVISE INSURING AGREEMENT (A) AND ADD CERTAIN EXCLUSIONS.  
ADOPTED APRIL, 1976

**RIDER**

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:

1. The Underwriter shall not be liable under the attached bond for:

Loss resulting from payments made or withdrawals from any depositor's account which has been credited with items of deposit which are uncollected for any reason, including forgery, unless such payments are made to, or withdrawn by, such depositor or representative of such depositor who is within the office of the Insured at the time of such payment or withdrawal, or unless such loss is covered under Insuring Agreement/Clause (A).

2. If this rider is attached to Standard Form No. 5 or No. 24, then the following language of Exclusion (e) is deleted:

"... or loss resulting from payments made or withdrawals from any depositor's account by reason of uncollected items of deposit having been credited by the Insured to such account, unless such payments are made to, or withdrawn by, such depositor or representative of such depositor who is within the office of the Insured at the time of such payment or withdrawal, or unless such loss is covered under Insuring Agreement (A)."

3. This rider shall become effective as of 12:01 a.m. on **January 1, 1979** standard time as specified in the attached bond.

Accepted.

**The Etna Casualty and Surety Company**

By: \_\_\_\_\_

*[Signature]*  
**Attorney-In-Fact**

**UNCOLLECTED FUNDS EXCLUSION**  
FOR USE WITH BLANKET BONDS, STANDARD FORMS NOS. 5, 22 AND 24,  
"DISCOVERY" OR "LOSS SUSTAINED" FORMS AND FORM NO. 23 TO EX-  
CLUDE ANY LOSS RESULTING FROM THE PAYOUT OR WITHDRAWAL OF  
UNCOLLECTED ITEMS OF DEPOSIT.  
ADOPTED JUNE, 1977.

SR 5064 Printed in U.S.A.



RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA  
in favor of Virginia Capital Bank

It is agreed that:

1. The Underwriter shall not be liable under the attached bond on account of loss resulting from the use of credit, debit, charge, access, convenience, identification or other cards


- (a) in obtaining credit; or
- (b) in gaining access to automated mechanical devices which, on behalf of the Insured, disburse money, accept deposits, cash checks, drafts or similar written instruments or make credit card loans; or
- (c) in gaining access to Point of Sale Terminals, Customer-Bank Communication Terminals, or similar electronic terminals of Electronic Funds Transfer Systems

whether such cards were issued, or purport to have been issued, by the Insured or by anyone other than the Insured, except when such loss is covered under Insuring Agreement/Clause (A).

2. This rider shall become effective as of 12:01 a.m. on January 1, 1979 standard time as specified in the attached bond.

Accepted:

The Etna Casualty and Surety Company

By:   
Attorney in Fact

CREDIT, DEBIT, CHARGE, ACCESS, CONVENIENCE,  
IDENTIFICATION OR OTHER CARD EXCLUSION

FOR USE WITH BLANKET BONDS, STANDARD FORM NO. 24, DISCOVERY  
OR LOSS SUSTAINED FORM AND STANDARD FORM NO. 23 TO EXCLUDE  
LOSS RESULTING FROM THE USE OF CREDIT, DEBIT, CHARGE, ACCESS  
CONVENIENCE, IDENTIFICATION OR OTHER CARDS IN OBTAINING CREDIT  
OR IN GAINING ACCESS TO AUTOMATED MECHANICAL DEVICES OR  
ELECTRONIC TERMINALS OF ELECTRONIC FUNDS TRANSFER SYSTEMS  
REVISED TO APRIL, 1977.

SR 5887c Printed in U.S.A.

# RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of Virginia Capital Bank

It is agreed that:

1 The Underwriter shall not be liable under the attached bond on account of loss involving automated mechanical devices which, on behalf of the Insured, disburse money, accept deposits, cash checks, drafts or similar written instruments or make credit card loans unless:

(a) such automated mechanical devices are situated within an office of the Insured which is permanently staffed by an employee whose duties are those usually assigned to a bank teller whether or not public access to such devices is from outside the confines of such office, or

(b) such automated mechanical devices are not situated within an office covered under (a) above, but are situated on premises at a location listed in the Schedule in paragraph numbered 2 below,

but in no event shall the Underwriter be liable under the attached bond for loss (including loss of Property):

(i) as a result of damage to such automated mechanical devices situated within any office referred to in (a) above resulting from vandalism or malicious mischief perpetrated from outside such office, or

(ii) as a result of damage to such automated mechanical devices situated on any premises referred to in (b) above resulting from vandalism or malicious mischief, or

(iii) as a result of damage to the interior of that portion of a building on any premises referred to in (b) above to which the public has access resulting from vandalism or malicious mischief, or

(iv) as a result of mechanical breakdown or failure of such automated mechanical devices to function properly, or

(v) through misplacement or mysterious unexplainable disappearance while such Property is (or is supposed to be) located within any such automated mechanical devices, or

(vi) to any customer of the Insured or to any representative of such customer while such person is on any premises referred to in (b) above, or

(vii) as a result of the use of credit, charge, access, convenience, identification or other cards in gaining access to such automated mechanical devices whether such cards were issued, or purport to have been issued, by the Insured or by anyone other than the Insured,

except when such loss is covered under Insuring Agreement (A).

## 2. Schedule of Device Locations.

DEVICE  
LOCATION

LIMIT OF LIABILITY  
AT EACH  
DEVICE LOCATION

DEDUCTIBLE AMOUNT  
AT EACH  
DEVICE LOCATION

## EXTORTION — THREATS TO PERSONS RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of Virginia Capital Bank

It is agreed that:

1 The Underwriter shall not be liable under the attached bond on account of loss through the surrender of Property away from an office of the Insured as a result of a threat:

(a) to do bodily harm to a director, trustee, Employee or partner of the Insured or to the proprietor (if the Insured be a sole proprietorship) or to any other person, except loss of Property in transit in the custody of any person acting as messenger provided that when such transit was initiated there was no knowledge by the Insured of any such threat, or

(b) to do damage to premises or property,

except with respect to (a) above, when covered under Insuring Agreement (A), or to the extent covered under the Extortion—Threats To Persons Insuring Agreement below, and with respect to (b) above, when covered under Insuring Agreement (A), or to the extent covered under the Extortion—Threats To Property Insuring Agreement when added by rider to the attached bond.

2. The attached bond is amended by adding an additional Insuring Agreement as follows:

### "EXTORTION—THREATS TO PERSONS

"Loss of Property surrendered away from an office of the Insured as a result of a threat communicated to the Insured to do bodily harm to:

(1) a director, trustee, Employee or partner of the Insured or to the proprietor (if the Insured be a sole proprietorship), or

(2) a relative or invitee of any person enumerated in (1) above

who is, or allegedly is, being held captive; provided, however, that the captivity, or alleged captivity, takes place within any of the states of the United States of America, the District of Columbia, Virgin Islands, Puerto Rico, Canal Zone or Canada, and that prior to the surrender of such Property (a) the person receiving the threat has made a reasonable effort to report the extortionist's demand to an associate, and (b) a reasonable effort has been made to report the extortionist's demand to the Federal Bureau of Investigation and to local law enforcement authorities."

3. The total liability of the Underwriter under the foregoing Extortion—Threats To Persons Insuring Agreement is limited to the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), it being understood, however, that such liability shall be a part of and not in addition to the Limit of Liability stated in Item 3 of the Declarations of the attached bond.

4 The Insuring Agreement set forth in paragraph numbered 2 of this rider shall be subject to any deductible amount applicable to Insuring Agreements (A), (B) and (C).

## RIDER

To be attached to and form part of Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA

in favor of **Virginia Capital Bank**

It is agreed that:

1. The attached bond is amended by deleting General Agreement B in the General Agreements section of the Bond and by substituting in the place thereof the following:

### ADDITIONAL OFFICES OR EMPLOYEES— CONSOLIDATION, MERGER OR PURCHASE OF ASSETS—NOTICE

B. If the Insured shall while this bond is in force, establish any additional office or offices, other than by consolidation or merger with, or purchase of assets of, another institution, such office or offices shall be automatically covered hereunder from the dates of their establishment, respectively, and without the requirement of notice to the Underwriter of an increase during any premium period in the number of offices or Employees at any of the offices covered hereunder or the payment of additional premium for the remainder of such premium period.

If the Insured shall, while this bond is in force, merge or consolidate with, or purchase the assets of, another institution, the Insured shall not have such coverage as is afforded under this bond for loss which:

- (a) has occurred or will occur in offices or premises,
- (b) has been caused or will be caused by an employee or employees, or
- (c) has arisen or will arise out of the assets

acquired by the Insured as a result of such merger, consolidation or purchase of assets: unless the Insured shall:

- (i) cause to be delivered to the Underwriter written notice of the proposed merger, consolidation or purchase of assets at least 60 days prior to the proposed effective date of the merger, consolidation or purchase of assets,
- (ii) obtain the written consent of the Underwriter to extend the coverage provided by this bond to such additional offices, Employees and other exposures, and
- (iii) pay to the Underwriter an additional premium computed pro rata from the date of such consolidation, merger or purchase of assets to the end of the current premium period.

2. The attached bond is further amended by inserting after the phrase "under this bond and" in the definition of "Employee", the following words:

" , if coverage is extended under the terms of the second paragraph of General Agreement B, "

3. The attached bond is further amended by inserting after the phrase "in which the Insured has an interest or" in the definition of "Property",

" , if coverage is extended

4. This rider shall be as specified in the attachment

Accepted



## NOTE

Richmond, Va.

\$ 10,296.00

March 27, 19 80

☒ Secured☐ Unsecured

No. 2-072-180-8-48

FOR VALUE RECEIVED, Paul's Auto Sales

1310 West Broad Street, Richmond, Virginia 23226

(full address)

the undersigned ("Maker," whether one or more), jointly and severally promise to pay to the order of

VIRGINIA CAPITAL BANK ("the Bank")

at any of its offices in the State of Virginia, the sum of Ten Thousand Two Hundred Ninety-six and no/100-----

-----Dollars (\$ 10,296.00) as shown in the following Schedule of Payments:

INSTALLMENT In 9 payments including interest as follows: 9 consecutive payments of \$1,144.00 each on the 25th day of each month beginning April 25, 19 80, and, if applicable, one final payment of \$ on , 19 .

DEMAND LOAN On Demand, together with interest on the unpaid balance from the date hereof at the rate of % per annum. Accrued interest shall be due and payable ☐ monthly ☐ quarterly ☐ other on the day of each , beginning , 19 .

TIME LOAN One payment in full due days after the date shown above. (Due , 19 .)

Together with interest on the unpaid balance from the date hereof at the rate of % per annum.

In the event any payment is more than twice the amount of an otherwise regularly scheduled equal payment, it shall be deemed a Balloon Payment.

Collateral. \*This Note is secured by Maker's waiver of the homestead exemption. \*If this Note is marked "Unsecured," other references to security and collateral shall not apply, but all other provisions hereof are applicable. As security for the payment of this Note, a deed of trust and/or a security agreement, pledge or assignment conveying a security interest hereinafter described has been delivered to Bank.

☐ Deed of Trust creating a lien on the following real estate (the Property) \_\_\_\_\_

together with all buildings, improvements and fixtures now or hereafter erected on said real estate. The deed of trust will cover after-acquired property affixed to said real estate future advances to or for the Maker, all insurance policies, premiums and the proceeds therefrom and all rents, issues and profits.

☒ Security Interest as provided by the Virginia Uniform Commercial Code in the following personal property (the Property): \_\_\_\_\_

Assignment of insurance policies

and all dividends, equipment, parts, accessories, attachments, additions, and all replacements thereof, now or hereafter installed in, affixed to, used in connection with, or resulting from such personal property and all insurance policies and premiums, and all proceeds therefrom.

Personal Insurance. Credit life insurance and credit accident & health insurance are not required and are not provided and no charge therefor made unless Maker signs below and insurance is issued by insurer. Only persons signing below will be insured. Premiums shown below shall be for the term of this loan.

I desire credit life insurance. Premium \$ \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

I desire credit accident & health insurance. Premium \$ \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

Property Insurance. ☐ is ☐ is not required. If required, Maker may choose the person through which property insurance is obtained. If obtained through Bank, the coverage, term and premium is as follows:

Coverage \_\_\_\_\_

Term \_\_\_\_\_

Premium \$ \_\_\_\_\_

The FINANCE CHARGE applies from the date hereof, or, if a different date, from \_\_\_\_\_ (Date).

The obligation of the Maker was determined as follows:

1. Loan Proceeds.	\$ 9,600.00
2. Other Charges:	
Insurance Premiums	\$ _____
Recording/Filing Costs	\$ _____
Survey	\$ _____
Attorney's Fees (title search)	\$ _____
Appraisal Fee	\$ _____
Other (itemize):	\$ _____
	\$ _____
Total Other Charges	\$ -0-
3. Amount Financed (1 + 2)	\$ 9,600.00
4. FINANCE CHARGE:	
Interest on Amount Financed	\$ 504.00
Service Charge	\$ 192.00
Total FINANCE CHARGE	\$ 696.00
5. Total of Payments (3 + 4)	\$ 10,296.00
6. ANNUAL PERCENTAGE RATE	12.08 %

Late Charges. (Applicable to all loans.) Maker agrees to pay a late charge of 5% of the amount of the payment for any payment which is made 7 days or more past the due date.

## Default.

(a) Installment Loans. Upon default by Maker in making any payment when due, which default shall not have been cured within 10 days from such due date, by making payment in full of such amount together with any late charge then due, or upon any other default by Maker as set forth in this Note, the Bank, at its option, may accelerate this Note and declare the then unpaid balance of the Total Payments immediately due and payable as set forth below under the heading Acceleration.

(b) All Other Loans. Upon default by Maker in making any payment when due or upon any other default by Maker as set forth in this Note, the Bank at its option, may accelerate this Note and declare the then unpaid balance of the Total of Payments immediately due and payable as set forth below under the heading Acceleration.

**Acceleration.**

- (a) Installment Loans. The balance owing shall be computed as if Maker had made a voluntary prepayment and received a credit on the date of acceleration under the method and in the manner set forth below under the heading Prepayment as the same relates to installment loans. Any unpaid part of such accelerated balance shall bear interest from the date of acceleration at the ANNUAL PERCENTAGE RATE shown above.
- (b) All Other Loans. The balance owing shall be computed as if Maker had made a voluntary prepayment and received a credit on the date of acceleration under the method and in the manner set forth below under the heading Prepayment as the same relates to all other Loans. Any unpaid part of such accelerated balance shall bear interest from the date of acceleration at the interest rate then being charged on this Note.
- In the event of default under any loan, Maker agrees to pay all collection costs and expenses, including 25% attorney's fees.

**Prepayment.** Any unpaid balance of the Total of Payments of any loan may be paid at any time. No part of the Service Charge will be refunded in the event of voluntary or involuntary prepayment.

- (a) Installment Loans. If the entire unpaid balance of the Total of Payments is paid before the final payment date, Maker shall receive a rebate by way of credit for any unearned interest included in the FINANCE CHARGE, which rebate shall be computed in accordance with the Rule of 78s.
- (b) All Other Loans. If the entire unpaid balance of the Total of Payments is paid before the final payment date, Maker shall receive a rebate by way of credit for any unearned interest included in the FINANCE CHARGE on a pro-rata basis.

**Demand Loans.** In accordance with federal law, demand loans are assumed for disclosure purposes to have a maturity of one-half year, but this assumption does not guarantee that the Bank will refrain from demanding payment for such period. For Business Purpose Loans Only: The ANNUAL PERCENTAGE RATE shown above is prospectively subject to change at any time including the initial period. Maker hereby agrees that the Bank at its option may change at any time and from time to time the interest rate shown above. Upon making each such change, the Bank will send notice thereof to the Maker's address shown on the Bank's records. This Note does not provide for any maximum or minimum rate of interest but the Bank shall not be entitled to charge interest in excess of the maximum rate allowed by law.

**IMPORTANT. SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE EXPRESSLY MADE A PART HEREOF.**

Maker, or one of them if more than one, hereby acknowledges that he has received a completely filled in copy of this Note prior to execution hereof.

Purpose of This Loan: Finance business insurance

Paul's Auto Sales (SEAL) \_\_\_\_\_ (SEAL)

by: Paul M. Tibbs (SEAL) \_\_\_\_\_ (SEAL)

Paul M. Tibbs  
ILO-15 (rev. 1/79)

**ADDITIONAL TERMS AND CONDITIONS**  
(See Front Side for Other Terms and Conditions)

**1. Obligations**

- A. Maker agrees to pay promptly all taxes, licenses and assessments on the Property.
- B. Maker will pay for any equipment, repairs, additions to, or accessories placed on the Property, all of which shall become a component part of the Property and are included in the terms of this Note.
- C. If required, Maker will insure the Property against all hazards in form and amount satisfactory to Bank. If Maker fails to obtain such insurance, Bank shall have right but not the duty to obtain such insurance including, but not limited to, insurance protecting only the interest of the Bank (commonly called "single interest" insurance) at Maker's expense. Maker assigns to Bank all right to receive proceeds of insurance on the Property (including any return premiums) not excluding the unpaid balance of the Note, and directs any insurer to pay all proceeds directly to Bank and authorizes Bank to endorse in name of Maker any check or draft for the proceeds. The cost of any such insurance shall be considered a Future Advance to Maker.
- D. Maker agrees that loss, injury or destruction of the Property shall not release the Maker's obligation hereunder and further agrees not to use the Property or permit the Property to be used for any purpose which is prohibited by law.
- E. Maker will pay all costs of recording any deed of trust or financing or termination statement with respect to the Property, and appoints Bank as Maker's attorney-in-fact to do whatever Bank may deem necessary to perfect or continue perfection of its security interest in the Property.

**2. Collateral**

- A. If the Property described on the face of this Note is in the nature of securities, it includes all stock dividends, dividends representing distribution of capital assets and rights to subscribe to additional capital stock to which the holder of the securities herein deposited as collateral is now or may hereafter become entitled or possessed by virtue of holding such securities, with authority to collect, sell, transfer and rehypothecate such Property, it being understood that on payment of the amount due under the terms of this Note, the Bank may return to Maker the securities deposited or an equal quantity of the same.
- B. In the event the Property pledged as collateral should at any time and for any reason become inadequate as collateral security in the sole judgment of the Bank, Maker agrees to deposit with the Bank such additional property as the Bank may require to render the collateral adequate.

**Joint Obligations.** If there be more than one Maker of this Note, their obligation shall be joint and several. All Makers, guarantors, sureties, endorsers or other Party hereto (collectively called a Party) shall be bound by the terms and conditions of this agreement.

**Events of Default.** The following shall constitute events of default under the terms of this Note:

- A. Failure of the Maker, or Party hereto, to keep or perform the Maker's obligations hereunder; or
- B. Failure of Maker to promptly pay when due any and all sums under this Note; or
- C. Removal of the Property from the state in which the Maker now resides without prior written notice to the Bank; or
- D. Use of the Property as fixtures and/or accessions (unless attached to real estate covered by deed of trust securing the Bank) without prior written consent of the Bank; or
- E. If any warranty, statement or representation made or furnished to Bank proves to have been false or if any covenant or undertaking provided for herein shall be breached or not fulfilled; or
- F. Loss, theft, misuse, abuse, substantial damage, abandonment, destruction, sale, or encumbrance of any of the Property or the making of any levy, seizure or attachment thereon or the institution of condemnation or forfeiture proceedings against the Property; or
- G. Death, dissolution, termination of existence, insolvency, business failure of any Party hereto, appointment of a receiver in any part of any property of, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy laws by or against any Party hereto; or
- H. If the Bank in its sole discretion shall deem itself insecure.

**Remedies.** In the event of default, the Bank shall have a right to elect the following remedies, which shall be cumulative:

- A. Declare all unpaid installments and any and all monies due or to become due under this Note immediately due and payable;
- B. Obtain judgment for all amounts due plus reasonable attorney's fees (25% if permitted by law);
- C. Enter the premises and without breach of peace take possession of the Property;
- D. Exercise any and all of the rights on default of the beneficiary under the deed of trust or of a secured Party under the security agreement;
- E. Set off the amount due hereunder against any amounts owing to Maker by virtue of any account, checking, saving or otherwise, which Maker may have with the Bank.
- F. Exercise any and all other remedies permitted to a lien creditor or secured party by law.

No waiver of default shall affect any later default. Should any part of this Note be adjudged invalid, the remainder thereby will remain in full force and effect.

**Waivers.** Maker and any Party hereto waive all rights conferred by existing or future law to notice and a hearing prior to repossession of the Property by the Bank and releases the Bank from all liability in connection with such repossessions. Maker and any Party hereto waive presentment and demand and hereby agree to any extension or extensions of time of payment of this Note or any installment or part thereof. Likewise, Maker and any Party hereto waive any right they may have to require such holder to proceed against any of the other parties and the benefit of all exemptions under the homestead laws as to any obligations under this Note.

**Privacy Act.** Maker hereby consents that prior to payment in full hereunder any governmental agency is authorized to release to the Bank the current home and office addresses and telephone numbers of Maker.

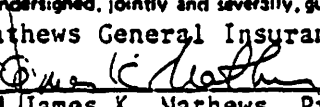
**Survival.** This Note shall apply to and bind the heirs, executors, administrators, assigns and successors in interest of Maker and any Party hereto and shall inure to the benefit of the Bank, its successors and assigns. Whenever reference in this Note is made to the Bank, it shall be deemed to include its successors and assigns.

This Note constitutes the entire agreement between the parties and no waiver or modification of its terms and conditions, except as provided by the deed of trust or security agreement, shall be valid unless written upon or attached to this Agreement and signed by the parties.

#### ENDORSEMENT

The undersigned, jointly and severally, guarantee prompt and full performance of all undertakings and obligations of Maker under the foregoing Note.

Mathews General Insurance Corporation

by: <u></u>	(Seal)	March 27, 1980
Signed James K. Mathews, President		Dated
_____	(Seal)	_____
Signed _____		Dated _____



## PROOF OF LOSS

## NOTE

Furnishing of Proof of Loss forms is without prejudice. All rights and defenses are reserved and the conditions of the BOND or POLICY are not waived. Where needed additional pages should be used to provide the requested information.

## BLANKET CRIME, THREE D AND OTHER FIDELITY BOND COVERAGE

BOND OR POLICY NO. 58 F 5087 BCA	NAME OF INSURED Virginia Capital Bank
-------------------------------------	--

THIS AFFIDAVIT IS EXECUTED BY  
Richard L. Wyatt \_\_\_\_\_ in the following capacity: (check one)

☒ Officer of the insured corporation, whose title is Vice President & Cashier

☐ Partner of the insured partnership      ☐ The individual named as insured

WHO HEREBY ATTESTS TO THE FOLLOWING:

1. This loss is due to (check one) ☐ Dishonesty of the insured's employee(s) whose name(s) and positions are:

\_\_\_\_\_

☐ Burglary or other theft from insured's premises      ☐ Destruction or disappearance at the insured's premises.

☐ Robbery or other theft from \_\_\_\_\_ (name of person)  
acting as messenger while away from the insured's premises.

☒ Other cause as follows: Alteration

\_\_\_\_\_

2. LOCATION OF LOSS 5001 Lakeside Avenue, Richmond, VA 23228	Date Ins. learned of Loss February 5, 1981	Date loss rep. to Ins. Co. February 1981
---	---	---

3. THE CIRCUMSTANCES UNDER WHICH THE LOSS TOOK PLACE, WITH RELEVANT DATES

On March 27, 1980, James K. Mathews presented the Bank with a promissory note in the amount

of \$10,296.00 made by Paul Tibbs, which was received by John Antrim, III, Branch Officer.

Pursuant to the directions of James K. Mathews, Tibbs executed the note in blank in the

office of Mathews. It was Tibbs' understanding that the note was in consideration for an

insurance premium. Mathews did not purchase insurance nor was the note completed in accordance

with Tibbs' understanding. Tibbs did not receive any benefit from this note. The loan was

subsequently defaulted and payment demanded of the maker and the endorser, Mathews General

Insurance Corporation. The Bank has continued to investigate this matter and has turned

over to its council, G. Andrew Nea, Jr., the documents involved for legal action.

4. The loss is in the amount of \$ 522.80, and is set forth in the following itemized statement (attach documentary evidence which supports and explains any one or more of the items) :

DATE	DESCRIPTION OF ITEM	AMOUNT		TOTAL	
1-12-81	Note #20721808-48	3,522	80		
	Total Loss →	8,522	80		
	CREDITS →				
	Salary →				
	Commission →				
	Any other →				
	→				
	Total Credits →	0			
	Net Loss →			8,522	80
	Less Deductibles, if any →				
	Amount Claimed →			8,522	80

(Attach additional sheets if further space is needed.)

**5. There is no other suretyship or insurance applicable except:**

(1) None.

(2)

DATE \_\_\_\_\_

3-24-81

**SIGNATURE**

**DATE SUBSCRIBED AND SWORN**

3-24-81

**NOTARY PUBLIC**

Expiry Date: 11/11/2023

PLAINTIFF'S RESPONSE TO  
REQUESTS FOR ADMISSION

The plaintiff, Virginia Capital Bank, by counsel, in response to the defendant's Requests for Admission says as follows:

1. The Bank gave value for the note (a copy of which is attached to the Motion for Judgment in this case as Exhibit B, hereinafter referred to as "note") purchased from James K. Mathews on or about March 27, 1980.

Answer: The Bank admits that it gave value for the Note on or about March 27, 1980, but denies that it purchased the Note from James K. Mathews.

2. The Bank took the note in good faith and in honesty in the conduct or transaction of the purchase of the note.

Answer: Denied.

3. The Bank took the note without notice of any defense against or claim to it on the part of any person or entity.

Answer: Admitted.

4. The Bank purchased the note in the regular course of business and not as part of a bulk transaction.

Answer: Denied.

VIRGINIA CAPITAL BANK

By Robert Perrow  
Of Counsel

CERTIFICATE

I certify that on the 10<sup>th</sup> day of February, 1982, a true and correct copy of the foregoing Plaintiff's Response to Requests for Admission was mailed, postage prepaid, to John W. Burke, III, McGuire, Woods & Battle, Ross Building, Richmond, Virginia 23219.

Robert Perrow



V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION II

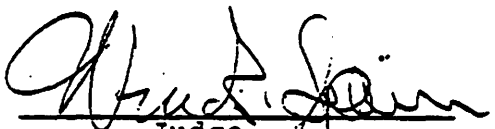
February 22nd, 1982

ORDER

This day came the parties, by counsel, upon motion of the plaintiff pursuant to Rule 1:8 of the Rules of the Supreme Court of Virginia to amend the Motion for Judgment filed herein, to which motion the defendant does not object.

Upon consideration whereof, it is ADJUDGED and ORDERED that the plaintiff be, and the same hereby is, granted leave to amend its Motion for Judgment and that the defendant shall have twenty-one (21) days from the date of filing of said amended motion for judgment to file its responsive pleadings thereto.

ENTER:

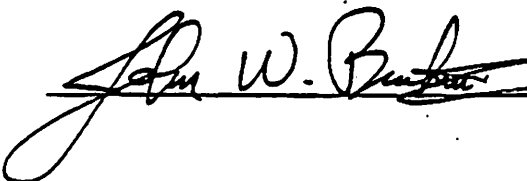
  
Judge  
2/22/82

I ask for this:

 p.g.

CB 94 Pg. 481

Seen:

 p.d.

ANSWERS TO INTERROGATORIES

Plaintiff, for its answers to Interrogatories propounded by the defendant says as follows:

1. State the current business and residential addresses, by giving street address and county or city, of Paul M. Tibbs. If Paul M. Tibbs is represented by counsel give counsel's name and address as well.

Answer. Paul's Auto Sales  
4000 Williamsburg Road  
Richmond, Virginia 23231

Residence is unknown

William L. Schaefer  
Attorney at Law  
15 N. Thompson Street  
Richmond, Virginia 23221

2. State the current residential and business addresses, by giving street address and county or city, of James K. Mathews. If James K. Mathews is represented by counsel give counsel's name and address as well.

Answer. James K. Mathews  
2105 Raintree Drive  
Richmond, Virginia 23233

Business address unknown.

Thomas H. Oxenham, Jr.  
Oxenham, Parkerson & Williams  
P.O. Box 29434  
Richmond, Virginia 23229

3. For each and every account currently held by the Bank or held at any time after February 1, 1981, in the name of or for the benefit of Paul M. Tibbs, Paul's Auto Sales, James K. Mathews, or Mathews General Insurance Corporation, or over which any of the above persons or entities have or had any control state:

- (a) the type of account or deposit;
- (b) the account number and other identifying information;
- (c) the current balance on or amount in such account or deposit or, if appropriate, the last balance on or amount in such account or deposit;
- (d) if appropriate, the date such account or deposit was closed, ended or removed.

Answer. Paul M. Tibbs, Paul's Auto Sales and Mathews General Insurance Corporation did not have any depository accounts with the plaintiff on or after February 1, 1981.

James K. Mathews had a personal checking account, no. 220-4291-06, opened August 4, 1980 and closed January 11, 1982. Last balance was \$2.36 before application of a service charge on January 11, 1982, which created a zero balance in the account.

4. Under which specific provision or provisions of Banker's Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA does the Bank assert coverage for the claim on the alleged loss as set forth in the Bank's Motion for Judgment.

Answer. The Bank relies upon the entire language of the bond and believes that coverage for the alleged loss is specifically covered under subparagraph (E) of the Insuring Agreements.

VIRGINIA CAPITAL BANK

By   
James H. Atkinson, Jr.  
Vice President

STATE OF VIRGINIA  
CITY OF RICHMOND

Subscribed and sworn before me, a notary public, in  
and for the jurisdiction aforesaid, this 23<sup>rd</sup> day of  
February, 1982.

C. J. Monegan  
Notary Public

My commission expires: My Commission Expires June 14, 1983

CERTIFICATE

I certify that on the 24<sup>th</sup> day of February, 1982, a  
true and correct copy of the foregoing Answers to Interro-  
gatories was mailed, postage prepaid, to John W. Burke, III,  
Esquire, McGuire, Woods & Battle, Ross Building, 9th and  
Main Streets, Richmond, Virginia 23219.

ORIGINAL SIGNED  
By Robert Perrow

FILED FEB 26 1982  
TESTE: IVA R. PURDY, Clerk  
By Jayce P. Smith D.C.

AMENDED  
MOTION FOR JUDGMENT

Comes now the plaintiff, Virginia Capital Bank (the "Bank"), by counsel, and moves for judgment against the defendant, The Aetna Casualty & Surety Company ("Aetna"), in the amount and on the grounds set forth below:

1. The defendant, Aetna, is a corporation organized under the laws of the State of Connecticut, duly licensed and doing business in the Commonwealth of Virginia.

2. On or about January 23, 1979, the Bank and Aetna entered into a written contract of insurance briefly described as Bond No. 58-F-5087-BCA (the "Bond"), whereby its terms, Aetna agreed to insure the Bank, inter alia, for loss through the Bank's acceptance of any promissory notes which proved to have been raised or otherwise altered up to a limit of \$300,000 and discovered during the policy period. The Bond was effective on January 1, 1979 and was in force at all times material hereto. A copy of the Bond is attached as Exhibit A and made a part hereof.

3. On or about March 27, 1980, Paul M. Tibbs ("Tibbs"), for value received, promised to pay the Bank or order the sum of \$10,296.00 in nine consecutive monthly payments of \$1,144.00 on the 25th day of each month beginning April 25, 1980 (the "Note"), a copy of which is attached as Exhibit B.

4. The Note was unconditionally endorsed by Mathews General Insurance Corporation by James K. Mathews, President ("Mathews").

5. Upon information and belief, the Bank alleges that prior to execution of the Note, Mathews represented to Tibbs that the purpose of the Note was "to finance insurance premiums in the amount of \$960.00 for a period of nine months and Tibbs executed the Note in blank based on the foregoing understanding.

6. Upon information and belief, the Bank alleges that Mathews intentionally completed the Note by altering the amount of the loan from \$960.00 to \$9,600.00 plus interest.

7. The Note was not paid when due, is in default and there is an unpaid principal balance of \$7,559.61 together with interest at the rate of 17.08 percent per annum from July 15, 1981.

8. The Bank has made demand for the payment of the Note from Tibbs and Mathews General Insurance Corporation, which payment has not been made.

9. In response to the Bank's demand for payment, Tibbs, in February, 1981, advised the Bank that the Note was altered and completed without his knowledge and consent and that Mathews did not procure any insurance on his behalf.

10. As a direct and proximate result of the alteration of the Note, the Bank has been unable to collect the unpaid balance of the Note.

11. Under the terms of the Bond, Aetna, upon proper notification, has a duty to reimburse the Bank for its loss resulting from the aforesaid alteration of the Note.

12. On or about March 24, 1981, the Bank duly filed with Aetna a Proof of Loss form setting forth a claim in the amount of \$8,522.80 on a loss of the same amount as a result of the aforesaid alteration (the "Proof of Loss"), a copy of which is attached as Exhibit C.

13. On or about July 2, 1981, Aetna denied the Bank's Proof of Loss in breach of the terms of the Bond.

14. As a direct and proximate result of Aetna's breach of the terms of the Bond, the Bank has suffered a loss in the amount of \$7,559.61.

WHEREFORE, the plaintiff, Virginia Capital Bank, demands judgment against the defendant, The Aetna Casualty & Surety Company, in the amount of \$7,559.61 together with interest thereon from July 15, 1981 and costs as allowed by law.

VIRGINIA CAPITAL BANK

By Robert D. Perrow  
Of Counsel

William A. Young, Jr.  
Robert D. Perrow  
WALLERSTEIN, GOODE & DOBBINS  
The Ironfronts  
1011 East Main Street  
P.O. Box 242  
Richmond, Virginia 23202  
Counsel for plaintiff



CERTIFICATE

I certify that on the 18<sup>th</sup> day of February,  
1982, a true and correct copy of the foregoing Amended  
Motion for Judgment was mailed, postage prepaid, to  
John W. Burke, III, McGuire, Woods & Battle, Ross  
Building, Richmond, Virginia 23219.

Robert Penow

GROUND'S OF DEFENSE TO AMENDED  
MOTION FOR JUDGMENT

Defendant, The Aetna Casualty & Surety Company, for its Grounds of Defense to the Amended Motion For Judgment of Virginia Capital Bank states as follows:

1. Defendant admits the allegations contained in paragraph 1 of the Amended Motion For Judgment.

2. Defendant admits that on or about January 23, 1979, the plaintiff and the defendant entered into a written contract of insurance, identified as Banker's Blanket Bond, Standard Form No. 24, No. 58 F 5087 BCA (Bond), that the Bond was effective on January 1, 1979 and was in force at all times material to the plaintiff's Amended Motion For Judgment and that Exhibit A to the Amended Motion For Judgment is a copy of the Bond. Defendant denies the remainder of the allegations in paragraph 2 of the Amended Motion For Judgment except to state that the Bond speaks for itself. Defendant further states that under rider SR 5884c a \$2,500.00 deductible is applicable to the Bond.

3. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraphs 3 and 4 of the Amended Motion For Judgment except to state that Exhibit B to the Amended Motion For Judgment speaks for itself.

4. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraphs 5, 6, 7, 8 and 9 of the Amended Motion For Judgment.

5. Defendant admits that plaintiff filed a Proof of Loss which was dated March 24, 1981, and that Exhibit C to the Amended Motion For Judgment is a copy of the Proof of Loss form filed by plaintiff. Defendant denies the remainder of the allegations in paragraph 12 of the Amended Motion For Judgment except to state

that Exhibit C to the Amended Motion For Judgment speaks for itself.

6. Defendant denies the allegations contained in paragraphs 10, 11, 13 and 14 of the Amended Motion For Judgment and further states that the plaintiff's loss, if any, is not within the coverage of the Bond.

WHEREFORE, the defendant respectfully requests the Court to deny and dismiss the plaintiff's Amended Motion For Judgment.

THE AETNA CASUALTY & SURETY COMPANY

By John W. Burke, III  
Of Counsel

Henry H. McVey, III  
John W. Burke, III  
McGUIRE, WOODS & BATTLE  
1400 Ross Building  
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Grounds Of Defense To Amended Motion For Judgment was hand delivered to Robert D. Perrow, Esquire, Wallerstein, Goode & Dobbins, 1011 East Main Street, Richmond, Virginia 23219 on this 22nd day of February, 1982.

John W. Burke, III  
John W. Burke, III

PLAINTIFF'S  
RESPONSE TO REQUEST FOR ADMISSIONS

Plaintiff, for its response to Request for Admissions propounded by the defendant says as follows:

1. The Bank gave value for the note (a copy of which is attached to the Amended Motion for Judgment in this case as Exhibit B, hereinafter referred to as "note").

Answer. Admitted.

2. The Bank took the note in good faith and in honesty.

Answer. Admitted.

3. The Bank took the note in the regular course of business and not as part of a bulk transaction.

Answer. Admitted.

VIRGINIA CAPITAL BANK

By Robert Perrow  
Of Counsel

CERTIFICATE

I certify that on the 3<sup>d</sup> day of March, 1982, a true and correct copy of the foregoing Plaintiff's Response to Request for Admissions was mailed, postage prepaid, to John W. Burke, III, Esquire, McGuire, Woods & Battle, Ross Building, 9th and Main Streets, Richmond, Virginia 23219.

FILED MAR 5 1982  
TESTED: IVA R. PURDY, Clerk  
By [Signature] D.C.

Robert Perrow 46

## SECOND INTERROGATORIES

Defendant, by counsel, propounds the following interrogatories on the plaintiff Virginia Capital Bank (Bank) to be answered in writing under oath with twenty-one (21) days of service in accordance with Rule 4:8 of the Rules of the Supreme Court of Virginia:

1. For each and every account, of whatever type, held at any time during the period from February 1, 1980, until and including February 1, 1981, by the Bank in the name of or for the benefit of Paul M. Tibbs, Paul's Auto Sales, James K. Mathews or Mathews General Insurance Corporation, or over which any of the above persons or entities had any control state for each such account or deposit:

- a) the type of account or deposit;
- b) the account number and other identifying information;
- c) the monthly balance for each of the following months:
  - 1. February 1980,
  - 2. March 1980.
  - 3. April 1980,
  - 4. May 1980,
  - 5. June 1980,
  - 6. July 1980,
  - 7. August 1980,
  - 8. September 1980,
  - 9. October 1980,
  - 10. November 1980,
  - 11. December 1980, and
  - 12. January 1981.
- d) if appropriate, the date each such account was closed, ended or removed;
- e) if appropriate, the opening balance of each such account.

2. With respect to the personal checking account of James K. Mathews No. 220-4291-06, opened August 4, 1980 and closed January 11, 1982, state:

- a) the opening balance;
- b) the monthly balance for each month from August 1980 until and including January 1982.

3. Identify by name, title and residential and business address the Bank officer(s), agent(s) and employee(s), in charge of or responsible for the Note dated March 27, 1980, a copy of which is attached to plaintiff's Amended Motion For Judgment as Exhibit B (herein referred to as "Note").

4. State the date on which the Note was first in default and the date of each default thereafter.

5. State the calculation and method by which the Bank arrived at the "amount of \$7,559.61 together with interest thereon from July 15, 1981" as stated in its Amended Motion For Judgment and state the information and data that forms the basis for such a claim.

THE AETNA CASUALTY & SURETY COMPANY

By John W. Burke  
Of Counsel

Henry H. McVey, III  
John W. Burke, III  
McGUIRE, WOODS & BATTLE  
1400 Ross Building  
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Second Interrogatories was hand delivered to Robert D. Perrow, Esquire, Wallerstein, Goode & Dobbins, 1011 East Main Street, Richmond, Virginia 23219 on this 29th day of March, 1982.

John W. Burke  
John W. Burke, III

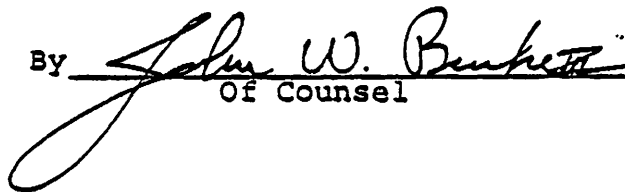
MOTION FOR SUMMARY JUDGMENT

Defendant, The Aetna Casualty & Surety Company, by counsel, pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia moves this Court to enter summary judgment in its favor for the reasons set forth in the accompanying Memorandum.

Respectfully submitted,

THE AETNA CASUALTY & SURETY COMPANY

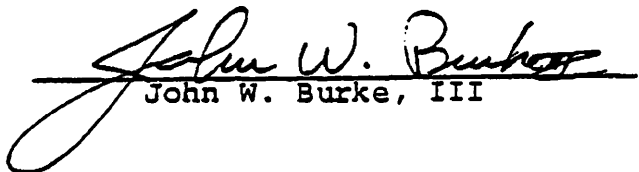
By

  
Of Counsel

Henry H. McVey, III  
John W. Burke, III  
McGUIRE, WOODS & BATTLE  
1400 Ross Building  
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion For Summary Judgment was hand delivered to Robert D. Perrow, Esquire, Wallerstein, Goode & Dobbins, 1011 East Main Street, Richmond, Virginia 23219 on this 31st day of March, 1982.

  
John W. Burke, III



A F F I D A V I T

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

FILED April 21, 1982  
TESTE: IVA R. PURDY, Clerk

By Iva R. Purdy D.C.

This day there appeared before me in my jurisdiction aforesaid Paul Tibbs who after first being duly sworn deposed as follows:

1. That he has been dealing with James K. Mathews of Mathews General Insurance Corporation since approximately 1958, and that he relied upon Mr. Mathews for all of his insurance needs;
2. That in March of 1980 he discussed with Mr. Mathews his insurance needs for the coming year; that Mr. Mathews indicated that the total premium would be between \$1,900 and \$2,100 and that he gave to Mr. Mathews a check for \$1,000 as a down-payment;
3. That as was his custom in years past, he executed a number of documents in blank in the office of Mr. Mathews, including a promissory note attached hereto and made a part hereof as Exhibit A (the Note);
4. That Mr. Mathews indicated to him that the Note would in approximately the principal sum of \$960 and that it would be repayable in 9 equal monthly installments; and that this procedure of both filing out document in blank and repaying the balance of premiums due in 9 installments through a bank loan had been in effect for a number of years;
5. That he received a payment book and audit confirmation with respect to the Note from Virginia Capital Bank (the Bank);
6. That he reported to Mr. Mathews that the payments were incorrect and that he returned to the Bank the audit confirmation stating that such payments were incorrect;
7. That upon receipt of past due notices from the Bank, he discussed the matter with Mr. Mathews who stated that he would straightenout the problem;
8. That he never made any payments to the Bank on the Note because the payments were incorrect and fully intended to make payments as and when proper payment schedule was received;
9. That he has discovered that Mr. Mathews did not purchase insurance and that he has no knowledge of any of the insurance policies as set forth on the assignment of such policies in favor of the Bank attached hereto and made a part hereof as Exhibit B.

And further this deponent sayeth not.

Paul M. Tibbs  
Paul Tibbs

Subscribed and sworn before me in my jurisdiction aforesaid  
this 5<sup>th</sup> day of February, 1981.

My commission expires: 3/19/83.

Will J. Schaefer  
Notary Public

FILED April 22, 1982  
TESTE: IVA R. PURDY, Clerk  
By Iva R. Purdy D.C.  
Clerk

ANSWERS TO SECOND INTERROGATORIES

The plaintiff, Virginia Capital Bank, for its answers to defendant's Second Interrogatories says as follows:

1. There were no accounts in the name of Paul M. Tibbs or Paul's Auto Sales. There was a checking account in the name of James K. Mathews and a checking account in the name of Mathews General Insurance Corporation which have been closed. The Bank objects to further answering Interrogatory no. 1 on the ground that the requested information is not relevant to the subject matter of this case or reasonably calculated to lead to the discovery of admissible evidence.

2. The Bank objects to answering Interrogatory no. 2 on the ground that the requested information is not relevant to the subject matter of this case or reasonably calculated to lead to the discovery of admissible evidence.

3. John Antrim, III  
No longer employed at Virginia Capital Bank.  
Last known address: 3818 Chamberlayne Avenue  
Apartment 14  
Richmond, Virginia 23227.

4. The Note was in default for the first payment due on April 25, 1980. Two payments were later received. See answer to Interrogatory no. 5.

5. (1) date of note - March 27, 1981  
(2) original amount of note - \$10,296.00  
(3) principal amount financed - \$9,600.00

- (4) first payment due - April 25, 1980  
(5) monthly payment amount - \$1,144.00  
(6) payments made:

4/28/80 payment (made 6/5/80)

principal portion	\$1,043.20
int. portion	+ 100.80
Total payment	<u>\$1,144.00</u>

5/25/80 payment (made 6/5/80)

principal portion	\$997.19
int. portion	146.81
including late chg.	
Total payment	<u>\$1,144.00</u>

- (7) Calculation of present principal balance:

original princ. amount	\$9,600.00
principal payment 4/25/80	-1,043.20
principal payment 5/25/80	- 997.19
Present principal bal.	<u>\$7,559.61</u>

VIRGINIA CAPITAL BANK

By Lucille Morelli  
Lucille Morelli  
Branch Manager and  
Assistant Cashier

Robert D. Perrow  
Robert D. Perrow  
WALLERSTEIN, GOODE & DOBBINS  
The Ironfronts  
1011 East Main Street  
P.O. Box 242  
Richmond, Virginia 23202

A F F I D A V I T

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

THIS DAY personally appeared before me in my jurisdiction aforesaid Lucille Morelli, who, after first being duly sworn, deposed as follows:

1. That Lucille Morelli is a duly elected Branch Manager of Virginia Capital Bank and as such is authorized and Assistant Cashier to make this Affidavit; and

2. That the allegations contained in the foregoing Answers to Second Interrogatories are true and correct to the best of her knowledge and belief.

SUBSCRIBED AND SWORN to before me this 20 day of April, 1982.

Carol H. Mady  
Notary Public

My commission expires:

My Commission Expires May 15, 1982

CERTIFICATE

I certify that on the 19th day of April, 1982, a true and correct copy of the foregoing Answers to Second Interrogatories was hand-delivered to John W. Burke, III, Esquire, McGuire, Woods & Battle, Ross Building, Richmond, Virginia 23219.

Virginia:

In the Circuit Court of the City of Richmond, Division 11,


the 4th day of June, 19 82

FINDINGS OF THE COURT

The Court, having considered the Motion of The Aetna Casualty & Surety Company for summary judgment, the memoranda of law, and the argument of counsel, doth conclude that while the bank note delivered by Tibbs to Mathews was altered by Mathews, without the knowledge or consent of Tibbs, said alteration was not the cause of the loss to Virginia Capital Bank, said loss being occasioned solely because of the insolvency or inability of Tibbs and Mathews to pay the Bank and that such loss is not covered by the Bond written by Aetna. The Court distinguishes this case from Citizens Bank of Oregon v. American Insurance Company, U.S.D.C. of Oregon, Jan. 25, 1968, where the pledged security was forged or counterfeited.

The decision to extend credit in this case was the exercise of a business judgment, and on the facts the Bank may enforce the note as completed. What it seeks to do here is have Aetna insure it against the insolvency or inability of Tibbs and Mathews to pay; in other words, to guarantee them against a loss occasioned by poor business judgment and not by the alteration.

Summary judgment for the defendant will be entered upon the presentation of a proper Order embodying these findings and preserving the objections of the plaintiff.

, Judge

cc: Robert D. Perrow, p.q.  
John W. Burke, III, p.d.

JUN 17 1982

ORDER GRANTING SUMMARY JUDGMENT

For good cause shown, upon careful consideration of the Motion For Summary Judgment of the Aetna Casualty & Surety Company, the Memoranda of Law and the argument of counsel, and for the reasons as set forth in the Findings Of The Court dated June 4, 1982, which findings are incorporated in this Order, it is hereby:

ORDERED AND ADJUDGED that the Aetna Casualty & Surety Company's Motion For Summary Judgment be and hereby is granted and that this action be and hereby is dismissed, to which action of the Court the plaintiff by counsel objected. A copy of this Order shall be sent to counsel of record.

A Copy,

Teste: Eva R. Purdy, Cle

By: Joyce C. Sneed  
Deputy Clerk

11/1/82

John W. Burkett  
Counsel for Defendant  
The Aetna Casualty & Surety  
Company

Seen and objected to:

Robert Perrow  
Counsel for Plaintiff  
Virginia Capital Bank



NOTICE OF APPEAL

Please take notice that the plaintiff, Virginia Capital Bank, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, appeals the final order of this Court, entered June 17, 1982. No transcript, statement of facts, testimony or other incidents of the case is to be hereafter filed.

VIRGINIA CAPITAL BANK

By Robert Perrow  
Of Counsel

Robert D. Perrow  
Keith L. Phillips  
WALLERSTEIN, GOODE & DOBBINS  
The Ironfronts  
1011 E. Main Street  
P. O. Box 242  
Richmond, Virginia 23202

CERTIFICATE

I certify that on the 25th day of June, 1982, a true and correct copy of the foregoing Notice of Appeal was ~~hand delivered~~ mailed postage prepaid to John W. Burke, III, McGuire, Woods & Battle, Ross Building, Richmond, Virginia 23219.

Robert Perrow

FILED June 28, 1982  
R. STE. WA R. PURDY, CLERK

By Robert D. Perrow clerk

### ASSIGNMENTS OF ERROR

1. The trial court erred in finding that the Bank's loss was not covered under the terms of the Banker's Blanket Bond.

2. The trial court erred in entering summary judgment in Aetna's favor because material facts are genuinely in dispute.