

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

The Honorable D. Craig Brown, Circuit Judge

Appellate Case No. 2018-001729
Circuit Court Case Number 2016-CP-10-0507

RECEIVED
JUN 03 2019
SC Court of Appeals

Buck Investments, LLC Respondent,

v

ROA, LLC, Deborah Rice-Marko, and
PNC Bank, N.A., successor to RBC Bank (USA) Defendants.

Of whom ROA, LLC, is the Appellant.

**RECORD ON APPEAL
VOLUME I OF II**

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BUCK INVESTMENTS, LC,

Plaintiff,

vs.

ROA, LLC, DEBORAH RICE-MARKO,
PNC BANK, N.A., successor to RBC
BANK (USA),

Defendants.

-and-

ROA, LLC and DEBORAH RICE-MARKO

Third-Party Plaintiffs,

vs.

EDGAR A. BUCK, JR.,

Third-Party Defendant.

2016-CP-10-507
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-4517

ORDER GRANTING DEFENDANT
PNC BANK'S MOTION FOR
SUMMARY JUDGMENT

2017 OCT 20 PM 3:29
JULIA R. RYAN
CLERK OF COURT

FILED

This matter came before the Court at 10:00 a.m. on Tuesday, October 10, 2017, for the purpose of hearing *PNC Bank's Motion for Summary Judgment as to Plaintiff's Specific Performance Cause of Action* filed August 28, 2017 ("Motion"). After a review of the Motion, related filings and hearing arguments from counsel for the parties, I hereby **GRANT** the Motion.

FINDINGS OF FACTS:

1. PNC Bank, N.A., successor to RBC Bank (USA) ("PNC") is the owner and holder of a recorded mortgage dated November 9, 2007 ("Mortgage") that encumbers the property that is the subject of this dispute, which is owned by Defendant ROA, LLC ("ROA") and located at 438

King Street in Charleston (the "Property").

2. The alleged contract ("Alleged Contract") between Plaintiff Buck Investments, LC ("Plaintiff") and ROA post-dated the Mortgage and was not recorded.

3. As set forth in Section 9 of the Mortgage, ROA is prohibited from selling the Property or encumbering the Property in any manner without PNC's consent.

4. Plaintiff seeks specific performance of the Alleged Contract, which would require ROA to sell the Property to Plaintiff and would require PNC to approve the sale.

5. PNC has not and does not consent to a sale pursuant to the Alleged Contract.

6. In Plaintiff's Second Amended Complaint filed on or about October 1, 2014, Plaintiff does not assert any claims or causes of action against PNC. Likewise, PNC has not asserted any claims or causes of action against Plaintiff.

CONCLUSIONS OF LAW:

PNC is entitled to summary judgment on Plaintiff's specific performance claim because:

1. Plaintiff cannot compel PNC to consent to the Alleged Contract due to PNC's Mortgage.

2. The Mortgage is superior to Plaintiff's Alleged Contract, and therefore the Alleged Contract cannot impair PNC's Mortgage rights.

3. Plaintiff has also not asserted any claims or causes of action against PNC, and therefore there is no genuine issue as to any material fact and PNC is entitled to judgment as a matter of law on Plaintiff's specific performance claim.

4. For these reasons, PNC's Motion is granted.

CONCLUSION

Based on the foregoing, PNC's *Motion for Summary Judgment as to Plaintiff's Specific*

Performance Cause of Action is granted. Therefore, it is hereby

ORDERED that PNC's Motion is hereby granted;

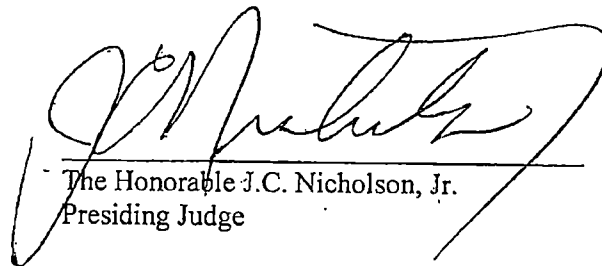
IT IS FURTHER ORDERED that PNC shall be dismissed as a party to this case, with prejudice; and

IT IS FURTHER ORDERED that PNC shall be removed from the case caption in this matter in all future filings.

AND IT IS SO ORDERED.

10/20, 2017

Charleston, South Carolina


The Honorable J.C. Nicholson, Jr.
Presiding Judge

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-0507

BUCK INVESTMENTS, LLC

ROA, LLC,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

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

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Unanimous Jury Verdict in favor of the Plaintiff in the amount of \$900,000.00 actual damages. Parties have ten (10) days for any post-trial motions.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Buck Investments, LLC	ROA, LLC	\$ 900,000.00
		\$
		\$

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

Morgan Templeton

Willard Hanna

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Kay Richardson

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 2016-CP-10-0507

Buck Investments, LLC,)

Plaintiff,)

-vs-)

VERDICT FORM

ROA, LLC; Deborah Rice Marko,)

Defendants.)

We, the jury, unanimously find that the Plaintiff, Buck Investments, LLC, has proven damages by a preponderance of the evidence in the amount of \$ 900,000.

July 25, 2018

Allison J. Baumig
Forelady

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-0507

BUCK INVESTMENTS, LLC

ROA, LLC, DEBORAH RICE-MARKO, PNC BANK, N.A.
Successor to RBC BANK (USA)

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Defendant's Motion for JNOV (Rule 50(b), SCRCP, or, in the Alternative, to Alter

Or Amend the Judgment (Rule 59(e), SCRCP,
is hereby DENIED.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2160

Judge Code

8/13/2018

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C.A. NO.: 2013-CP-10-4517

BUCK INVESTMENTS, LC,
Plaintiff,

-versus-

ROA, LLC, DEBORAH RICE-MARKO,
PNC BANK, N.A., successor to RBC
BANK (USA),

Defendants

AMENDED COMPLAINT
(non-jury)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT -1 PM 3:58

FILED

COMES NOW, the Plaintiff above named, Buck Investments, LC ("Buck"), complaining of the Defendants above named, alleges and states that:

1. The Plaintiff, Buck, is a South Carolina Corporation doing business in Charleston County, South Carolina.
2. The Defendant ROA, LLC, ("ROA") is, upon information and belief, a South Carolina corporation doing business in South Carolina, specifically, in Charleston County, South Carolina. The Defendant, Deborah Rice-Marko, ("Marko"), is upon information and belief, a citizen and resident of Charleston County, South Carolina and member and/or managing member of ROA. The Defendant, PNC Bank, N.A., is the successor to RBC Bank (USA) (hereinafter "PNC") and is a corporation existing under one of the states of the United States, and is licensed to do business in Charleston County, South Carolina.
3. This Court has both personal and subject matter jurisdiction over this matter and venue is proper as the events which give rise to this lawsuit took place in Charleston County.

FACTUAL ALLEGATIONS

4. This action surrounds the contract for the sale, and corresponding foreclosure, of real property known as 438 King Street in Charleston County, South Carolina and having TMS# 460-16-02-066 ("the Property"). Charleston County tax records indicate that ROA purchased the Property on April 17, 2007. Upon information and belief, the Property was collateral for loans issued to Marko and ROA by PNC.

5. On November 26, 2012, Marko and ROA received a first Notice of Default from PNC notifying Marko and ROA that loans provided to Marko and ROA were in default, that PNC was requesting payment of the balances of the loans, and if payment was not received PNC would move forward with collection efforts, to include pursuit of any collateral securing the notes.

6. On or about January 25, 2013, Marko executed a Letter of Intent ("LOI") on behalf of ROI with Buck to contract to sell the Property. At the time of executing the LOI, Marko had knowledge that PNC had placed the loans issued to Marko and ROA in default, that PNC sought collection of said loans, and that PNC would pursue collateral securing the notes on said loans if the loans were not satisfied. A copy of the LOI is attached hereto as Exhibit "A" and is incorporated by reference.

7. As a condition of the LOI, ROA was obligated to provide "title to the Property shall be good and marketable and conveyed at settlement fee simple by limited warranty deed, free and clear of all liens and encumbrances." Exhibit A at ¶6. Marko and ROA knowingly and intentionally omitted and/or misrepresented facts concerning the status of the Property to Buck and in doing so induced him to execute the LOI. Had Buck known of the circumstances surrounding the Property at that time, which were material to Marko's and ROA's ability to perform, and material to Buck's

purchasing the Property, Buck would not have agreed to the LOI.

8. On February 15, 2013, Marko and ROA received a second Notice of Default from PNC, notifying Marko and ROA that loans provided to Marko and ROA were in default, that PNC was accelerating the outstanding balances, and that if such balances were not paid within 10 days, PNC would pursue its rights upon default, including litigation and foreclosure. As of February 15, 2013, Marko and ROA were in discussions with Buck, pursuant to the LOI, to pursue a contract to sell the Property to Buck. ROA failed to notify Buck of the second Notice of Default. Had Buck known of the circumstances surrounding the Property at that time, which were material to Marko's and ROA's ability to perform, and material to Buck's purchasing the Property, Buck would have not have agreed to the LOI.

9. Instead of notifying Buck of the status of the Property, Marko and ROA continued with their negotiations and subsequently signed a Real Estate Sales Agreement ("Agreement") to sell the Property to Buck on March 20, 2013. Marko signed the contract on behalf of ROA. The proper representative of Buck signed on behalf of the purchaser. The Agreement constituted a valid contract in that it contains an offer, acceptance, and is supported by valuable consideration. Buck supplied earnest money of \$50,000.00 to the designated escrow agent for this transaction. At all times, Buck has stood ready, willing, and able to perform its obligations under the Agreement and move forward with the purchase of the Property. Time was of the essence for this real estate transaction. The closing of the Property was set for April 3, 2013. A copy of the Agreement is attached hereto as Exhibit "B" and is incorporated by reference.

10. The Agreement provided that Seller (Marko and ROA) represented and warranted to Purchaser (Buck) that "to the best knowledge of the Seller (Marko and ROA) there is no actual or

threatened, litigation, or proceeding by any organization, person, individual, or government authority against the Property, or with respect thereto.” Marko and ROA had knowledge of the threat of litigation and foreclosure proceedings as provided in, but not limited to, the Notices of Default dated November 26, 2012, and February 15, 2013. Marko and ROA knowingly and intentionally omitted and/or misrepresented or failed to disclose this information concerning the status of the Property to Buck and in doing so induced him to execute the Agreement. Had Buck known of the circumstances surrounding the Property at that time, which were material to Marko’s and ROA’s ability to perform under the Agreement, and material to Buck’s purchasing the Property, Buck would not have signed the Agreement.

11. Subsequent to executing the Agreement and up until the closing date of April 3, 2013, Marko and ROA knowingly and intentionally omitted and/or misrepresented the status of the Property to Buck and in doing so induced Buck to pursue the closing of the Property, causing Buck to expend time and money.

12. ROA failed to close on the Property on or before April 3, 2013, did not have a legal cause to refuse performance, and at all times represented to Buck that it would proceed to closing pursuant to the terms of the Agreement.

13. Buck notified ROA of its obligation to cure the default under the contract on May 14, 2013, reserving all other rights under the contract. The default was not cured.

14. PNC has a mortgage and/or lien on the Property and has filed a lis pendens on the Property. Further, PNC initiated foreclosure proceedings against Marko and ROA, which included the Property. That foreclosure proceeding remains pending in Charleston County Court of Common Pleas. The foreclosure proceedings were commenced after the date that the closing was to take

place. Further, the lis pendens was filed after the date performance was to occur.

15. Upon information and belief, Marko is the sole member of ROA and is subject to liability for any breach of a common law duty of care owed to Buck.

16. Upon information and belief, Marko and ROA had knowledge of Buck's intention to pursue an investment exchange under 26 U.S.C. § 1031 ("1031 Exchange"), through the course of negotiations up and until the closing date of April 3, 2014. Despite having knowledge of Buck's intentions to pursue a 1031 Exchange, and the implications to Buck should Buck be forced to forego that opportunity, Marko and ROA continued to knowingly and intentionally omit and/or misrepresent the status of the Property to Buck, ultimately causing Buck to forego its investment opportunity and suffer pecuniary loss.

17. As a result of the acts of Defendants, Buck has suffered pecuniary damage including but not limited to profit loss, loss of rents, loss of investment opportunity, and loss of investment opportunity pursuant to 26 U.S.C. § 1031.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Specific Performance)
(As to ROA)**

18. Buck re-alleges and re-avers the allegations contained in paragraphs 1 through 17 as if fully set forth herein.

19. A valid and enforceable contract was entered between Buck and ROA, and such contract was breached by ROA and/or unjustifiably failed to perform by ROA. The contract is valid in that it contains an offer, acceptance, and is supported by valuable consideration. As a proximate result of ROA's breach, Buck suffered damages.

20. Buck remains ready, willing, and able to perform its obligations under the contract

and believes that ROA should be compelled to perform under the terms and conditions of the contract.

**FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)
(As to Defendants ROA and Deborah Rice-Marko)**

21. Buck re-alleges and re-avers the allegations contained in paragraphs 1 through 20 as if fully set forth herein.

22. Defendants made false representations to Buck as to the status of the Property, including but not limited to knowingly and intentionally omitting and misrepresenting that Defendants were in default on loans secured by the Property, that PNC had requested the balance of said loans from Defendants, and that PNC intended to pursue litigation including foreclosure proceedings on the Property.

23. Defendants had a pecuniary interest in making the representation.

24. Defendants owed a duty of care to Buck to communicate truthful information as to the Property.

25. Defendants breached their duty of care to communicate truthful information to Buck.

26. Buck was not aware of the falsity of the Defendants' knowing and intentional omissions and representations and Buck justifiably relied to its detriment upon such representations.

27. The risk of harm to Buck was foreseeable to Defendants.

28. As a direct and proximate result of Buck's justifiable reliance on Defendants' false representations, Buck suffered pecuniary loss and is entitled to recover actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION
(Fraudulent Misrepresentation)
(As to Defendants ROA and Deborah Rice-Marko)**

29. Buck re-alleges and re-avers the allegations contained in paragraphs 1 through 28 as if fully set forth herein.

30. Defendants made false representations to Buck as to the status of the Property, including but not limited to knowingly and intentionally omitting and misrepresenting that Defendants were in default on loans secured by the Property, that PNC had requested the balance of said loans from Defendants, and that PNC intended to pursue litigation including foreclosure proceedings on the Property. The false representations were material to Buck's purchasing the Property and the performance of the Agreement.

31. Defendants knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity, as Defendants were in receipt of two "Notices of Default" from PNC as to the status of the Property as Defendants continued to negotiate, and pursue the Agreement with Buck.

32. Defendants intended that Buck act upon the false representations as to the Property.

33. Buck was ignorant as to the falsity of the Defendants' knowing and intentional omissions and representations.

34. Buck actually and justifiably relied upon the false representations made by Defendants.

35. As a direct and proximate result of Buck's justifiable reliance on Defendants' false representations, Buck suffered pecuniary loss and is entitled to recover actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION
(Constructive Fraud)
(As to Defendants ROA and Deborah Rice-Marko)**

36. Buck re-alleges and re-avers the allegations contained in paragraphs 1 through 35 as if fully set forth herein.

37. Defendants made false representations to Buck as to the status of the Property, including but not limited to knowingly and intentionally omitting and misrepresenting that Defendants were in default on loans secured by the Property, that PNC had requested the balance of said loans from Defendants, and that PNC intended to pursue litigation including foreclosure proceedings on the Property and Defendants. The false representations were material to Buck's purchasing the Property and the performance of the Agreement.

38. Defendants should have known that the representations made to Buck were false.

39. Defendants intended that Buck act upon the false representations as to the Property.

40. Buck was ignorant as to the falsity of the Defendants' knowing and intentional omissions and representations.

41. Buck actually and justifiably relied upon the false representations made by Defendants.

42. As a direct and proximate result of Buck's justifiable reliance on Defendants' false representations, Buck suffered pecuniary loss and is entitled to recover actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)
(As to Defendants ROA and Deborah Rice-Marko)**

43. Buck re-alleges and re-avers the allegations contained in paragraphs 1 through 42 as if fully set forth herein.

44. Defendants breached a valid and enforceable contract for the sale of the Property with Buck.

45. Defendants fraudulently intended to breach the contract with Buck.

46. Defendants committed fraudulent acts accompanying the breach of contract with Buck, including but not limited to knowingly and intentionally omitting and misrepresenting that Defendants were in default on loans secured by the Property, that PNC had requested the balance of said loans from Defendants, and that PNC intended to pursue litigation including foreclosure proceedings on the Property. Defendants course of conduct towards Buck persisted over the course of approximately three months, in spite of knowledge of the default and pending litigation/foreclosure proceedings.

47. As a direct and proximate result of Defendants fraudulent intent and fraudulent acts in breaching the contract, Buck suffered pecuniary loss and is entitled to recover actual and punitive damages.

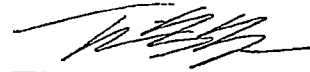
WHEREFORE, Plaintiff prays for judgment against Defendants requiring performance under the contract, recovery of punitive damages incurred as a proximate result of the acts of Defendants, together with the cost of this matter, attorneys fees, and for such other and further relief as this Court may deem just and proper.

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

Dated this 1st day of October, 2014.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



Morgan S. Templeton
Neil S. Haldrup
Thomas B. Boger
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
Attorneys for Plaintiff

EXHIBIT “A”



January 15, 2013

ROA, LLC
Mrs. Debbie Rice Marko
P.O. Box 817
Charleston, SC 29402

Re: Letter of Intent - 438 King Street

Dear Mrs. Marko,

We are pleased to submit this Letter of Intent for the purchase of 438 King Street, Charleston, SC. The proposed terms are as follows:

LETTER OF INTENT

1. The buyer is Buck Investments, LLC and/or assigns.
2. The property consists of the following parcels:
438 King Street
Charleston, SC 29403
TMS#: 469-16-02-066
3. The purchase price shall be \$3,500,000.00 and shall be paid as follows:
a. Fifty Thousand Dollars (\$50,000) earnest money deposit upon seller's approval of the Purchase Contract to be held by Roadstead Real Estate Advisors, LLC, as escrow agent.
b. Balance of Purchase Price at Settlement.
4. The Buyer and Seller agree to work in good faith to sign a Purchase Contract within ten (10) days from the date of Seller's approval of this Letter of Intent.

Buck001009

5. Settlement shall be held on or before 30 days after the end of the due diligence period, but shall not be later than March 31, 2013.

6. Title to the Property shall be good and marketable and conveyed at settlement fee simple by limited warranty deed, free and clear of all liens and encumbrances.

a. Seller shall, within five days from the full execution of a contract, deliver to Purchaser copies of the leases, surveys, and any other documents pertinent to the sale of the property that are in the possession of the Seller.

b. Seller shall pay for all transfer and documentary taxes relating to the conveyance of the Property.

7. The Purchase Contract and Buyer's obligation to close will be contingent upon the following:

a. Buyer shall have sixty (60) days from the effective date of the Purchase Contract to conduct a due diligence review of the Property. Seller and its agents shall cooperate with the Buyer in its due diligence review.

b. If the Buyer is not satisfied with the results of the due diligence Review, (prior to the end of the due diligence period), the Buyer may terminate the Purchase Contract, receive back its earnest money deposit and neither party shall have any liability or responsibility to the other under the Purchase Contract.

c. All attorney fees and other costs associated with the Purchase Contract, loan closing, and settlement shall be paid by the party incurring them.

8. The Buyer and Seller shall both be responsible for paying a brokerage fee to Roadstead Real Estate Advisors, LLC of Fifty thousand dollars (\$50,000.00) upon closing. The Buyer is represented by Roadstead Real Estate Advisors, LLC. Both the Seller and the Purchaser acknowledge and understand that no other agent is involved in this transaction.

[Handwritten signatures and initials]

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9. Both Buyer and Seller will mutually work together for the completion of a 1031 transaction.

10. All negotiations and correspondence are to be held as confidential.

If this Letter of Intent is acceptable, please sign and return to us. We look forward to completing this transaction with you. This Letter of Intent outlines the basic terms that are acceptable to the Buyer. However, neither the Buyer nor the Seller shall be bound by this Letter of Intent until a full contract is executed by both parties.

With best regards,

Geoff Groat

Daniel Atwill

Accepted and Agreed:

Raa

By: Atwill Dan Atwill
As Seller

Dated: 1/12/2013

Atwill Dan Atwill
1/28/2013

By: [Signature]
As Purchaser

Dated: 1-16-13

1-25-13

EXHIBIT “B”

REAL ESTATE SALES AGREEMENT

20 THIS REAL ESTATE SALES AGREEMENT (the "Agreement") is entered into as of this the day of March, 2013 (the "Effective Date") by and between ROA, LLC ("Seller"), and Buck Investments, LLC ("Purchaser"). Seller and Purchaser are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

- A. Seller owns TMS# 460-16-02-066, 438 King St.
- B. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, such real property on the terms and conditions of this Agreement.

AGREEMENT:

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which the Parties hereto acknowledge, and in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

1. **PURCHASE AND SALE OF PROPERTY.** Subject to and in accordance with the terms and conditions of this Agreement, Seller agrees to sell and to convey to Purchaser, and Purchaser agrees to purchase from Seller, the following described real property:

(a) The real property located in or near the City of Charleston, County of Charleston, State of South Carolina, more particularly described or graphically depicted on Exhibit A attached hereto and made a part hereof, and any improvements thereon (collectively, the "Land"); and

(b) Together with all right, title, and interest of Seller, including any after-acquired title or reversion, in and to the roads, streets, avenues, and alleys adjoining the Land (all of the foregoing property being hereinafter referred to collectively as the "Property");

(c) Purchaser will at closing assume all leases for space in the Property, but will not assume any management contracts, leasing agent agreements, service contracts or non-lease contracts or obligations of Seller.

2. **PURCHASE PRICE; EARNEST MONEY.** The purchase price and terms of payment, subject to all adjustments and credits hereinafter provided, shall be as follows:

(a) The purchase price for the Property shall be Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (the "Purchase Price") payable as follows:

(i) Purchaser shall pay Fifty Thousand and 00/100 Dollars (\$50,000.00) representing an earnest money deposit to McNair Law Firm, as escrow agent (the "Escrow Agent"), within three (3) business days after receipt by Purchaser of this Agreement as signed by Seller. As used in this Agreement, "business day" means any day that is not a Saturday, a Sunday, or a day on which banks in South Carolina are closed. The Earnest Money shall be non-refundable to Purchaser except as otherwise set forth in this Agreement. The Earnest Money shall be applied to the Purchase Price at Closing (hereinafter defined).

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(ii) Purchaser shall pay the balance of the Purchase Price at the time of consummation of the purchase and sale contemplated hereby (the "Closing"), less any prorations as hereinafter provided. Payment under this Section 2(a)(ii) shall be made by wire transfer of funds in accordance with written wire transfer instructions given by Seller to Purchaser before Closing or by delivery of an official bank check or an attorney's or title company's trust account check.

(b) Seller and Purchaser hereby appoint Escrow Agent to serve as Escrow agent hereunder and Escrow Agent signs this Agreement for the sole purpose of accepting its engagement as escrow agent pursuant to the terms of this Agreement and agreeing to be bound by the applicable terms hereof. Seller and Purchaser acknowledge and agree that the Earnest Money shall be deposited by Escrow Agent in a non-interest bearing account. Seller and Purchaser jointly and severally release and waive any claims they may have against Escrow Agent that may result from Escrow Agent's performance in good faith of its function hereunder, specifically including, but not limited to, any delay in electronic wire transfer of funds. Escrow Agent shall be liable only for loss or damage caused by its acts of gross negligence or intentional misconduct while performing services as an escrow agent, and Escrow Agent shall not be liable for any loss or damage resulting from (i) any default, error, action or omission of any other party, (ii) the expiration of any time limit unless such time limit was known to Escrow Agent and such loss is solely caused by failure of Escrow Agent to proceed in its ordinary course of business, or (iii) Escrow Agent complying with any and all legal process, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

3. INSPECTION PERIOD

(a) From and after the Effective Date, Purchaser and its agents shall have Ten (10) days (as may be extended pursuant to Section 3(b)) the "Inspection Period") to study and to inspect the Property and to conduct due diligence on the Property. Promptly after Seller's receipt of a counterpart of this Agreement as signed by Purchaser (but not later than five (5) days after such receipt) Seller shall deliver to Purchaser the following: all leases; copies of title opinions; title insurance policies; deeds; deeds of trust; mortgages; title exceptions; building plans; current survey; and environmental studies.

(b) If Purchaser determines in its sole discretion that the Property is not suitable for Purchaser for any reason, then at any time before 5:00 p.m. (Charleston, South Carolina time) on the last day of the Inspection Period, Purchaser may terminate this Agreement by giving Seller and Escrow Agent written notice of such termination (which may be given by facsimile or electronic mail on the last day of the Inspection Period), and upon Escrow Agent's receipt of a copy of such termination, Escrow Agent shall promptly thereafter pay the Earnest Money to Purchaser.

(c) During the Inspection Period, Purchaser shall have a license to enter upon the Property to make any inspections, tests, and studies (excluding environmental assessments) that Purchaser deems necessary with respect to its purchase and use of the Property. Such inspections, tests, and studies shall be conducted in such a manner as to minimize damage to the Property and disturbance to existing Tenant and its business operations; in the event Purchaser does not purchase the Property, Purchaser agrees to repair any damage caused by such inspections, tests, or studies to the extent commercially practicable. Purchaser shall indemnify, defend, and hold harmless Seller and its officers, employees, agents, representatives, invitees, and contractors against any injury or damage caused by the entry of Purchaser or its agents, representatives, consultants, or contractors upon the Property in connection with exercise of the inspection right granted to Purchaser under this Section 3, unless due to any actions of Seller, its employees, agents, representatives, consultants, contractors, or invitees. Purchaser shall

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promptly after receipt provide Seller with a copy of any written and final inspection report(s), tests, and studies prepared by or on behalf of Purchaser regarding the Property.

(d) In conducting any inspections, investigations, or tests of the Property, Purchaser and its agents and representatives shall: (i) not unreasonably interfere with the maintenance of the Property; (ii) not injure or otherwise cause bodily harm to Seller or its respective agents, guests, invitees, contractors, and employees or any tenants or their agents, guests, invitees, contractors, and employees; (iii) comply with all applicable laws; (iv) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (v) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (vi) before conducting any Phase II or other invasive testing of the Property, Purchaser shall first obtain from Seller written authorization, to be granted at Seller's sole discretion, prior to beginning any such testing. Purchaser shall bear the cost of all such inspections or tests. Any liability of Purchaser arising under the obligations of this Section 3(e) shall survive any termination of this Agreement.

4. **TITLE EXAMINATION/ OBJECTIONS:** During the Inspection Period, Purchaser shall conduct an examination of title to the Property, which shall result in the issuance by a title insurance company of Purchaser's choosing (the "Title Company"), of a title insurance commitment or a title opinion or title report with respect to the status of title to the Property (the "Title Report"). Within five (5) business days after receipt of the Title Report and any new survey of the Property obtained by Purchaser, Purchaser shall give Seller copies of such documents. If an exception to title not acceptable to Purchaser appears on the Title Report or the new survey, Purchaser shall give Seller notice of the exception within ten (10) business days after receipt of the Title Report or the survey, as the case may be. Seller shall have a reasonable period, not to exceed fifteen (15) days after receipt of notice from Purchaser (the "Cure Period"), to elect to remove any such exception as long as Purchaser provides written notice of such exception within the Inspection Period, or to provide Purchaser written notice that it will not remove such exception. If Seller elects not to remove the title exception, or cannot do so within the Cure Period, then Purchaser shall have the right (but not the obligation) to: (i) extend the Cure Period, (ii) accept title to the Property subject to the exception, which shall then become a Permitted Exception, without reduction in the Purchase Price; or (iii) terminate this Agreement, in which case Escrow Agent shall promptly return the Earnest Money to Purchaser. In the instance when the Seller elects not to remove an exception and Purchaser elects to terminate the Agreement, then Seller agrees to reimburse Purchaser for expenses incurred by Purchaser directly related to its due diligence. For purposes of clarification, in no event shall an exception which has been removed from the Title Report thereafter be deemed a Permitted Exception hereunder. Seller shall be required to remove at closing those exceptions which can be removed by paying an ascertainable sum of money, such as mortgages, liens, unpaid taxes, and special assessments.

5. **ESTOPPEL CERTIFICATES:** Prior to Closing, Seller shall request estoppels certificate from all Tenants. The estoppel certificate shall be substantially in the form attached hereto as Exhibit B (the "Estoppel Certificate"). Seller will make every good faith effort to obtain the estoppels from all Tenants.

6. REPRESENTATIONS AND WARRANTIES:

(a) Seller does hereby warrant and represent to Purchaser as follows:

(i) Seller holds fee simple title to the Property, subject to the Permitted Exceptions (as defined herein). For purposes of this Agreement, "Permitted Exceptions" shall be (A) the lien of real estate taxes, taxes imposed by special assessment and water/sewer/vault, public space and other public charges, which are now or due and payable; (B) all applicable laws (including zoning,

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building ordinances and land use regulations), (C) all matters which would be disclosed by a personal inspection or an accurate survey of the Property, and (D) all easements, restrictions, covenants, agreements, conditions, or other matters of record, excluding any such matters that Seller commits in writing to cure prior to Closing pursuant to Section 4 above;

(ii) To the best knowledge of the Seller there is no actual or threatened action, litigation, or proceeding (including, but not limited to, condemnation) by any organization, person, individual, or governmental authority against the Property, or with respect thereto;

(iii) Seller has not received written notice of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property, nor has Seller received written notice that the buildings and improvements thereon, if any, do not comply with all applicable legal requirements with respect to the use, occupancy, and construction thereof; and

(iv) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder. This Agreement has been duly authorized, executed, and delivered by all necessary action on the part of Seller and constitutes the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

(v) To the best knowledge of the Seller and except as may be set forth in the environmental reports, if any, to be furnished to the Purchaser prior to the expiration of the Inspection Period, there are no Hazardous Materials, as hereinafter defined, used, stored, buried or otherwise located on the Real Property or used in the operation of the Property in violation of federal, state or local law; the operation of the Property is, in all material respects, in compliance with all Environmental Laws, as hereinafter defined; there are no prior or pending investigations, inspections, audits or claims relating to compliance with Environmental Laws by the Seller or its predecessors in title to the Real Property.

"Hazardous Materials" means any flammable, explosives, radioactive materials, radon, asbestos, and any paints, solvents, chemicals, petroleum products, or other man-made materials with hazardous or carcinogenic or toxic characteristics, including without limitation any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", or "contaminants" under any applicable federal or state or local laws, ordinances, rules or regulations. "Environmental Laws" means any applicable federal, state or local laws, ordinances, or regulations pertaining to Hazardous Materials, occupational safety, occupational health, industrial hygiene, historic preservation, or environmental conditions.

(vi) Seller warrants that the Landlord is in full compliance with its obligations of leases:

(b) All representations and warranties contained in this Section 6 shall be deemed remade as of Closing and shall survive Closing for a period of ninety (90) days.

(c) EXCEPT AS OTHERWISE SET FORTH HEREIN OR IN ANY OF THE CLOSING DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING, INCLUDING, WITHOUT LIMITATION, THE DOCUMENTS SPECIFIED IN SECTION 10(f) (the "SELLER CLOSING DOCUMENTS"), SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, MAKE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY. PURCHASER AGREES THAT, WITH RESPECT TO THE PROPERTY, PURCHASER HAS NOT

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RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER, EXCEPT FOR THOSE REPRESENTATIONS OR WARRANTIES SET FORTH HEREIN OR IN ANY OF THE SELLER CLOSING DOCUMENTS. PURCHASER AGREEING THAT IT IS RELYING SOLELY ON ITS OWN DUE DILIGENCE IN PROCEEDING TO CLOSING AFTER EXPIRATION OF THE INSPECTION PERIOD. EXCEPT AS PROVIDED HEREIN, SELLER SHALL SELL AND CONVEY TO PURCHASER, AND PURCHASER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND, WITH ALL FAULTS.

(d) Purchaser does hereby warrant and represent to Seller as follows:

(i) Purchaser has full power and authority to enter into this Agreement and to perform all of its obligations hereunder. This Agreement has been duly authorized, executed, and delivered by all necessary action on the part of Purchaser and constitutes the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms.

(ii) Purchaser is not insolvent (as such term is defined in Section 101(32) of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code")) and will not become insolvent as a result of entering into and consummating this Agreement or the transactions contemplated hereby (including, without limitation, the purchase of the Property), nor are the transfers to be made hereunder or obligations incurred in connection herewith made or incurred by Purchaser with any intent to hinder, delay, or defraud any creditors to which Purchaser is or becomes indebted. Purchaser acknowledges that it is receiving new, fair, reasonably equivalent value in exchange for the transfers and obligations contemplated by this Agreement, and affirmatively represents that neither its entry into this Agreement nor its consummation of the transactions contemplated hereby constitutes a fraudulent conveyance or preferential transfer under the Bankruptcy Code or any other federal, state or local laws affecting the rights of creditors generally.

(iii) Purchaser is not a nonresident alien or foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder);

(iv) Purchaser is not a disregarded entity as defined in 26 CFR § 1.1445-2(b)(2)(iii); and

(v) Neither Purchaser nor any director, officer, agent, employee, or affiliate of Purchaser currently is subject to any United States sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

7. CONDITIONS TO PURCHASER'S OBLIGATION TO PURCHASE. The obligation of Purchaser to purchase the Property from Seller is subject to the satisfaction on or before Closing of the following conditions (collectively, the "Closing Conditions"), any of which may be waived in whole or in part in writing by Purchaser at or prior to Closing.

(e) The representations and warranties made by Seller in this Agreement shall be materially true as of the date of Closing, and:

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(b) There shall not be a material adverse change to the condition of the Property following the expiration of the Inspection Period or the condition of title to the Property following the expiration of the Cure Period, which is not caused by Purchaser. In the event that there is a material adverse change to the condition of the Property (including the environmental condition of the Property), or condition of title to the Property as provided above, Purchaser shall provide written notice to Seller identifying such material adverse change and Seller shall have a period of fifteen (15) days from receipt of such notice to correct such material adverse change and Closing shall be postponed as necessary to permit Seller the entire fifteen (15) day correction period. If Seller does not correct such material adverse change within such fifteen (15) day correction period, Purchaser may, in writing, either (i) terminate this Agreement, at which time all of the Earnest Money shall be returned to Purchaser; or (ii) Purchaser and Seller may mutually agree to extend Seller's cure period under this Section 7(b) for at least ten (10) business days.

8. **INDEMNIFICATION.** Seller agrees to defend, indemnify, and hold Purchaser harmless from and against, and to reimburse such persons with respect to, any and all third-party claims, demands, losses, damages (excluding consequential damages), liabilities, causes of action, judgments, penalties, costs, and expenses (including reasonable attorneys' fees actually incurred at standard hourly rates, expenses reasonably incurred, and court costs and costs of investigation and remediation) incurred by Purchaser arising out of the breach of any representation or warranty of Seller as set forth herein. This Section 8 shall survive Closing for a period of ninety (90) calendar days.

9. **BROKERAGE COMMISSION.** Seller and Purchaser shall each owe a finder's fee / commission of Fifty Thousand and No/100 (\$50,000.00) Dollars to be paid at Closing to Roadstead, LLC and such finder's fee / commission shall only be earned and paid upon completion of this transaction at Closing. Except as stated above, Seller and Purchaser warrant and represent to the other that neither has employed any investment banker, broker, finder, or intermediary in connection with the transactions contemplated hereby who is entitled to any compensation, fee, or commission in connection with the execution or delivery of this Agreement or the consummation of the transaction contemplated hereby. Each Party agrees to defend, indemnify, and hold harmless the other against any such claim asserted by any investment banker, broker, finder, or intermediary. This indemnification shall survive Closing.

10. **CLOSING**

(a) Unless extended in writing by agreement of the Parties and subject to the satisfaction or waiver of the Closing Conditions, Purchaser and Seller shall consummate and close the sale contemplated by this Agreement on Wednesday, April 03, 2013, or at such earlier date and time if agreed to by both parties. Time is of the Essence.

(b) Ad valorem taxes, assessments, user fees, rents, common area maintenance charges, and other items of income and expense relating to the property for the calendar year in which Closing occurs shall be adjusted and prorated between Seller and Purchaser as of 12:01 a.m. on the Closing Date, based on a 365-day year as follows:

(i) Base rents actually collected prior to the Closing shall be prorated as of the Closing Date. Purchaser shall receive a credit for any amounts of free or reduced rent allowed any tenant of the Property for any time period after the Closing Date. Rent received by Purchaser after Closing shall be first applied to all unpaid rent accruing after the Closing Date, then to the month in which the Closing occurs, and then to periods prior to the Closing Date.

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(ii) To the extent possible, percentage rents collected prior to the Closing shall be prorated at Closing as if received ratably throughout the year.

(iii) Additional rent collected from tenants under the Leases to cover taxes, insurance, utilities, maintenance, marketing and other operating costs and expenses (commonly known as "common area maintenance charges") shall be prorated as of the Closing Date along with the expenses for which such charges are collected. To the extent estimated payments on account of such charges have been collected from tenants, such payments shall be prorated at Closing. Seller shall provide Purchaser with a statement of current common area maintenance charges, taxes and insurance amounts for each tenant. Such statement shall list the amounts paid and the full amounts owed by each tenant until Closing, and the sums due from or to each tenant. The actual charges for the year in which Closing occurs shall be prorated as of the Closing Date.

(iv) Real estate taxes and assessment for the current year shall be prorated, whether or not due and payable. If real estate taxes for the current year cannot be ascertained, those for the previous year shall be utilized with allowance for the discount allowed by law.

(v) At the end of the calendar quarter following the Closing, Purchaser shall prepare and present to Seller a recalculation of any and all amounts due under this subsection (b), based on actual figures rather than estimates if any, used in calculating the prorations made at Closing and reflecting the results of the final accounting and adjustments for common area maintenance charges for the year in which the Closing occurs. The parties shall make the appropriate adjusting payment between them within 30 days of delivery of any such recalculation, and shall at Closing enter into a proration agreement to that effect. Prorations for real estate taxes as provided in Section 10(b)(iv) above, however, shall be final and not subject to recalculation post-Closing.

(c) Seller shall pay all required documentary stamps and other transfer taxes as required by state law, as well as Seller's attorney's fees.

(d) Purchaser shall pay the cost of recording the limited warranty deed and Purchaser's attorney's fees.

(e) All security deposits, if any, in the possession of Seller, but Seller shall have no liability to Purchaser for any tenant security deposits not actually paid to Seller.

(f) At Closing, Seller will deliver to Purchaser the following documents:

(i) A. Limited Warranty Deed to the Property.

(g) At Closing, Purchaser shall deliver to Seller a sum equal to the balance of Purchase Price as herein provided. Escrow Agent shall deliver the Fifty Thousand Dollar (\$50,000.00) Earnest Money to Seller at Closing.

11. RISK OF LOSS. Seller shall bear all risk of condemnation, and of loss, damage, or destruction to the Property prior to Closing.

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12. DEFAULT.

(a) By Seller. If Seller defaults by failing to close for reasons within the Seller's control, then provided Purchaser is not in default hereunder (and provided Purchaser has notified Seller of the specific nature of the default and allowed Seller a thirty (30) calendar day period to cure such default), Purchaser may declare this Agreement terminated thereby releasing Purchaser from any further obligations to Seller pursuant to this Contract, in which event Purchaser shall have the option of either having all Earnest Money immediately returned and forfeited to Purchaser as liquidated damages or Purchaser may exercise its right to sue for specific performance whereby Seller shall be required to perform. In the event Purchaser shall require specific performance, the Earnest Money shall apply to the Purchase Price.

(b) By Purchaser. If Purchaser defaults in any of its obligations under this Agreement, then provided Seller is not in default hereunder (and provided Seller has notified Purchaser of the specific nature of the default and allowed Purchaser a ten (10) business day period to cure such default), Seller may declare this Agreement terminated thereby releasing Seller from any further obligations to Purchaser pursuant to this Contract, in which event all Earnest Money shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy, and all other rights and obligations of the Parties shall be terminated.

13. MISCELLANEOUS.

(a) Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be deemed given if delivered personally or sent by facsimile or email (with confirmation of receipt), by registered or certified mail, postage prepaid, or by recognized courier service, to the addresses set forth below or such other addresses as are specified by written notice delivered in accordance herewith. Notices shall be deemed received when actually received by Seller or Purchaser, as applicable; provided, however, that notices will be deemed received upon transmission of such notice if delivery cannot be accomplished because of a change of address by one Party, but only if such Party did not notify the other Party of such change of address, or because of refusal of a Party to accept delivery of any such notice.

If to Purchaser:	Buck Investments, L.C.
Address:	78 Ashley Pointe Dr, Suite 300 Charleston, SC 29407 Attn: Edgar A. Buck Jr. Phone: 843-266-4140 Fax: 843-762-5311 Email: Ebuck@jupiterhd.com



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If to Seller:

ROA, LLC

Address:

147 Wappoo Creek Drive - Suite 605
Charleston, South Carolina 29412
Attn: Bradshaw & Company, LLC
Phone: 843-795-1909
Fax: 843-795-2349
Email: eb@Bradshaw-Company.com

(b) Law To Govern. This Agreement shall be governed by, construed, interpreted, and enforced under the laws of the state where the Property is located.

(c) No Waiver. The failure of either Party to exercise any power given any Party hereunder or to insist upon strict compliance by either Party of its obligations hereunder, shall not constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

(d) Entire Agreement/Modification. This Agreement contains the entire agreement of the parties to this Agreement with respect to the subject matters discussed herein, and no representations, inducements, promises, or agreements, oral or otherwise between the parties to this Agreement not embodied herein, shall be of any force and effect. No amendment to this Agreement shall be binding on any of the parties to this Agreement unless such amendment is in writing, and such amendment is executed by all of the parties to this Agreement.

(e) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

(f) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one instrument.

(g) Survival of Warranties. All representations, warranties, and agreements contained in this Agreement shall survive Closing to the extent set forth herein.

(h) Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(i) Captions. Captions and headings throughout this Agreement are for convenience and reference only, and they shall not define, limit, modify or add to the interpretation or meaning of any provisions of this Agreement or in any way affect the scope, intent, or effect of this Agreement.

(j) Force Majeure. Whenever a period of time is provided for in this Agreement for either Party to do or perform any act or thing, said Party shall not be responsible for any delay due to acts of God or other causes beyond the reasonable control of said Party, and in such event the time period shall be extended for the amount of time said Party is so delayed, so long as the Party asserting a delay due to an event of force majeure promptly notifies the other Party of the occurrence of such event, provided the foregoing shall not apply to the Parties' obligations at Closing.

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(k) Assignment. Purchaser shall have the right to assign this Agreement and its rights hereunder, in whole or in part, at any time and from time to time.

(l) Additional Instruments. The parties hereto shall execute and deliver any and all additional documents, certifications, or other instruments and to perform any and all additional actions as shall be necessary to give full effect to and to complete the purpose and intent of this Agreement.

(m) Time is of the Essence. Time is of the essence in this Agreement and each of the covenants and provisions contained herein. This Agreement must be fully executed by Purchaser and Seller by 5:00 P.M. March 20, 2013 or shall become null and void.

(n) Leases. Seller will not enter into any new leases or modify the terms of any existing lease without the prior written consent of Purchaser. Seller warrants that there is no tenant improvement allowances owed and that there are no future commissions owed on any leases.

(o) Authorization. The persons executing this Agreement on behalf of Seller and Purchaser warrant and represent that each of them is duly authorized to do so and that this Agreement constitutes the valid and binding obligations of Seller and Purchaser, respectively, enforceable against Seller and Purchaser in accordance with its terms.

(p) Non-Disclosure. Purchaser and Seller agree not to disclose, directly or indirectly, the terms of this Agreement to any person, firm, or entity other than their respective attorneys, lenders, accountants, contractors, and representatives, the title company, or other third parties who are required to be informed thereof in connection with their approval of the proposed transactions or the representation of the Parties in connection with this transaction.

(q) Like-Kind Exchange. Either, or both parties may structure the sale and purchase of this Property so as to qualify for like-kind exchange treatment pursuant to Section 1031 of the Internal Revenue Code. Accordingly, prior to Closing, either party may assign this Agreement to a qualified exchange intermediary or other third party and take such other action as necessary to facilitate the exchange and shall give written notice of such assignment identifying the assignee to the other party and the other party shall cooperate and execute such documents as may be requested by the exchanging party, but at no cost to the cooperating party.

[signature page to follow]

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[Signature page to Real Estate Sales Agreement]

IN TESTIMONY WHEREOF, the parties listed below each have signed this Agreement in their respective names, by their duly authorized officers, members, or managers, as the case may be, as of the Effective Date.

SELLER:

ROA, LLC

By: 

Name: _____

Title: _____

PURCHASER:

Buck Investments, LC

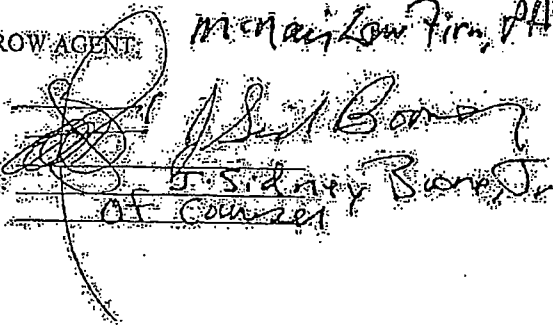
By: 

Name: _____

Title: _____

ESCROW AGENT:

menairlow firm, PA

By: 

Name: _____

Title: _____

☐ PURCHASER ☐ SELLER HAVE READ THIS PAGE

Page 11 of 13

Buck000395

EXHIBIT "A"
LEGAL DESCRIPTION

ALL that certain piece, parcel, lot, or tract of land, with the buildings and improvements located thereon, or to be built thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated in the current numbering system for the City of Charleston, as NO. 438 KING STREET, CITY OF CHARLESTON, as shown on a plat thereof made by Forsberg Engineering and Surveying, Inc., dated May 14, 2007, as revised and duly recorded in the Office of the RMC for Charleston County, SC, in Plat Book EKS at Page 720; SAID property having such size, shape, dimensions, buttings and boundings as will, by reference to said plat more fully and at large appear.

SUBJECT to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina.

THIS being the same property as conveyed to ROA, LLC, by Deed of 438 King Street, LLC, dated April 17, 2007 and duly recorded in the Office of the RMC for Charleston County, SC, in Book U622 at Page 719; and by Quitclaim Deed of Berry Blue Development, LLC, dated February 06, 2008 and duly recorded in the Office of the RMC for Charleston County, SC, in Book R650 at Page 347.

TMS No. 4601602060



☒ PURCHASER ☒ SELLER HAVE READ THIS PAGE

Page 12 of 13

Buck000396

Exhibit B

Estoppel Certificate

STATE OF SOUTH CAROLINA:)

COUNTY OF CHARLESTON:)

ESTOPPEL LETTER

Buck Investments, Limited Company
78 Ashley Pointe Drive Suite 300
Charleston SC 29407

HEREBY CERTIFIES THAT:

Tenant:

1. the tenant, (the "Tenant") is in possession of premises located at the _____ floor of _____, Charleston, South Carolina (the "Premises");
2. The Tenant holds the Premises under a written Lease between Tenant and _____ South Carolina limited liability company as landlord (the "Landlord") dated _____ as amended (the "Lease");
3. Attached hereto is a true and correct copy of this Lease. This Lease represents the entire agreement between the Tenant and the Landlord, and there exist no oral agreements or understandings, express or implied, between the Tenant and the Landlord, its agents or employees;
4. As of the date of this Certificate, the Tenant is not in default in the performance of such Lease nor has it committed any breach thereof;
5. So far as is known to the Tenant the Landlord under such Lease is not, as of the date of this Certificate, in default in the performance of such Lease nor has it committed any breach thereof;
6. No rent has been paid by the Tenant in advance under such Lease except the rent for the current month;
7. The Tenant has, as of the date of this Certificate, no defenses or offsets the Tenant could allege in any action brought against the Tenant for rent accruing under such Lease;
8. The Tenant is making this Certificate with the understanding that you are purchasing the leased Premises;
9. The Landlord has a Security Deposit of \$ _____ (\$ _____) Dollars;
10. The current Monthly Base Rent is \$ _____ (\$ _____) Dollars;
11. The Additional Rent and other charges currently being paid monthly is \$ _____.

The undersigned declares that the foregoing is true and correct, and that it has the authority to execute this Certificate.

Executed this _____ day of _____, 2013:

By: _____

Its: _____

 PURCHASER  SELLER HAVE READ THIS PAGE

Page 13 of 13

Buck000397

SALES AGREEMENT ADDENDUM

This SALES AGREEMENT ADDENDUM is made and entered into on this day of April, 2013, by and between ROA, LLC, (hereinafter referred to as the "Seller") and Buck Investments, LC (hereinafter referred to as the "Purchaser").

THIS SALES AGREEMENT ADDENDUM shall become part of the Contract between the Seller and the Purchaser dated March 20, 2013 for TMS # 460-16-02-066, further identified as 438 King Street, Charleston, SC, upon execution by both parties.

WHEREAS both the Seller and the Purchaser desire to amend the Sales Agreement;

NOW, THEREFORE, for and in consideration of the foregoing promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Contract as follows:

- 1) The Closing scheduled for Wednesday, April 03, 2013 has been extended to Friday April 5, 2013, at 10:00 AM.
- 2) Time is of the essence.
- 3) The Seller and the Purchaser expressly agree and acknowledge that except as modified in this Sales Agreement Addendum, the Contract, including all terms and conditions shall remain the same and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals on the day and year first above written.

WITNESSES:

SELLER:

ROA, LLC

By: _____

Its: _____

Dated: _____

As to Landlord

PURCHASER:

Buck Investments, LC

By: _____

Its: _____

Dated: _____

As to Tenant

Buck000398

CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 1st day of October, 2014 she served a copy of **AMENDED COMPLAINT** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known address, in Charleston, South Carolina:

ADDRESSEE(S)

Frank B.B. Knowlton
Tara C. Sullivan
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, South Carolina 29201
**ATTORNEY OF DEFENDANT, PNC
BANK, NATIONAL ASSOCIATION, as
successor to RBC BANK (USA)**

Williard D. Hanna, Jr.
Hanna Law, P.A.
1661 Glens Bay Road
Surfside Beach, South Carolina 29575
**ATTORNEY FOR DEFENDANT ROA,
LLC AND DEBORAH RICE-MARKO**


Sarah Jane Mock

FILED
OCT 07 2014
JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

FILED

OCT 07 2014

**JULIE J. ARMSTRONG
CLERK, C.P. & G.S.**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-10-0507

Buck Investments, LC,

Plaintiff,

vs.

ROA, LLC; Deborah Rice-Marko; and
PNC Bank, N.A., successor to RBC
Bank, (USA),

Defendants;

-and-

ROA, LLC and Deborah Rice-Marko,

Third-Party Plaintiffs,

vs.

Edgar A. Buck, Jr.,

Third-Party Defendant.

DEFENDANTS ROA, LLC AND
DEBORAH RICE-MARKO'S
SECOND AMENDED ANSWER TO
SECOND AMENDED COMPLAINT,
COUNTERCLAIM AND
THIRD-PARTY COMPLAINT

(JURY TRIAL DEMANDED)

FILED
2018 MAY -2 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

The Defendants ROA, LLC and Deborah Rice-Marko, amending their answer to the Plaintiff's Second Amended Complaint filed October 1, 2014, state and allege as follows:

1. Each and every allegation of Plaintiff's Second Amended Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Admit Paragraphs One (1) through Five (5).

3. With regard to Paragraph Six (6), these answering Defendants deny those portions which refer to Defendant Deborah Rice-Marko's knowledge of PNC's placement of the loans in

default, PNC's seeking collection of said loans, or PNC pursuing of collateral to secure the notes on said loans. Admit the remainder of Paragraph Six (6).

4. Deny the allegations of Paragraphs Seven (7) through Seventeen (17), inclusively.

5. With regard to Paragraph Eighteen (18), these answering Defendants reallege their responses to Paragraphs One (1) through Seventeen (17) as if fully repeated herein.

6. Deny the allegations of Paragraphs Nineteen (19) and Twenty (20).

7. With regard to Paragraph Twenty-One (21), these answering Defendants reallege their responses to Paragraphs One (1) through Twenty (20) as if fully repeated herein.

8. Deny the allegations of Paragraphs Twenty-Two (22) through Twenty-Eight (28), inclusively.

9. With regard to Paragraph Twenty-Nine (29), these answering Defendants reallege their responses to Paragraphs One (1) through Twenty-Eight (28) as if fully repeated herein.

10. Deny the allegations of Paragraphs Thirty (30) through Thirty-Five (35).

11. With regard to Paragraph Thirty-Six (36), these answering Defendants reallege their responses to Paragraphs One (1) through Thirty-Five (35) as if fully repeated herein.

12. Deny the allegations of Paragraphs Thirty-Seven (37) through Forty-Two (42), inclusively.

13. With regard to Paragraph Forty-Three (43), these answering Defendants reallege their responses to Paragraphs One (1) through Forty-Two (42) as if fully repeated herein.

14. Deny the allegations of Paragraphs Forty-Four (44) through Forty-Seven (47), inclusively.

FOR A SECOND DEFENSE

15. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

16. To the extent that ROA is liable to Plaintiff for breach of contract, which liability is denied by ROA, Plaintiff has an adequate remedy at law by way of damages, and is therefore not entitled to the equitable remedy of specific performance.

FOR A THIRD DEFENSE

17. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

18. Upon information and belief, Plaintiff has been in communication with PNC regarding the agreements and obligations of ROA to PNC, including but not limited to the mortgage on this and other properties held by PNC for the purpose of obtaining information to gain and advantage over ROA with respect to the property that is the subject of this action.

19. Such contact by Plaintiff was not authorized by ROA.

20. Plaintiff, therefore, has unclean hands with respect to the transaction in suit and is therefore not entitled to equitable relief from this Court.

FOR A FOURTH DEFENSE

21. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

22. The obligations of ROA under the contract with Plaintiff were expressly conditioned on ROA's ability to release the lien held by PNC from the property for an "ascertainable sum of money." Because of the many disputes between ROA and PNC regarding the obligations of ROA to PNC, ROA has not agreed with PNC regarding the sum of money that

is lawfully due PNC from the sale of this property and therefore, ROA was not and is not obligated to convey the property to Plaintiff.

FOR A FIFTH DEFENSE

23. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

24. The lis pendens filed by PNC creates an interest in the property that is superior to any interest of Plaintiff as a result of the contract between the parties.

25. Because of the lis pendens filed by PNC, ROA can only convey title subject to the interest of PNC.

26. ROA's duty to convey to Plaintiff, if any, is therefore impossible to perform, and ROA's obligations to Plaintiff, if any, are discharged as a result.

FOR A SIXTH DEFENSE

(Failure to Mitigate)

27. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

28. Plaintiff's claims are barred to the extent Plaintiff failed to mitigate its damages as required by law.

FOR A SEVENTH DEFENSE

(Impossibility of Performance/Frustration of Purpose)

29. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

30. At the time specified for closing, the subject property was encumbered by a mortgage to the Defendant PNC.

31. At the time of entering into the contract, the Plaintiff was aware, or should have been aware of said mortgage.

32. The Defendant PNC refused to release the property from the mortgage to allow the Defendant ROA to close on the property.

33. The Defendant ROA would therefore assert impossibility of performance and frustration of purpose as a defense.

FOR AN EIGHTH DEFENSE

(Waiver and Estoppel)

34. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

35. Plaintiff's causes of action are barred by the doctrines of waiver and estoppel.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Comparative Negligence)

36. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

37. The incident referred to in Plaintiff's Second Amended Complaint and the Plaintiff's alleged damages, if any, were due to and caused by the negligence, gross negligence, recklessness, willfulness and wantonness of the Plaintiff, combining and concurring with any and all acts of the Defendants as a direct and proximate cause thereof, and without which the same would not have occurred.

38. Therefore, the Plaintiff's alleged damages, if any, were caused in whole or in part, or were contributed to by the Plaintiff's own negligence and recklessness, and not by any negligence on the part of the Defendants.

39. Therefore, these answering Defendants plead the Plaintiff's sole negligence or negligence greater than that of the Defendants as a complete defense to this action.

40. Should it be determined that the negligence of Plaintiffs is equal to or less than the negligence of Defendants, then the amount of Plaintiff's recovery shall be reduced in accordance with the South Carolina Doctrine of Comparative Negligence.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Conspiracy)

41. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

42. These answering Defendants are informed and believe that Plaintiff has combined with others for the purpose of injuring and damaging these Defendants, and the actions of Plaintiff, in combination with others, has caused damages to these Defendants.

43. As a direct and proximate result of said actions, these Defendants have been damaged as set forth herein, and they are entitled to judgment against the Plaintiff.

44. The actions of Plaintiff were reckless and malicious such that punitive damages are appropriate.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Express and Implied Warranties of Confidentiality)

45. These answering Defendants reiterate and reallege the foregoing defenses as if fully repeated herein.

46. All times hereinafter mentioned, these Defendants were clients and customers of the Co-Defendant PNC.

47. By virtue of contracts existing between the Co-Defendant PNC and these Defendants, it owed these Defendants an express and implied warranty of confidentiality as to privileged financial information about these Defendants.

48. As customers and clients of the Co-Defendant PNC, the Plaintiff owed to these Defendants a duty of confidentiality that extended not only to account transactions, but also to the information that the Plaintiff had about the Defendants.

49. The businesses, occupations, and professions of these Defendants are dependent upon their relationships, reputations, and good names in the banking and other financial communities.

50. In breach of the warranties and duties owed to these Defendants by the Plaintiff and its officers, servants, agents, and employees, Plaintiff divulged privileged financial information about these Defendants to the Plaintiff and third parties.

51. On April 15, 2013 Defendants received an e-mail which described a phone conversation in which Plaintiff disclosed the confidential information in a phone call to a third party.

52. On May 10, 2013 Defendants received an e-mail from Plaintiff which described the Plaintiff's contact with Co-Defendant, PNC, and the discussion of confidential information.

53. Eventually, this information reached entities with which these Defendants relied upon in the banking community.

54. As a result of said breach, these Defendants have suffered significant damage to their good name which is irreparable.

55. These Defendants have also suffered inconvenience and distress including anxiety, disappointment, and loss of expectation.

56. In addition, these Defendants were put at disadvantage in their negotiations with the Plaintiff and have suffered financial loss to business dealings with the Plaintiff and other banks and financial institutions.

57. These Defendants are informed and believe that they are entitled to judgment against the Plaintiff for actual and punitive damages.

**FOR A TWELFTH DEFENSE AND BY WAY OF
COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

58. The foregoing allegations are reiterated and realleged as if fully repeated herein.

59. The Third-Party Plaintiff ROA, LLC is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, and at all times pertinent herein, was doing business in Charleston County, South Carolina.

60. The Third-Party Plaintiff Deborah Rice-Marko is a citizen and resident of Charleston County, South Carolina.

61. Upon information and belief, the Third-Party Defendant, Edgar A. Buck, Jr., is a citizen and resident of Charleston County, South Carolina. Further, upon information and belief, he is the principal of Buck Investments, LC, and responsible for negotiating the contract which is the subject of this litigation.

62. On January 25, 2013, a Letter of Intent was executed by the Plaintiff, Third-Party Plaintiff ROA, LLC, and Third-Party Defendant, Edgar A. Buck, Jr. (attached hereto as Exhibit "A"), on behalf of Buck Investments, LC. By execution of this Letter of Intent, the Third-Party Defendant, individually and as principal of Buck Investments, LC, would be responsible for making sure the terms of the Agreement would not be breached.

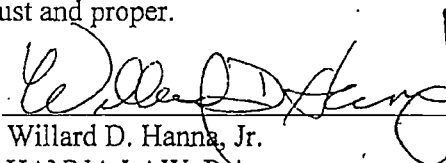
63. Said letter contained an agreement to keep all communications confidential.

64. In violation of said agreement, the Plaintiff and Third-Party Defendant did communicate with the Co-Defendant, PNC, not only as to matters of this contract, but also other financial matters.

65. As a result of the actions of the Plaintiff and the Third-Party Defendant, these Defendants have suffered severe financial damages.

66. These Defendants are informed and believe that they are entitled to judgment against the Plaintiff and Third-Party Defendant.

WHEREFORE, having fully amended its answer to Plaintiff's Second Amended Complaint and having set forth their Counterclaims and Third-Party Complaint, the Defendants/Third-Party Plaintiffs ROA, LLC and Deborah Rice-Marko, pray that Plaintiff's claims be dismissed; for judgment against the Plaintiff and Third-Party Defendant; and for such other and further relief as this Court may deem just and proper.



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*Attorney for Defendants ROA, LLC and
Deborah Rice-Marko*

April 30, 2018

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) Civil Action No. 2016-CP-10-0507.

Buck Investments, LC,

Plaintiff,

vs.

ROA, LLC; Deborah Rice-Marko; and
PNC Bank, N.A., successor to RBC
Bank, (USA),

Defendants;

-and-

ROA, LLC and Deborah Rice-Marko,

Third-Party Plaintiffs,

vs.

Edgar A. Buck, Jr.,

Third-Party Defendant.

**DEFENDANT ROA, LLC'S MOTION
FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
(RULE 50(b)) OR, IN THE
ALTERNATIVE, TO ALTER AND
AMEND THE JUDGMENT (RULE
59(e))**

FILED
2018 AUG -6 PM 12:55
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant ROA, LLC ("ROA"), through its undersigned counsel, moves pursuant to Rules 50(b) and 59(e), SCRCP, for an order granting judgment notwithstanding the verdict or, in the alternative, altering and amending the judgment entered in favor of Plaintiff Buck Investments, LC ("Buck"). In support thereof, ROA states as follows:

1. LEGAL STANDARDS FOR MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION TO ALTER OR AMEND.

A. RULE 50(B)

Rule 50(b), SCRCP, provides that "[w]henver a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to

have submitted the action to the jury subject to a later determination of the legal questions raised by the motion." "A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for directed verdict." Rule 50(b), SCRCP.

B. RULE 59(E)

A motion to reconsider and alter or amend an order may be filed whenever a party believes the court misunderstood or failed to fully consider an argument or fact. Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A motion to reconsider, alter or amend provides the proper vehicle to inform the court it applied an incorrect standard in ruling on an issue. Mailsources LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 374-75, 588 S.E.2d 639, 641 (Ct. App. 2003).

2. GROUNDS FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, TO ALTER OR AMEND.

ROA incorporates its motion for directed verdict at the close of Buck's case and at the close of all evidence, and further moves for judgment notwithstanding the verdict or, in the alternative, to alter or amend the judgment on the grounds that (1) the doctrine of impossibility of performance excuses ROA's failure to perform under the subject contract and, as a result, ROA cannot be liable to Buck for breach of contract and (2) the doctrines of waiver and estoppel preclude Buck from recovering against ROA.

This matter relates to a contract for ROA to sell real property located at 438 King Street in Charleston to Buck. In November of 2007, RBC Bank (later to be acquired by PNC Bank) recorded a mortgage on the property. The mortgage was amended in 2009 and again in July of 2011. The mortgage expressly provided that any conveyance of the property by ROA required the "prior written consent" of the bank, which the bank could withhold in its sole discretion.

On March 20, 2013, Buck and ROA entered into a contract for Buck's purchase of the property. The contract provided Buck with an inspection period during which it was to conduct a title examination, provide ROA with notice of any title exceptions, and require ROA to cure any such exceptions or opt to cancel the contract or proceed subject to the title exceptions. The contract further provided that ROA would "remove at closing those exceptions which can be removed *by paying an ascertainable sum of money* such as mortgages, liens, unpaid taxes, and special assessments." Before ever entering into the contract, Buck examined the title, which included the recorded mortgage of PNC and modifications to the mortgage. After examining title, Buck did not note any exceptions.

When the original April 3, 2013 closing deadline passed, the parties continued to attempt to schedule the closing. The contract permitted a thirty day extension of the closing deadline. On May 3, 2013, however, PNC filed a foreclosure action against ROA and other entities.

Buck commenced this action against ROA and PNC, seeking in part specific performance of the contract. On August 28, 2017, PNC filed a motion for summary judgment as to Buck's specific performance claim. PNC argued that because (1) PNC's consent was required for ROA to transfer the property to Buck, (2) PNC had complete discretion to withhold such consent, and (3) PNC had not consented, the Court could not order specific performance of the contract. The Court agreed and granted PNC's motion for summary judgment by order entered October 20, 2017. The Court held "Plaintiff cannot compel PNC to consent to the Alleged Contract due to PNC's Mortgage" and that "the Alleged Contract cannot impair PNC's Mortgage rights."

Buck and ROA proceeded to trial in this matter on July 23 through 25. Relevant to the instant motion, the Court denied ROA's motion for directed verdict on the grounds of impossibility of performance and waiver/estoppel and, at the close of all evidence, granted

Buck's motion for directed verdict as to those defenses. ROA contends the Court should have entered judgment in its favor on the ground that performance under the contract was rendered impossible and on the ground that Buck waived and is estopped from asserting its rights under the contract.

A. The Doctrine of Impossibility of Performance Excuses ROA's Failure to Perform Under the Contract.

A party to a contract must perform its obligations under the contract unless its performance is rendered impossible by an act of God, the law, or by a third party. V.E. Amick & Assocs., LLC v. Palmetto Environ. Group, Inc., 394 S.C. 538, 716 S.E.2d 295 (Ct. App. 2011). "Impossibility must be real and not a mere inconvenience." Id. Courts have recognized that impossibility of performance excuses a party from performance of a contract "either at the time of breach or at the time that court relief is sought." See, e.g., Edge Group WAICCS LLC v. Sapir Group LLC, 705 F. Supp. 2d 304, 318 (S.D.N.Y. 2010).

In this case, ROA's performance under the contract was rendered impossible by the act of a third party outside of its control. PNC's mortgage on the property, of which Buck had actual or constructive knowledge, expressly provided that PNC's consent was necessary for any transfer of the subject property and that PNC could withhold such consent in its sole discretion. As this Court has held, PNC never consented and was never required to consent. Moreover, during the time Buck and ROA sought to arrange the closing of the sale of the property, and before Buck ever informed ROA that it considered ROA to be in default of its obligations under the contract, PNC filed a foreclosure action against the property, pursuant to which PNC sought the appointment of a receiver and to have the property sold at foreclosure sale. At that point in time, performance by ROA of any obligations it had under the Contract was rendered impossible. See, e.g., Serio v. Copeland Holdings, LLC, 2017 Ark. App. 280, 13, 521 S.W.3d 131, 138 (2017)

(finding impossibility of performance of real estate contract based upon third-party lienholder's refusal to consent). The impossibility of performance is further evidenced by the fact that Buck approached PNC on its own and attempted to convince PNC to allow the closing. PNC refused.

The Court erred in granting a directed verdict in favor of Buck as to ROA's defense of impossibility. ROA respectfully requests that the Court reconsider its ruling in this regard and enter an order finding, as a matter of law, ROA's failure to perform under the subject contract was excused pursuant to the doctrine of impossibility of performance.

B. THE DOCTRINES OF WAIVER AND ESTOPPEL BAR BUCK FROM RECOVERING AGAINST ROA.

South Carolina law recognizes the affirmative defenses of waiver and estoppel. "Waiver is a voluntary and intentional abandonment or relinquishment of a known right," Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (citing Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)); see also King v. James, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010); Sanford v. South Carolina State Ethics Comm'n, 385 S.C. 483, 496-97, 685 S.E.2d 600, 607 (2009), and may be expressed or implied by a party's conduct. Parker, 313 S.C. at 487, 443 S.E.2d at 391. Acts that are inconsistent with a continued assertion of a right may constitute a waiver. Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Similarly, "[e]quitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do." Eason, 384 S.C. at 480, 682 S.E.2d at 807 (citing Parker, 313 S.C. at 487, 443 S.E.2d at 391). "The distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Parker, 313 S.C. at 487, 443 S.E.2d at 391. "Estoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as

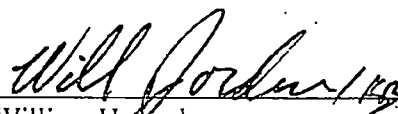
equities between the parties may preponderate.” Quail Hill, LLC v. County of Richland, 379 S.C. 314, 324, 665 S.E.2d 194, 199 (Ct. App. 2008) (rev’d in part on separate grounds).

In this case, the contract imposed upon Buck an obligation to inspect the title to the property prior to closing and to identify any exceptions to the title that Buck required ROA to cure. The recorded PNC mortgage, which plainly requires PNC to consent to any transfer of the property and gives PNC unfettered discretion to withhold such consent, was a matter of public record at the time the parties executed the contract. At that time, Buck could have demanded that ROA provide Buck with evidence of PNC’s consent to the transfer. Buck did not do so, instead opting to proceed toward closing with the knowledge that ROA’s obligation under the contract was limited to removing liens on the property at the time of closing that could be removed by the payment of an ascertainable sum. Having chosen this course of conduct, the doctrines of waiver and estoppel preclude Buck from now arguing that ROA breached any contractual obligation it owed to Buck.

The Court erred in denying ROA’s motion for directed verdict pursuant to the doctrines of waiver and estoppel. ROA respectfully requests the Court reconsider its prior ruling and enter judgment in favor of ROA pursuant to these defenses.

For the reasons set forth in detail above, the Court should grant ROA’s Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Altering and Amending the Judgment.

[Signature Page Follows]



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*Attorney for Defendants ROA, LLC and
Deborah Rice-Marko*

August 3, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
Civil Action No. 2016-CP-10-0507

FILED
2018 AUG -8 PM 12:58
JULIE J. ARMSTRONG
CLERK OF COURT

Buck Investments, LC,

Plaintiff,
vs.

ROA, LLC; Deborah Rice-Marko; and
PNC Bank, N.A., successor to RBC
Bank, (USA),

Defendants;

-and-

ROA, LLC and Deborah Rice-Marko,

Third-Party Plaintiffs,

vs.

Edgar A. Buck, Jr.,

Third-Party Defendant.

**DEFENDANT ROA, LLC'S AMENDED
MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT
(RULE 50(b)) OR, IN THE
ALTERNATIVE, TO ALTER AND
AMEND THE JUDGMENT (RULE
59(e))**

Defendant ROA, LLC ("ROA"), through its undersigned counsel, moves pursuant to Rules 50(b) and 59(e), SCRPC, for an order granting judgment notwithstanding the verdict or, in the alternative, altering and amending the judgment entered in favor of Plaintiff Buck Investments, LC ("Buck"). In support thereof, ROA states as follows:

**1. LEGAL STANDARDS FOR MOTION FOR JUDGMENT NOTWITHSTANDING THE
VERDICT AND MOTION TO ALTER OR AMEND.**

A. RULE 50(B)

Rule 50(b), SCRPC, provides that "[w]henver a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to

have submitted the action to the jury subject to a later determination of the legal questions raised by the motion." "A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for directed verdict." Rule 50(b), SCRCP.

B. RULE 59(E)

A motion to reconsider and alter or amend an order may be filed whenever a party believes the court misunderstood or failed to fully consider an argument or fact. Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A motion to reconsider, alter or amend provides the proper vehicle to inform the court it applied an incorrect standard in ruling on an issue. Mailsources LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 374-75, 588 S.E.2d 639, 641 (Ct. App. 2003).

2. GROUNDS FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, IN THE ALTERNATIVE, TO ALTER OR AMEND.

ROA incorporates its motion for directed verdict at the close of Buck's case and at the close of all evidence, and further moves for judgment notwithstanding the verdict or, in the alternative, to alter or amend the judgment on the grounds that (1) the doctrine of impossibility of performance excuses ROA's failure to perform under the subject contract and, as a result, ROA cannot be liable to Buck for breach of contract and (2) the doctrines of waiver and estoppel preclude Buck from recovering against ROA.

This matter relates to a contract for ROA to sell real property located at 438 King Street in Charleston to Buck. In November of 2007, RBC Bank (later to be acquired by PNC Bank) recorded a mortgage on the property. The mortgage was amended in 2009 and again in July of 2011. The mortgage expressly provided that any conveyance of the property by ROA required the "prior written consent" of the bank, which the bank could withhold in its sole discretion.

On March 20, 2013, Buck and ROA entered into a contract for Buck's purchase of the property. The contract provided Buck with an inspection period during which it was to conduct a title examination, provide ROA with notice of any title exceptions, and require ROA to cure any such exceptions or opt to cancel the contract or proceed subject to the title exceptions. The contract further provided that ROA would "remove at closing those exceptions which can be removed *by paying an ascertainable sum of money* such as mortgages, liens, unpaid taxes, and special assessments." Before ever entering into the contract, Buck examined the title, which included the recorded mortgage of PNC and modifications to the mortgage. After examining title, Buck did not note any exceptions.

When the original April 3, 2013 closing deadline passed, the parties continued to attempt to schedule the closing. The contract permitted a thirty day extension of the closing deadline. On May 3, 2013, however, PNC filed a foreclosure action against ROA and other entities.

Buck commenced this action against ROA and PNC, seeking in part specific performance of the contract. On August 28, 2017, PNC filed a motion for summary judgment as to Buck's specific performance claim. PNC argued that because (1) PNC's consent was required for ROA to transfer the property to Buck, (2) PNC had complete discretion to withhold such consent, and (3) PNC had not consented, the Court could not order specific performance of the contract. The Court agreed and granted PNC's motion for summary judgment by order entered October 20, 2017. The Court held "Plaintiff cannot compel PNC to consent to the Alleged Contract due to PNC's Mortgage" and that "the Alleged Contract cannot impair PNC's Mortgage rights."

Buck and ROA proceeded to trial in this matter on July 23 through 25. Relevant to the instant motion, the Court denied ROA's motion for directed verdict on the grounds of impossibility of performance and waiver/estoppel and, at the close of all evidence, granted

Buck's motion for directed verdict as to those defenses. ROA contends the Court should have entered judgment in its favor on the ground that performance under the contract was rendered impossible and on the ground that Buck waived and is estopped from asserting its rights under the contract.

A. The Doctrine of Impossibility of Performance Excuses ROA's Failure to Perform Under the Contract.

A party to a contract must perform its obligations under the contract unless its performance is rendered impossible by an act of God, the law, or by a third party. V.E. Amick & Assocs., LLC v. Palmetto Environ. Group, Inc., 394 S.C. 538, 716 S.E.2d 295 (Ct. App. 2011). "Impossibility must be real and not a mere inconvenience." Id. Courts have recognized that impossibility of performance excuses a party from performance of a contract "either at the time of breach or at the time that court relief is sought." See, e.g., Edge Group WAICCS LLC v. Sapir Group LLC, 705 F. Supp. 2d 304, 318 (S.D.N.Y. 2010).

In this case, ROA's performance under the contract was rendered impossible by the act of a third party outside of its control. PNC's mortgage on the property, of which Buck had actual or constructive knowledge, expressly provided that PNC's consent was necessary for any transfer of the subject property and that PNC could withhold such consent in its sole discretion. As this Court has held, PNC never consented and was never required to consent. Moreover, during the time Buck and ROA sought to arrange the closing of the sale of the property, and before Buck ever informed ROA that it considered ROA to be in default of its obligations under the contract, PNC filed a foreclosure action against the property, pursuant to which PNC sought the appointment of a receiver and to have the property sold at foreclosure sale. At that point in time, performance by ROA of any obligations it had under the Contract was rendered impossible. See, e.g., Serio v. Copeland Holdings, LLC, 2017 Ark. App. 280, 13, 521 S.W.3d 131, 138 (2017)

(finding impossibility of performance of real estate contract based upon third-party lienholder's refusal to consent). The impossibility of performance is further evidenced by the fact that Buck approached PNC on its own and attempted to convince PNC to allow the closing. PNC refused.

The Court erred in granting a directed verdict in favor of Buck as to ROA's defense of impossibility. ROA respectfully requests that the Court reconsider its ruling in this regard and enter an order finding, as a matter of law, ROA's failure to perform under the subject contract was excused pursuant to the doctrine of impossibility of performance.

B. THE DOCTRINES OF WAIVER AND ESTOPPEL BAR BUCK FROM RECOVERING AGAINST ROA.

South Carolina law recognizes the affirmative defenses of waiver and estoppel. "Waiver is a voluntary and intentional abandonment or relinquishment of a known right," Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009) (citing Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994)); see also King v. James, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010); Sanford v. South Carolina State Ethics Comm'n, 385 S.C. 483, 496-97, 685 S.E.2d 600, 607 (2009), and may be expressed or implied by a party's conduct. Parker, 313 S.C. at 487, 443 S.E.2d at 391. Acts that are inconsistent with a continued assertion of a right may constitute a waiver. Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Similarly, "[e]quitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do." Eason, 384 S.C. at 480, 682 S.E.2d at 807 (citing Parker, 313 S.C. at 487, 443 S.E.2d at 391). "The distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Parker, 313 S.C. at 487, 443 S.E.2d at 391. "Estoppel is an equitable doctrine, essentially flexible, and therefore to be applied or denied as

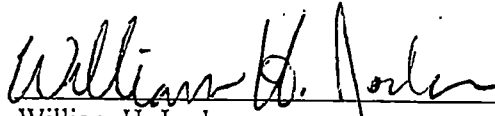
equities between the parties may preponderate.” Quail Hill, LLC v. County of Richland, 379 S.C. 314, 324, 665 S.E.2d 194, 199 (Ct. App. 2008) (rev’d in part on separate grounds).

In this case, the contract imposed upon Buck an obligation to inspect the title to the property prior to closing and to identify any exceptions to the title that Buck required ROA to cure. The recorded PNC mortgage, which plainly requires PNC to consent to any transfer of the property and gives PNC unfettered discretion to withhold such consent, was a matter of public record at the time the parties executed the contract. At that time, Buck could have demanded that ROA provide Buck with evidence of PNC’s consent to the transfer. Buck did not do so, instead opting to proceed toward closing with the knowledge that ROA’s obligation under the contract was limited to removing liens on the property at the time of closing that could be removed by the payment of an ascertainable sum. Having chosen this course of conduct, the doctrines of waiver and estoppel preclude Buck from now arguing that ROA breached any contractual obligation it owed to Buck.

The Court erred in denying ROA’s motion for directed verdict pursuant to the doctrines of waiver and estoppel. ROA respectfully requests the Court reconsider its prior ruling and enter judgment in favor of ROA pursuant to these defenses.

For the reasons set forth in detail above, the Court should grant ROA’s Motion for Judgment Notwithstanding the Verdict or, in the Alternative, Altering and Amending the Judgment. Finally, in response to Buck’s Motion for Judgment Notwithstanding the Verdict or for a new trial, Defendants hereby renew and preserve their motion to require Buck to elect its remedies. It is the undersigned’s understanding that Defendants’ motion to require election was rendered moot by the Court’s order granting directed verdict in Defendants’ favor as to Buck’s

specific performance cause of action. Defendants file this amended motion to ensure that Defendants' motion to require election is preserved for the record.



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August 6, 2018

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

2016-CP-10-00507

BUCK INVESTMENTS, LLC,)

Plaintiff,)

Transcript of Record

vs.)

July 23-25, 2018

ROA, LLC, DEBORAH RICE-MARKO,)

AND PNC BANK, N.A. SUCCESSOR)

TO RBC BANK(USA),)

Defendants, .)

ROA, LLC, AND DEBORAH RICE-
MARKO,)

Third-Party
Plaintiffs,)

vs.)

EDGAR A. BUCK, JR.,)

Third-Party
Defendant.)

B E F O R E:

Honorable D. Craig Brown
Charleston County Courthouse
Charleston, South Carolina

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

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Thomas B. Boger, Esquire
Attorney for Plaintiff

Willard D. Hanna, Jr., Esquire
William H. Jordan, Esquire
Attorney for Defendants

Kay H. Richardson
Circuit Court Reporter

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1 MR. BUCK: Edgar Alton Buck, Jr., B-U-C-K.

2 MR. TEMPLETON: May it please the Court?

3 THE COURT: Yes.

4 DIRECT EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR. TEMPLETON:

5 Q: Mr. Buck, where do you live?

6 A: James Island.

7 Q: How long have you lived there?

8 A: All my life.

9 Q: What do you do for a living?

10 A: Real estate investment, development and management of real
11 estate properties.

12 Q: What is your affiliation with Buck Investment, PC or LLC?

13 A: I'm the managing member.

14 Q: And what is the business purpose of that company?

15 A: The purpose of Buck Investments is to buy, sell, develop,
16 and manage commercial real estate.

17 Q: And how long has it been in business?

18 A: We've been in business over 20 years.

19 Q: Before you were with that company -- who founded the
20 company?

21 A: My father did.

22 Q: In terms of real investments that Buck does, is it more
23 commercial or is it more residential or both?

24 A: It's a commercial-based real estate investment.

25 Q: And just for the benefit of the jury, how about explain

1 the difference of a commercial property and residential
2 property from your company's perspective.

3 A: Commercial property in our case would be where businesses
4 operate out of. We would buy the property, develop it or
5 renovate it to make it for a special tenant or use. Then they
6 would pay us rent over a period of time of the lease.
7 Residential property would be where people live.

8 Q: In terms of the types of properties that Buck has invested
9 in in the Charleston community, can you give us some examples
10 of property that you've invested in over the years.

11 A: Yeah, our primary interest is in downtown Charleston,
12 office buildings, retail properties along King Street, Meeting
13 Street. Also, properties throughout the tri-county area that
14 would include fast food, strip centers, little retail centers.

15 Q: Are you familiar with 438 King Street?

16 A: Yes, I am.

17 Q: Before getting involved in this deal, had Buck Investments
18 purchased any property in the upper King Street area?

19 A: Yes, we have, several parcels near and around 438.

20 Q: Why?

21 A: We saw that -- you know, 20 years ago downtown was really
22 looked at as south of Calhoun Street. Things were starting to
23 change in early 2000's. You know, the peninsula is very small
24 so the growth had to push north. And, saw that there was
25 going to be some opportunities for upper King Street. We had

1 some relationships with tenants that were looking at that area
2 and asked us to pursue properties that we leased to them up
3 there.

4 Q: In the last 20 years how many different properties on
5 upper King Street has Buck Investments acquired and sold over
6 the years, approximately?

7 A: We've probably been involved in about 10 deals that
8 involve King Street area.

9 Q: Have you been involved in any deals that are around, close
10 proximity to 438 King Street?

11 A: Yes, we actually own a parcel that's adjacent to 438 King
12 Street.

13 Q: Do you recall what you paid for that -- strike that. Do
14 you recall what the address of that property is?

15 A: Yes, we own 46 and 48 John Street that are adjacent to the
16 rear 438. We purchased those properties packaged together for
17 \$2,350,000 dollars.

18 Q: Do you recall when that deal was done?

19 A: That was all during the same time period that we were
20 pursuing and under contract on 438 King Street.

21 Q: And does Buck still presently own those properties?

22 A: We do.

23 Q: And how -- strike that.

24 May I approach the witness, Judge?

25 THE COURT: Yes, sir.

1 Q: Exhibit 18. Mr. Buck, do you recognize that property?

2 A: Yes, that's the King Street view of 438 King Street.

3 MR. TEMPLETON: Judge, this has been admitted without
4 objection. Plaintiff's ---

5 THE COURT: What number is that again?

6 MR. TEMPLETON: 18, Your Honor.

7 THE COURT: Yes, sir, you may.

8 PLAINTIFF'S EXHIBIT NUMBER 18

9 ADMITTED INTO EVIDENCE

10 BY MR. TEMPLETON:

11 Q: Mr. Buck, I'm showing you what has been marked as exhibit
12 18. I know I just asked you if you recognized this but that's
13 438 King Street, correct?

14 A: Yes, sir.

15 Q: And which building is it in that property?

16 A: It's the taller yellow building in the middle.

17 Q: Do you recall how large that property is, that building?

18 A: The building is roughly 9,000 square feet on three floors.

19 Q: If I was standing on King Street and I'm facing -- that's
20 the Michael Mitchell building, but if I'm facing that and I
21 look down to the right south on King Street, can you give us
22 some examples of the properties that you might run into that
23 the jury might be familiar with?

24 A: Just south of the property is Hall's Chophouse Restaurant.
25 You go further south there's, I think, a hair salon place, and

1 you get to the corner there's another restaurant on the
2 corner. Then you move further south you end up back at Marion
3 Square.

4 Q: How many blocks from Marion Square would you estimate it
5 was?

6 A: This is a block and a half.

7 Q: And the other properties you've got on John Street, that
8 would be behind the Michael Mitchell building, correct?

9 A: It would be off of John Street and I guess adjoins this
10 property in the rear. There's a rear parking lot behind 438
11 King Street.

12 Q: How did you come to learn that 438 King Street was for
13 sale?

14 A: I was approached by a gentleman by the name of Geoff Groat
15 and Daniel Atwill with Roadstead Real Estate.

16 Q: And what affiliation, if any, does Buck Investments have
17 with Roadstead?

18 A: There's no affiliation. At the time, you know, late 2012,
19 we were actively looking at properties and I had brokers all
20 over town that were bringing me stuff on a daily basis for us
21 to look at, as there was more sellers than there were buyers
22 during this time period.

23 Q: And why was that, if you know?

24 A: My opinion, you know, the economy was improving but still
25 there was a lot of people that were not willing to invest in

1 commercial real estate at the time.

2 Q: But was Buck still willing to invest in commercial
3 property?

4 A: Yes, we were very, very active during 2012, 2013 time
5 period and remain fairly active today.

6 Q: Prior to this, do you recall whether it was Mr. Groat or
7 Mr. Atwill who approached you?

8 A: They work as kind of like a team so I believe that I
9 probably got phone call and emails from one or both.

10 Q: And do you recall when that opportunity was presented to
11 you?

12 A: I believe it was November, early December of 2012.

13 Q: And prior to that deal being presented, had you ever had
14 any interaction with ROA or any of the defendants?

15 A: No, sir.

16 Q: You ever had any contact with Ms. Marko?

17 A: No, sir.

18 Q: And you didn't know her socially; is that right?

19 A: No, sir.

20 Q: Now, what did you think about the property when the
21 opportunity presented?

22 A: We were actively looking at properties along King Street,
23 especially upper King Street, and then with this property
24 adjoining a parcel that we already owned it then would open up
25 opportunities for us. So, you know, we were very much

1 interested.

2 Q: So interested to where you would want to make an offer?

3 A: Yes. I mean, I think we made an offer on December 6th of
4 2012.

5 Q: And was there a period of negotiations that went on during
6 the month?

7 A: There was. We went back and forth on the price that we
8 offered and then what was finally accepted, and then it took a
9 time -- period of time for us to get our attorneys to agree on
10 the contract language.

11 Q: Let me show you -- may I approach, Judge?

12 BY TEMPLETON:

13 Q: --- show you what was marked as exhibit 5. That's also
14 been admitted by consent. Do you recognize that document?

15 A: Yes.

16 PLAINTIFF'S EXHIBIT NUMBER 5

17 ADMITTED INTO EVIDENCE

18 A: Yeah. This email was part of the negotiations that were
19 continuing into January of 2013 for the property. And this
20 talks about how 438 also has a small strip of property that
21 comes all the way back out to John Street, so it's kind of a
22 flagship -- flag-shaped parcel.

23 Q: And do you recall what did you offer in January of 2013
24 to purchase the property?

25 A: This was 3.4 million dollars with a closing stipulated by

1 March 31st.

2 Q: Ultimately, the negotiations continued; is that correct?

3 A: That is correct.

4 Q: Do you recall when the contract was ultimately ---

5 A: I think it was -- the contract was finally signed on March
6 20th. And, I think we had agreed to the price well in advance
7 of that and the attorneys were working on the documentation.

8 Q: I'll show you Plaintiff's Exhibit Number 1.

9 Judge, that's been admitted by consent as well.

10 PLAINTIFF'S EXHIBIT NUMBER 1

11 ADMITTED INTO EVIDENCE

12 A: This is the fully executed real estate sales contract.

13 Q: What's the date of that document?

14 A: March 20th of 2013.

15 Q: And what is ultimately the offered price or the agreed
16 upon price?

17 A: The offered price is 3,500,000.

18 Q: If you look at the -- I think it's the 11th page of the
19 document, is that your signature?

20 A: Yes, it is.

21 Q: And the signature is on behalf of Buck Investments, LLC?

22 A: Yes, sir..

23 Q: And below that is a block called escrow agent. It's the
24 McNair Law Firm. It looks like the signature of Sid Mitchell;
25 is that right?

- 1 A: That's correct.
- 2 Q: And who is Mr. Boone?
- 3 A: Mr. Boone would be our attorney, real estate attorney.
- 4 Q: As a result of this contract were you required to put down
- 5 some earnest money?
- 6 A: Yes, as part of signing this contract we were required to
- 7 put up \$50,000 of earnest money.
- 8 Q: And did you do that?
- 9 A: We did.
- 10 Q: And where is that money today?
- 11 A: It's still being held by the escrow agent.
- 12 Q: If you'll turn to Page 4 of the document, this is in
- 13 Paragraph 6(a)(ii).
- 14 A: Yes, sir.
- 15 Q: Are you with me? What does that provision of the contract
- 16 read?
- 17 A: Well, Section 6 is the representations and warranty
- 18 section of the contract; (a) reads, seller does hereby warrant
- 19 and represent the purchaser as follows; (ii) to the best
- 20 knowledge of the seller there is no actual or threatened
- 21 action, litigation, court proceeding including but not limited
- 22 to condemnation by any organization, person, individual, or
- 23 governmental authority against the property or with respect
- 24 thereto.
- 25 Q: Was it ever told -- where you ever told that there was any

1 potential that this deal could not happen?

2 A: No, sir.

3 Q: If it had been disclosed to you that there was something
4 that could've potentially been out of the defendant's control,
5 what would you have done differently, if anything?

6 MR. HANNA: Calls for ---

7 THE COURT: Hold on. Don't answer the question yet.

8 MR. HANNA: It calls for speculation, Your Honor.

9 THE COURT: Ask the question again.

10 BY MR. TEMPLETON:

11 Q: Mr. Buck, if you had known that there was a potential
12 impediment to this deal going through, what if anything
13 differently would you have done?

14 A: Well, what ---

15 THE COURT: Hold on a minute, hold on a minute. That's
16 your objection?

17 MR. HANNA: Yes, sir.

18 THE COURT: Overruled, you may answer the question. So
19 noted for the record.

20 A: One, we would not have pursued this property. We were
21 involved in a 1031 exchange. I'm happy to discuss that at any
22 point. Do you want that described?

23 Q: We'll get to that.

24 A: But whereby that agreement, we had sold other property and
25 were looking to reinvest this money and based upon the terms

1 of the 1031 exchange we had to close this property in early
2 April to meet that -- you know, those guidelines. So, with
3 that we would not've been interested in moving forward.

4 Q: And in terms of Exhibit Number 1, the closing date. Is
5 the closing date reflected in that document?

6 A: It is.

7 Q: What was the closing date to be?

8 A: The closing date on Wednesday, April 3rd, 2013, or such
9 earlier date. Time is of the essence meaning -- showing the
10 importance of us closing by that date.

11 Q: It was April 3rd, 2013?

12 A: Yes, sir.

13 Q: Not May 3rd, 2013?

14 A: No, sir.

15 Q: How did you arrive at the offer 3.5 million dollars?

16 A: Well, this was based upon, one -- couple of factors here.
17 What we were currently paying for similar buildings in that
18 market, what the rental income was for the property, and then
19 also what the potential of this property allowed for us. You
20 know, this property, you know, had been listed for sale in
21 early, I guess, 2011, 2012.

22 Q: Say that last part again.

23 A: The property had been on the market earlier on, actively
24 listed in the MLS.

25 Q: Do you recall what it was offered to be sold for at that

1 time?

2 A: The original -- one of the offered prices was \$4,950,000,
3 and then the price had been reduced to 3,695,000, I believe.

4 Q: In terms of the 3.5 million-dollar price, did you believe
5 you were paying more than it was worth or did you feel like
6 you were paying a fair price?

7 A: You know, I felt it was a fair price and with the
8 potential that it had since we owned other properties in the
9 area that this would be a good investment for my investors.

10 Q: And given the proximity of 438 King Street to the other
11 properties, did that have any bearing in this matter?

12 A: I think it had a major bearing. You know, it opened up
13 the potentials, especially with this rear parking lot to us
14 being able to do a development, a larger development without
15 affecting the rental income of this historic building.

16 Q: And when you're talking about the rental income, you're
17 talking about the tenants that were in the building at the
18 time you were seeking to buy the building; is that right?

19 A: That's correct.

20 Q: Explain to the jury how that works in your world. How
21 does that go into consideration of what to pay or what not to
22 pay for the purchase of a building?

23 A: Well, this building was being used as a retail store on
24 the first floor and then there was office space above. They
25 paid monthly rent based upon their lease. The lease is

1 determined by similar properties in the market and what kind
2 of what rents are. And we receive those rents and that's kind
3 of our return on the investment. You know, as would, you
4 know, interest be your return on a savings account at the
5 bank, you know, in relation.

6 Q: And I should have asked you this earlier, Mr. Buck, was
7 this a cash deal or was this a loan that you were gonna have
8 to acquire? How were you going to pay for this?

9 A: This was strictly a cash deal from our investors.

10 MR. TEMPLETON: May I approach?

11 THE COURT: Yes, sir..

12 BY MR. TEMPLETON:

13 Q: I'm sure I asked you this earlier. Do you recognize
14 Exhibit Number 7?

15 That was admitted by consent as well.

16 PLAINTIFF'S EXHIBIT NUMBER 7

17 ADMITTED INTO EVIDENCE

18 A: Yes, this is the \$50,000 earnest money check that we
19 submitted to McNair Law Firm as the escrow per the terms of
20 the contract.

21 THE COURT: What exhibit number was that?

22 MR. TEMPLETON: Number 7, Judge.

23 THE COURT: Thank you.

24 BY MR. TEMPLETON:

25 Q: Now, you mentioned -- you mentioned a few minutes ago the

1 1031 exchange. How about tell the jury your understanding of
2 what a 1031 exchange is as it relates to your business.

3 A: 1031 is a classification by the tax code. I'm not a tax
4 attorney, so I'm gonna give you kind of how it works and
5 really the purpose of it. When you sell ---

6 MR. HANNA: Your Honor, this is one of the things that we
7 discussed pretrial, and I don't know whether you want to take
8 this up as you mentioned outside the presence of the jury.

9 (REPORTER'S NOTE: Bench conference is held off the record in
10 the presence of but outside the hearing of the jury.)

11 THE COURT: Restate the question.

12 BY MR. TEMPLETON:

13 Q: Let me ask this question a little differently, if you
14 could listen closely. I'm interested in your understanding of
15 the impact of a 1031 on your business, not any sort of expert
16 opinion on that. Simply as it relates to your business.

17 MR. HANNA: Objection, Your Honor.

18 THE COURT: Objection overruled. You may answer the
19 question, sir.

20 A: We use the 1031 tax law because we're in the business of
21 buying and selling real estate. What it allows us to do is,
22 when we sell a property, we hire what is known as a qualified
23 intermediary and basically they step into the process where we
24 sale the property through them. They hold all the funds, and
25 then when we buy a property basically we're buying it through

1 that intermediary where they then transfer the funds that
2 they've been holding into the new property. And what this
3 allows us to do is to hopefully get a better return for our
4 investors because you're investing hopefully more money. It's
5 basically made on the profit -- you're deferring paying taxes
6 on the profit you made on selling one piece of property and
7 then exchanging buying another piece of property that you'd
8 rather own. And, this is very common in this industry, you
9 know, whether you're, you know, an individual buying one
10 investment property or you are a larger group that buys
11 numerous, but we do this on a regular basis. And then at the
12 time after you've sold the property, bought a new property,
13 and then when you do sell the future property if you decide
14 that you want to take the cash out and disperse it, at that
15 time is when the taxes would be paid on your full gain going
16 back towards your original basis. But, it's basically a way
17 to defer paying taxes. So, if we had an asset, you know, that
18 was three and a half million dollars in this case and then we
19 bought something -- we sold an asset that was three and a half
20 and bought this asset where it had a -- basically it gives us
21 an opportunity to get a better return.

22 Q: Now, in terms of the timing when you sell a property, is
23 there a time requirement that you must also turn around and
24 acquire another property?

25 A: Yes, sir. Based on the regulations with this law, finding

1 a intermediary, once we sell the first property we have 45
2 days to identify future properties that we'd be interested in
3 purchasing. Not that says that we have to purchase them but
4 that we would be interested in purchasing them. And that we
5 have to close within 180 days of when we sold the initial
6 property.

7 MR. TEMPLETON: May I approach?

8 THE COURT: Yes.

9 BY MR. TEMPLETON:

10 Q: I'm showing you what's been marked as Exhibit Number 26,
11 which has been admitted without objection from the defendant,
12 Judge.

13 THE COURT: All right.

14 PLAINTIFF'S EXHIBIT NUMBER 26

15 ADMITTED INTO EVIDENCE

16 BY MR. TEMPLETON:

17 Q: Mr. Buck, do you recognize that series of documents?

18 A: Yes, this is the 2012 tax return for Buck Investments
19 showing where we paid capital gains taxes because in this case
20 we sold our property, put it into this 1031 but because this
21 transaction did not close we could not fully complete the 1031
22 therefore having to pay taxes at this time versus deferring
23 the taxes.

24 Q: If you look at the second page of the document is that the
25 -- I call it the spreadsheet that sets forth the math?

- 1 A: That's correct.
- 2 Q: And what is the net loss to Buck Investments from losing
3 the 1031 exchange?
- 4 A: In this case, it was around \$700,000.
- 5 Q: If you look at the third, fourth, and fifth pages of the
6 document ---
- 7 A: Yes, sir.
- 8 Q: What is that document?
- 9 A: This is the notice to the qualified intermediary where
10 we're identifying potential properties to purchase.
- 11 Q: If you look at the second page of that document, I think
12 it's Item 12.
- 13 A: Yes.
- 14 Q: What property is identified?
- 15 A: 438 King Street, Charleston, South Carolina.
- 16 Q: Now, at the time that you entered into this contract did
17 you know that there was a mortgage on the property?
- 18 A: Not at the time.
- 19 Q: Would you have expected your lawyers to figure that out at
20 some point?
- 21 A: Yes.
- 22 Q: It wouldn't have surprised you that there was a mortgage
23 on the property, correct?
- 24 A: No, not at all. We place debt on many of our properties
25 as well. So, having a mortgage on commercial real estate is

1 not ---

2 Q: Not an issue?

3 A: No.

4 Q: At any point in time during the course of this negotiation
5 was it ever told to you by anyone that there was any financial
6 concern related to the existence of a mortgage on 438 King
7 Street?

8 A: No, sir.

9 Q: Would it have made a difference to you in this process if
10 the mortgage company had issued a letter of default or
11 insinuated that there could be an inability to transfer clean
12 title?

13 A: Yes, that would've been a huge issue and that would've
14 given us notice that there was a chance this deal was not
15 gonna close.

16 Q: When did you first know that there was a potential that
17 this deal was not gonna happen?

18 A: I believe it was a day or two before closing that we were
19 notified that there were some issues with the estoppels from
20 the tenants.

21 Q: And what's an estoppel?

22 A: An estoppel is just an agreement that is signed by the
23 tenant saying that they have a lease in place. It tells how
24 long the least runs for and that they have basically have paid
25 rent current.

1 MR. TEMPLETON: Judge, may I approach? It's gonna be
2 Exhibits 8 through 11. If the Court will indulge me I'll just
3 stay up there in the interest of time and walk through them.

4 THE COURT: That's fine.

5 MR. TEMPLETON: Thank you, Judge.

6 THE COURT: And those are without objection, correct?

7 MR. TEMPLETON: Yes, Your Honor.

8 PLAINTIFF'S EXHIBIT NUMBER 8 THROUGH 11

9 ADMITTED INTO EVIDENCE

10 BY MR. TEMPLETON:

11 Q: Mr. Buck, I'm showing you is exhibit number 8. Do you
12 recognize that email?

13 A: I do. This is a chain of emails.

14 Q: First, what's the date of the emails?

15 A: The first email is dated March 22nd, 2013, and this is
16 from my attorney Sid Boone at McNair to Eric Bradshaw, who is
17 ROA's attorney, copied on there is Frank Jackson, who is our
18 qualified intermediary, along with an associate in the McNair
19 Law Firm. So, that's the first one on here. Then there's an
20 email to Deborah Rice-Marko copying Eric Bradshaw from James
21 Olsen as Eric Bradshaw on Friday had forwarded Sid Boone's
22 email to him. And it reads, Debbie please see Sid's comments
23 below. Can you please provide the tax ID number for ROA, LLC
24 and let me know if this building is in fact a majority of the
25 assets of that entity. Also, could I please get copies of all

1 leases, and rent rolls, and security deposit receipts?

2 Q: And that's what you're referring to as the estoppels, that
3 information?

4 A: Yes.

5 Q: Okay.

6 A: And then there's an email following up on that.

7 Q: I'm showing you exhibit number 9.

8 Also admitted without -- no objection to that. It was
9 admitted by consent.

10 A: This email is also dated Friday, March 22nd, from Sid
11 Boone to Eric Bradshaw and Deborah Rice-Marko. This is to
12 confirm receipt of the deposit in the amount of \$50,000.
13 Closing is set for April 3rd, 2013 at 3 P.M.

14 Q: I'm showing you what's marked as Plaintiff's Exhibit
15 Number 10, and I'd like you start at the bottom and work up.
16 First of all, do you recognize the document?

17 A: Yes. Email from Sid Boone, my attorney, to James Olsen,
18 copying Eric Bradshaw. What is the status of the seller
19 documents, estoppels, et cetera, for closing tomorrow?

20 Q: Then at the top.

21 A: Then Eric Bradshaw responds to all below, Sid, just
22 received an email from Debbie moments ago that she has
23 circulated estoppels both with the out-of-state tenants as
24 well as with the local tenants but doesn't have them in hand.
25 Most likely going to need to extend the closing deadline a

1 bit. When is Eddie's actual 1031 deadline date? Really very
2 sorry for the inconvenience, we're pushing hard as we can on
3 our end.

4 Q: That's a question specifically related to the 1031
5 exchange that's being asked of you as to when it happened, is
6 that you're -- is that what you're saying?

7 A: No, when ---

8 MR. HANNA: Leading, Your Honor.

9 A: --- when the deadline, when ---

10 THE COURT: Hold on, hold on, hold on.

11 MR. TEMPLETON: I'll rephrase.

12 THE COURT: I have three people talking at one time. I
13 don't need but one. My court reporter can't take down but one
14 at the time. Okay? Now ---

15 MR. HANNA: Leading question, Your Honor. I think he's
16 agreed to that, agreed to rephrase if I understand correctly.

17 THE COURT: Very well. State your objection and your
18 grounds for such.

19 Mr. Buck, when you hear an objection, stop.

20 A: I didn't hear it.

21 THE COURT: And that's fine.

22 A: I apologize.

23 THE COURT: I'm just giving you instructions as we go
24 forward here, okay. When an objection is made stop talking,
25 let me rule on the objection, then we'll proceed from there.

1 Okay?

2 A: Yes, sir.

3 THE COURT: I'm sorry. Go ahead Mr. Templeton.

4 MR. TEMPLETON: Thank you, Judge.

5 THE COURT: And I agree with you, Mr. Buck. I didn't
6 hardly hear him either. I just saw him out the corner of my
7 eye stand up. Okay?

8 A: Okay.

9 MR. HANNA: Your Honor, while Mr. Templeton is reading,
10 is there a possibility we could move that podium because when
11 I sit at the table he's in direct line of the witness and I
12 can't see him.

13 THE COURT: You absolutely may move that podium.

14 MR. HANNA: Thank you, sir.

15 THE COURT: Or you may move anywhere in the courtroom you
16 feel like you need to move to see what's going on. Okay?

17 MR. HANNA: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. TEMPLETON: Let's put 10 away. Judge, I'm showing
20 the witness Exhibit Number 12 admitted with no objection.

21 THE COURT: Very well.

22 PLAINTIFF'S EXHIBIT NUMBER 12

23 ADMITTED INTO EVIDENCE

24 BY MR. TEMPLETON:

25 Q: Do you recognize Exhibit 12?

- 1 A: Yes, I do.
- 2 Q: And what is that document?
- 3 A: This is an email from Debbie Rice-Marko to me.
- 4 Q: All right. And what does Ms. Marko say in that email to
- 5 you?
- 6 A: Let me rephrase that. Starting at the bottom is where I
- 7 write to her on April 5th after the closing did not occur.
- 8 Debbie, please help me understand why the closing has not
- 9 occurred per our contract and you are nonresponsive.
- 10 The response I received back, Eddie I apologize for the
- 11 inconvenience and am working very hard at getting this to
- 12 close. I'll be in touch later this afternoon. Obviously, I
- 13 need an extension. What is the latest day you can close with
- 14 your 1031 deadline? Could we have an extension to the 3rd of
- 15 May? Thank you, Debbie.
- 16 And then I responded by, is there something that I can
- 17 help with? The deadline for my 1031 is Tuesday, April 9th.
- 18 We are ready to close and have been and need to close ASAP.
- 19 Q: And when the closing didn't happen on April 3rd -- strike
- 20 that. Did the closing happen on April 3rd?
- 21 A: No, sir.
- 22 Q: Did you appear at closing?
- 23 A: I was ready to close; yes, sir.
- 24 Q: You were ready, willing, and able to close, correct?
- 25 A: Yes, sir.

1 MR. TEMPLETON: Exhibit Number 11. That was without
2 objection as well, Judge.

3 A: This is on April 4th ---

4 BY MR. TEMPLETON:

5 Q: Hold on, let me ask my question. Do you recognize that
6 document?

7 A: Yes, I do.

8 Q: Was that a letter that was sent at your request?

9 A: Yes, sir.

10 Q: And what is that letter?

11 A: This a letter dated April 4th from Sid Boone, who is my
12 attorney to Eric Bradshaw, ROA's attorney. Dear Eric,
13 Pursuant to referenced contract closing was to occur on or
14 before April 3rd, 2013 as set forth in paragraph 10(a). This
15 is to advise the seller is in default and purchaser reserves
16 all rights as provided in the agreement if seller fails to
17 cure the default within 30 days.

18 Q: I'm showing you Exhibit 13.

19 Admitted without objection, Judge.

20 PLAINTIFF'S EXHIBIT NUMBER 13

21 ADMITTED INTO EVIDENCE

22 BY MR. TEMPLETON:

23 Q: Do you recognize that document?

24 A: Yes, I do.

25 Q: And what's the date of the document?

1 A: This is dated April 4th, 2013.

2 THE COURT: And that's exhibit what number?

3 MR. TEMPLETON: 13, Judge.

4 THE COURT: Okay. You've got 13 through 15 there, each
5 one that you hand him -- make sure if you hand them out of
6 order so to speak.

7 MR. TEMPLETON: Yes, sir. I will.

8 THE COURT: Okay, thank you.

9 BY MR. TEMPLETON:

10 Q: Who is the email to and from?

11 A: It starts out on April 8th, I write to Debbie, Any chance
12 you'll be prepared to close tomorrow? She responds back, I am
13 sorry but no. I then respond with, Anything I can help with?

14 Q: I'm showing you what's been marked as Exhibit Number 15.

15 Also, admitted without objection, Judge.

16 PLAINTIFF'S EXHIBIT NUMBER 15

17 ADMITTED INTO EVIDENCE

18 Q: Do you recognize that document?

19 A: Yes, I do. It's a chain of emails.

20 Q: All right. And what do those emails discuss?

21 A: She writes, As you know, our lease on the second floor of
22 438 expires in a little over 60 days. We submitted a renewal
23 proposal almost two months ago. Is there any guidance you can
24 give us at this point? This was to -- it's one of her -- her
25 second floor tenant to Debbie, and she sends this to me on

1 Wednesday, April 24th. Eddie, I continue to work to get this
2 transaction closed by the end of the 30 days. I take it
3 that's referring to the 30 days default on the contract. I
4 was contacted by the second floor tenant and as you recall I
5 sent to you their offer to lease renewal. You were not in
6 agreement with their offer. Below is a copy of what they
7 sent. And then I respond, I want to hand the lease renewal.
8 When does it look like you'll be ready to close? And Debbie
9 responds, I hope to close on May 6th.

10 Q: Is there any -- have you gotten any indication from the
11 seller of this property after the closing but before May 3rd
12 that this deal was not gonna happen?

13 A: No, sir.

14 Q: What was your expectation of what was going to occur?

15 A: That we were going to have a closing, I guess, as per the
16 contract not by the dates of the contract but there was some
17 issues that she was working through with the tenants in
18 providing the estoppels as she referenced and are referenced
19 through the contract and that was the delay in why things were
20 being drug out but that she was actively working and that this
21 deal was going to close.

22 MR. TEMPLETON: Almost through, Judge.

23 BY MR. TEMPLETON:

24 Q: Two more, 14 and 17. Let's start out with Exhibit 14.
25 It's going to take you back a little bit. I'm showing you

1 what's been marked as Exhibit 14.

2 Admitted without objection, Judge.

3 PLAINTIFF'S EXHIBIT NUMBER 14

4 ADMITTED INTO EVIDENCE

5 BY MR. TEMPLETON:

6 Q: Do you recognize that document?

7 A: Yes, I do.

8 Q: What's the date of that document?

9 A: It starts on April 11th. I write to Debbie, and we're
10 going back in time a little bit here. When do you hope to be
11 prepared to close? On the same day Debbie responds, In about
12 two weeks but I'll keep you updated. I respond back, Please
13 keep me updated. And she responds, I will, and again I do
14 apologize for this extended closing. Debbie.

15 Q: And then finally, Exhibit Number 17 I'm showing you which
16 was admitted without objection.

17 PLAINTIFF'S EXHIBIT NUMBER 17

18 ADMITTED INTO EVIDENCE

19 Q: Do you recognize that document?

20 A: Yes, I do.

21 Q: The bottom email appears to be from you to Ms. Marko; is
22 that right?

23 A: Yes. This is dated July 10th. I write to Debbie, I have
24 not heard from you in several months. Did you forward the
25 contract discussed with your lender? We would like to move

1 forward with closing.

2 Q: When did you first learn that there was a lender issue in
3 this matter?

4 A: I guess sometime after May 6th when we still hadn't
5 closed.

6 Q: And Ms. Marko's response to your email was what?

7 A: Eddie, as you know this is a matter -- this matter is in
8 litigation and I am unable to respond.

9 Q: In preparing for this closing what costs and expenses did
10 Buck Investments incur?

11 A: Well, there was surveys. There was preparing the
12 contracts. There was inspections of the property and legal
13 fees incurred so that we'd be prepared to perform.

14 Q: Can you tell the jury what those costs were?

15 A: Those were roughly, I think, 17,000, \$20,000. Buck
16 Investment has no employees, so all other work of due
17 diligence was done by another one of my companies of which no
18 fees were assessed for those before closing.

19 Q: After May 6th, 2013 and before your July 10, 2013 email to
20 Ms. Marko, were you given any reason as to why the closing
21 could not occur?

22 A: Only thing I recall is it was an issue with the lender.

23 Q: Now, Mr. Buck, obviously you've brought a lawsuit here.
24 Why have you brought a lawsuit?

25 A: Because we had a contract that was binding between us, and

1 Ms. Marko, she did not perform and it cost me and my investors
2 a sizeable amount of money because for lots of reasons but one
3 main one was we were not able to use this 1031 exchange and
4 were forced to pay taxes versus reinvesting the proceeds at
5 that time.

6 Q: I'm gonna ask you another question here because I suspect
7 Mr. Hanna's gonna ask you a question. Exhibit 26 had a number
8 of properties that were listed as potential 1031 exchange.
9 Why not go park your money somewhere else and just walk from
10 this deal?

11 A: Well, one, we didn't know that this deal wasn't gonna
12 close till April 2nd. Some of these properties we did
13 purchase for other 1031 money. Some of them we ruled out
14 because of -- in our due diligence and there were others that
15 we were not able to agree upon the price on.

16 Q: You've told the jury about the 1031 exchange and you've
17 told the jury about the hard costs that your company incurred
18 in preparing for this deal that didn't go forward. Was there
19 any expectation had this deal gone forward that Buck
20 Investments would've enjoyed any profit from the revenue
21 stream of tenants that were impacted by the deal?

22 A: Yes, sir. I mean, that was, you know, one of the main
23 reasons for purchasing the property was to get a return on our
24 investment, and we do that through the rents received on the
25 property, also depreciation of the property over time. In

1 addition would be the opportunity to adjoin it with the other
2 property that we controlled on John Street.

3 Q: Before entering into the contract or in the due diligence
4 period was Buck provided any information as to the amount of
5 rents revenue at this property? Was that something that you
6 ---

7 A: Yes, we were provided a rent roll.

8 Q: A what?

9 A: A rent roll, which would tell what each tenant was
10 currently paying, how long the lease went to, who the tenant
11 was, and what space they occupied.

12 Q: Do you have any recollection as to what the rent roll was
13 at the time this deal would've gone down in 2013?

14 A: I think it was around \$250,000 a year.

15 Q: In addition to buying property on upper King, have you
16 also sold property on upper King?

17 A: I think we still have all of our holdings on upper King
18 Street.

19 MR. TEMPLETON: Court's indulgence?

20 THE COURT: Yes, sir.

21 MR. TEMPLETON: May I approach the bench?

22 (REPORTER'S NOTE: Bench conference is held off the record in
23 the presence of but outside the hearing of the jury.)

24 THE COURT: All right, ladies and gentlemen, I'm gonna
25 ask you to step to the jury room for a minute. We've been

1 going for about an hour and a half.

2 Do not discuss the case and I'll get you back out here as
3 quickly as possible. Okay?

4 (REPORTER'S NOTE: Jury exits courtroom @ 11:42 A.M.)

5 THE COURT: All right, Mr. Templeton.

6 MR. TEMPLETON: You want me to do it on a proffer, Judge.

7 THE COURT: I'll hear what you intend to bring out and
8 let's let Mr. Hanna make his appropriate objections and make
9 sure the record is protected and, depending on what my ruling
10 is, we'll go from there.

11 MR. TEMPLETON: Great.

12 PROFFER EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR. TEMPLETON:

13 Q: Mr. Buck, what I want to focus with you on now is your
14 experience on upper King in valuations.

15 A: Yes, sir.

16 Q: How many properties on upper King Street have you
17 purchased?

18 A: I believe I have eight holdings on King Street.

19 Q: And of those eight holdings, how many of those holdings
20 are directly adjacent to the subject property 438 King?

21 A: Two, 46 and 48 John Street.

22 Q: And are the properties that you have purchased in that
23 area of upper King Street similar to this property? This
24 property being 438 King.

25 A: Most of them. Several buildings are the same basic

1 *****OFF THE RECORD*****

2 (On the Record - 12:06 A.M.)

3 THE COURT: Thank you, be seated.

4 All right. Anything before I bring the jury back out?

5 MR. TEMPLETON: Nothing from the plaintiff, Judge.

6 THE COURT: Defense counsel?

7 MR. HANNA: None, Your Honor.

8 THE COURT: All right. Bring me the jury, please, sir.

9 (REPORTER'S NOTE: Jury enters courtroom @ 12:09 P.M.)

10 THE COURT: Thank you, sir. Mr. Templeton, you may
11 continue, sir.

12 MR. TEMPLETON: Thank you, Your Honor.

13 DIRECT EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR. TEMPLETON:

14 Q: Mr. Buck, earlier in your testimony we talked about other
15 properties that you had acquired on King Street. Do you
16 recall that?

17 A: Yes, sir.

18 Q: How many properties in upper King Street area have you
19 purchased?

20 A: I believe we have eight King Street holdings.

21 Q: How many of those holdings are similar to that of 438 King
22 Street?

23 A: Most of those eight where you have retail on the first
24 floor and then office or residential above.

25 Q: And, I think you told the jury earlier that at least two.

1 of those properties are adjacent to 438 King Street.
2 A: That's correct.
3 Q: Have you sold any of those properties?
4 A: No, sir.
5 Q: And from approximately what period of time did you acquire
6 those properties?
7 A: Those holdings were acquired primarily in the last five
8 years.
9 Q: Are you personally familiar with the eight properties that
10 you have acquired?
11 A: Yes, I am.
12 Q: Do you have a personal knowledge as to what the value of
13 the properties are that you acquired?
14 A: Yes, I do.
15 Q: Prior to offering to purchase 438 King did you have an
16 opportunity to personally observe the property?
17 A: Yes, I did.
18 Q: Did you have an opportunity to walk the property?
19 A: Yes, I did.
20 Q: Again, the property -- you personally owned property --
21 strike that. Buck Investments owns property that is similar
22 to 438 King Street; is that correct?
23 A: Yes, we do.
24 Q: And you offered to purchase the property for 3.5 million
25 dollars. Obviously, the deal didn't go forward but do you

1 have an opinion today as to what 438 King Street is worth?

2 A: Based upon our other purchases and holdings along with
3 other buildings that we've looked at during that same period
4 of time and even recently, and with current appraisals of some
5 of our holdings, you know, one, I have not been through this
6 building in five years. I have not seen the current rent
7 roll, but basing it on other knowledge the building should be
8 worth, you know, \$600 a square foot, about \$5,000,000 today.

9 Q: And you said you haven't walked this property is several
10 years, right?

11 A: That's correct.

12 Q: You haven't sold any property on King Street of your
13 holdings, right?

14 A: No, sir.

15 Q: But in your view \$600 a foot is a reasonable expectation.
16 Is that fair?

17 A: Based upon our other holdings, other sales that we know of
18 I think that's a reasonable number.

19 Q: And when Buck Investments sought to purchase 438, did it
20 have an expectation or a hope of this property increasing in
21 value?

22 A: Yes, I mean, our goal on these holdings on King Street was
23 not to buy and to flip them. It was to buy and receive the
24 current roll income, raise the rental rates when the
25 opportunities arose. You know, see the appreciation of these

1 properties and then to hold them for an extended period of
2 time.

3 Q: Thank you, Mr. Buck. Answer any questions that Mr. Hanna
4 may have for you.

5 MR. TEMPLETON: I tender the witness for cross, Judge.

6 THE COURT: I'm sorry. What was that Mr. Templeton?

7 MR. TEMPLETON: I tender the witness for cross.

8 THE COURT: Cross examination.

9 MR. HANNA: Thank you, Your Honor.

10 CROSS EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR. HANNA:

11 Q: Mr. Buck, Buck Investments, how much is it worth?

12 A: I don't know.

13 Q: Is that because you haven't looked or because it's worth
14 so much you don't have any idea how much it's worth?

15 A: No, we have numerous holdings. Again, it's a company made
16 to invest in real estate so it has a limited cash position but
17 has assets.

18 Q: I don't believe I asked you about cash. I asked you how
19 much it's worth, 100 million?

20 A: No, sir.

21 Q: More or less?

22 A: Less.

23 Q: More than 50 million?

24 A: I can't really answer that. It's based upon market.

25 Q: I believe you testified that the property was brought to

1 you; is that correct?

2 A: That's correct.

3 Q: Now, how is that done? How do they come about?

4 A: One, either I'll receive phone calls from brokers or
5 unsolicited emails or I'll have packages show up at my door
6 for properties that people are representing whether it's
7 through a broker or through an owner asking us if we have an
8 interest in this.

9 Q: But, I was referring to this piece of property. How did
10 you come on this piece of property?

11 A: Mr. Groat and Mr. Atwill contacted me and said that they
12 had a property on King Street that they would -- that it was
13 available and that they'd like to put in front of me, and
14 would I have an interest in looking at it.

15 Q: And I believe, if I'm not wrong, Mr. Atwill testified at
16 his deposition that they were out looking for properties
17 specifically for you, is that correct?

18 A: No, sir. I believe, at the time because of how active we
19 were most brokers knew that we were active in reinvesting
20 funds and were looking for deals specifically to bring to us.
21 So, we were dealing during this time with numerous brokers and
22 we do not have any kind of exclusive relationship with anyone.

23 Q: That was not my question either. My question was, didn't
24 they contact Ms. Rice-Marko with the specific intent of
25 finding properties for you?

- 1 A: I did not instruct them to do that, no.
- 2 Q: I didn't ask you that. I asked you isn't that what
- 3 happened?
- 4 A: I have no idea. You'll have to ask them.
- 5 Q: Were you present at Mr. Atwill's deposition?
- 6 A: I was not.
- 7 Q: Okay. Now, this thing about the 1031 exchange. Help me
- 8 understand that, please, sir. You had to identify a property.
- 9 A: Yes, sir.
- 10 Q: Property that you were going to buy to replace property
- 11 that you were going to sale, is that right, sir?
- 12 A: That we'd already sold.
- 13 Q: All right, sir. And how would you identify that property?
- 14 A: A form is sent to our qualified intermediary.
- 15 Q: You created that form?
- 16 A: It's done by my CFO.
- 17 Q: And as I understand it 438 was listed on one of those
- 18 forms.
- 19 A: That's correct.
- 20 Q: And that was sent to your qualified intermediary as you
- 21 call it.
- 22 A: Yes, sir.
- 23 Q: Do you remember when this piece of property was
- 24 designated?
- 25 A: December 19th of 2012.

1 Q: And December 19th would have given you until what time to
2 close on that piece of property?

3 A: It's based upon the time when you close the previous deal,
4 it's 180 days.

5 Q: And that would have been when? April the 9th.

6 A: Yes, sir, thereabouts.

7 Q: That's what you reflected in the emails that you exchanged
8 with Ms. Rice-Marko, was it not?

9 A: That's correct.

10 Q: Now, if I understand it correctly between that time and
11 that contract that was signed by Ms. Rice-Marko she had no
12 obligations to you whatsoever did she, sir?

13 A: Not until we had a signed contract.

14 Q: And so you're looking -- you had taken the risk when you
15 put her property down on that list, that you would not be able
16 to close on that, did you not, sir?

17 A: There were numerous properties that were identified that
18 we were working at the time.

19 Q: That was not my question, sir. You knew when you listed
20 that property that you did not have it under contract and that
21 you might not be able to use that property for a like property
22 exchange, didn't you?

23 A: As of that date we were actively pursuing it but I did not
24 -- was not under contract.

25 Q: That was not my question again, sir. My question was, you

1 knew when you listed that property that you might not be able
2 to close on it and use it the 1031, didn't you sir?
3 A: That along with other properties, yes, sir.
4 Q: Now, when you signed the contract, I believe you said you
5 would not have signed the contract had you known that it would
6 not close by April the 9th; is that right, sir?
7 A: If I'd known there was financial issues I would not have
8 signed that contract.
9 Q: We'll get to that in a minute. But, I believe your
10 testimony was you would not have signed the contract if you
11 knew that you could not close on it by April the 9th. Is that
12 your testimony or not?
13 A: I don't believe so. I said that we would consider it and
14 ---
15 Q: This contract that was signed, who originated that
16 contract?
17 A: The contract was done between Sid Boone and Eric Bradshaw.
18 Q: Have you used that form contract before?
19 A: Very similar to it, yes, sir.
20 Q: Has Mr. Boone represented you on deals involving contracts
21 such as this one?
22 A: Yes, sir.
23 Q: And what y'all basically did was take a boilerplate
24 contract that you've used before and modified it to fit this
25 particular situation; isn't that right, sir?

1 A: I don't necessarily call it a boilerplate but it's a
2 framework of a contract that we use. We do not create from
3 scratch a new contract for every deal.

4 Q: Paragraph 12, the one that's been referred to, I'll ask
5 you to read for the jury the portion that I have underlined in
6 Paragraph 12, sir.

7 A: Under Paragraph 12, let's see where we start here because
8 I want to make sure -- if seller defaults by failing to close
9 closed for reasons within the seller's control, then provided
10 purchaser is not in default hereunder.

11 Q: The portion that I had underlined.

12 A: I need to give a context.

13 Q: You want to read the whole thing? Go ahead.

14 A: I'll read the whole thing.

15 Q: Okay.

16 A: And provided purchaser has notified seller of the specific
17 nature of the default and allowed seller a 30-day calendar day
18 period to cure such default, purchaser may declare this
19 agreement and terminate it thereby releasing purchaser from
20 any further obligations to seller pursuant to this contract.

21 Q: So, according to the default provisions of the contract,
22 Ms. Rice-Marko could still perform on May 3rd and meet the
23 requirements of the contract, could she not, sir?

24 A: I'd have to do the math, but we notified her that she was
25 in default and she had 30 days to take care of that.

1 Q: That's right, and that was after the May 9th -- excuse me
2 -- April 9th. That was April 11th when that letter was
3 written, wasn't it, sir?
4 A: I don't have those in front of me so I can't really
5 respond exactly to dates. No, the letter was written on April
6 4th.
7 Q: You knew when you signed the contract that there was a
8 possibility that it would not close within the time period
9 needed on the 1031, didn't you, sir?
10 A: I've never had that issue.
11 Q: That was not my question, sir. Please listen to my
12 question. You knew when you signed it that there was a
13 possibility that it would not close in time for you to qualify
14 that property for a 1031 exchange, didn't you?
15 A: I did not know that.
16 Q: Contract said that, didn't it.
17 A: The contract says there's 30 days to cure.
18 Q: All right. And that would've been after April the 9th,
19 wouldn't it?
20 A: Yes, sir.
21 Q: Okay. But you still say you didn't know that it was a
22 possibility that it might not close within that time period.
23 A: Like I've said, we've never had that issue.
24 Q: That's the reason why you sent Exhibit 11 notifying Ms.
25 Marko that she had 30 days to comply. That letter was written

1 on April 4th. Okay. That would've given her until at least
2 May the 3rd to perform under the contract.
3 A: Under the terms of the contract, yes, sir.
4 Q: So, when April rolled around -- April 9th rolled around
5 she was not in default under that contract, was she? She
6 still has ---
7 A: She was in default.
8 Q: She still had a right to cure it.
9 A: Yes.
10 Q: If she had closed on May the 3rd she would've complied
11 with the contract?
12 A: She would've cured the default; yes, sir.
13 Q: And complied with the terms of the contract. You would've
14 still gone through with it on May 3rd, wouldn't you, sir?
15 A: I believe so.
16 Q: Even though the 1031 designation didn't even apply then,
17 you would've still gone through with it?
18 A: I believe so based upon support of my investors.
19 Q: And I believe you said on direct examination had you known
20 about this problem with the mortgage that you would've not
21 entered into a contract.
22 A: That's correct. I did say that.
23 Q: During the negotiations you anticipated a problem with the
24 mortgage, did you not?
25 A: No, sir.

1 Q: Wasn't there an email that went back and forth saying that
2 we can't understand why this is not closing and it must be a
3 lender issue? Didn't that happen?

4 A: Clearly speculation.

5 Q: But you -- then was it still a possibility at that time
6 might be a lender issue and that it might not close.

7 A: Clearly speculation but, one, that was after we were
8 supposed to close.

9 Q: Now, this notion that you would not have closed or would
10 not have signed the contract if you had known of the lender
11 issues. Isn't it true that after May 3rd, after the
12 foreclosure had been filed, after you knew that you had lender
13 issues you were still trying to close it?

14 A: Yes, sir.

15 Q: And isn't it true that you reached out to, through your
16 attorneys to the attorney who was representing PNC, the
17 foreclosure attorney, to see if something could be done about
18 it even in late May, 2013?

19 A: Yes, sir.

20 Q: And they gave you the same response that they gave Ms.
21 Marko on May the 3rd, no, they're not going along with it,
22 didn't they, sir?

23 A: Not directly.

24 Q: But isn't that what they said, no, we're not gonna let you
25 sale -- we're not gonna let her sale the property?

1 A: They would not tell me that, no.
2 Q: Did they tell anybody that?
3 A: I can't speculate on that. I mean, that'd be hearsay.
4 Q: What was your understanding at that point in time why they
5 wouldn't talk to you about it?
6 A: They were dealing with their borrower.
7 Q: Is there any question, Mr. Buck, that the reason that this
8 thing didn't close was because the property was in foreclosure
9 and the bank wouldn't go along with the deal?
10 A: It was not in foreclosure when we entered into a contract
11 nor when we were supposed to close.
12 Q: Again, listen to my question. Isn't it true that it
13 didn't close because the bank was in -- had begun foreclosure
14 and would not go along with the deal? Isn't that the reason
15 why it didn't close?
16 A: No, sir. If the bank could've been paid off and the deal
17 closed.
18 Q: They -- this Court has already ruled that the bank would
19 not consent to that sale. Do you agree with that?
20 MR. TEMPLETON: Objection ---
21 A: Unless she paid off ---
22 THE COURT: Hold on, hold on.
23 MR. BUCK: --- paid off the bank. Which could've been
24 ---
25 THE COURT: Mr. Buck, hold on.

1 MR. BUCK: I'm sorry.

2 THE COURT: State the grounds for your objection.

3 MR. TEMPLETON: He is asking the witness for a legal
4 conclusion of what the Court has held as a matter of law.

5 THE COURT: Objection sustained.

6 If you want to hand him some documents to look at.

7 MR. HANNA: Absolutely, Your Honor. Could we see the
8 order of ---

9 MR. TEMPLETON: Your Honor, he's going to cross examine
10 the witness on an order of the Court?

11 MR. HANNA: That's the facts of the case, Your Honor.

12 THE COURT: Can y'all approach?

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 BY MR. HANNA:

16 Q: Let's talk about the effects of the 1031 exchange, Mr.
17 Buck. I believe you said it was a deferral of taxes, isn't
18 that right, sir?

19 A: Yes, sir.

20 Q: It doesn't mean you don't have to pay those taxes it just
21 means it puts it off for a while that you have to pay the
22 taxes.

23 A: Well, if you never sale that property then you never pay
24 the taxes.

25 Q: And isn't it true, sir, that you're not losing the benefit

- 1 -- you're not -- let's assume that the tax deferral was
2 \$100,000 on a piece of property. You don't lose \$100,000 from
3 the fact that you don't get to do a 1031, you just lose the
4 use of that money for that time period.
- 5 A: Restate the question.
- 6 Q: Yes, sir. It isn't -- if a piece of property doesn't
7 qualify for a 1031 exchange that doesn't mean that you lose
8 that tax credit. It just means that it's not deferred, right?
- 9 A: Yes, it wouldn't be deferred and you can use -- basically,
10 you're investing those funds for a return, and if you never
11 sale that asset you wouldn't pay any taxes and potentially
12 could end up into an estate issue where there's step up in --
13 where that gain would not have to be paid at any point in
14 time.
- 15 Q: And you just don't get to use that money -- you can use
16 that money for other purposes rather than giving it to Uncle
17 Sam. Is that right?
- 18 A: Well, the purpose of it is to be able to exchange real
19 estate parcels without having to pay tax at the time which
20 better your return for your investors and potentially
21 eliminates the tax burden.
- 22 Q: Have you read the mortgage agreement between PNC and Ms.
23 Rice-Marko?
- 24 A: I have not.
- 25 Q: Do you remember a fax that was transmitted on the day of

1 closing, May 3rd, that faxed a copy of the foreclosure papers
2 to someone. Do you remember anything about that at all?
3 A: No, sir. I don't know anything about a fax.
4 Q: Let me question you for a moment about the value of the
5 property at 438. As I understand it you're basing that on
6 sales that you've been involved in prior to this one.
7 A: No, sir.
8 Q: All right. What are you basing it on?
9 A: I'm basing it upon a number of things. One, transactions
10 that we were involved in, offerings that were submitted to us,
11 properties that we looked at and made offers that weren't
12 successful. I'm basing that on appraisals of out properties
13 that show comparable properties along King Street, and basing
14 it upon rental rates and leases that either we have or others
15 that we -- that I would have had knowledge of.
16 Q: And the properties that you purchased on King Street, when
17 was the last one purchased?
18 A: Approximately two years ago.
19 Q: And the one before that?
20 A: Probably three years ago.
21 Q: And I assume the others were before that. Do you know the
22 condition of 438 King?
23 A: I do not. As I mentioned earlier, there appears to be
24 some deferred maintenance on the building.
25 Q: You don't know the condition of the interior, whether it

1 needs repairs, you don't know if the electricity is working in
2 the building, you don't know what the plumbing is like in the
3 building, you don't know anything about it except what it
4 looks like from the street, do you?

5 A: I have not been inside the building in five years.

6 Q: So, you don't know anything about the building except for
7 what you see from the street?

8 A: As it, as it relates to its condition, no.

9 MR. HANNA: Excuse me one second, Your Honor.

10 BY MR. HANNA:

11 Q: Mr. Buck, in Paragraph 12 of the contract with regard to
12 what happens on a seller's breach, did you have any input in
13 drafting that particular paragraph in the contract, sir?

14 A: I am not the attorney, so anything that -- as to legal
15 language was drafted by my attorney and we've used a similar
16 version of this contract for all our transactions.

17 Q: So, the answer is no, you didn't have anything to do with
18 the drafting of Paragraph 12 or how the highlighted paragraph
19 came about or as to the negotiations leading up to Paragraph
20 12?

21 A: That's a standard paragraph that's used in our contracts
22 that I did not draw up.

23 Q: The answer is no, you don't know anything about it?

24 A: No, I did not draft it.

25 MR. HANNA: I believe that's all I have, Your Honor.

1 Thank you.

2 THE COURT: Any redirect?

3 MR. TEMPLETON: Briefly, Judge.

4 REDIRECT EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR.

5 TEMPLETON:

6 Q: Mr. Buck, you were asked a question about the 1031
7 exchange. Your company paid taxes in 2012, correct?

8 A: Yes, sir.

9 Q: Did it incur a taxable loss because the 1031 did not
10 occur?

11 A: Yes.

12 Q: And that was the \$700,000 figure that you told the jury
13 about earlier, correct?

14 A: Yes, sir.

15 Q: That was -- it wasn't that that money was -- you paid that
16 money to the government but the intent was that you didn't
17 have to pay that money to the government, correct?

18 A: That's correct.

19 MR. HANNA: Leading, Your Honor.

20 THE COURT: Sir?

21 MR. HANNA: Leading.

22 THE COURT: Overruled. I'll allow it, he's already
23 answered it.

24 Do you have any recross?

25 MR. HANNA: Nothing, Your Honor.

1 THE COURT: Mr. Buck; you may step down. Thank you, sir.

2 Can the lawyers approach a minute, please?

3 (REPORTER'S NOTE: Bench conference is held off the record in
4 the presence of but outside the hearing of the jury.)

5 THE COURT: Ladies and gentlemen, what we're gonna do at
6 this point is we're gonna -- I'm gonna let you go to lunch.
7 I'm gonna ask -- well, go ahead. Well, in just a minute, I'm
8 gonna let you go to lunch.

9 MR. TEMPLETON: I will not keep them from lunch for long.

10 Your Honor, I'd like to publish a stipulation that the
11 defendants have entered into to the jury.

12 THE COURT: All right, go ahead.

13 MR. TEMPLETON: Should I mark it as a court exhibit or
14 should I mark it as evidence for publishing.

15 THE COURT: What is it?

16 MR. TEMPLETON: I'll mark it as 27, Plaintiff's 27, and I
17 ask for instruction to the jury as to what a stipulation
18 means.

19 PLAINTIFF'S EXHIBIT NUMBER 27

20 ADMITTED INTO EVIDENCE

21 MR. TEMPLETON: Defendant stipulates that the plaintiff
22 was ready, willing, and able to perform at the closing of 438
23 King Street in April, 2013. And then Plaintiff asks for
24 instruction.

25 THE COURT: Ladies and gentlemen, this stipulation is

1 simply an agreement by the parties to this particular fact, to
2 this particular fact. And it will be marked as an exhibit,
3 plaintiff's exhibit and it will be one of the items of
4 evidence that goes back with you all when given the case to
5 deliberate on.

6 MR. TEMPLETON: And then, Judge, actually, we would like
7 to publish a request for admission that was served on the
8 defendant. We would mark as 28.

9 PLAINTIFF'S EXHIBIT NUMBER 28

10 ADMITTED INTO EVIDENCE

11 MR. TEMPLETON: We'll do the same thing with the
12 instructions on the RTAs.

13 THE COURT: Just give me just a second. I want to look
14 at something.

15 MR. TEMPLETON: Yes, sir.

16 THE COURT: Ladies and gentlemen, what I'm getting ready
17 to put up is a request to admit. Under our rules of
18 procedure, and more specifically Rule 36 of the South Carolina
19 Rules of Civil Procedure allow what's called request to admit
20 to be served upon each other, Plaintiff can serve them on
21 Defense counsel, Defense counsel can serve them on Plaintiff.
22 In this case Plaintiff's counsel served this particular
23 request to admit on Defense counsel and this request to admit
24 speaks for itself. And it's a fact that's admitted in this
25 case by both sides. Okay.

1 THE COURT: Any objection or exception to anything I've
2 told the jury from Defense counsel?

3 MR. HANNA: No, Your Honor.

4 THE COURT: Mr. Templeton?

5 MR. TEMPLETON: None.

6 THE COURT: All right. Go ahead.

7 MR. TEMPLETON: Ladies and gentlemen, the question that
8 was posed was admitted, foreclosure proceedings by PNC had not
9 been commenced on the subject property prior to April 3rd,
10 2013, and the defendant's admitted that request. And that's
11 marked as Exhibit 28.

12 THE COURT: Very well.

13 MR. TEMPLETON: And I won't hold anybody up from lunch
14 now.

15 THE COURT: All right. Now, I'm gonna let you go to
16 lunch. All right?

17 I'm gonna ask you to be back, be back in your jury room
18 at 2:00, be back at 2 o'clock, and we'll resume the trial as
19 promptly at that time as possible. Do not, do not discuss the
20 case at all with anyone. Do not do any independent
21 investigation. As I've told you from the outset, you are to
22 decide this case based solely upon the evidence and testimony
23 presented in this courtroom and nowhere else.

24 You all have a nice lunch. I'll see you back at 2:00.

25 (REPORTER'S NOTE: Jury exits courtroom @ 12:41 P.M. The

1 following takes place outside the presence of the jury.)

2 THE COURT: Anything before we break for lunch from
3 plaintiff's counsel?

4 MR. TEMPLETON: No, Your Honor.

5 THE COURT: Defendant's counsel?

6 MR. HANNA: No, Your Honor.

7 THE COURT: 2 o'clock.

8 RECESS - 12:41 P.M.

9 *****OFF THE RECORD*****

10 (On the Record - 2:08 P.M.)

11 THE COURT: Bring me the jury, please, sir.

12 (REPORTER'S NOTE: Jury enters courtroom @ 2:09 P.M.)

13 THE CLERK: All jurors present, Your Honor.

14 THE COURT: Thank you, sir.

15 Good afternoon, ladies and gentlemen, I hope you all had
16 a nice lunch and ready to proceed this afternoon. At this
17 time we're going to continue the case.

18 Mr. Templeton, you're recognized. Call your next
19 witness.

20 MR. TEMPLETON: Let me step out in the hall and see who
21 we've got standing by, Judge.

22 THE COURT: All right.

23 MR. TEMPLETON: Your Honor, plaintiff calls Geoff Groat.

24 THE CLERK: Left hand on the Bible and raise your right
25 hand.

GEOFFREY LOUIS GROAT, JR. - DIRECT BY TEMPLETON

1 GEOFFREY LOUIS GROAT, JR., HAVING BEEN
2 DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE CLERK: Be seated. Please speak in the microphone
4 and state your full name and spell your last name for the
5 record.

6 MR. GROAT: Sure. Geoffrey Lewis Groat, Jr.

7 THE CLERK: Spell the first name -- last name.

8 MR. GROAT: Last name is G-R-O-A-T.

9 THE COURT: Go ahead.

10 DIRECT EXAMINATION OF GEOFFREY LOUIS GROAT, JR. BY MR.
11 TEMPLETON:

12 Q: Mr. Groat, where are you employed?

13 A: I own a real estate firm here in Charleston, Roadstead
14 Real Estate Advisors.

15 Q: How long have you owned that business or been involved
16 with that business?

17 A: That business started in September of 2012.

18 Q: And what's the nature of the business?

19 A: Primarily, almost exclusively, commercial real estate
20 transactions.

21 Q: And what is a broker-in-charge?

22 A: I oversee the day-to-day operations of the business as
23 well as oversee my agents.

24 Q: Are you in fact the broker-in-charge?

25 A: I am.

- 1 Q: How many agents do you have?
- 2 A: Six.
- 3 Q: Do you have a business partner as well?
- 4 A: Mr. Atwill is my business partner.
- 5 Q: Do you know Eddie Buck?
- 6 A: I do.
- 7 Q: Buck Investments. How do you know Mr. Buck?
- 8 A: I've known Eddie for quite a long time. We -- I was with
- 9 a commercial real estate firm CB Richard Ellis for about 13
- 10 years prior to my starting this business. Some folks in that
- 11 company worked with Eddie in the past. I know Eddie from a
- 12 civic organization that we are both part of.
- 13 Q: And have you worked with him on occasion over the years?
- 14 A: On occasion.
- 15 Q: Do you have an exclusive relationship with Mr. Buck?
- 16 A: I do not.
- 17 Q: Do you know Debbie Rice-Marko?
- 18 A: I do.
- 19 Q: And have you ever worked with Ms. Marko before?
- 20 A: No, not directly other than this, you know, transaction
- 21 that we're discussing now.
- 22 Q: The transaction we're talking about in relation to 438
- 23 King Street, right?
- 24 A: That's correct.
- 25 Q: And really what I want to direct you to is not what you

1 know in 2018, I really want to take you back in time to 2012,
2 to 2013. Okay?

3 A: Absolutely.

4 Q: That's the frame work of any of my questions. All right?

5 A: Okay.

6 Q: So, how did Roadstead become aware that 438 King Street
7 was for sale?

8 A: My business partner, Daniel Atwill, had known Ms. Marko
9 from a prior lease discussion, I believe it was. And at the
10 time as is typically the case, we went out and we were looking
11 for opportunities. King Street at that time had become a very
12 desirable location for acquisitions and numerous people were
13 looking to acquire properties. And, Daniel felt like he had
14 enough of a former relationship with her to reach out and make
15 a warm call as opposed to a cold call and see if she would be
16 interested in selling the building.

17 Q: Was the building presently on the market, and by presently
18 I mean in 2012?

19 A: No, it was not.

20 Q: When did you -- who initiated the contact with Mr. Buck as
21 it relates to 438 King Street.

22 A: I reached out to Mr. Buck after Mr. Atwill had indicated
23 that Ms. Marko said that she'd be willing to consider selling
24 her building.

25 Q: And when you reached out to Mr. Buck, what did he tell

1 you?

2 A: He said if we could get more information gathered he would
3 be interested in taking a look at it.

4 Q: And what type of information did he want to see or what
5 would be expected in an ordinary course of a commercial real
6 estate transaction?

7 A: Typically, an acquisition like that would require looking
8 at the rent roll to see who the tenants are, how long the
9 terms are remaining in their leases. It also gives you a
10 chance to review the credit worthiness of the tenant. That
11 and -- also, you know, should we proceed, start doing a
12 building inspection as well.

13 Q: And why does a rent roll, or rent occupancy, or building
14 occupancy matter in a commercial transaction?

15 A: A lot of times on an investment property you would buy a
16 building based on the income stream. The asset may or may not
17 be the desired asset or the part of the transaction a lot of
18 times in the income stream that's being replaced. So, the
19 income and the credit worthiness of the tenant usually is an
20 indicator as to the value of the building.

21 Q: And what's the first -- I mean, I know there's a lot of
22 evolutions in the process of a deal. What's the first main
23 hurdle, if you will, in getting over having the deal begin?

24 A: So, we would begin after the initial contact where we've
25 established that the owner would be willing to consider

1 selling and we'd have a buyer who'd be interested in acquiring
2 the property. At that point we would begin negotiating terms
3 of the letter of intent, which is a nonbinding document that
4 begins to lay out the terms and conditions under which both
5 parties would consider consummating the transaction.

6 Q: Do you recall if the letter of intent was entered into in
7 this transaction?

8 A: I believe we did have a letter of intent, yes.

9 Q: Assuming things progress, what's the next step in the
10 process after a letter of intent is entered?

11 A: After the letter of intent is completed, at that point
12 typically one of the -- either the seller or the buyer's
13 counsel would go and produce a contract from the terms
14 contained in the letter of intent.

15 Q: And was a contract entered in this particular case?

16 A: It was.

17 Q: Do you recall what the date of that contract was?

18 A: I do not.

19 MR. TEMPLETON: May I approach?

20 THE COURT: Yes, sir.

21 BY MR. TEMPLETON:

22 Q: I'm going to show you what's been marked as Exhibit Number
23 1. Do you recognize that document?

24 A: I do.

25 Q: Is that the contract that was entered into in this

1 transaction?
2 A: I believe it is.
3 Q: And what was the date of the contract?
4 A: 20th of March, 2013.
5 Q: And prior to that contract being entered, did you and Mr.
6 Buck have any discussions about a 1031 exchange?
7 A: We may have had some discussions about a 1031. I was
8 aware just through kind of word on the street that Mr. Buck
9 was looking for 1031 options. It's not precluded him from
10 acquiring properties in the past without a 1031. But, yes,
11 I'd heard that he was looking for 1031 opportunities.
12 Q: You knew that was part of this -- potentially part of this
13 transaction.
14 A: Potentially part of this, yes.
15 Q: Are you familiar with the expression the deal's gone hard?
16 A: Yes.
17 Q: And what does that mean?
18 A: Typically that means that the earnest money that the
19 purchaser has put up as collateral or good will to be held in
20 escrow is becoming -- is now nonrefundable and would not be
21 returned to the buyer regardless.
22 Q: And did this deal in fact go hard?
23 A: It did.
24 Q: And from a commercial real estate stand point and from
25 your view of this transaction did you expect this deal to go

1 through?

2 A: Absolutely.

3 Q: Was it ever disclosed to you or ever intimated to you that
4 there was gonna be any potential impediment to this deal going
5 through?

6 A: None whatsoever.

7 Q: And certainly you understand that things can happen.
8 Commercial deals don't always go through.

9 A: Correct.

10 Q: But, in relation to this deal back then did you have any
11 indication whatsoever that this deal was not gonna go through?

12 A: None whatsoever.

13 Q: Did you have any direct contact with Ms. Marko in this
14 transaction?

15 A: If I did it might've been by email. On occasion -- Mr.
16 Atwill was sort of primary contact with Mr. Marko and I
17 relayed information to Mr. Buck.

18 Q: During the period of due diligence that you described --
19 strike that. As the broker-in-charge representing the buyer,
20 did you also have a deal with the seller of the property as it
21 relates to your commission?

22 A: We did. As the property was not listed for sale and we
23 were simply looking for opportunities we were able to come to
24 an agreement with the seller that she would pay us should the
25 deal be consummated.

1 Q: And if the deal had gone through, what did you stand to
2 make in the deal?

3 A: Each party in the deal was paying us \$50,000.

4 Q: During this process were you aware that there was a
5 mortgage on the property?

6 A: I was not.

7 Q: What was the closing date to be, according to Exhibit
8 Number 1? Take a look at it or do you recall?

9 A: Sure. I do not recall, so I'd have to take a look.
10 Closing date was April 3rd, 2013 or such earlier date and time
11 as agreed to by the parties, time is of the essence.

12 Q: Did the closing take place?

13 A: It did not.

14 Q: Did you appear at the closing?

15 A: I did.

16 Q: And when did you learn that the closing was not going to
17 take place?

18 A: While I was sitting waiting for the closing to take place.

19 Q: What explanation, if any, were you given as to why the
20 closing was not going to take place?

21 A: I was given no reason whatsoever. We were simply told
22 that there was not going to be a closing and we should go
23 home.

24 Q: And who told you that?

25 A: I believe it was Ms. Marko's counsel or maybe his

1 assistant.

2 Q: Between April 3rd, 2013 and the next month, six weeks of
3 2013, were you given an explanation as to why the transaction
4 did not go forward?

5 A: I do not recall any direct discussion relative to that but
6 I believe that either through Mr. Atwill or through
7 discussions with Mr. Buck's attorney ---

8 Q: Don't disclose any ---

9 A: Sorry.

10 Q: It has to be personal, of you personally. I don't want
11 you to tell us what somebody else told you.

12 A: I was made aware, I don't remember the source, that there
13 was some financial issues associated with the property that
14 precluded the sale from happening.

15 MR. TEMPLETON: Court's indulgence?

16 THE COURT: Yes, sir.

17 MR. TEMPLETON: No further questions.

18 THE COURT: Mr. Hanna? Cross examination.

19 MR. HANNA: One second, please.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION OF GEOFFREY LOUIS GROAT, JR. BY MR. HANNA:

22 Q: Good afternoon, Mr. Groat.

23 A: Good afternoon, sir.

24 Q: Yes, sir. A couple of quick questions. I'm gonna ask you
25 to review two documents for me.

1 Defendant's 5 and 6 have been agreed to by counsel for
2 introduction.

3 THE COURT: Mr. Hanna, have they already been admitted by
4 Plaintiff?

5 MR. HANNA: No, they are my exhibits agreed to by
6 Plaintiff, Your Honor.

7 THE COURT: 5 and 6?

8 MR. HANNA: Yes, Your Honor, Defendant's 5 and 6.

9 BY MR. HANNA:

10 Q: As I understood it took a while from the time the parties
11 agreed in the concept to sale the property and actually get a
12 contract signed; isn't that right, sir?

13 A: I don't recall how long it took, but sometimes it does
14 take a while to go from the letter of intent to the contract.

15 Q: I think the record would reflect -- I think Mr. Buck's
16 testimony would reflect that the letter of intent was signed
17 somewhere in January and the contract was signed somewhere in
18 March?

19 A: Could very well be.

20 Q: And as I understand it during that time period there was
21 some speculation as to what was holding up the Rice-Marko end
22 of it, of the negotiations as far as going to a formal
23 contract. Isn't that right, sir?

24 A: That I don't recall.

25 Q: All right. Well, let me -- I'll give you all the time you

1 need to review this document and, after you've reviewed it, I
2 have a few questions for you, please.

3 THE COURT: And that's exhibit number what?

4 MR. HANNA: 5.

5 THE COURT: That was number 5?

6 MR. HANNA: Yes, sir.

7 THE COURT: Okay, thank you.

8 BY MR. HANNA:

9 A: It's the same document.

10 Q: This is an email from you to Mr. Buck, is it not?

11 A: It is, yes.

12 Q: Does this refresh your memory with regards to problems
13 that y'all had with the contract?

14 A: So, it does, and it appears that she had indicated that
15 was acquiring other property that may be precluding her from
16 being able to move forward on the preparation of the contract.

17 Q: And in there you make the comment, it's the second
18 paragraph, third sentence. At the least we plan to find out
19 if your purchase is contingent on her being able to acquire
20 other property. I still would like to find out if there is a
21 bank issue associated with that delay. Is that correct, sir?

22 A: That is, yes.

23 Q: So, before the contract on March 11th, y'all were at least
24 inquiring as to whether or not there was a banking issue that
25 was preventing you from going to contract. Isn't that right,

1 sir?

2 A: It sounds like we were speculating that there could be a
3 bank issue but she told us that the reason was because of the
4 need to acquire the property.

5 Q: She told you specifically there was no bank issue?

6 A: I was thinking that was what it said -- if there are no
7 specific -- so I guess she'd indicated her need to acquire the
8 other property.

9 Q: But the way -- any indication from her at that point in
10 time that there was a bank issue?

11 A: No. No.

12 Q: All right.

13 MR. HANNA: Defendant's Exhibit 6, Your Honor.

14 THE COURT: Yes, sir.

15 BY MR. HANNA:

16 Q: Same thing with this exhibit, please, sir.

17 A: Okay.

18 Q: Do you remember seeing that document, sir?

19 A: I don't remember seeing that document, but I don't know
20 that I was party to this.

21 Q: Okay. Let's take a look at the second paragraph. It's
22 from Mr. Buck to Sid Boone. What does that say?

23 A: FYI it must be a lender issue.

24 Q: Okay. So, there was some discussion between the parties
25 prior to -- and what's the date of that email?

1 A: April 5th.

2 Q: Okay. Some discussion prior to contracting about whether
3 or not there was a lender issue, an inquiry at least.

4 A: There was the contemplation that that could be a problem.

5 MR. HANNA: That's all I have from this witness, Your
6 Honor. Thank you.

7 THE COURT: Any redirect?

8 MR. TEMPLETON: Yes, sir.

9 REDIRECT EXAMINATION OF GEOFFREY LOUIS GROAT, JR. BY MR.
10 TEMPLETON:

11 Q: Do you have Defendant's 5?

12 A: I do.

13 Q: This email that Mr. Hanna was just asking you about, this
14 is your email to Mr. Buck, right?

15 A: Right.

16 Q: And the second paragraph second sentence where it says, at
17 least we plan to find out if your purchase is contingent on
18 her being able to acquire the other property. Did that
19 sentence have anything to do with 1031 exchange that Ms. Marko
20 was ---

21 A: No. Not that I was aware of.

22 MR. TEMPLETON: Nothing further, Judge.

23 THE COURT: Recross?

24 MR. HANNA: The Defendant's Exhibit Number 4, I think,
25 has been admitted without objection, Your Honor.

1 RECROSS EXAMINATION OF GEOFFREY LOUIS GROAT, JR. BY MR. HANNA:

2 Q: I was just going to ask you about the first sheet of this.
3 You're free to review all of it if you want to, Mr. Grout, but
4 my questions will be directed primarily the front sheet if you
5 would read that for me before you answer my questions, please,
6 sir.

7 A: Okay.

8 Q: This is an email from you to Mr. Eric Bradshaw, who
9 would've been Ms. Rice-Marko's attorney; is that correct?

10 A: That's correct.

11 Q: And in that you make the statement, it is becoming
12 apparent that there may be some significant financial or
13 lender issues at hand. Is that correct, sir?

14 A: I did.

15 Q: Was that your opinion at that time?

16 A: That was becoming my opinion at the time because there was
17 no other reason that we were made aware of that it could be.

18 Q: And that's dated as early as February 22nd of that year.
19 So, as early as February 22nd at least you had some concerns
20 as to whether there was a lender issue, correct?

21 A: I was beginning to think there could've been.

22 MR. HANNA: Excuse me, Your Honor. I apologize. I
23 apologize for the confusion. I've been trying to collate
24 between our exhibits and their exhibits and it's been kind of
25 hard for us.

1 BY MR. HANNA:

2 Q: Going back to Exhibit Number 4 again, if you would,
3 please, sir. In that email chain, same date February 22nd,
4 there is an email from Mr. Buck to you. Read that before you
5 answer my question, please, sir.

6 A: From me to Mr. Buck.

7 Q: Well, it's from Mr. Buck to you I believe it is.

8 A: Oh, this -- just this one here. Okay.

9 Q: Okay. And in that email Mr. Buck responds to you and
10 says, see below. I've gotten no confirmation from Eric as to
11 the reasons for this request but I'm sure that it is exactly
12 what you and your dad were thinking. The lender must be
13 wanting to evaluate this and perhaps even appraise some of the
14 other properties in the cross collateralization to make sure
15 they're not upside down.

16 A: That was from me to Mr. Buck.

17 Q: All right, I apologize. I stand corrected. From you to
18 Mr. Buck. So, at that point in time, not only did you know
19 there were lender issues involved, you knew that there was a
20 potential problem with cross collateralization.

21 A: I did not know for a fact. I was ---

22 Q: I said a potential problem.

23 A: Potential problem, yes.

24 MR. HANNA: Okay, I think that's it, Your Honor.

25 THE COURT: Can y'all come here a minute?

1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 THE COURT: Sir, you may step down. Thank you.

4 MR. TEMPLETON: Your Honor, Mr. Groat is under subpoena
5 by both sides. Can he be released?

6 THE COURT: Any objection to him being released?

7 MR. HANNA: None, Your Honor.

8 THE COURT: Sir, you may be excused. You have no further
9 responsibility here. Have a nice day.

10 MR. GROAT: Okay, thanks.

11 THE COURT: Call your next witness, please.

12 MR. TEMPLETON: Daniel Atwill.

13 DANIEL ATWILL, HAVING BEEN DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: Be seated. Please state your full name and
16 spell your last name for the record.

17 MR. ATWILL: Daniel Atwill, A-T-W-I-L-L.

18 DIRECT EXAMINATION OF MR. ATWILL BY MR. TEMPLETON:

19 Q: Good afternoon, Mr. Atwill. Where are you employed, sir?

20 A: Roadstead Real Estate Advisors.

21 Q: And what do you do there?

22 A: I'm the real estate sales person.

23 Q: And are you also a partner in that entity?

24 A: Yes, sir.

25 Q: And what do you do there?

1 A: I procure sales and leasing of predominant commercial
2 property.
3 Q: Do you know Eddie Buck?
4 A: I do.
5 Q: How do you know him?
6 A: Through business over the years.
7 Q: Do you know Deborah Rice-Marko?
8 A: I do.
9 Q: How do you know her?
10 A: Through business over the years as well.
11 Q: Have you done other deals with her?
12 A: I have not. I know her through a company that I started
13 at, that was Clement, Crawford & Thornhill and she was a
14 client of one of the brokers in that office. So, I know her
15 in passing through that office.
16 Q: Are you familiar with the property known as 438 King
17 Street?
18 A: I am; yes, sir.
19 Q: And how did you become familiar with that property?
20 A: Probably a year to a year and a half before this deal, I
21 showed the ground floor space to a potential tenant for lease,
22 which that deal did not come to consummation, but I became
23 familiar with that building through showing the retail space
24 to a potential tenant.
25 Q: And at the time that you were showing it, you were showing

1 it so it would be leased for whose benefit, I guess is my
2 question?

3 A: The owner, which was Marko.

4 Q: I'm going to direct your attention to late 2012 and first
5 quarter of 2013. That's really what I want to talk about with
6 you and what you remember from that time. Okay?

7 A: Yes, sir.

8 Q: Not what you know today. All right? Do you recall when
9 -- well, how did this deal get started, that deal to sale 438
10 King Street to Mr. Buck?

11 A: Sure. In the beginning my business partner, Geoff Groat,
12 came to me, who was closer to Eddie than I am, and said
13 Eddie's looking for property, and I started brainstorming
14 thinking about properties that might fit for his needs and
15 that property came to my mind quickly because of my experience
16 with showing it. It's a beautiful property. I thought it
17 would be something that might entice Eddie's liking. So, I
18 called Ms. Marko just to enquire to see if she had any
19 interest in selling it at all. And she expressed that she
20 possibly would, and so we submitted a letter of intent from
21 Eddie and I delivered it to Ms. Marko.

22 Q: Let me stop you there for a second.

23 Judge, this is Plaintiff's 4 has been admitted by ---

24 THE COURT: 4?

25 MR. TEMPLETON: --- Plaintiff's 4, by consent.

1 BY MR. TEMPLETON:

2 Q: Mr. Atwill, do you recognize that document? Let's start
3 with the first page.

4 A: Yes.

5 Q: What is the first page of that?

6 A: It appears to be an email from me to Ms. Marko.

7 Q: And what's the date of that document?

8 A: December 12th, 2012.

9 Q: And what are you transmitting to Ms. Marko?

10 A: I guess, sales on King Street around that time -- you
11 know, around that timeframe.

12 Q: Are these known as comps?

13 A: Yes.

14 Q: Why would a seller of a property want to see comps?

15 A: To see -- to find out what they could potentially get for
16 their property perhaps and she had asked me to send her some
17 comps.

18 Q: With regard to the comps that you sent her in December of
19 2012 there are several that are attached there. What's the
20 low end of the comp to the high end of the comp? What's the
21 range?

22 A: \$710,000 on the low and it looks like \$4,150,000 on the
23 high.

24 Q: I'm taking you back to -- after you sent that email to Ms.
25 Marko do you recall having any further conversations with Ms.

1 Marko about this deal?

2 A: I don't remember specific conversations but, yes, we
3 negotiated and went back and forth on the letter of intent,
4 which then lead us into a contract that everybody agreed to.

5 Q: And the contract was executed in March of 2013?

6 A: I believe so.

7 Q: Does that sound right?

8 A: Sounds correct.

9 Q: So, the letter of intent would've been before then?

10 A: Yes, sir.

11 Q: To the extent that you recall, were there any
12 communications that you had with Ms. Marko where she disclosed
13 to you any financial impediment to bringing this matter to
14 closing?

15 A: None whatsoever.

16 Q: Did you and Mr. Groat speculate between the letter of
17 intent and the contract that there could be some impediment to
18 closing?

19 A: Not at all.

20 Q: Do you know if Mr. Groat and Mr. Buck may have speculated
21 on that issue?

22 A: Not to my knowledge.

23 Q: If they speculated on it before the deal went forward with
24 the contract, what would be significant about that to you, if
25 anything?

1 A: I just don't think that that was even a potential
2 conversation.

3 Q: When was the closing to take place? And you can refer to
4 the contract, Exhibit -- Plaintiff's 1, if you need to refresh
5 your memory as to the date.

6 A: I'm sorry. Do you know exactly where the closing
7 paragraph is?

8 Q: I'm probably the last person you should ask. I think it's
9 on the -- here it is.

10 A: To close Wednesday, April 3rd, 2013.

11 Q: Did you show up at the closing?

12 A: Yes, sir; I did.

13 Q: Did the deal close?

14 A: It did not.

15 Q: What if any reason were you given at the closing for why
16 it was not going to close?

17 A: I honestly can't remember exactly who all was there. I
18 know Eddie was there. I know Geoff Groat was there. I was
19 there. I believe there was the representative of the law firm
20 that was representing Marko was there. And we all got there
21 and he basically said, it's not happening. And we all -- and
22 I had no idea.

23 Q: Were you surprised by that?

24 A: Absolutely was.

25 Q: At any point in time during this process from December

1 2012 until the closing in your conversations with Ms. Marko
2 did she ever tell you that there was a financial impediment to
3 having this deal close?

4 A: She never disclosed anything about financial problems and
5 did thank me repeatedly for keeping everything so
6 confidential.

7 MR. TEMPLETON: Court's indulgence.

8 No further questions, Judge.

9 THE COURT: Cross examination?

10 MR. HANNA: No questions for this witness, Your Honor.

11 THE COURT: Sir, you may step down. Thank you.

12 MR. ATWILL: Am I released from the subpoena?

13 THE COURT: That was probably what Mr. Templeton was
14 gonna ask me.

15 Mr. Templeton?

16 MR. TEMPLETON: Yes, sir. I was going to ask if he could
17 be released from the mutual subpoena that he's under.

18 THE COURT: Any objection, Mr. Hanna?

19 MR. HANNA: None, Your Honor.

20 THE COURT: Then your answer is, yes, sir, you may.

21 MR. ATWILL: Thank you, sir.

22 THE COURT: Have a nice day. Thank you.

23 All right, call your next witness, please.

24 MR. TEMPLETON: Plaintiff calls Deborah Rice-Marko.

25 THE CLERK: Put your left hand on the Bible, raise your

1 right hand.

2 DEBORAH RICE-MARK, HAVING BEEN DULY
3 SWORN, TESTIFIED AS FOLLOWS:

4 THE CLER: Be seated. If you'll please speak into the
5 microphone. State your full name and spell your last name.

6 MS. MARKO: Certainly. My name is Deborah, D-E-B-O-R-A-
7 H, Rice, R-I-C-E, hyphen Marko, M-A-R-K-O, and I'm known as
8 Debbie.

9 DIRECT EXAMINATION OF DEBORAH RICE-MARKO BY MR. TEMPLETON:

10 Q: Good afternoon, Ms. Marko.

11 A: Good afternoon, Mr. Templeton.

12 Q: Nice to see you.

13 A: Nice to see you, sir.

14 Q: I have two questions for you and we'll see if we can agree
15 on a few things. I'm sure there will be things that we don't
16 agree on.

17 A: Such is life.

18 Q: Such is life. You are the owner of ROA, LLC, correct?

19 A: Correct.

20 Q: And you are the managing member of that LLC, correct?

21 A: Yes, sir.

22 Q: And you are the sole member of that LLC, correct?

23 A: Yes, sir.

24 Q: And can we agree that there was a contract between you and
25 Buck Investments for the sale of 438 King Street to Mr. Buck

1 for the sum of \$3.5 million dollars?
2 A: To Buck Investments, LLC, yes, sir.
3 Q: And the sale price was 3.5 million?
4 A: As I recall, yes, sir.
5 Q: And the closing of that deal was to go forward on April
6 3rd, 2013, correct?
7 A: The closing date was April 3rd with a 30-day cure period
8 taking it to May 3rd, if needed.
9 Q: But the contract itself contemplated a closing date of
10 April 3rd, 2013. The default period would've been the
11 additional 30-day period that you're referring ---
12 A: The additional 30 days to cure would have made it May 3rd,
13 yes, sir.
14 Q: But the closing itself was April 3rd.
15 A: Correct, uh-huh, (affirmative response).
16 Q: And you signed the contract on behalf of ROA?
17 A: As I recall, yes, sir.
18 Q: And does ROA have any other assets other than 438 King
19 Street?
20 A: Excuse me, Mr. Templeton, I need to see the contract. I
21 believe that Mr. Bradshaw signed, who was my attorney. I
22 don't think it was I who signed it, on the bottom.
23 Q: I will show you what was marked as Plaintiff's 1. I'll
24 turn it to the signature page ---
25 A: Oh, yeah ---

1 Q: --- and you can tell me whether that's your signature or
2 not.

3 A: No, sir. That's Mr. Bradshaw who's my attorney and had my
4 power of attorney.

5 Q: He was authorized to sign on your behalf, correct?

6 A: That's correct. Yes, sir.

7 Q: Now, in terms of the prospect of selling this particular
8 piece of property do we agree that that started in December of
9 2012?

10 A: I was approached by Mr. Atwill in December, yes.

11 Q: And isn't it true that between December of 2012 and April
12 3rd of 2013 you did not tell Buck Investments that there was
13 any financial -- potential financial impediment to this deal
14 closing?

15 A: I personally did not tell Mr. Buck but it was recorded and
16 it was also known to his attorney, Mr. Sid Boone.

17 Q: But you personally never told Mr. Buck, correct?

18 A: No, sir; I did not.

19 Q: And the mortgage that you're referring to that was
20 recorded, the status of any payments that were due and payable
21 to PNC Bank, that would not be recorded, true?

22 A: It was recorded; yes, sir.

23 Q: Now, let me ask my question again. In terms of ---

24 A: The status?

25 Q: --- the status of your payments, whether the note and

1 mortgage were in default, would not be known by looking at the
2 documents that are on file in this courthouse.

3 A: No, sir. The forbearance agreement would've been
4 recorded.

5 Q: Let me ask it to you one more time.

6 A: Uh-huh, (affirmative response).

7 Q: Whether the bank was being paid, whether there was a
8 default in that preceding would not have been recorded in this
9 courthouse in the RMC's office?

10 A: No, sir, but there was a forbearance agreement that was
11 recorded that had noted that there had been, I guess, a
12 forbearance between RBC Bank and then myself.

13 Q: That's the document you're referring to in 2011 ---

14 A: Yes, sir.

15 Q: --- which cross collateralized the loans that you had on
16 multiple properties; is that correct?

17 A: That's correct. That's correct.

18 Q: And just so we're clear, RBC was who you originally had
19 the loan with?

20 A: That's correct.

21 Q: And that became PNC Bank; is that right?

22 A: Some of them went further back than that, the Centura Bank
23 and you know I think they were mergers with various banks, but
24 RBC was the last one before PNC, yes, sir.

25 Q: So, let's walk through a little bit of this here for a

1 second so the jury can get a flavor of understanding the
2 financial picture that predated this contract. Okay? Isn't
3 it true that in 2005 you opened a revolving line of credit
4 with RBC Centura Bank and the original limit was for
5 \$5,000,000?

6 A: I would have to say I'd have to see documentation. I
7 don't recall ---

8 Q: We can do that.

9 This is exhibit 20, Judge, admitted without objection.

10 THE COURT: Okay.

11 PLAINTIFF'S EXHIBIT NUMBER 20

12 ADMITTED INTO EVIDENCE

13 BY MR. TEMPLETON:

14 Q: All right, Ms. Marko, that's exhibit 20, which has been
15 admitted in this case and that's an affidavit that you filed
16 in the foreclosure case, correct?

17 A: It's an affidavit of Deborah Rice-Marko, Court of Common
18 Pleas, and it's clocked May 20th, 2014. So, yes, I'd have to
19 assume it was for that purpose.

20 Q: Turn to Page 12. Is that your signature?

21 A: Yes, sir, it is.

22 Q: So, we'll just walk through it. Paragraph 2, isn't it
23 true -- In 2005 I opened a revolving line of credit with RBC
24 Centura Bank in Charleston, SC. The original limit of the
25 line of credit was \$5,000,000.

1 A: That's correct.

2 Q: Paragraph 3, in 2007, the amount of the line increased to
3 6.5 million, correct?

4 A: And was secured by pledge of securities. Yes, that's
5 correct.

6 Q: Paragraph 4, isn't it true by the end of 2007 you or
7 entities controlled by you, had four commercial real estate
8 loans and a revolving line of credit with RBC Centura?

9 A: And it goes on to say each -- no loans would be cross
10 collateralized or cross defaulted.

11 Q: You can answer my question first ---

12 A: Yes.

13 Q: --- and you can explain it any way you want.

14 A: No, I was just continuing what you were reading. I'm
15 sorry.

16 Q: Paragraph 7, isn't it true that in March 2008 you pledged
17 over 23,000 additional shares of Wachovia stock to the RBC
18 line of credit in order to add additional collateral to
19 address declining value of Wachovia Bank stock, correct?

20 A: Well, and it goes on to say -- that's what it says, but it
21 goes on to say all margin calls were met and there were no
22 defaults in the lines of credit.

23 Q: And isn't it true that in June of 2008 the line of credit
24 was reduced from 5.3 million to 3.5 million and then to 1.8
25 million in 2009?

1 A: There's several paragraphs there, Mr. Templeton, but
2 Paragraph Number 10 says -- it says in June of '08, I met the
3 loan-to-value margin costs by using a significant portion of
4 the proceeds of my mother's life insurance policies as well as
5 other available funds. As a result of these payments to RBC
6 the outstanding balance of the line was reduced in June '08
7 from five-million-three to three-million-five and then one-
8 million-eight in January of '09, yes, sir.

9 Q: So, my question is yes, in June of 2008 the line of credit
10 was reduced from 5.3 million to 3.5 then to 1.8 in January of
11 2009?

12 A: Yes, sir. That's correct.

13 Q: And on October 3rd 2008, you were emailed by RBC
14 indicating that they wanted to restructure all of your loans,
15 correct?

16 A: Paragraph 13 ---

17 THE COURT: Ms. Marko?

18 MS. MARKO: Yes, sir.

19 THE COURT: Answer the question and then you can explain
20 if you want to, please.

21 A: Okay. Yes, sir. That's part of the paragraph -- yes,
22 sir.

23 Q: And isn't it true at the time the outstanding principal of
24 all your RBC loans to you and your family was approximately
25 21.7 million dollars?

1 A: Yes, sir. But we skipped a significant amount of ---

2 Q: I'm sure your lawyer can ask the questions as he wants.

3 A: Yes, sir.

4 Q: And isn't it true in May of 2010 all of the loans were
5 cross defaulted?

6 A: Paragraph 20? That's correct. Paragraph 20; yes, sir.

7 Q: In June of 2012, is it correct that PNC Bank began
8 communicating with you through counsel?

9 A: No, sir; I don't recall that, that that's correct.

10 MR. TEMPLETON: This is plaintiff's 2, Judge, admitted
11 without objection.

12 PLAINTIFF'S EXHIBIT NUMBER 2

13 ADMITTED INTO EVIDENCE

14 BY MR. TEMPLETON:

15 Q: I'll show you Exhibit -- Plaintiff's 2 and ask you if you
16 recognize that document or if you've seen it before?

17 A: Yes, I do. I do recognize this.

18 Q: Was this the document confirming the forbearance agreement
19 had been entered into?

20 A: Yes, sir, it appears to be. Yes, sir.

21 Q: Then on November -- isn't it true on November 26, 2012 you
22 received a default letter for failure to provide requested
23 financial information to the bank?

24 A: Yes, sir.

25 MR. TEMPLETON: Plaintiff's 3, Judge, admitted without

1 objection.

2 THE COURT: All right.

3 PLAINTIFF'S EXHIBIT NUMBER 3

4 ADMITTED INTO EVIDENCE

5 BY MR. TEMPLETON:

6 Q: And, Ms. Marko, is Exhibit 3, the December 26, 2012 letter
7 indicating the default?

8 A: It is requiring that all the balances on all the notes be
9 due and paid within 10 days.

10 Q: It's demanding \$20,065,815, correct?

11 A: I don't see that number but I would think that's probably
12 correct, yes.

13 Q: Also, take a look at your affidavit which is Exhibit
14 Number 20, Paragraph 33, isn't it true the letter accelerated
15 the debt and demanded payment in the amount of \$20,065,815?

16 A: That's correct; in 10 days, yes, sir.

17 Q: And then again, isn't it true on February 15th, 2013 you
18 received a second default letter for failure to pay the amount
19 previously demanded. Isn't that true?

20 A: That's correct. Yes, sir.

21 MR. TEMPLETON: Plaintiff's 6, Judge.

22 THE COURT: All right.

23 MR. TEMPLETON: Admitted by consent.

24 BY MR. TEMPLETON:

25 Q: So, Exhibit 7 -- excuse me, Exhibit 6, is that the

1 February 15th, 2013 second default letter?

2 A: Yes, sir.

3 Q: And the information that's contained in those Exhibits 3,
4 4, and 5, and 6, that was never disclosed to Mr. Buck, was it?

5 A: No, sir, not to my knowledge.

6 Q: And those defaults were never recorded with the
7 courthouse, were they?

8 A: Not to my knowledge; I wouldn't know, but ---

9 Q: So, would you agree with me that he would have no way of
10 knowing your specific financial situation at the time that the
11 contract was entered in this case on March 20th, 2013?

12 A: No, sir; I would not agree.

13 Q: You don't agree that he wouldn't know that?

14 A: No, sir; I would not.

15 Q: And you base that on what?

16 A: Well, several things, Mr. Templeton. One, the forbearance
17 agreement that we referred to July of 2011, actually Mr. Sid
18 Boone who was Mr. Buck's attorney is the person who gave -- or
19 his firm, I went to when we needed an opinion letter and it
20 was his firm who helped draw up the forbearance agreement.
21 So, Mr. Boone knew about the forbearance agreement, he knew
22 about the properties, he -- I guess, the maturity date of the
23 forbearance agreement. In addition to which there were
24 several things going on through that period of time. One, PNC
25 had put the -- when they cross collateralized everything, Mr.

1 Templeton, it was as if they all came together as one. We had
2 one debt collateralize with all the properties. And at that
3 time when they demanded these notes -- payments on all of
4 these loans it was one payment. Mr. Buck, through his
5 knowledge of note purchasing et cetera, et cetera, may have
6 known that PNC was actually marketing these notes or these
7 loans on the internet. So, I can't say for certain what he
8 would not have known but he had several ways to know.

9 Q: You can't testify to this jury that Mr. Buck knew your
10 personal financial situation of his own personal knowledge at
11 the time that this contract was entered on March 20th.

12 A: I can't testify that he didn't, sir.

13 Q: You can't testify that he did know, can you?

14 A: I have no way of knowing, sir.

15 Q: Correct, you have no way of knowing what he knew, what was
16 in his head, do you?

17 A: No, sir. I can't testify to what's in his head.

18 Q: So, your excuse that you're providing to the jury why this
19 deal didn't go through is because you had a forbearance
20 agreement with the bank that Mr. Buck should've known about.

21 That's your position, correct?

22 A: No, sir. I don't think that's what I'm saying.

23 Q: What are you telling this jury as to why you didn't sell
24 this property to Mr. Buck?

25 A: Very simply, Mr. Templeton, I couldn't sell the property

1 because PNC would not agree to release the property.

2 Q: Then why put him through signing a contract on March 20th,
3 2013, closing on April 3rd, 2013?

4 A: And, sir, why put myself through that? Why would I want
5 ---

6 Q: My question is why put him through ---

7 MR. HANNA: Let her answer the question, please, sir.

8 THE COURT: Answer the question, please, ma'am.

9 BY MR. TEMPLETON:

10 Q: It was my hope -- I was negotiating with PNC at the time.
11 They were continuing to pressure me for a settlement. In
12 fact, I got an email and said that if I didn't settle -- meet
13 with them to settle that it would not bode well with me. So,
14 it was my hope that I would be able to reach a settlement with
15 them and I was very, very close to reaching a settlement with
16 them until I received an email sometime April the 5th, the
17 evening of April the 5th, and they abruptly cut off all
18 negotiations with me.

19 Q: But you never told Mr. Buck any of that information did
20 you?

21 A: No, sir, not to my knowledge.

22 Q: And ultimately PNC Bank did bring a lawsuit, correct?

23 A: Correct.

24 Q: And I believe that was filed in May of 2013, correct?

25 A: May the 3rd at 11:47, I believe was the clock time.

1 Q: And you contested their position in that lawsuit, correct?

2 A: Yes, we had counterclaims.

3 Q: In fact, you countersued PNC for several things, correct?

4 A: Yes, sir.

5 Q: And ultimately that lawsuit was settled, correct?

6 A: Yes, it was.

7 Q: And isn't it true that Mr. Buck tried to intervene in that
8 lawsuit and participate in any settlement negotiations that
9 went on in that lawsuit.

10 MR. HANNA: Objection to relevance, Your Honor.

11 THE COURT: I'm gonna overrule it. I'm going to allow
12 it.

13 MR. HANNA: Okay.

14 A: I'm not sure about the legal procedures. I -- you know,
15 but I do know that he tried to intervene and he was not
16 allowed to intervene, but I can't testify to what the
17 procedures are at this time.

18 A: But you know that your lawyers opposed that request,
19 correct?

20 A: I don't know that.

21 Q: You don't know that?

22 A: No, sir; I don't

23 Q: Did you authorize them to consent to Mr. Buck's
24 intervention in that lawsuit?

25 A: I don't recall, sir. I don't know.

1 Q: You knew that Mr. Buck was tying this property ---
2 attempting to purchase this property in conjunction with 1031
3 exchange, correct?
4 A: I know that he had a 1031 exchange clause in the contract
5 but whether or not he was going to identify it I wouldn't know
6 that. No, sir.
7 Q: But you knew that was part of this deal, correct?
8 A: No, sir. Again, I knew that he had a clause in there that
9 if he wanted to conduct a 1031 I would cooperate but I don't
10 know if he did or didn't. I would have no way of knowing if
11 he identified it.
12 Q: Plaintiff's 12, the middle portion of that document is an
13 email from you to Mr. Buck, correct?
14 A: Correct.
15 Q: Read it to the jury, please.
16 A: Friday, April the 5th, Eddie, I apologize for the
17 inconvenience and I'm working very hard at getting this to
18 close. I will be in touch later this afternoon. Obviously, I
19 need an extension. What is the latest date you can close with
20 your 1031 deadline? Could we have an extension to the 3rd of
21 May? Thank you, Debbie.
22 Q: So, as of April 5th you knew that he had a 1031 in play,
23 correct?
24 A: He had told me that, yes.
25 Q: And you wrote it in your email, you knew.

1 A: Yes. I did not know that he did or did not intend to use
2 this. But, yes, he had told me he was going to do a 1031.

3 Q: You didn't tell him at that point that you were having
4 financial difficulties with PNC Bank either, did you?

5 A: I was -- this was at 10:30 in the morning and I had not
6 received the information from PNC. No, sir, I was continuing
7 to negotiate. In fact, I had a counteroffer out to them at
8 this time.

9 Q: Except you didn't close on April 3rd, two days before, and
10 the reason you didn't close was because the bank wouldn't
11 release the note and the mortgage, correct?

12 A: I couldn't close if the bank wouldn't release the note and
13 the mortgage.

14 Q: And that's the reason that you didn't appear and close at
15 the closing date?

16 A: First -- excuse me, Mr. Templeton, I didn't mean to speak
17 over you. I'm sorry.

18 Q: It's a very simple question, Ms. Marko. The reason you
19 didn't appear at the closing on April 3rd is because the bank
20 would not release the mortgage and the note, correct?

21 A: First, Mr. Templeton, I ---

22 MR. TMEPLETON: Judge, I've got to ask for some help
23 here.

24 THE COURT: Yes or no question. Answer and then respond.

25 A: I didn't know -- I'm trying to say I didn't know of a

1 closing date, time or place. This is the first I've heard
2 today that Mr. Atwill and Mr. Groat showed up for a closing:
3 I had no idea that there was a closing date and time in place.

4 MR. TEMPLETON: Your Honor, we would strike,
5 nonresponsive to the question, and I'd ask you to instruct the
6 witness to answer my question.

7 THE COURT: Restate your question, please.

8 BY MR. TEMPLETON:

9 Q: Ms. Marko, on April 3rd 2013 the reason you did not appear
10 at the closing was because the bank would not release the
11 mortgage and the note, correct?

12 A: They would not release it; that's correct.

13 Q: That's the reason the closing didn't happen, correct?

14 A: That's correct.

15 Q: And on April 5th, the email that you just went through a
16 moment ago, you didn't tell Mr. Buck that you were having
17 trouble with PNC Bank and that was the reason for the failure
18 to close. You didn't tell him that.

19 A: Mr. Templeton, again, I was negotiating that morning.

20 This was at 10:30 ---

21 THE COURT: Hold on. Answer the question, please, and
22 then you can explain it if -- it's a yes or no question and
23 then you may -- you have every opportunity to respond. He's
24 asking you a question.

25 A: Will you please restate it, please, Mr. Templeton?

1 BY MR. TEMPLETON:
2 Q: On April 5th when you emailed Mr. Buck confirming the
3 existence of the 1031 asking for an extension, you didn't tell
4 him you were having difficulty with PNC Bank, did you?
5 A: I didn't tell him because I wasn't having difficulty. We
6 were getting along. We were negotiating.
7 Q: Except you didn't close two days before because the bank
8 wouldn't let you.
9 A: That's correct.
10 Q: Because you didn't have -- you'd already been placed in
11 default in February of 2013 by the letter and in November 2012
12 by the letter, and you didn't tell him that either.
13 A: No, sir, not to my recollection.
14 Q: Now, this property in 2012, '13, '14, '15, '16, '17, and
15 today, you still own it, right?
16 A: Correct.
17 Q: In 2012 the property was rented, correct? Leased to
18 people.
19 A: I believe that's correct, yes.
20 Q: ROA generated rents and revenue from the property being
21 leased, correct?
22 A: Correct.
23 Q: And did the property generate rent in 2013?
24 A: I would assume so, yes. I don't know for a fact but, yes,
25 I would assume so.

1 Q: 2014?

2 A: If your question is did they generate rents, yes. Was is
3 profitable? I don't recall.

4 MR. TEMPLETON: This is Plaintiff's 25, Judge, admitted
5 without objection.

6 THE COURT: All right.

7 PLAINTIFF'S EXHIBIT NUMBER 25

8 ADMITTED INTO EVIDENCE

9 BY MR. TEMPLETON:

10 Q: Ms. Marko, I'm handing you Exhibit 25, which is the tax
11 return from 2012 through 2016, and then we'll just kind of
12 walk through them. Here take a moment to look at the
13 documents if you like and if you'd just give me a signal when
14 you're ready to roll.

15 A: Okay, sir.

16 Q: All right, as far as the 2012 the rents that were received
17 -- let me start over. This is the tax return that relates to
18 438 King Street, Charleston, South Carolina, correct?

19 A: It appears to be, yes.

20 Q: And on the first page there's a Line Item Number 3 which
21 lists the rents received, correct?

22 A: Correct.

23 Q: And in 2012, that was \$226,181, correct?

24 A: That's what's on Line B, yes.

25 Q: In 2013, if you forward through the documents until you

1 hit 2013.
2 A: Yes, sir.
3 Q: And that's again a tax return Schedule E for 438 King
4 Street, Charleston, South Carolina, correct?
5 A: Correct.
6 Q: And on Line Item 3, the rents that are received are
7 \$233,979, correct?
8 A: Correct.
9 Q: Moving forward to 2014, again that's the Schedule E for
10 438 King Street for ROA, correct?
11 A: Yes, sir.
12 Q: And in 2014 on Line Item -- the rents received were
13 \$245,183, correct?
14 A: Correct.
15 Q: And in 2015, if you'll move forward to the document,
16 that's the Schedule E for 438 King Street, Charleston, South
17 Carolina for ROA, correct?
18 A: Correct.
19 Q: And on Line 3, the rents that were received \$254,727,
20 correct?
21 A: Could you repeat that, please, Mr. Templeton? I got lost.
22 Q: Sure. Line 3, rents received in 2015.
23 A: Uh-huh, (affirmative response)
24 Q: 254,727.
25 A: I'm looking at this; uh-huh, (affirmative response).

1 Q: And then last but not least, 2016 Schedule E for 438 King,
2 ROA is the filer, correct, and it's dealing with the -- let me
3 start over. Strike that. Let me start over. This is the
4 2016 Schedule E on the property known as 438 King Street,
5 Charleston, South Carolina, correct?
6 A: That's correct.
7 Q: All right. And then on Line Item 3 the revenue for 2016
8 for rents received is \$263,428, correct?
9 A: Correct; uh-huh, (affirmative response).
10 Q: Did ROA file a tax return in 2017?
11 A: ROA doesn't file tax returns.
12 Q: Did you file a tax return in 2017 or have you done that
13 yet?
14 A: No, sir; I have not.
15 Q: Was the property rented in 2017 or leased?
16 A: We'd lost a third floor tenant but we do have a first and
17 second floor, or part of second floor.
18 Q: Are you able to tell us for 2017 how much rent was
19 generated in 2017?
20 A: No, sir. I'm sorry, I can't.
21 Q: But it was rented, correct?
22 A: The first floor and part of the second floor is rented.
23 Q: And in 2018 has it been leased?
24 A: No, sir.
25 Q: The building is vacant right now?

-1 A: The third floor and part of the second floor, and right
2 now I've got my offices on the third floor.

3 Q: The original mortgage amount that was on 438 King, isn't
4 it true that was 3.9 million?

5 A: I don't recall, sir; I don't know. It sounds close but I
6 don't know.

7 Q: It's close to that, ballpark?

8 A: What was a ballpark? I don't know. This 3.9, I don't
9 recall, sir. I just -- I'm not trying to be difficult; I just
10 don't know.

11 Q: Would you agree with me that the mortgage on that property
12 putting aside the cross collateralization of 438 King Street
13 was more than 3.5 million dollars?

14 A: I don't know, sir. I can't agree or don't agree.

15 Q: Do you have an opinion as to what that property is worth
16 today?

17 A: No, sir; I don't.

18 Q: Have you received any offers to sell that property since
19 April of 2013?

20 A: I have a letter of intent.

21 Q: And what is a letter of intent?

22 A: The same as Mr. Buck and I have a letter of intent.

23 MR. HANNA: Your Honor, I think this is one of the things
24 that you reserved ruling on. I think it's Exhibit Number 22.

25 THE COURT: Hold on just a second.

1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 THE COURT: I'm gonna have to ask you to step to the jury
4 room. It's probably about time for a break anyway. I'll get
5 you back out here as quickly as I can. Okay? Do not discuss
6 the case.

7 (REPORTER'S NOTE: Jury exits courtroom @ 3:17 P.M. The
8 following takes place outside the presence of the jury.)

9 THE COURT: Can I see what y'all are talking about,
10 please?

11 MR. HANNA: It's Number 22.

12 MR. TEMPLETON: I've got it here, Judge. It's pre-marked
13 as 22.

14 THE COURT: I've got it right here. And it's that the
15 book y'all gave me?

16 MR. TEMPLETON: That's the one I gave you. Yes, sir.

17 MR. HANNA: It's in there somewhere, Your Honor. Mine
18 says 22, Exhibit 22.

19 THE COURT: What's your question, Mr. Templeton? What
20 were you gonna ask her?

21 MR. TEMPLETON: I'm gonna ask her if she received any
22 offers. I already asked her if she already received any
23 offers and she said she got one this year, that's what I heard
24 her say, and before that I asked her did she have an opinion
25 as to what the property was worth. She said she did not. And

1 this is an offer that was made. It may not've been accepted
2 it but at least an offer that was made that shows some indicia
3 of what the property is worth.

4 THE COURT: What's your objection, Mr. Hanna?

5 MR. HANNA: Your Honor, my interpretation of a letter of
6 intent is not an offer. It's an intent to make an offer,
7 number one. Number two, this was never accepted by Ms. Rice-
8 Marko. Her name does not appear on it so there's no admission
9 on her part as to what it's worth. Number three, it is an
10 opinion of a third party as to what the property is worth
11 based on his proposed letter of intent which is hearsay.

12 THE COURT: Why can he not ask her, did you receive this
13 letter. Were you not offered five million dollars for the
14 property? What's the objection about that? If she says I've
15 never seen it, then he's stuck with the answer, possibly.

16 MR. HANNA: That was not the question that I heard. I
17 can't remember but I would agree with Your Honor, if he's
18 gonna say ---

19 THE COURT: I don't disagree with you on the letter
20 coming in because of hearsay within the letter. I agree with
21 you on that. I don't think it's admissible. If y'all are not
22 agreeing to it and this person's not coming in here to
23 testify, you've got hearsay issues.

24 MR. TEMPLETON: I agree, Judge, but I think I get to
25 cross examine her on it to the extent I -- but I ---

1 THE COURT: But I'm gonna allow him to ask the question.

2 MR. HANNA: Without a reference to the letter?

3 THE COURT: Well, he can reference the letter but that
4 doesn't mean that it's going into evidence.

5 MR. HANNA: It depends on how far he goes. I would
6 agree, Your Honor.

7 THE COURT: Sir?

8 MR. HANNA: I said, it would depend on how far he goes
9 with his question regarding it. I can imagine questions that
10 would not consist of hearsay, and I can imagine some questions
11 he would ask about it, which would get into the hearsay.

12 THE COURT: Well, and I certainly want you to object and
13 whatever you need to do to protect your client but at the same
14 time I think -- I'm gonna allow him to ask her about it and,
15 you know, but it's not gonna be admitted into evidence. You
16 know, if he crosses what you think would be the line on his
17 questions -- quite frankly, I don't think there should be that
18 many questions as it relates to this, but ---

19 MR. HANNA: Your Honor, what relevance could a letter of
20 intent that was not accepted have in this case?

21 THE COURT: Mr. Templeton, I'll let you respond.

22 MR. TEMPLETON: Sure, as I indicated earlier it's some
23 indicia of the present value of that property, and the witness
24 is testifying that she doesn't have an opinion as to the value
25 of her own property. The law is pretty clear that she can

1 have an opinion, she doesn't have to state it, but I think
2 this is at least some indicia of what a willing purchaser is
3 offering to purchase this property. The document speaks for
4 itself. It's addressed to Debbie and represents the general
5 outline of the terms and conditions of the intended and
6 includes a -- no, she didn't accept it. That's not the
7 question. And, I don't think I'd even be going there if she
8 had said I have an opinion on my property.

9 MR. HANNA: Could I ask Mr. Templeton to state that
10 question that he wants to ask. I'm not sure what the question
11 is now. What's the question you want to ask?

12 THE COURT: Proffer of testimony, Mr. Templeton.

13 MR. TEMPLETON: Sure.

14 THE COURT: Please, sir.

15 MR. TEMPLETON: Thank you.

16 May I approach?

17 THE COURT: Yes, sir.

18 PROFFER OF TESTIMONY OF DEBORAH RICE-MARKO BY MR. TEMPLETON:

19 Q: Ms. Marko, I'm showing you what's been marked as
20 Plaintiff's Exhibit 22, a two-page document.

21 THE COURT: For identification.

22 MR. TEMPLETON: For identification purposes only.

23 THE COURT: Taken out and marked for identification
24 purposes only.

25 PLAINTIFF'S EXHIBIT NUMBER 21

MARKED FOR IDENTIFICATION

BY MR. TEMPLETON:

A: All right, sir.

Q: Have you ever seen that document before?

A: I think I have, yes.

Q: And the document is dated in January of this year,
correct?

A: That's correct.

Q: And isn't it true that you were offered or provided a
letter of intent offering 5.125 for this property?

A: I don't think it's an offer, but it's a letter of intent
that says 5125, yes.

Q: At least there was an expression of interest to purchase
438 King Street or enter into negotiations on 438 King Street
for 5.125 million dollars, correct?

A: Correct.

Q: And you didn't accept it, correct?

A: Correct.

MR. TEMPLETON: That's it.

MR. HANNA: Your Honor, he's asking questions about the
content of the letter itself without offering it. That's an
attempt to circumvent rule against hearsay.

THE COURT: I'm gonna allow it over your objection but
it's so noted.

MR. TEMPLETON: Your Honor, while the jury's out if you

1 wants to address the settlement agreement issue as well
2 because that's coming down next.

3 THE COURT: All right, let's go.

4 MR. TEMPLETON: Or do you want to wait -- or you want to
5 proffer that in a proffer or what do you want to do?

6 THE COURT: What exhibit?

7 MR. TEMPLETON: That's 21. And I'm not seeking to admit
8 the document, but I was gonna go down a line of questioning
9 regarding the settlement resolution of the foreclosure and
10 also confirmation of the arrangement whereby 438 King Street
11 would be released from its obligors for a sum certain.

12 THE COURT: All right, let me hear you, Mr. Templeton
13 with regards to this settlement agreement.

14 MR. TEMPLETON: All right, Your Honor.

15 BY MR. TEMPLETON:

16 Q: Ms. Marko, we were talking about earlier that PNC Bank
17 brought a foreclosure action against you, correct?

18 A: Correct.

19 Q: And you contested that foreclosure, correct?

20 A: Correct.

21 Q: And ultimately in 2017, July of 2017, that litigation was
22 ended by reaching an agreement, correct?

23 A: Correct.

24 Q: And as part of that agreement, it dealt with 438 King
25 Street, correct?

1 A: It dealt with all the properties; not one property, it
2 dealt with all properties for one number.

3 Q: Yes, ma'am, but what I'm focused on is 438 King Street. I
4 don't want to introduce your other property issues into the
5 case. Isn't it true that part of that resolution contemplated
6 a specific number being accepted by the bank in exchange for
7 the release of 438 King Street to be sold?

8 A: I'm gonna have to look at the language in the settlement
9 agreement, sir. Do you have that?

10 Q: Yes, ma'am.

11 MR. HANNA: While he's looking for that, may I interpose
12 a question along those lines. The document speaks for itself;
13 whatever it says it says. But, he's gonna ask her to
14 interpret it?

15 BY THE COURT:

16 THE COURT: She's indicated she doesn't know and she
17 wants to see the language that applies to his question, so I'm
18 gone let her look at the document. I think she's entitled to
19 look at it.

20 MR. HANNA: I understand that. I was just saying any
21 questions about -- he's asking her to interpret the document.
22 It's a legal document; it speaks for itself.

23 THE COURT: And you're correct. However, I want her to
24 look at it -- and I mean, I'm gonna tell you what I'm inclined
25 to do here without even going any further, okay, is allow him

1 to ask her what he's asked her here. The document is not
2 going into evidence. Okay? You had a concern about all of
3 these other entities, et cetera, et cetera, but you in your
4 opening and out the gate has raised the issue -- defense of
5 impossibility. You told that -- and this contradicts that, so
6 to speak. Okay? Because this document, the way I read it,
7 and it doesn't matter how I read it, but by the same token it
8 spells out each of these properties and it says in Paragraph B
9 on Page 1, 1(b), Defendant shall -- I mean, she's got 365 days
10 to come up with 12-and-a-half million dollars. And during
11 that period of time she can market, sale, refinance the
12 collateral. One, two, three, four, five -- five pieces of
13 property, and it has a figure by each one of them as to what
14 -- my impression is what the bank will take to release that
15 piece of property. Am I reading it wrong?

16 MR. HANNA: No, sir, you're not. But, if I understand
17 the law with regard to impossibility of performance, and if
18 you are -- I don't know what your ruling is really on that
19 yet. I'm waiting with baited breath to see what the final
20 decision on that ---

21 THE COURT: I told you this morning I was inclined to
22 tell you I didn't think it applied. I mean, I told you that:

23 MR. HANNA: Yes, sir.

24 THE COURT: But I was gonna give you the opportunity to
25 put out there what you wanted to and ---

1 MR. HANNA: Yes, sir. But, Your Honor, as I understand
2 the impossibility of performance it would be either measured
3 at the time of the default whether it was impossible at that
4 point in time or not, or whether it's impossible performance
5 at the time of the trial. This has to do with whether it's
6 possible in between those time periods and in conjunction with
7 the settling of a lawsuit while this one is still pending.
8 And all those things, I think, would make it too complicated
9 for the jury to understand. I don't know whether they're
10 following of this to start with.

11 THE COURT: I told y'all that in chambers this morning
12 that I thought y'all were gonna have a hard time getting them
13 to understand everything. I mean, you know, but -- and that's
14 y'all concern, not mine. My concern is to make sure that
15 y'all both sides get a fair shot at it and whatever this jury
16 decides.

17 MR. HANNA: Yes, sir. And I guess that's my point but
18 what legal theory are we going down? Is Mr. Templeton saying
19 that it was possible performance during the time period that
20 the litigation was ongoing and therefore we had to do it then?
21 He asked for other things besides just performance. He asked
22 for damages. He asked for withdrawal. He asked for
23 everything in the world. Now, how do you tie those into
24 whether or not she could perform under that document?

25 THE COURT: Mr. Templeton?

1 MR. TEMPLETON: It's a continuing breach, Judge. This
2 lawsuit has been going on for a long time. They've kept us
3 out at every corner and the agreement says what it says. And
4 I don't think the agreement comes into evidence. But, I think
5 the agreement says just as the Court pointed out, there's a
6 sum certain for each of these properties. And if we're
7 measuring the impossibility standard, which I don't think
8 applies, the sum here is for \$4,000,000 for the sale and
9 release of this property with PNC Bank by the terms of this
10 agreement says they'll release it. And, as counsel said in
11 opening, as the Court points out, that they've raised this
12 impossibility issue. They say these properties are all
13 intertwined. The witnesses said they're all intertwined as
14 one. So, to the extent that it wasn't relevant, they've
15 opened the door through their actions.

16 THE COURT: Well, I'm gonna allow that line of
17 questioning. The document is not coming in yet. I think that
18 is appropriate.

19 Anything else?

20 MR. TEMPLETON: Do you want me to finish the proffer or
21 you're good to go?

22 THE COURT: No, I've told you what I will allow.

23 MR. TEMPLETON: Good to go. Thank you, sir.

24 MR. HANNA: Your Honor, one question if I might with
25 regard to the first objection.

1 THE COURT: Yes, sir.

2 MR. HANNA: Mr. Templeton keeps referring to it as an
3 offer. I don't think it's an offer. I think it's an intent
4 to make an offer but ---

5 THE COURT: It's a letter of intent, period.

6 MR. TEMPLETON: I will call it a letter of intent to
7 purchase ---

8 THE COURT: Period.

9 MR. TEMPLETON: --- which is what the document is
10 entitled.

11 MR. HANNA: How far am I going to be allowed to go down
12 that line of question without waiving my objection to that
13 line of testimony?

14 THE COURT: How far are you going to be allowed?

15 MR. HANNA: I mean, if it's gonna waive the objection
16 that I made, I'm not gonna ask any questions.

17 THE COURT: Well, here are the choices you have. Right
18 now after he finishes questioning her you won't have to ask
19 her a thing.

20 MR. HANNA: I understand that.

21 THE COURT: And you can certainly put her up in your case
22 in chief and ask her whatever you want to at that point.

23 MR. HANNA: Absolutely.

24 THE COURT: However, if you choose to ask her some
25 questions, so be it. I mean, you always -- and I guess it's

1 one of the stressful things about trying a case is knowing
2 where that line is and knowing where it's not and knowing when
3 you open that door. My good friend, who is a lawyer in
4 Florence that's tried a ton of cases, tried one in front of me
5 the other week and he made a critical mistake in a question to
6 a witness in a case and opened the door on something, and I
7 hated it for him, you know, but that's just ---

8 MR. HANNA: I understand.

9 THE COURT: I'll let you -- and I'll be listening
10 intently as I have said. ---

11 MR. HANNA: As long as he refers to it as a letter of
12 intent rather than offer, I don't think I'll have any problems
13 with it, Your Honor.

14 THE COURT: Well, and I've told him that.

15 MR. TEMPLETON: Yes, sir. I understand.

16 THE COURT: And that's my instruction.

17 Ms. Marko, you may -- I'm gonna step down and you
18 certainly may step down as well if you want to.

19 MS. MARKO: I would appreciate that.

20 THE COURT: But do not discuss your testimony at all with
21 anyone. Okay? When I come back, I'm gonna have you take the
22 stand again before I bring the jury back out.

23 All right. We'll stand down for just a few minutes.

24 RECESS - 3:36 P.M.

25 *****OFF THE RECORD*****

1 (On the Record - 3:47 P.M.)

2 (REPORTER'S NOTE: Jury enters courtroom @ 3:47 P.M.)

3 THE COURT: Mr. Templeton.

4 MR. TEMPLETON: Thank you, Judge.

5 PLAINTIFF'S EXHIBIT NUMBER 22

6 MARKED FOR IDENTIFICATION

7 CONTINUATION OF DIRECT EXAMINATION OF DEBORAH RICE-MARKO BY

8 MR. TEMPLETON:

9 Q: Ms. Marko, I've handed you what's been marked as Exhibit
10 22 for identification purposes only and I have a couple of
11 questions on that for you on that document. Have you had an
12 opportunity to read the document?

13 A: Not in entirety, but enough to ---

14 Q: You've seen that document before, correct?

15 A: Yes, sir; I believe I have.

16 Q: And earlier I asked you whether you had received any
17 interest in this property and you didn't recall any except
18 something that may have occurred earlier this year. Is that
19 right?

20 A: Correct.

21 Q: And isn't it true in January of 2018 you received a letter
22 of intent to purchase 438 King Street for the sum of
23 \$5,125,000?

24 A: Correct.

25 Q: And you didn't accept that offer, correct?

1 A: No, I did not.

2 Q: I'm showing what's been marked as 21 -- Plaintiff's 21 for
3 identification purposes only. Before I talk to you about that
4 document though let's sort of bring you back to what I'm
5 talking about with that one. Okay? We've talked about it
6 earlier that PNC Bank ultimately did bring a foreclosure
7 action against you, correct?

8 A: I think me individually, as well as ROA, yes.

9 Q: And ROA. And that involved 438 King Street, correct?

10 A: Correct.

11 Q: And you filed an answer in that case contesting PNC's
12 right to foreclose, correct?

13 A: Correct.

14 Q: In July of 2017 you were able to reach an agreement with
15 PNC Bank, correct?

16 A: Correct.

17 Q: Now, I'm showing you Exhibit 21 which is that agreement,
18 correct?

19 A: It appears to be, yes.

20 Q: And in that agreement isn't it true that the King Street
21 property is contemplated as being -- the dispute with PNC is
22 being resolved for the sum of \$4,000,000.

23 A: I'm sorry, could you repeat that, please?

24 Q: Yes, ma'am. Isn't it true that in the settlement
25 agreement the way it worked with PNC that you designated a

1 certain sum of money for each of the properties that were
2 being foreclosed upon, correct?
3 A: I believe so.
4 Q: All right. And, if the defendants in that lawsuit, which
5 was you came up with the sum of \$12.5 million dollars they
6 would drop their lawsuit, correct?
7 A: There were other terms but yes.
8 Q: And in that document there was a specific sum designated
9 for the King Street property, 438 King Street, and that was
10 \$4,000,000, correct? Page 1, three lines from the bottom.
11 A: That's correct.
12 Q: After this agreement was executed did you ever convey to
13 Mr. Buck the willingness to accept \$4,000,000 in exchange for
14 a release of that mortgage and note?
15 A: No, I did not.
16 Q: Ultimately, you did end up resolving matters with the
17 bank, correct?
18 A: Correct.
19 Q: Ultimately, financing was available to resolve the dispute
20 with the bank, correct, pursuant to Exhibit 21 that's in front
21 of you?
22 A: Financing or sale, yes.
23 Q: All right. There was an assignment made, right?
24 A: Yes.
25 Q: And are you familiar with that assignment?

1 A: Yes.

2 Q: Were you involved in that negotiation in any way, shape,
3 or form?

4 A: It was a term of the settlement agreement.

5 Q: Let me rephrase my question so we're on the same page. I
6 understand that the settlement agreement that's in front of
7 you right now, it contemplated 12.5 million dollars being paid
8 to the bank, right?

9 A: Correct.

10 Q: And the mortgage and notes that were on this property were
11 they conveyed to some third party or did you guys come up with
12 12.5 million dollars to pay the bank, if you know?

13 MR. HANNA: Your Honor, I don't know that this is part of
14 the discussion that we had.

15 THE COURT: Objection -- are you making an objection?

16 MR. HANNA: Yes, sir.

17 THE COURT: Sustained.

18 MR. TEMPLETON: I'll get to the point.

19 THE COURT: Move on, please.

20 BY MR. TEMPLETON:

21 Q: Are you familiar with a company called CHSOP, LLC?

22 A: Yes.

23 Q: Do you have any affiliation with that entity?

24 A: No.

25 Q: Do any of your children have an affiliation with that ---

1 MR. HANNA: Your Honor, relevancy.

2 THE COURT: Objection sustained.

3 MR. TEMPLETON: May we approach?

4 THE COURT: Yes.

5 (REPORTER'S NOTE: Bench conference is held off the record in
6 the presence of but outside the hearing of the jury.)

7 THE COURT: Objection sustained.

8 MR. TEMPLETON: Judge, this is Plaintiff's 19. This was
9 admitted by consent.

10 THE COURT: Without objection?

11 MR. TEMPLETON: Yes, sir.

12 PLAINTIFF'S EXHIBIT NUMBER 19

13 ADMITTED INTO EVIDENCE

14 BY MR. TEMPLETON:

15 Q: Ms. Marko, this is just a bit of housekeeping that we
16 talked about earlier that the property was under lease -- 438
17 King Street had tenants in the property at the time that this
18 contract was signed, right?

19 A: The March 20th contract?

20 Q: Yes, ma'am.

21 A: To my recollection, yes. It's been a while, but yes, sir.

22 Q: Exhibit 19 are the leases that were in place at the time
23 of the March 20th contract; is that correct?

24 A: I would have to assume so from what I'm seeing, but yes.

25 Q: Thank you.

1 MR. TEMPLETON: Court's indulgence?

2 THE COURT: Yes, sir.

3 MR. TEMPLETON: Your Honor, I don't have any other
4 questions.

5 THE COURT: All right. Any questions, Mr. Hanna?

6 MR. HANNA: Yes, sir, Your Honor.

7 (To Mr. Templeton) I'm gonna get right in front of you so
8 you can't see. Right over -- am I all right here?

9 MR. TEMPLETON: Yeah, you're good there.

10 MR. HANNA: Okay.

11 CROSS EXAMINATION OF DEBORAH RICE-MARKO BY MR. HANNA:

12 Q: Ms. Rice-Marko, you have been questioned about
13 developments with regard to the loan becoming in default. The
14 original letter of default didn't have anything to do with
15 payment, did it?

16 A: No, sir; it did not.

17 Q: It had to do with your refusing to give the bank further
18 financial information, correct?

19 A: That's correct.

20 Q: Please tell the ladies and gentlemen of the jury why you
21 refused the demand of the bank at that point in time.

22 A: It goes back a ways. In 2011, there was a forbearance
23 agreement. Forbearance means that we agreed -- the bank and I
24 agreed to certain terms and they would not initiate collection
25 efforts or whatever. As I stated, Mr. Buck's attorney Sid

1 Boone's firm helped with that forbearance agreement. That
2 forbearance agreement had certain interest rates, certain
3 terms of repayment, et cetera. In December of 2000 and I
4 believe it was '11, PNC Bank purchased RBC Bank. And at that
5 time PNC Bank looked at the loans that were part of that
6 purchase. My account representative was, I guess, part of
7 that due diligence, so he was looking -- meeting with the PNC
8 folks and looking at the documents, et cetera. And he would
9 tell me, he's say I'm going to Raleigh today I'm going to meet
10 with PNC, et cetera and so on. In March, I believe March 19th
11 or March 20th, I believe that was in 2011, I guess it was --
12 let's see, July was the forbearance agreement, 2011, it must
13 have been March of '12. My account representative called me
14 on my cell phone and he said, Debbie I want to give you a
15 heads up, PNC doesn't like this agreement that RBC struck with
16 you. They don't like the interest, they don't like the terms,
17 they don't like the agreement, and they want out. And they're
18 gonna do anything they can to trip you up and cause you to
19 have a default, and your making payments has nothing to do
20 with whether they're going to continue on with this agreement.
21 That was March, I think, 19th or 20th in 2012. In June of
22 2012, a gentleman named Wursto called me from Pennsylvania ---

23 MR. TEMPLETON: Objection, Judge, hearsay.

24 THE COURT: Sustained.

25 BY MR. HANNA:

1 Q: Without saying what he told you, what did you do next?

2 A: And asked for information, for some financial information.
3 I had heard, as I said, that they were going to try to trip me
4 up, and specifically they would try to trip me up by asking
5 for information that would be difficult for me to give them
6 and I'd have to make a decision whether to give them that
7 information or not. And he came to Charleston, he met with
8 me, and he would not give me assurances that he would not
9 misuse that information, and so I withheld the information
10 from him. Specifically, he was asking for personal financial
11 information. At the same time, he met here in Charleston with
12 ---

13 MR. TEMPLETON: Objection, hearsay and speculation.

14 THE COURT: Objection sustained.

15 MR. HANNA: Well, we don't know whether it's for the
16 truth of the matter asserted yet, Your Honor.

17 THE COURT: I'll allow her to testify on her personal
18 knowledge, on her personal knowledge. Ask her the question
19 again.

20 MR. HANNA: Well, it wasn't a question addressed for that
21 particular -- but I'll be happy to rephrase.

22 THE COURT: Please do.

23 BY MR. HANNA:

24 Q: When you were contacted by Mr. Wursto ---

25 A: Yes, sir.

1 Q: He was with which bank?

2 A: PNC Bank.

3 Q: Your original mortgage was with RBC, right?

4 A: Correct.

5 Q: This was shortly after PNC took over RBC; isn't that
6 right?

7 A: That's correct.

8 Q: And in that time period you had learned that they wanted
9 to get rid of your note; isn't that right?

10 A: That's correct; I was told.

11 Q: And this was a way in your opinion that they were gonna do
12 that. They were going to ask for financial information.

13 A: It was exactly what I was told, yes.

14 Q: And as we know right now, the bank, PNC had been
15 disseminating your personal information on the street.

16 MR. TEMPLETON: Objection, facts not into evidence.

17 THE COURT: Can y'all approach, please?

18 (REPORTER'S NOTE: Bench conference is held off the record in
19 the presence of but outside the hearing of the jury.)

20 BY MR. HANNA:

21 Q: Ms. Rice-Marko, if you're in trouble financially -- as a
22 buyer and seller of real estate you're in trouble financial
23 and that gets out into the community of people that purchase
24 properties -- properties like Mr. Buck. Does that have an
25 effect on your ability to market those properties?

1 A: Absolutely, it does.

2 Q: And is that why you were holding everything so close to
3 the vest, you kept telling everybody you've got to keep this
4 confidential, I don't want it disclosed to everyone on the
5 street? It was not because of this transaction but for the
6 global effect that it might have with regarding to the
7 valuation of your property and able to disclose that; isn't
8 that correct?

9 A: That's correct. Ad in fact in November of 2012, when I
10 received the first default letter for not getting the
11 information to PNC, I'd been getting phone calls from what I
12 call predatory lenders. And, they were inquiring not only
13 about these loans but about my personal residence, and they
14 were visiting my tenants, they were going to my properties ---

15 MR. TEMPLETON: Objection, relevance.

16 A: And, so ---

17 THE COURT: Hold on, ma'am. He's made an objection. I
18 want to hear from your lawyer.

19 A: I'm sorry.

20 MR. HANNA: Let me pose another question and see if I can
21 ---

22 THE COURT: Thank you. Let's move on, sir.

23 BY MR. HANNA:

24 Q: Ms. Rice-Marko, so the bottom line in this is that you
25 didn't have a problem with disclosing information to Mr. Buck;

1 you had a problem with your information being disclosed out on
2 the street?

3 A: Correct.

4 Q: And because he was in the community of the predator market
5 you were afraid that anything that was disclosed to him would
6 have been disclosed to others; is that right?

7 A: Exactly.

8 Q: And isn't it true that if that happened that would affect
9 your ability to market other properties that were in default
10 and cure all of these problems with that bank.

11 A: Exactly.

12 Q: So, that was the reason for you being tight with the
13 information at this point in time. Now, let me ask you
14 another question. You said that another letter introduced
15 later on that the bank notified you you were also in default
16 for nonpayment.

17 A: Correct.

18 Q: Isn't it true that the reason why you went into
19 nonpayment is that you said, well, if they've got me in
20 default on the confidentiality, I'm not making any more
21 payments to them because it doesn't do any good?

22 A: That's correct. That's what the letter told me.

23 Q: And at that point in time after they notified you of the
24 default, I assume you went into panic mode trying to figure
25 out some way to save everything that your family had worked

1 for.

2 A: I felt like I was swimming with sharks and I was the bait.
3 Everybody was after me.

4 Q: And it wasn't only just you at stake, it was your sons and
5 these other corporations and everything else.

6 A: Exactly.

7 Q: You were frantically trying to devise some way to
8 rearrange the finances.

9 A: Exactly.

10 Q: And that's the reason why you entertained for Mr. Buck to
11 potentially sell the property in an effort to devise a game
12 plan to get cash flow so you could take care of all of it.

13 A: Exactly. PNC told me if I did not enter into negotiations
14 ---

15 MR. TEMPLETON: Objection, hearsay, Judge.

16 THE COURT: Objection sustained.

17 BY MR. HANNA:

18 Q: Don't tell me what PNC said. All through this time period
19 between November, December, and March when you signed the
20 contract you were constantly trying to negotiate with the
21 bank; is that right?

22 A: I was negotiating, yes.

23 Q: And kind of holding this sale in the background hoping
24 that if you could pull it together, bingo, you could do it.

25 A: Exactly.

1 Q: And when -- all during this time they're pushing you to
2 sign a contract. They want a contract.

3 A: Yes, sir. In fact, February 11th I had wrote Mr. Atwill
4 and asked him to please stop pushing me, and he wrote back in
5 an email that he was sorry for pushing me.

6 Q: Now, while we're on that subject, there were emails going
7 back and forth where they questioned between themselves, Mr.
8 Groat, Mr. Atwill, and everybody else, was this a lender
9 issue. Did they ever come to you and ask you was this a
10 lender problem?

11 A: Never.

12 Q: All right. So, you didn't tell them and they didn't ask?

13 A: Never.

14 Q: Mr. -- you didn't ever hear anything that would make you
15 believe that that was important to Mr. Buck in these
16 negotiations?

17 A: Not that I recall, no.

18 Q: Now, let's talk about the point in time when you actually
19 signed that contract. When you signed that contract it is my
20 understanding that you were at a point in time where PNC was
21 receptive, they were looking to get this thing resolved. It
22 was your opinion that they wanted it resolved.

23 A: Absolutely. Absolutely.

24 Q: And that's when you saw the daylight. Here's an
25 opportunity for me to walk through and get this done.

1 A: Exactly.

2 Q: And that's the reason why you signed the contract.

3 A: Absolutely.

4 Q: And then later on you found out that the bank -- you were
5 wrong about the bank's intention. They had no intention of
6 letting you ---

7 MR. TEMPLETON: Object to form.

8 THE COURT: Let him finish the question, please.

9 Finish your question and then if you have an objection,
10 make your objection and I'll rule on it.

11 Go ahead Mr. Hanna.

12 MR. HANNA: Thank you, Your Honor.

13 BY MR. HANNA:

14 Q: At that point in time, you believed that you could pull it
15 together?

16 A: Absolutely. They were leading me to believe, yes.

17 Q: And it was between March 20th when you signed the contract
18 and May 3rd the day -- last day that the deal could possibly
19 close that you found out that they were not receptive to the
20 idea?

21 A: I actually found out April the 5th.

22 Q: Okay. How did you find that out, without telling me what
23 anybody said?

24 A: I was sent an email from my attorney that had been given
25 to him by PNC's attorney, from Mr. Wursto.

- 1 Q: And what did you do at that point in time?
- 2 A: I was blindsided because I was negotiating, and I had made
3 the last offer and I was waiting for PNC to offer ---
4 counteroffer. I was totally blindsided.
- 5 Q: And the reason you didn't pick up the phone and call Mr.
6 Buck and tell him that is he never questioned that, never
7 asked about that.
- 8 A: It was Friday night at 5 o'clock, and I was waiting until
9 Monday to try to find out what had happened.
- 10 Q: And despite the notice and that knowledge you continued to
11 try to pull the deal together ---
- 12 A: Absolutely.
- 13 Q: --- and close the contract with Mr. Buck, didn't you?
- 14 A: In was in my best interest.
- 15 Q: There was no reason for you not to go through with it if
16 the bank went through with it.
- 17 A: I needed it to close.
- 18 Q: And when did you find out that the -- excuse me one
19 second, Your Honor.
- 20 When did you find out that they were going to foreclose?
- 21 A: Friday afternoon, again, after 5:00 on May the 5th.
- 22 Q: Was it when you received this?
- 23 A: Or excuse me, I misspoke. May the 3rd.
- 24 Q: Is this the first notice that you had of the foreclosure
25 when they served these papers on you?

1 A: I believe my attorney called me and told me that he had
2 heard about it, but I hadn't -- I received notice until I
3 think the process server showed up at my door that weekend.

4 Q: I'm not asking you to go through all these papers but
5 looking at the top document, can you identify this document
6 please, ma'am?

7 A: Yes, that appears to be the date and timestamp from
8 Charleston County.

9 Q: That's where PNC initiated foreclosure action on PNC.

10 A: On ROA?

11 Q: I mean, excuse me, on 438 King. And the date of filing
12 with the clerk of court and time of filing on that is May 3rd
13 at 11:16?

14 A: Correct.

15 Q: And you got the papers sometime after that?

16 A: I believe the process server showed up at my house over
17 the weekend, yes.

18 Q: Okay. What did you think when you got those papers?

19 A: Scared. It was my only -- it was the only thing I had
20 left. It's ---

21 Q: All right. Did you ever intend to deceive Mr. Buck about
22 anything?

23 A: No, sir; I didn't. I was trying to -- I was trying to put
24 a deal together. I was being pressured to put a deal
25 together. Mr. Buck was pressuring me to give a contract. PNC

1 was pressuring me. I had note buyers or loan buyers, mortgage
2 buyers, predatory buyers coming to my place of business,
3 calling me on the phone. It was my best interest to try to
4 close that property. I had -- I spent a lot of money trying
5 to get it done myself. It's all I had left.

6 Q: Let's talk for a minute, and I may come back to that line
7 of testimony in a little bit, but while it's on my mind I want
8 to address this settlement agreement that was entered into
9 with the bank with regard to the foreclosure. At that point
10 in time when you were able, through years of litigation with
11 the bank, and as I understand a lot of that had to do with
12 confidentially, breach of confidentiality by the bank; is that
13 right?

14 A: That was a lot of it. Yes, sir. They put all of the
15 loans and my personal financial information, the leases, and
16 everything on the internet for anybody such as Mr. Buck to
17 see, anybody who was a note buyer or a loan buyer.

18 Q: Now, at the time that you reached an agreement with the
19 bank where you had kinda worked out all of this, was the
20 litigation that we're here about today still in place?

21 A: I'm sorry, sir; can you say that again, please?

22 Q: When you entered into that settlement agreement with PNC
23 in July of 2017 ---

24 A: Yes.

25 Q: --- this litigation was still in place; was it not?

1 A: Yes, it was.

2 Q: And in this litigation you were not only being sued ---

3 A: Yes.

4 Q: --- for breach of contract, you were being sued for fraud
5 and everything else at that point in time, were you not?

6 A: Yes, sir.

7 Q: Okay. Now, eventually there was a court order that
8 ordered that the document be produced to Mr. Buck. As I
9 understand it, the reason why it was not produced voluntarily
10 is because the agreement had confidentiality provisions in it
11 which you couldn't do voluntarily, it had to be done by the
12 Court.

13 A: Right. I could not -- no, I did not -- it was not within
14 my power, no.

15 Q: Now, if my memory serves me right, it's been close to a
16 year that they've had this settlement agreement with the
17 provisions in it. During that period of time, have they made
18 any offer to come to you and purchase the property for
19 \$4,000,000?

20 A: No, sir.

21 Q: All right. With regard to the letter that you received
22 from this third party -- this unnamed third party, it's been
23 called an intent to offer. Was there ever any binding
24 agreement between you and anybody else with regard to the sale
25 of this property?

1 A: No, I never signed it. It was, you know, it was years
2 since I had received any kind of communication about this
3 property from anybody other than the litigation.

4 Q: And even though you had an agreement with PNC that said
5 that you could sell that property for \$4,000,000, you couldn't
6 do it because of the lis pendens that was placed on the
7 property?

8 A: No, I could not. I had a lis pendens from Mr. Buck, which
9 means that it would not be able to be.

10 Q: Excuse me one second. That's all I have. Thank you, Ms.
11 Rice-Marko.

12 THE COURT: Any redirect?

13 MR. TEMPLETON: Yes, sir.

14 REDIRECT EXAMINATION OF DEBORAH RICE-MARKO BY MR. TEMPLETON:

15 Q: Ms. Marko, your lawyer asked you a few moments ago if Mr.
16 Buck ever asked you what the problem was or words to that
17 effect, and you told him no. Isn't it true that he emailed
18 you on April 5th, that's Exhibit 12, and said please help me
19 understand why the closing has not occurred per the contract
20 and you were nonresponsive. Eddie. Isn't that true that's
21 what he asked?

22 A: I think I heard two questions, Mr. Templeton. One, I
23 don't think the question Mr. Hanna was presented the same as
24 you said it.

25 THE COURT: Answer the question, please.

1 BY MR. TEMPLETON:

2 Q: Ms. Marko, isn't it true that on April 5th, 2013 at 9:04
3 and 40 seconds, Mr. Buck wrote you an email that says quote,
4 please help me understand why the closing has not occurred per
5 the contract, and you are nonresponsive. Isn't that true?

6 A: That's correct.

7 THE COURT: And that's Exhibit 12, correct?

8 MR. TEMPLETON: Yes, Your Honor.

9 THE COURT: Thank you.

10 BY MR. TEMPLETON:

11 Q: And you understand that since this deal didn't go through
12 that Mr. Buck lost some money, correct?

13 A: I don't understand that. I understand that he's alleged
14 that but I don't understand that; no, sir.

15 Q: You don't think he spent money getting ready for this
16 closing?

17 A: I have no way of knowing what he spent. He's got in-house
18 counsel. I just don't know, sir.

19 Q: If the deal had gone through he would own the property,
20 right?

21 A: Correct.

22 Q: And you agree that it's worth more today than it was then,
23 don't you?

24 A: I have a contract from Mr. Buck for 3.5 million dollars,
25 that's all I know.

1 Q: You don't know as we sit here today if that property's
2 worth more than it was ---

3 A: I have no evidence whatsoever to show anything other than
4 the 3.5 million dollars.

5 Q: And you talked at length about the things that PNC did.
6 Mr. Buck didn't do anything to you, did he?

7 A: I don't know what Mr. Buck did, sir. What exhibit number,
8 please? I don't ---

9 Q: This is Plaintiff's Exhibit 1, Paragraph 6, little (i),
10 little 2, right there. Would you read that provision, Exhibit
11 1, that's the contract, correct?

12 A: Yes, sir. It appears to be, yes.

13 Q: Would you read that provision of the contract to the jury,
14 please?

15 A: To the best knowledge of the seller there's no actual or
16 threatened action, litigation, or proceeding, including but
17 not limited to condemnation by any organization, person,
18 individual, or governmental authority against the property or
19 with respect thereto.

20 MR. HANNA: Your Honor, he's on redirect of this witness.
21 It was not matter that was covered in cross.

22 THE COURT: I'm gonna allow it right now and see where he
23 goes with it. Go ahead, Mr. Templeton.

24 MR. TEMPLETON: That's as far as I want, Judge, just to
25 rehash that issue.

1 THE COURT: I'm would allow it and I did allow it.

2 Next question, please.

3 MR. TEMPLETON: Court's indulgence.

4 Thank you, Judge. I'm finished.

5 MR. HANNA: Nothing, Your Honor.

6 THE COURT: Ma'am, you may step down. Thank you.

7 MS. RICE-MARKO: Thank you, sir.

8 THE COURT: As she's stepping down, can the lawyers
9 approach, please?

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence of but outside the hearing of the jury.)

12 BY THE COURT:

13 THE COURT: All right, ladies and gentlemen, we're gonna
14 go ahead and break for the day. I'm gonna ask you to be back
15 at 9:30 in the morning, 9:30 in the morning.

16 Do not discuss the case. Do not do any independent
17 investigation on your own. As I've told you from the outset,
18 we're to decide this case based solely upon evidence and
19 testimony presented in this courtroom and nowhere else.

20 Now, before I let you go let me do this, when you all
21 return tomorrow morning, I want you all to select a
22 foreperson. All right? I will tell you that your foreperson
23 cannot be Mr. Eckert or Mr. Bogstad -- did I pronounce that
24 correctly? Close enough? All right. Those two individuals
25 cannot be your foreperson. When you all select a foreperson

1 JUROR 7: Seven.

2 THE COURT: Juror Number 7, Ms. Gadsden.

3 JUROR 7: It's Baumgardner.

4 THE COURT: I'm sorry, Ms. Baumgardner. That will be
5 your seat throughout the remainder of this trial. Okay?

6 All right. We are at this time going to continue the
7 trial of this case.

8 Mr. Templeton, you're recognized.

9 MR. TEMPLETON: Your Honor, the plaintiff rests its case
10 in chief.

11 THE COURT: All right. Ladies and gentlemen, the
12 plaintiff has rested its case. What I'm gonna have to do
13 right now is I'm gonna have to run you back out of here.
14 There's some things that we have to take up outside of your
15 presence. I'll get you back in here as quickly as I can but
16 it may take a few minutes. Okay? So, just be patient. Do
17 not discuss the case at all. I'll get you back in here as
18 quickly as I can.

19 (REPORTER'S NOTE: Jury exits courtroom @ 9:46 A.M. The
20 following takes place outside the presence of the jury.).

21 THE COURT: All right, Mr. Jordan.

22 MOTIONS:

23 MR. JORDAN: Thank you, Your Honor. May it please the
24 Court? At this time Defendant would move for directed verdict
25 as to the two causes of action asserted by Plaintiff in its

1 amended complaint. Your Honor, several of the issues that we
2 will outline this morning are addressed in detail in our
3 summary judgment brief and so I won't rehash, every, every
4 case and every issue, but I will highlight them with the
5 Court's attention to that brief as well.

6 Your Honor, first we would move for a directed verdict as
7 to the plaintiff's specific performance cause of action as we
8 discussed at length, there is a prior order of this Court
9 ordering that specific performance is not available to the
10 Plaintiff given the position of a third-party lienholder,
11 which was PNC and is now another third party that is not a
12 party to this action. And for that reason we would argue and
13 request a directed verdict on that ground. Specific
14 performance is not an available remedy to the plaintiff.

15 Related to that, Your Honor, Paragraph 12 of the contract
16 between the parties in this case provides the remedies
17 available to the purchaser in the event the seller is in
18 default. And that paragraph provides that, in the event of
19 default, purchaser has the option of specific performance or a
20 return of his earnest money, which is \$50,000. Your Honor,
21 given that specific performance is in our view not available
22 as to Plaintiff, we would argue that the only remedy available
23 to the plaintiff in this case is the return of his earnest
24 money and would ask the Court to direct a verdict on that
25 issue as well.

1 Your Honor, the plaintiff has also asserted a cause of
2 action against Ms. Rice-Marko for negligent misrepresentation.
3 Defendant moves for a directed verdict as to that cause of
4 action for several reasons. Your Honor is well aware of the
5 elements necessary to assert a cause of action for negligent
6 misrepresentation, and there are several that the Court should
7 find as a matter of law, the plaintiff has not established in
8 his case in chief. First, Your Honor, there have been no
9 false statements identified that Ms. Rice-Marko allegedly made
10 to the defendant. The defendant has not -- excuse me, to the
11 plaintiff. The plaintiff did not testified or offer any
12 evidence in the record of a material statement of fact that
13 Ms. Rice-Marko made to Mr. Buck upon which a negligent
14 misrepresentation could be based.

15 Your Honor, the Court is aware that a false
16 representation in order to support a cause of action for
17 negligent misrepresentation must be predicated upon a
18 misstatement of fact rather than an expression of opinion, an
19 expression of intention, or expression of confidence that a
20 bargain will be satisfactory. It appears to be the
21 plaintiff's position that the negligent misrepresentation in
22 this case is Ms. Rice-Marko's failure to let Mr. Buck know
23 that there could be some financing issues related to the sale.
24 Your Honor, there is no evidence in the record that Ms. Rice-
25 Marko made a misstatement of fact to Mr. Buck related to this

1 transaction. Any representation that can be gleaned from her
2 silence is simply an expression of opinion, is a hope for the
3 future that the contract would be able to close, and cannot be
4 the ground to support a negligent misrepresentation cause of
5 action.

6 Moreover, Your Honor, the contract in Paragraph 6(k)
7 contains an exclusion by the plaintiff recognizing that he is
8 not relying upon any representations of anyone other than the
9 representations that are contained in the contract. So, if
10 you look at paragraph 6(e), it's in all bold and it expressly
11 provides that Mr. Buck recognizes that there are no other
12 representations or warranties, expressed or implied, of any
13 kind or nature whatsoever with respect to the property and
14 that he is not relying on any such representation. For that
15 reason, Your Honor, we believe that Mr. Buck cannot support
16 the cause of action for negligent misrepresentation against
17 Ms. Rice-Marko.

18 Additionally, Your Honor, there is no evidence in the
19 record that Ms. Rice-Marko would have any pecuniary interest
20 in any alleged misrepresentation made to Mr. Buck. Ms. Rice-
21 Marko offered the only testimony on that point, which is that
22 she more than anyone else needed to close, that it was in her
23 interest for this transaction to go forward. Your Honor,
24 there is no conceivable pecuniary interest to Ms. Rice-Marko
25 in not closing on this contract and misrepresenting to Mr.

1 Buck that she would and failing to move forward with it. So,
2 that additional element of the negligent misrepresentation
3 cause of action fails as a matter of law.

4 Additionally, Your Honor, one of the elements of the
5 negligent misrepresentation cause of action is justifiable
6 reliance. The plaintiff must show that he justifiably relied
7 on any alleged misrepresentation from Ms. Rice-Marko. The law
8 as well, Your Honor, that where there is no confidential or
9 fiduciary relationship in an arms-length transaction between
10 mature educated people is involved, there is no right to rely.

11 Your Honor, the only testimony before this Court is that
12 both Mr. Buck and Ms. Rice-Marko were sophisticated parties,
13 they were involved in an arms-length real estate transaction.
14 As such, Mr. Buck has no right to rely on any alleged
15 misrepresentations made by Ms. Rice-Marko and that cause of
16 action should fail for that reason as well.

17 Your Honor, there is an additional basis for the cause of
18 action for negligent misrepresentation failing as to Ms. Rice-
19 Marko is that at all times when Ms. Rice-Marko was dealing
20 with Mr. Buck she was acting as a disclosed agent of the
21 principle ROA. And when she is acting as a disclosed agent of
22 the principal ROA, she cannot be liable individually for any
23 alleged misrepresentations that she made in those
24 negotiations.

25 Your Honor, I'll discuss the damages issues for a moment.

1 The -- as we've discussed previously the case law in South
2 Carolina is clear that the breach of -- the damages for breach
3 of contract for a real estate closing that does not go forward
4 is measured by the difference in the contract price and the
5 market value at the time of the breach. In this case, Your
6 Honor, there is no testimony before this Court as to the value
7 of the property at the time of the breach other than the
8 contract itself. Your Honor, we would submit to the Court
9 that the Court should direct a verdict on the breach of
10 contract cause of action and should preclude the plaintiff
11 from arguing that the appreciation value is an appropriate
12 measure of damage.

13 Your Honor, there is also testimony before Your Honor
14 regarding damages related to rent rolls and lost profits from
15 the property. Your Honor, the testimony offered by Mr. Buck
16 on that point was solely related to the income stream that he
17 believes he would have received from that property. He did
18 not discuss the expense of maintaining the property, the
19 taxes, he did not offer any recognition of the other side of
20 property ownership. He only offered testimony concerning the
21 profits and not the expenses. For that reason we believe that
22 his claim to that amount of money on those rent rolls is
23 speculative and should not go to the jury as a measure of
24 damage.

25 Your Honor, the 1031 exchange that Mr. Buck alleges he

1 lost as a result of this failed contract should also be
2 prohibited from proceeding to the jury. Mr. Buck testified
3 and the record is clear that he designated this property as a
4 1031 property before he ever entered into a contract to
5 purchase it. That the deadline for him to complete the
6 transaction expired before Ms. Rice-Marko was required to
7 perform under the contract when taking into consideration the
8 built-in cure period within the contract. And for that
9 reason, Your Honor, as a matter of law nothing that Ms. Rice-
10 Marko did or that ROA did was approximate cause of Mr. Buck's
11 alleged failure to complete the 1031 exchange.

12 Your Honor, as an additional grounds for directed
13 verdict, the contract, in Paragraph 4, provides a period in
14 which Mr. Buck had an opportunity to inspect the title, to
15 know the exceptions to the title, to demand that Ms. Rice-
16 Marko cure any exceptions to the title, and if she refused to
17 do so to either receive the closing subject to those
18 exceptions or terminate the contract. Your Honor, Mr. Buck
19 had the opportunity to determine that it was indeed required
20 that PNC consent to this transaction, that he could've
21 demanded Ms. Rice-Marko to provide him with that consent.
22 Failing to do so, Your Honor, and proceeding without noting
23 any title exception Mr. Buck has waived his right and is
24 estopped from proceeding under the contract on that ground,
25 Your Honor.

1 Moreover, Your Honor, Mr. Buck was on constructive
2 knowledge of the existence of that contract -- the existence
3 of the mortgage and the clause requiring PNC's consent as a
4 matter of public record.

5 Finally, Your Honor, we would move to dismiss or move for
6 a directed verdict on plaintiff's punitive damages claim. The
7 only evidence before this Court would potentially support a
8 negligence claim and there is no evidence that there was any
9 willful, wanton conduct on behalf of Ms. Rice-Marko or her
10 entity that would potentially justify an award of punitive
11 damages.

12 Your Honor, if I may back up one minute to the damages
13 issue, the other issue that we see in this case with respect
14 to damages is the two causes of action asserted by the
15 plaintiff are in some ways contradictory to one another. The
16 breach of contract cause of action seeks to say this contract
17 should have closed and I should have acquired the property,
18 and because I didn't acquire the property I was damaged. I
19 didn't have the rent rolls. I didn't have what they claim to
20 be depreciation of value.

21 The other cause of action, Your Honor, seeks to say if
22 you had told me the truth about this I never would have
23 entered into the contract and so, as a result, I was damaged
24 by expending money in reliance, the \$17,000 that I spent
25 preparing for closing in relying on this as a 1031 exchange

1 that didn't happen. And it's our position, Your Honor, that
2 the plaintiff has to either affirm the contract and seek
3 remedy for breach or has to disaffirm the contract and say I
4 want my damages, I never should have entered into it in the
5 first place. I think that all of those damages together
6 cannot go to the jury because they would be -- they would be
7 -- and would be potentially contradictory to one another. So,
8 those are grounds for directed verdict, Your Honor.

9 THE COURT: All right, Mr. Boger.

10 MR. BOGER: Yes, Your Honor. Mr. Jordan gave me a good
11 bit to respond to, so I'm going to try to take each one in
12 turn.

13 As to specific performance, I think maybe what we haven't
14 put on the record that we should have prior to today -- you
15 know, their position is it's impossible because we cannot
16 force the bank to do anything. And we are not asking this
17 Court to force the bank to do anything. What we're asking the
18 Court to do is force ROA and Ms. Rice-Marko to perform under
19 their contract. We understand that PNC is no longer a party.
20 We understand there's an order as to PNC. That order does not
21 affect the substantial right as to ROA and Ms. Rice-Marko as
22 pertaining to the contract with Buck Investments. We have
23 cited in our motion for partial summary judgment regarding the
24 possibility under the *Morin* case, *Morin vs Innegrity*, which
25 was a Court of Appeals case in 2018, this year; and also the

1 *Hawkins* case. It stands for the position that ROA cannot
2 stand and say we can't perform because we can't pay, or
3 because it's impractical. And that's what's going on here.
4 They are standing back and saying, sorry, we can't pay and
5 can't perform. This Court has every power to order them to
6 pay and perform. Additionally, it is their burden to prove
7 that they can't do that. And, what Ms. Rice-Marko testified
8 on the stand yesterday is that she can't do that, she can't
9 prove that because she hasn't done it. She's not taken an
10 offer to the bank in the face of a settlement agreement that
11 she had with the bank. She didn't say, you know, we can get
12 you the amount the bank needs, and in turn the bank has
13 declined that offer. It is not up to the bank as to who pays.
14 Practically speaking, a bank's gonna take money wherever they
15 get it and that should satisfy the bank's deal or settlement
16 agreement with Ms. Rice-Marko. So, there's nothing in front
17 of the Court that shows they've proven their burden of
18 impossibility.

19 Additionally, Your Honor, I believe Mr. Jordan next spoke
20 about the remedies that are available and pointed to Paragraph
21 12 of the contract. And, we believe that in the general
22 standard here is that the damages are a natural or probable
23 consequence of those -- and those contemplated by the parties.
24 In looking at this provision, one, we believe it's ambiguous.
25 And where it isn't ambiguous, we believe the jury has a right

1 to determine the initial damages. And we're citing *Bannon v.*
2 *Knauss*, which was 320 S.E.2d 470. Additionally, a federal 4th
3 Circuit case, *Richman Enterprises v. Pamplin*, 79 F.3d 1141.
4 And in *Bannon* the Court states in the absence of clear
5 language in the contract to the contrary, a non-breaching
6 party may normally elect to pursue the remedies specified or
7 pursue any other remedy available for the breach. The
8 presence of a liquidated damages clause in a contract does not
9 in itself limit the remedies available to the non-breaching
10 party. And in this case, Section 12(a) addresses the breach
11 by the seller and does not limit or say this is the sole and
12 exclusive remedy of default compared with Section (b), which
13 is default by the purchaser does limit as to sellers
14 liquidated damages and seller's sole and exclusive remedy.
15 That language is not in the default paragraph for the seller.
16 And, citing that 4th Circuit case -- although the liquidated
17 damages agreement can apply to a future contract by either the
18 purchaser or the seller, usually the liquidated damages clause
19 is intended to function only in the case of the purchaser's
20 breach. Here the purchaser did not breach.

21 Next, Your Honor, I'll take up negligent
22 misrepresentation. We disagree with the position presented by
23 the defendants. We think the facts and testimony show that it
24 was a clear misrepresentation on behalf of ROA and Ms. Rice-
25 Marko. There is a duty to disclose based on the contract,

1 that's again Paragraph 6(a) -- to the best knowledge of the
2 seller there has been an actual or threatened actual
3 litigation or proceeding by any organization, person,
4 individual, or governmental authority against the property or
5 with respect thereto. That in itself provides that she has a
6 duty to disclose whether or not there's a suit or a threatened
7 suit, and that's the key word here, threatened. And she knew
8 in 2012 -- in December of 2012 she knew, and then February of
9 '13 prior to the contract that it was threatened. I mean, she
10 received these letters of which we have no way of access to.
11 You know, here she's got a duty to act in good faith and fair
12 dealing with Mr. Buck as it stood with this contract and that
13 was -- that was never had in this instance. She contracted
14 and continued to misrepresent the fact that she would be able
15 to close, that there was nothing wrong. He asked, anything I
16 can help with, what's going on, what can I do? Nothing, we're
17 trying to close, we're trying to close. Even on or after
18 April 5th, the day in which she testified the bank told her we
19 are no longer negotiating with you. Nothing after April 5th
20 from Ms. Rice-Marko stating, sorry we're not gonna be able to
21 do this deal, I've got something going on with my bank,
22 they're foreclosing, whatever that may be. Matter of fact, a
23 week later she says, still gonna try to close, can we do it in
24 a couple of weeks. That in and of itself I think is a
25 scintilla of evidence to show there was a misrepresentation.

1 And also, that Mr. Buck testified that he relied on that to
2 his detriment. He said, I would have not have gone forward, I
3 would not have continued down the road if she would've told me
4 upfront, I've got some issues with my lender or there's
5 threatened litigation, and we think a reasonable juror could
6 conclude that.

7 In response to the pecuniary interest, she did have a
8 pecuniary interest. She had pecuniary interest because she
9 stood to benefit from the contract, one. And then two, as we
10 stand here today what has changed? She still had the benefit
11 of holding the property and should this action go in her favor,
12 she has that back in her favor and that's her property.

13 And then additionally, I think we need to take up the
14 fact that Ms. Rice-Marko herself can't be liable for her
15 mistake on behalf of ROA, and I would cite the *Jade Street*
16 case for the position that she -- if she is negligently
17 misrepresenting facts to the detriment of someone else on
18 behalf of her company, she can be held liable.

19 THE COURT: What case was that again?

20 MR. BOGER: That was as a single member LLC, Your Honor,
21 that's *16 Jade Street, LLC v. R. Design Construction Company*.
22 There are two cases, two opinions that were issued on that,
23 728 S.E.2d 448 and 747 S.E.2d 770. We would also -- no, those
24 two should do it.

25 THE COURT: Let me ask you this, Mr. Boger. On this

1 negligent misrepresentation and breach of contract, would you
2 agree with me that if your client -- the verdict is returned
3 in favor of your client, how do you allocate damages as to
4 each? I mean, I agree in part with Mr. Jordan here, it's
5 almost as if they're two conflicting causes of action from the
6 standpoint of, well, if we had known all of this to begin with
7 I would never have gone down this road. And my damages here
8 at this point on the negligent misrepresentation, so to speak,
9 are thereabouts \$20,000 give or take. Okay? On the breach of
10 contract cause of action, same situation but we wanted to go
11 through with the contract and she breached it but yet we're
12 entitled to damages for what we paid to get to closing. We're
13 entitled to damages for what I had to pay taxes on because the
14 1031 didn't work out, we're entitled to damages for all of
15 these -- this rent money and we're entitled to the difference
16 in the contract price and the value of it now. How's a -- you
17 would agree with me that your client's not entitled to a
18 verdict on -- and a recovery on both.

19 MR. BOGER: No, and ---

20 THE COURT: It's almost like you've got to choose.

21 MR. BOGER: Well, I think the jury has to choose. You
22 know, we're gonna send back a verdict form that asks them to
23 decide and allocate what are the, you know, what are the
24 damages for breach of contract? What are the damages for her
25 negligent misrepresentation? And I think that's the fact

1 finders obligation to determine based on what was testified
2 to, how those apply and in response to the Judge's charges.
3 You know, we can submit alternative relief -- forms of relief
4 to the ---

5 THE COURT: Well, let me ask you this ---

6 MR. BOGER: --- and they would ---

7 THE COURT: Is an omission of statement the same as a
8 false representation?

9 MR. BOGER: Yes, but there is also a duty of good faith
10 and fair dealing in every contract. And then here we have a
11 -- she misrepresented that she would be able to close and
12 continued to do that.

13 THE COURT: Every real estate contract I've ever dealt
14 with has within their provisions it says, all right, the
15 seller at closing will provide good and clear title, just like
16 we've got here. Okay? And if they can't then that's a breach
17 of contract, right?

18 MR. BOGER: But if you negligently represent that they
19 can and that you ---

20 THE COURT: Well, let me ask you this. What about the
21 provisions within the contract that your client's lawyer
22 drafted, which under the law is construed against the drafter,
23 that says there are no other representations outside of this
24 contract either express or implied.

25 MR. BOGER: Well, the totality of the contract, Your

1 Honor, in that same paragraph there's a provision that says
2 that there's no actual threatened litigation. I mean, so ---

3 THE COURT: Well, I mean, the point in the testimony
4 that's been in here today, she didn't know there was any
5 litigation until the morning of the closing when she was
6 served with the complaint.

7 MR. BOGER: Threatened litigation.

8 THE COURT: There were obviously letters that she
9 received that they held her in default.

10 MR. BOGER: Threatened litigation.

11 THE COURT: They didn't say we're fixing to file a
12 foreclosure action on you. I don't think that's what it said,
13 or maybe it did.

14 MR. BOGER: Exhibit 6, Your Honor. This notice is sent
15 to you as a courtesy and is not an admission that any notice
16 is otherwise good to you, nor is it an election of remedies or
17 a waiver of lender's right to exercise any rights or remedies
18 that may be available at law or in equity.

19 THE COURT: Okay. That's not giving them up. They're
20 not saying we're filing a lawsuit against you. What exhibit
21 was that? Is it 6?

22 MR. BOGER: Yes, Your Honor.

23 THE COURT: Your 6? The 6 that you're referencing and
24 the 6 that is in this notebook given to me are not one in the
25 same.

1 MR. BOGER: On Page -- that was on the last -- on the
2 last page, Your Honor. On Page 2, if lender does not receive
3 the full payment of the balance that's owed with a notice
4 within 10 days of the date of this letter the lender shall
5 have no alternative but to pursue its rights upon default
6 included but not limited to pursuing litigation to collect on
7 the notes, foreclose on the mortgage and enforcement of the
8 guarantees.

9 THE COURT: Well, let me ask you this..

10 MR. BOGER: I think a reasonable person would say that's
11 as threatening as it gets.

12 THE COURT: Okay, and that letter is dated when?

13 MR. BOGER: February 13 -- 15, 2013.

14 THE COURT: February what?

15 MR. BOGER: 15th or 13th.

16 THE COURT: All right. Anything else, Mr. Boger?

17 MR. BOGER: That same language is in Exhibit 3, Your
18 Honor, which is the November of 2012 letter.

19 Additionally, Your Honor, to address some of the damages
20 and I said it -- I started to say it and, you know, that it's
21 an a -- consequence and everything that flows from that. And
22 also what's contemplated by the parties, and here -- it was
23 contemplated when the property was contracted for that the
24 property would increase in value. That was the purpose of any
25 real estate deal and of certainly this contract, that as an

1 investment. The rent rolls that are part of the deal were
2 contemplated and Mr. Buck testified that he looked at those
3 and that was a determining factor in whether or not he was
4 gonna purchase the property.

5 THE COURT: Well let me ask you this -- and I didn't mean
6 to cut you down or ---

7 MR. BOGER: Can I say one more thing?

8 THE COURT: Yes, sir.

9 MR. BOGER: And in the 1031 exchange, Your Honor, it was
10 contemplated. I don't think that there is, you know, that
11 there's enough actual support to show that she was aware of
12 it. It was in the contract, contemplated in the contract,
13 then she was aware of it in emails, she knew of it, and never
14 again represented truthfully what the circumstances of, you
15 know, that she had. And that's as far as damages go ---

16 THE COURT: My question to you is this, and I don't --
17 you correctly and accurately stated the law as it relates to
18 damages concerning those which are recoverable for breach of
19 contract must either flow as a natural consequence of the
20 breach or must have been reasonably within the parties'
21 contemplation at time of contract. Do you have any case law
22 that says we're entitled to breach of contract for sale of
23 property that would entitle my client to damages for the
24 increase in the value of it? I don't know that I've ever seen
25 that. And, I'm not saying -- now certainly, if your client in

1 putting money into renovating and, you know, there was some
2 contem -- one of the cases that I looked at that you all
3 provided to me, in contemplation of adding this and all
4 different kinds of roads or whatever and it was contemplated
5 by the parties, then they would be recoverable. Okay? Do you
6 have anything that says -- with regards to the value from the
7 time of contract until now, in this case the testimony has
8 been from your client it's up to around \$5,000,000. There's
9 testimony concerning a letter of intent that was an offer to
10 buy the property from Ms. Marko for 5.125, I think it was. Do
11 you have anything that would entitle you -- just because you
12 contemplate -- I mean, everybody buys a piece of property
13 hopes that it's going to increase in value. But do you have
14 anything that would warrant, that says you're entitled to that
15 element of damages in a breach of contract case?

16 MR. BOGER: Nothing specific on that issue from what we,
17 you know, cited it's like I said before the natural probable
18 consequence. And, under the circumstance we feel like that
19 applies because this is -- it's ---

20 THE COURT: Can you find me any case, any case outside of
21 South Carolina? And I'll give you time to do that.

22 MR. BOGER: Okay.

23 THE COURT: But I've never seen that. I'm not saying it
24 doesn't exist. Now, when I got on the bench, you know, we as
25 judges go sit with other judges for a period of time. Okay?

1 A couple of weeks of common pleas, a couple of weeks of
2 criminal court, and then low and behold they cut us loose.
3 And one of the best bits of advice I was given during that
4 time by one of the judges I sat with, he said, Craig, just
5 because you're a Judge now doesn't mean some special light is
6 shown down upon you and you know everything. So, no, I don't
7 know everything. But, I've never in my years of law school,
8 in my years of practicing law, and I'm not saying it's not out
9 there. It's really nothing I've ever had to specifically
10 address. But, I'm gonna give you an opportunity to find me
11 something on that if you -- because you're talking about a
12 bunch of money here. From the testimony it's about 1.7
13 million dollars that you want to argue to this jury. Okay?

14 MR. BOGER: Yes, sir.

15 THE COURT: And I'm gonna give you some time to do that.

16 MR. BOGER: Thank you for that opportunity, Your Honor.
17 We'll see what we can find.

18 The other -- alternatively, the other piece to that is,
19 and Mr. Jordan sort of discussed, testimony and who can
20 testify as to the value. But, there is testimony on the
21 record that the property was at least listed for sale in late
22 2012 for 4.9 million, and that Mr. Buck provided to us
23 yesterday so we would alternatively would want to present that
24 at the time of the breach it was worth more than 3.5 based on
25 that testimony.

1 And, Your Honor, I think the last piece of this is the
2 element of punitive damages. You know, we believe that should
3 be presented to the jury based on what has been provided we
4 think that a reasonable juror could conclude that based on the
5 settlements that the acts were willful, wanton, and reckless.
6 This has gone on for five years and there's a duty of good
7 faith and fair dealing to -- and cure, you know, the default.
8 You know, here she -- you know, it was clear she wasn't gonna
9 close. She told them she would. It's dragged on. There's
10 been nothing in the way of -- she's had the ability to try and
11 cure it, to settle it, to take an offer to the bank as part of
12 the settlement agreement. That hasn't occurred. And going
13 back to the original closing, again, she knew on 4/5, April
14 5th of '13, that it wasn't gonna happen and continued to
15 represent that it would, that they were working on it. So, we
16 think that a reasonable juror could find that those were
17 reckless acts. And we think punitives should get to the jury.

18 And then there was also -- Mr. Jordan briefly touched on
19 an estoppel issue as to before the closing date. That was
20 expressed by them, not the lender, so we do not think that
21 applies here.

22 THE COURT: Estoppel issue?

23 MR. BOGER: Yes, Your Honor.

24 THE COURT: Mr. Jordan, anything in response?

25 MR. JORDAN: Briefly, Your Honor. The discussion about

1 the damages for a breach of a real estate contract, the *Knauss*
2 case which we provided to Your Honor earlier in the week and
3 which in which Mr. Boger just cited it for a different
4 proposition, makes it clear that the damages recoverable for a
5 breach of real estate contract are the general damages which
6 is the difference in value at the time of the breach and the
7 contract price. That's the general damage. And then, yes, it
8 is possible for a party who has a breach of contract related
9 to a real estate transaction cause of action to recover
10 additional damages such as the money that that party spent in
11 reliance on the contract. So, the \$17,000 that Mr. Buck
12 claims that he spent, if the jury were to conclude that that
13 was a -- that we did reach the contract, that we have no
14 defense, and that that's a -- that he did that in reliance
15 upon and as a reasonable option to the contract, then I think
16 that would be a possible measure of damage. What the law
17 never says is that you get a appreciation of the value. That
18 is not the law in South Carolina. That is specific to real
19 estate contracts. Other contracts, I don't know, but real
20 estate contracts make it clear, the law makes it clear that is
21 not a recoverable measure of damage.

22 Briefly, Your Honor, on the negligent misrepresentation
23 claim, if I'm hearing correctly, the plaintiff says it's this
24 contract that imposes a duty upon Ms. Rice-Marko to make
25 truthful representations and that it's by failing to do what

1 this contract obligates her to do that she has misrepresented
2 facts to Mr. Buck. The contract doesn't impose any duty on
3 Ms. Rice-Marko. This is ROA, LLC. This is a contract entered
4 into by those two parties, and her claims, misrepresentations
5 did not arise from what is contained in the contract. Your
6 Honor, the argument that Ms. Rice-Marko's comments to Mr. Buck
7 of, can we close in a couple of weeks, or can we -- that that
8 was a misrepresentation. There is no evidence that that was a
9 misstatement of fact. Ms. Rice-Marko testified, I wanted to
10 close, I was doing everything I could to close. She was
11 expressing the opinion, the hope, the belief that in the
12 future she would be able to work it and be able to go to
13 closing and that cannot satisfy the requirements for a
14 negligent cause of misrepresentation cause of actions. Mr.
15 Boger said that Ms. Rice-Marko had pecuniary interests in
16 making the misrepresentation. Well, he's looking at it from
17 the standpoint of today that she still holds this property and
18 that she is enjoying the appreciation. But, what we have to
19 look at and what the Court has to look at is did she have a
20 pecuniary interest in making the misrepresentation at the time
21 that she made the representation. Now, what possible interest
22 would she have in entering into a contract and inducing
23 another party to enter into a contract that she had no intent
24 of selling, that there is no possible pecuniary interest
25 there. She was buying herself a lawsuit if she's entering

1 into a contract that she's intending not to pursue. And so I
2 don't understand and I don't think that there is any evidence
3 that there is a pecuniary interest for what Ms. Rice-Marko
4 said or didn't say to Buck at that time. And, Your Honor, I
5 think that relates also to the punitive damages argument.
6 There's no evidence that she was willfully misleading him.
7 She was doing what she did to get to closing, too. And so for
8 all of those reasons, Your Honor, we would move for a directed
9 verdict and ask the Court to strike Plaintiff's claim for
10 punitives. Thank you, Judge.

11 THE COURT: All right, I'm gone step off the bench for
12 just a minute. I'm want to look at a couple of things.

13 RECESS - 10:29 A.M.

14 *****OFF THE RECORD*****

15 (On the Record - 11:18 A.M.)

16 (REPORTER'S NOTE: The following takes place outside the
17 presence of the jury.)

18 BY THE COURT:

19 THE COURT: All right. With regards to Defendant's
20 motion for directed verdict on the specific performance cause
21 of action, specific performance under the law in *Ingram v.*
22 *Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287, which was a
23 2000 case, May of 2000 case from the South Carolina Supreme
24 Court, says that specific performance should be grant only,
25 only if there is no adequate remedy at law and specific

1 enforcement of contract is equitable between the parties. The
2 Court finds that the plaintiff is not entitled to specific
3 performance. That there is an adequate remedy at law in
4 damages and therefore such requests for the plaintiff is
5 hereby denied directed verdict on that issue, and the
6 defendant is hereby granted.

7 Now, with regards to Defendant's request as it relates to
8 damages pointing out Paragraph 12 of Plaintiff's Exhibit
9 Number 1, which is the contract for sale, Paragraph 12(a)
10 referring to the default, Defendant argues that Plaintiff
11 would only be entitled to the return of his \$50,000 earnest
12 money pursuant to this provision of the contract. The Court
13 hereby denies Defendant's request as to limitation of damages
14 to that paragraph. At no point has Plaintiff, according to
15 the paragraph, declared that the agreement was terminated.
16 That's why we're here today, that's why we're here today to
17 try to enforce it. That paragraph says purchaser may declare
18 this agreement terminated thereby releasing purchaser from any
19 further obligations to seller pursuant to the contract and
20 purchaser shall have the option of either having all the
21 earnest money immediately returned and forfeited to purchaser
22 as liquidated damages or purchaser may exercise its rights to
23 sue for specific performance, whereby the seller shall be
24 required to perform. In the event purchaser shall require
25 specific performance the earnest money shall apply to the

1 purchase price. And my -- from what I've heard here there has
2 never been a point of whereby purchaser declared the agreement
3 to terminate. So, with regards to that issue, Defendant's
4 request is hereby denied.

5 With regards to negligent misrepresentation, Defendant's
6 motion for directed verdict as to negligent misrepresentation,
7 numerous elements of which apply to that cause of action of
8 which the plaintiff is required to prove each. While
9 Plaintiff argued in opposition to Defendant's motion for
10 directed verdict on this cause of action alleging that
11 Plaintiff, excuse me, that Defendant had a pecuniary interest
12 in making the statement. The Court agrees with Defense
13 counsel from the standpoint that pecuniary interest has been
14 the increase in value of the property since the alleged
15 breach. A pecuniary interest in making the statement in this
16 Court's view would have been necessitated at the time of the
17 entering of the contract, not subsequent to entering the
18 contract. All of the allegations by the plaintiff are that
19 any false representations were made at the time of the entry
20 of the contract. The only testimony that's been -- that has
21 come from this stand from the defendant is that she wanted to
22 sale this property, and their defense from the outset is that
23 the bank wouldn't release it. She wanted to sell it. She
24 wasn't making anything from not -- from retaining the property
25 at that point. The Court is therefore granting Defendant's

1 directed verdict motion to the negligent misrepresentation
2 cause of action which in turn strikes punitive damages.

3 The only cause of action that is going to this jury is
4 going to be breach of contract, going to be breach of
5 contract. Even if, even if for argument sake Plaintiff were
6 entitled or the Court had not granted a directed verdict on
7 the negligent misrepresentation, the argument of Plaintiff's
8 counsel as it relates to Paragraph 6(a), 2 and 3, if I recall
9 correctly. Even if that can be construed as a negligent
10 misrepresentation, it's still simply a breach of contract.
11 It's still a breach of contract because they did not fulfill
12 -- those obligations were not fulfilled.

13 Anything further at this time from the defense counsel?
14 They were your motions and that's why I'm giving you the first
15 opportunity at this point.

16 MR. JORDAN: Yeah, Your Honor, just to make sure that the
17 record is clear on for the preservation process, our motion
18 with respect to damages concerning the breach of contract and
19 appreciation of value versus the time of the contract, is that
20 denied?

21 THE COURT: I told Mr. Boger I'd give him some time if he
22 wanted to find me some law on that.

23 Mr. Boger, have you looked for any law on that yet?

24 MR. BOGER: Yes, Your Honor.

25 THE COURT: Did you find anything?

1 MR. BOGER: I did not find anything, but I do have
2 somewhat of a rebuttal that I would like to provide the Court
3 if I could for the record.

4 THE COURT: With regards to what issue?

5 MR. BOGER: With regards to whether ---

6 THE COURT: Appreciation?

7 MR. BOGER: --- is allowed.

8 THE COURT: I'm sorry, I spoke when you were speaking.
9 I'm sorry.

10 MR. BOGER: To whether the jury can hear the appreciation
11 issue.

12 THE COURT: Okay. I'll come back to you on that in just
13 a second. Okay?

14 Mr. Jordan?

15 MR. JORDAN: Yes, Your Honor, and we have moved for
16 directed verdict on damages related to the rent rolls and the
17 1031 exchange. I just want to be clear if that has been ruled
18 on by Your Honor. And our DV ground of waiver of estoppel. I
19 just want to make sure those were clear for the record.

20 THE COURT: On your defense of waiver and estoppel?

21 MR. JORDAN: Yes, Your Honor.

22 THE COURT: As to the rent -- damages for rent rolls and
23 1031 exchange?

24 MR. JORDAN: No, sorry. Those are two -- three separate
25 issues, Your Honor. So, we'd move for a directed verdict as

1 to the rent rolls on the basis that the testimony before the
2 Court offered by Mr. Buck is solely as to what would have come
3 in on the rent. There has been no testimony about what it
4 would've -- costs of the property, the taxes, the maintenance
5 and all of that, and as such those damages are speculative if
6 provided to the jury as they are.

7 THE COURT: All right. With regards to your motion for
8 directed verdict on that, denied.

9 MR. JORDAN: Thank you.

10 THE COURT: I think there is sufficient evidence in the
11 record as testimony from your client as to what she reported
12 on her tax returns as to what it was. Were those tax returns
13 entered into evidence?

14 MR. TEMPLETON: Yes, sir.

15 THE COURT: All right, they were introduced into
16 evidence. I'm sure those tax returns if there were any
17 expenses on that -- I mean that's in evidence, you can argue
18 that. All right?

19 MR. JORDAN: Thank you, Your Honor.

20 THE COURT: So, that is denied.

21 MR. JORDAN: Thank you.

22 THE COURT: Next, 1031.

23 MR. JORDAN: The 1031 exchange, our argument is that we
24 should get directed verdict on the ground of proximate cause.
25 The testimony is that Mr. Buck designated this piece of

1 property as a 1031 property prior to ever entering into the
2 contract with Ms. -- with ROA. And, that pursuant to the
3 terms of the contract, closing did not have to occur before
4 his 1031 period expired.

5 THE COURT: It did initially, though, correct?

6 MR. JORDAN: Correct. If you don't take into
7 consideration the cure period built into the contract.

8 THE COURT: I understand. When the last letter that went
9 out went beyond the time period for the 1031 -- Ms. Marko, I
10 don't need you to shake your head at me. Okay? That's what
11 your lawyer is for.

12 MS. RICE-MARKO: I'm sorry.

13 THE COURT: The last letter that went out would've
14 extended it to May, sometime in May ---

15 MR. JORDAN: 3rd or 4th.

16 THE COURT: May 3rd, which was beyond that but the first
17 initial closing that was to take place was within that
18 timeframe. It would've entitled them to exercise that 1031,
19 correct?

20 MR. JORDAN: The closing date provided in the contract
21 was prior to April 9th, what Mr. Buck testified was his last
22 day.

23 THE COURT: Exactly, okay. Anything -- I just wanted to
24 get the timeline correct.

25 MR. JORDAN: That's correct, Your Honor.

1 THE COURT: Anything else on that issue?

2 MR. JORDAN: No, Your Honor, just ---

3 THE COURT: I'm gonna deny your request for directed
4 verdict on that issue. Even though Mr. Buck testified that he
5 was still willing to go forward on it, the initial reason for
6 entering into this contract and wanting to close before the
7 9th was for that benefit. He may've -- I mean, he obviously
8 was willing to forgo that benefit at that point, and I think
9 that's a good argument for you and Mr. Hanna in closing
10 arguments to that damage issue but I'm letting that go to the
11 jury.

12 MR. JORDAN: Thank you, Judge. With respect to our
13 waiver and estoppel defenses, our argument is that Paragraph 4
14 of the contract which provides the period for the plaintiff to
15 conduct an inspection of the title and note any exceptions,
16 that he did so, he obtained the mortgage which provided that
17 it needed PNC's consent to close. He did not notify any
18 exceptions. He proceeded forward and we would argue that that
19 -- by doing that he waived his right to sue under the contract
20 and it's also estopped from ---

21 THE COURT: The Court's denying your request as regards
22 to that. I think that's another good argument for the jury
23 and I'm denying it.

24 MR. JORDAN: Thank you, Your Honor.

25 THE COURT: All right, anything else?

1 THE COURT: Thank you.

2 All right, ladies and gentlemen, I hope you all had a
3 chance to get to know each other a little bit better sitting
4 back there.

5 At this time we are going to continue the trial of this
6 case. I'm gonna recognize defense counsel.

7 Mr. Hanna, Mr. Jordan.

8 MR. HANNA: Defense would call Mr. Buck back to the
9 stand, Your Honor.

10 CLERK: Mr. Buck, please put your left hand on the Bible,
11 raise your right hand.

12 EDGAR ALTON BUCK, JR. HAVING BEEN
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 CLERK: Be seated. If you'll please state your full name
15 and spell your last name for the record.

16 MR. BUCK: Edgar Alton Buck, Jr., B-U-C-K.

17 REPLY DIRECT EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR.

18 HANNA:

19 Q: Mr. Buck, just a few short questions that I forgot to ask
20 you yesterday. I believe you said that this was a cash
21 transaction, you had cash money to close the deal with. Is
22 that right, sir?

23 A: That's correct.

24 Q: I would assume that you haven't kept that three-and-a-half
25 million dollars sitting in a savings account since then. What

1 did you do with the three-and-a-half million after that?

2 A: Well, I paid taxes and then left the balance of it sitting
3 in a savings account, in a money market account.

4 Q: So, you didn't invest in any other property after that
5 time?

6 A: That money has not been reinvested.

7 Q: Has not been reinvested. You didn't do anything with it
8 except let it sit there since then; is that right?

9 A: The cash is sitting in money markets.

10 MR. HANNA: That's all I have, Your Honor.

11 THE COURT: Any ---

12 MR. TEMPLETON: Yes, Your Honor.

13 THE COURT:. --- cross?

14 MR. TEMPLETON: Yes, Your Honor.

15 THE COURT: Go ahead.

16 REPLY CROSS EXAMINATION OF EDGAR ALTON BUCK, JR. BY MR.

17 TEMPLETON:

18 Q: Mr. Buck, the reason that that money has been sitting in
19 the money market account is for this day, today, to come to
20 court and try to enforce this contract, correct?

21 A: Yes, sir.

22 Q: And at all times you've been ready, willing, and able to
23 perform on this contract, correct?

24 A: That's correct.

25 Q: And the \$50,000 of earnest money that was put down, that's

1 still sitting in Sid Boone's trust account, correct?

2 A: Yes, sir.

3 Q: Thank you.

4 THE COURT: Mr. Hanna?

5 MR. HANNA: Nothing further, Your Honor.

6 THE COURT: Sir, you may step down. Thank you.

7 MR. HANNA: Your Honor, as we indicated before, we might
8 need to take a -- I think that's the end of our case, but I
9 want to make sure.

10 THE COURT: Can y'all approach a minute?

11 (REPORTER'S NOTE: Bench conference is held off the record in
12 the presence of but outside the hearing of the jury.)

13 THE COURT: Give us just a minute, ladies and gentlemen.
14 Okay?

15 MR. HANNA: Defense rests, Your Honor.

16 THE COURT: All right. Anything in reply, Mr. Templeton?

17 MR. TEMPLETON: No, Your Honor.

18 BY THE COURT:

19 THE COURT: All right, ladies and gentlemen, the defense
20 has rested and what that means at this point is you've heard
21 all the testimony you're gonna hear in this case. All right?
22 And what I'm gonna do right now is I'm gonna let you go to
23 lunch. Okay? I know you haven't been in the courtroom much
24 this morning but I told you if I had you waiting back there
25 you'd be waiting for a reason. We were in here working while

1 y'all were back there. Okay? There's some other stuff we've
2 got to deal with now, so rather than make you wait longer
3 right now, I'm gonna go ahead and let you go to lunch. Okay?
4 I'm gonna ask you to be back at 2 o'clock, 2 o'clock.

5 Now, that which remains in this case is closing arguments
6 by the lawyers and then my charge on the law to you, and it's
7 gonna be given to you. Okay? Don't discuss this case at all
8 with anyone. Don't do any independent investigation. As I've
9 told you from the outset you're to decide it based on the
10 evidence and testimony presented in this courtroom and nowhere
11 else.

12 Please be back at 2 o'clock and we will get started as
13 promptly at that time. Thank you.

14 (REPORTER'S NOTE: Jury exits courtroom @ 11:52 A.M. The
15 following takes place outside the presence of the jury.)

16 THE COURT: Hold on just a second.

17 All right. Plaintiff's counsel, I'm assuming you have a
18 motion or so.

19 MOTIONS:

20 MR. TEMPLETON: Yes, Your Honor. Let me gather my
21 thoughts for just a moment, Judge. The first motion for
22 directed verdict is that on the breach of contract cause of
23 action that remains. The basis for that motion is threefold.

24 Number one, Mr. Hanna in opening statement acknowledged
25 the existence of the contract, acknowledged of its existence.

1 Ms. Marko testified that she didn't close on, she didn't
2 perform on it. That's -- there's been no presentation of any
3 evidence as to a closing. The defense that has been mounted
4 is one of impossibility. As was noted in our motion for
5 summary judgment under the *Morin vs Innegrity* case, neither
6 ability or inability to bring money to a closing or the acts
7 of third party can constitute impossibility. That's been the
8 defense that was in their answer for it and that doesn't
9 survive as a matter of law. Simply put, we think you should
10 direct a verdict in favor of the plaintiff as to the claim of
11 breach of contract leaving the issue of damages for the jury
12 to decide. To the extent that the defendant's answer contains
13 -- defenses which go to things that were dealt with at
14 directed verdict on those would not be in play. There are no
15 third-party complaints nor under any counterclaims that are
16 remaining. The only other affirmative defense that arguably
17 exists is the doctrine and the waiver of estoppel. We don't
18 believe the plaintiffs have put up sufficient evidence to meet
19 their burden of proof recognizing that any affirmative
20 defenses are their burden to prove. We don't think it's a
21 matter of law that's sufficient to go to the jury. And I
22 apologize, Judge. And to follow up, Your Honor, on that *Morin*
23 case ---

24 THE COURT: You need a copy of it?

25 MR. TEMPLETON: No, sir. I've got it, I'm just

1 struggling to find it. I'm sorry.

2 THE COURT: That's okay. I thought you may have given me
3 your copy, that's why I asked.

4 MR. TEMPLETON: I may have. Thank you, Judge. What I
5 would direct the Court's attention to is the language cited
6 within that opinion dealing with *Farnsworth* on contracts.
7 Equally -- and I'm quoting -- equally unveiling is Innegrity's
8 claim it was impossible to force the lenders to remove Morin's
9 obligations. That's the crux of the entire defense that has
10 been mounted here. That it was PNC's fault, it was PNC's
11 fault, we have an empty chair, it's all PNC's fault.

12 And that that does not survive breach of contract claim. It's
13 not a legal cognizable defense according to the South Carolina
14 Court of Appeals and it should be stricken leaving only the
15 issue of damages. And that's -- I think that's it for my DV.

16 THE COURT: All right. Mr. Jordan?

17 MR. JORDAN: Thank you, Your Honor. With respect to the
18 impossibility of performance argument, Your Honor, our
19 position is that ---

20 THE COURT: Let's deal with this first, please, if you
21 don't mind.

22 MR. JORDAN: Yes, sir.

23 THE COURT: Plaintiff has moved for directed verdict as
24 to, one, the existence of a contract; two, a breach and then
25 the impossibility. Let's go, if you would, go in that order

1 and kind of line up with the order of which they approached
2 this, if you don't mind.

3 MR. JORDAN: Sure, Your Honor. Give me one second.

4 THE COURT: Okay.

5 MR. JORDAN: Your Honor, the defendants do not have any
6 opposition to the existence of contract and to Defendants not
7 performing under the contract.

8 THE COURT: In other words, the breach.

9 MR. JORDAN: Correct.

10 THE COURT: The only issue which was argued to me by
11 Plaintiff then is damages.

12 MR. JORDAN: Your Honor ---

13 THE COURT: Hold on a minute. Your co-counsel has to
14 stand up and talk or either tell you something. See what Mr.
15 Hanna wants to tell you.

16 MR. JORDAN: As to liability, the only issue is, sure we
17 have a contract that breached, we have the question of whether
18 or not it was a justifiable breach.

19 THE COURT: On the impossibility.

20 MR. JORDAN: Correct. And then we have the issue of
21 waiver and estoppel which we believe should go to the jury for
22 consideration. And then, of course, we have as to damages and
23 mitigation of damages argument that we believe should go to
24 the jury.

25 THE COURT: All right. Anything else you want to tell me

1 or argue to me at this point.

2 MR. JORDAN: Sure, Your Honor. The -- with respect to
3 the *Morin* case and Plaintiff's contention that the
4 impossibility of performance defense is not available, there's
5 an important decision between *Morin* and what we have in this
6 case. And, that is in the *Morin* case there was factually, as
7 Your Honor is probably aware at this point, it was an
8 employer/employee issue where the employee said I will
9 guarantee some loans entered into by the employer and in
10 exchange employer you will agree that if I'm terminated
11 without cause you will remove me as a guarantor of those
12 loans, unequivocal, no ifs, ands, or buts, that was the
13 agreement. And that happened, the employee was terminated
14 without cause and the loans got called, and the employee came
15 and said I've got to be removed. And what the employer said
16 when they were unable to do that is that the lender wouldn't
17 consent and that it didn't have the money to pay off the note.
18 What's different in this case, Your Honor, is that there is a
19 contract between ROA and Buck, which specifically provides
20 that ROA at a time of closing will remove those exceptions
21 which can be removed by paying an ascertainable sum of money
22 such as mortgages, liens, unpaid taxes, and special
23 assessments. At the time that this was to go to closing there
24 was a foreclosure action that had been filed. There was not
25 an ascertainable sum of money that could require PNC to

1 consent to this transaction. ROA could've gone to the bank
2 and said here's the full balance of this property and the bank
3 could have said no.

4 THE COURT: Where's the testimony on that, though? Is it
5 not your burden to bring that in here? If you're raising that
6 as an affirmative defense, why do you not have to bring any
7 testimony to that effect, because there's absolutely no
8 testimony on record of that.

9 MR. JORDAN: Your Honor, I believe there is testimony
10 from Ms. Rice-Marko that at the time that it was to be closed
11 the bank would not consent to releasing the property.

12 THE COURT: But you just argued to me that no sum of
13 money would do it. And, is that not your -- and that's not
14 any facts that are in evidence. I mean, you argued that it
15 was in foreclosure and that they wouldn't agree to anything,
16 and there's no facts in evidence concerning that.

17 MR. JORDAN: Well, there's facts in evidence that Ms.
18 Rice-Marko was trying to negotiate with PNC in order to get
19 this property released.

20 THE COURT: That's different though than what you're
21 arguing to me that they wouldn't take any sum. That's an
22 important -- in my opinion that's an important distinction
23 here.

24 MR. JORDAN: Your Honor, the fact also remains that the
25 bank did not consent to the sale. There is testimony in the

1 record that they did not consent to the sale. And there's the
2 prior orders of the Court holding that the bank didn't have to
3 consent to the sale. And so, at the time of the closing there
4 was not anything that Ms. Rice-Marko could do in her own power
5 to ensure that the closing went forward. That, in our
6 opinion, is built into the contract. There's a recognition
7 that there are things that we will try to take care of in
8 closing and if we can't then we don't have to go to closing.
9 That we are -- there are essentially impossibility of
10 performance exceptions built into this contract and that those
11 would apply in this case, Your Honor. We're moving and
12 closing those exceptions which can be removed. Well, the bank
13 didn't consent. There's evidence in the record that the bank
14 didn't consent. That did not get removed at the time of
15 closing. So, we would argue, Your Honor, that the
16 impossibility defense stands and that it is applicable to this
17 case and it's contradictory to the facts that are in the *Morin*
18 decision. Your Honor, I believe there's sufficient evidence
19 in the record for the Court to -- for the jury to consider
20 whether or not Mr. -- whether Buck investments waived or is
21 estopped from arguing that the issue related to the bank's
22 existing mortgage and require to consent, that was in public
23 record, he had the opportunity to inspect it. The contract
24 provided him with the opportunity and, in fact, the obligation
25 to do a title inspection, which he did. So, we believe that

1 issue should go to the jury.

2 And, Your Honor, we would also -- well, I don't know that
3 Plaintiff has moved to DV as to mitigation being ---

4 MR. TEMPLETON: I have not.

5 MR. JORDAN: Okay. That's all in response to their
6 directed verdict motions, Your Honor.

7 THE COURT: You gonna -- you want to say anything on the
8 mitigation?

9 MR. TEMPLETON: I do, Judge, but I want to deal with the
10 first part first.

11 THE COURT: Sir?

12 MR. TEMPLETON: I want to deal with the first part before
13 I get to that part, I guess.

14 THE COURT: Which part?

15 MR. TEMPLETON: Well, do you want me to address the
16 mitigation part? Or do you want me to reply to what he was
17 talking about?

18 THE COURT: If you have something new I'll hear from you
19 on those issues. With regard -- let me say what I'm gonna
20 rule. Okay?

21 MR. TEMPLETON: All right.

22 THE COURT: With regards to the defense of impossibility,
23 I'm granting Plaintiff's directed verdict motion on that. I
24 think pursuant to *Morin v. Innegrity* as well as *Hawkins v.*
25 *Greenwood*, 328 S.C. 585, the possibility of performing

1 contract must be real and not mere inconvenience to excuse
2 performance as legally impossible, quotes, legally impossible.
3 It must appear the thing to be done cannot be accomplished by
4 any means. I emphasize any means. And if it is only
5 improbable or out of the power of the obligor, here being Ms.
6 Marko, it is not deemed in law impossible. Therefore, I am
7 granting Plaintiff's motion for directed verdict as to the
8 defense of impossibility.

9 With regards to waiver and estoppel, I'm denying
10 Plaintiff's directed verdict motion. As it applies to that, I
11 think there are facts in evidence that contract, Plaintiff's
12 Exhibit Number 1 is in evidence, which specifies the rights of
13 the purchaser in title search, et cetera, there've been
14 questions concerning that to what -- and your argument from
15 the other side of that during the course of the trial was that
16 it might not've shown everything. Okay. And it wasn't in the
17 record that they were foreclosing at that point and they --
18 but it certainly, as argued by Mr. Jordan, it was in the
19 record that a title search would've shown a cross
20 collateralization of this piece of property. And that
21 Plaintiff certainly could've requested from the defendant that
22 the bank would be willing to and would release this property
23 pursuant to such. None of that was done but, I mean, those
24 are arguments. Okay? Those are arguments and I think that
25 waiver and estoppel -- and those arguments that Mr. Jordan

1 made in his position. I'm gonna deny with regards to waiver
2 and estoppel. Now, is there anything else you want to say,
3 Mr. Templeton, pursuant to those rulings?

4 MR. TEMPLETON: The only thing I wanted to add for
5 purposes of the record with regard to the waiver and estoppel
6 issue, the contract itself contemplates a closing. It
7 contemplates production of the title or passing of a clean
8 title. And there's nothing within the testimony that's been
9 elicited that would have reduced the default issue to the
10 purchaser at the time of contract. No amount of due diligence
11 would've done that. In fact, the contract contemplates what
12 are called estoppels. Estoppels being information coming from
13 the seller as to any impediment to closing. There are emails
14 that are attached within the record that show that those
15 requests were made both in advance of the contract during the
16 period of due diligence, letter of intent, and subsequent to
17 the execution of the contract. We don't think waiver and
18 estoppel would apply to something that could not be found
19 through due diligence being whether or not this loan was in
20 default or not or ROA was in the process of being foreclosed
21 upon. We've discussed Exhibits 3 and 6, which were the
22 letters from the bank through counsel threatening litigation.
23 We believe that those two documents in and of themselves when
24 juxtaposed against the contract and the representations that
25 were made in that contract make full disclosure, recognizing

1 the full good faith, fair dealing that's implicit in any
2 contract put the burden on them to disclose those issues when
3 requested. It's been argued by the defendant that the breach
4 was not until May 3rd. As the Court held earlier, the initial
5 breach was April 3rd. Even if the defendant's want to argue
6 that May 3rd is in fact the breach, there were direct requests
7 made on April 5th as to why this was not being closed, why
8 this did not happen, and it was met with silence except for
9 acknowledging that the 1031 exchange was in play and began
10 representing that we were moving towards closing. We believe
11 waiver and estoppel should be out. We, of course, respect the
12 Court's ruling to the extent that Your Honor wishes to
13 reconsider its position in light of the argument.

14 THE COURT: Well, I'm not going to change my ruling on
15 that but certainly wanted to give you an opportunity to make
16 that argument so the record's clear on that from your stand
17 point.

18 MR. TEMPLETON: And then the only issue I had, Your
19 Honor, you asked before we started down that rabbit hole, is
20 the mitigation of damages. I did not mention that in my
21 opening presentation. I believe that the standard for
22 mitigation of damages has to be reasonable. A party is not to
23 do everything and anything under the sun to mitigate the
24 damages, it has to be a reasonable standard. On Defendant's
25 case in chief, Mr. Buck unequivocally stated that the reason

1 that the money had not been put into other investments or put
2 anywhere other than a money market account was because -- by
3 virtue of this lawsuit, because he stood ready, willing, and
4 able to perform on this very contract. We think at best it is
5 disingenuous for the defendants to argue that he is
6 contributed to his own demise in light of the directed verdict
7 in favor of the breach of contract in terms of a liability
8 aspect of this to then say, oh, yeah, we've reached a contract
9 but oh by the way you didn't mitigate the damages. We
10 absolutely have at every turn we have sought to intervene in
11 the foreclosure proceeding which was opposed and objected to
12 by Marko and the Court can take judicial notice of that. It's
13 a foreclosure proceeding, there are orders in there as well as
14 motions, and opposition papers filed by the defendants. Two,
15 the circular argument that has been presented here is no, you
16 cannot have specific performance but, oh yeah, by the way, you
17 can't have a breach of contract either. Whereas, Ms. Marko is
18 completely in the same position that she was before the entry
19 of this contract and she had the information that was at her
20 disposal that would've led our client not to enter into in the
21 first place. All of that being said, the standard is one of
22 reasonableness, and the only evidence of him not putting that
23 money into other use was by virtue of this lawsuit and that is
24 reasonable as a matter of law. If we had used that money the
25 argument that would be presented to the Court is that we've

1 waived our right to enforce the contract, and we've waived our
2 right to specific performance because we weren't ready,
3 willing, and able to perform with the contract. If we'd
4 pulled the money down from the trust account, the 50 grand,
5 the argument would've been you pulled it down, you elected
6 your remedy and you're out. So, essentially they're arguing
7 we're in a hostage choice here. There was no way to go. And
8 to argue that we didn't mitigate is inappropriate and we're --
9 DV on that.

10 THE COURT: Yes, sir.

11 MR. JORDAN: Thank you, Your Honor.

12 As Mr. Templeton said, the standard is what Mr. Buck did
13 with the money was reasonable and that ---

14 THE COURT: Let me ask you this.

15 MR. JORDAN: Sure.

16 THE COURT: Well, go ahead and make your argument and
17 I'll ask, I'm sorry.

18 MR. JORDAN: The standard is, is what Mr. Buck did with
19 his money reasonable and that's a jury question. The jury has
20 heard the testimony about what he did with the money and the
21 jury can conclude whether or not it was reasonable or not.
22 It's not a matter of law, it's a matter of fact for the jury
23 to consider and to decide upon. And so we think, given the
24 testimony that it didn't go anywhere, he didn't do anything
25 with it, that there should be a chance for the jury consider

1 whether he mitigated.

2 THE COURT: Let me ask you this. Say for argument sake
3 that I was gonna allow the jury to consider as an element of
4 damages in this breach, which I've already ruled upon, and I'm
5 not, just for argument sake here, that I allow Plaintiff that
6 request of damages in the amount at the time of breach until
7 now which was 1.6 million dollars, from 3.5 to 5.1. Isn't
8 that right? And say Plaintiff had retained this money as he
9 has done for purposes of executing this contract, would it not
10 be a more proper argument and defense on your part concerning
11 mitigation if he let it sit there as opposed to investing it
12 into something that would've appreciated in value to minimize
13 that 1.6? Does that make sense to you?

14 MR. JORDAN: It does, Your Honor, and I certainly think
15 that our mitigation of damages defense would relate to and
16 would probably be stronger if that had happened, if they were
17 seeking -- continuing to seek that additional 1.5 and they had
18 let their money sit there. But, what remains, Your Honor, is
19 this claim that I should've had this property, and if I had I
20 would have had rent rolls. I would've been recovering income
21 from my investment that I wasn't able to enter into. So, we
22 still have the same issue that he has taken what he believes
23 would've been an investment that would've brought him money.
24 He's taken that money and he hasn't done anything with it and
25 so we think the jury should consider whether or not it's

1 reasonable to give him the benefits of the property ownership
2 when he took the money and didn't do anything with it once he
3 knew it wasn't going to close.

4 THE COURT: All right. Mr. Templeton, anything else?

5 MR. TEMPLETON: Your Honor, we didn't know that it was
6 not going to go to closing until the last hour when Your Honor
7 ruled on specific performance. And so, I think it is
8 extremely disingenuous to argue that on the one hand you can't
9 claim appreciation of damages for your inability to perform on
10 the contract that we're seeking to enforce. And on the same
11 breath say, oh, but you should've taken that money and done
12 something else with it as a defense. That is illogical.

13 THE COURT: Let me ask this. Well, to say in fairness
14 for the record, I mean, I let y'all know Monday what my
15 inclinations were on the specific performance. I told you
16 what my inclinations were. When Judge Nicholson -- I think it
17 was Judge Nicholson -- back in August of '17 granted PNC's
18 motion for summary judgment, which related in part to that
19 specific performance issue, correct? And I don't have that
20 order exactly right in front of me but I think it addressed
21 the issue of adequate remedy of law. Did it not?

22 MR. TEMPLETON: Not Judge Nicholson's order, Your Honor.
23 I think what you're referring to is Judge Jefferson's order
24 that we talked about on Monday related to the injunction
25 recognizing there was an accurate remedy at law as it related

1 to the rents that we filed a motion for an injunction. I
2 think that's the order that ---

3 THE COURT: Here, I've got it right here. Hold on a
4 second, because I tabbed it in the file.

5 MR. TEMPLETON: In the preamble of it, it discusses the
6 plaintiff's motion for injunction and then at the end it talks
7 about ---

8 MR. JORDAN: I have a copy of it here, Your Honor.

9 THE COURT: PNC Bank's motion for summary judgment.
10 Let's see.

11 MR. TEMPLETON: May I approach, Judge. Here it is. I've
12 got it.

13 THE COURT: Okay, yeah. Bring it up here and let me see.

14 MR. TEMPLETON: The first and last pages are what we're
15 focusing on.

16 THE COURT: Let me give this back to you, Mr. Templeton.

17 MR. TEMPLETON: Yes, sir.

18 THE COURT: Here's what I'm referring to. Right here,
19 Mr. Templeton, that's what I'm referring to.

20 MR. TEMPLETON: Right, that's what you're referring to.

21 THE COURT: Right, not what you handed me.

22 MR. TEMPLETON: Oh, okay.

23 THE COURT: So, that order does not -- it simply grants
24 their motion for summary judgment letting them out. And it is
25 Judge Nicholson's order filed October 20, 2017 and signed by

1 him on that date as well. It just says PNC's motion for
2 summary judgment as to Plaintiff's specific performance cause
3 of action is granted. That's what it says in the conclusion.

4 Now, my question -- let me ask you this, Mr. Templeton.
5 As it relates to the rent rolls, et cetera, okay, which I said
6 I'm gonna let go to the jury, all right, because I think can
7 be a natural consequence of the breach here. Okay? Why is it
8 not for argument sake proper mitigation as to, well, you
9 could've invested it somewhere else and gained some of this
10 money that you claim you've lost. And I understand he -- and
11 I heard his testimony. I've heard that sitting on the 50,
12 sitting on the 3.5 in hopes that this Court was gonna order
13 specific performance. Is that argument from your side on that
14 issue as well as a jury issue for them to say, well, we think
15 he should've invested it. We think he should've maybe
16 mitigated his damages. Why is it not?

17 MR. TEMPLETON: I don't think it is, Judge, and here's
18 why. Because that was not money he had. That was money that
19 he would have had but for the breach, so there was not this
20 money sitting aside. Had this contract been performed Buck
21 would've been receiving those revenues. Now, they can argue,
22 as the Court noted earlier, that there are expenses and costs
23 associated with ownership of the property. Those tax returns
24 were evidence and they can argue them any way they want but
25 that would not've been in Buck mitigation. That would've been

1 an argument that Buck would have incurred carrying costs --
2 well, not carrying costs because it was a cash deal, but
3 expenses associated with the building. The defendants never
4 cross-examined Mr. Buck, nor did they cross examine Ms. Marko
5 on the expenses themselves, so all that's in there is what was
6 on her tax return and her testimony about the revenue itself.
7 So, I don't think it's a mitigation. I think it's an argument
8 as to the extent of the damage.

9 THE COURT: Okay. Last word, anything else?

10 MR. JORDAN: Your Honor, just that the plaintiff had 3.5
11 million dollars, it would've been invested in property and he
12 arguably would've received income for that. He took it and
13 during this time he hasn't done anything with it. We think
14 that's clearly an issue for the jury.

15 THE COURT: I mean, in fairness to the plaintiff, I mean,
16 they wanted to go forward with this thing. They've been
17 ready, willing, according to the testimony here. And there,
18 you know, hasn't been any evidence in the record that had he
19 invested this money, and y'all would've come back to the table
20 and said all right we'll sell it now, that he'd have had any
21 other money to go forward and buy it. I mean, you've kind of
22 put him in a corner. So, if you come back at that point and
23 maybe you are saying they breached the contract then if he
24 doesn't have any additional funds to follow through. So, I
25 mean, it's -- do you get your cake and eat it, too?

1 MR. JORDAN: Well, Your Honor I don't think it's getting
2 our cake and eating it, too, but it is -- I believe there's an
3 email in evidence by which Ms. Marko says to Mr. Buck, I'm in
4 litigation and can't talk about this anymore. I think while
5 their arguing that we're being disingenuous, I think it's a
6 little but disingenuous for them to say for the last five
7 years we thought this was going to close. Judge Jefferson
8 ordered in January of 2015 that with respect to specific
9 performance she set forth the elements and she said, having
10 failed to meet his burden of proving the plaintiff has an
11 adequate remedy at law.

12 THE COURT: What is that from? I'm sorry.

13 MR. JORDAN: That is from Judge Jefferson's order of
14 January 9th, 2015 in response to Mr. Buck's motion for
15 preliminary injunction.

16 THE COURT: All right. I remember seeing that. Okay.
17 I'll take a look at it and I'll let you know.

18 MR. JORDAN: Thank you, Judge. Judge, sorry, so that the
19 record is clear, we would renew our motions for directed
20 verdict that we argued after the close of the plaintiff's
21 case. The ones that were denied we would renew at this time
22 just to preserve the record.

23 MR. TEMPLETON: So would I.

24 THE COURT: As to each, the Court's rulings remain the
25 same but your objections are so noted for the record.

1 MR. TEMPLETON: Your Honor, I did have one question for
2 you. We're going to reconvene at 2:00; is that correct?

3 THE COURT: I'm gonna go work on a jury charge right now.

4 MR. TEMPLETON: Okay.

5 THE COURT: If you all will be back, say 1:45.

6 MR. TEMPLETON: And just as I process what I'm going to
7 talk to this jury about, just so I'm clear. We're dealing
8 with breach of contract. You're gonna let us know about the
9 mitigation damage and that's where we are.

10 THE COURT: Pretty much. Waiver and estoppel.

11 MR. TEMPLETON: I thought you ---

12 THE COURT: I didn't rule on that.

13 MR. TEMPLETON: I thought you directed a verdict on
14 waiver and estoppel.

15 THE COURT: I don't think I did.

16 MR. JORDAN: He said that could go to the jury.

17 MR. TEMPLETON: Okay, right, right.

18 MR. JORDAN: Good try.

19 THE COURT: And I'll tell you and I'm gonna look at it a
20 little bit more but just so it's in your thought process, I am
21 leaning towards allowing mitigation in that part of the
22 charge. I'm not concrete yet, but I'm -- I want to look at it
23 a little bit more. But just for your benefit right now so you
24 can at least be processing that. Easier to take it out than
25 possibly put it in. Okay?

1 MR. BOGER: Your Honor, do you need anything from the
2 parties in terms of jury charges or verdict form?

3 THE COURT: I don't think so. I mean, I've gotta go --
4 both of you brought me in this morning a stack of jury request
5 to charge. I'm gonna look at them because I haven't had a
6 chance to before now. But, I mean, based upon my rulings
7 here, I've ruled there's a contract. I've ruled there's a
8 breach and that's clear and the only issue is damages here.
9 It should be hopefully not too complicated of a charge. All
10 right? But thank you, Mr. Boger.

11 RECESS - 12:28 P.M.

12 *****OFF THE RECORD*****

13 (On the Record - 2:02 P.M.)

14 CHARGE CONFERENCE:

15 THE COURT: Mr. Jordan, did you submit a proposed charge
16 for waiver or estoppel?

17 MR. JORDAN: I believe I did, Your Honor.

18 THE COURT: I didn't see one.

19 MR. JORDAN: Okay.

20 THE COURT: Maybe I missed it, I overlooked it, but I
21 didn't see it.

22 MR. JORDAN: I don't see one either, Your Honor. I'll
23 prepare one.

24 THE COURT: Well, let me ask you this question. Is your
25 request to charge as it relates to estoppel is that equitable

1 estoppel? Because if it's equitable in nature, that's for me,
2 not the jury.

3 MR. JORDAN: I believe it would be equitable estoppel,
4 Your Honor, so ---

5 THE COURT: Then you're not entitled to a charge in that.

6 MR. JORDAN: All right.

7 THE COURT: All right. That's an equitable issue and
8 that's for me, not the jury. At least that's my reading of
9 the law and that's pursuant to *Gaymon v. Richland Memorial*
10 *Hospital*, 327 S.C. 66. Okay? So, as it relates to that I
11 assume, I am directing a verdict for the plaintiff on that
12 issue. Okay?

13 MR. TEMPLETON: Your Honor, just for clarification stake,
14 does that also extend to, they couched it as waiver of
15 estoppel?

16 THE COURT: Those are two separate -- they are two
17 separate charges and they're two separate defenses.

18 Now, I think I've gotten this charge. I've been typing
19 since y'all left for lunch. I'm gonna hit on the highlights
20 of what I've gotten in here. Y'all can listen to it when I
21 charge the jury and certainly have a right to make any
22 exceptions or objections. I'll give you that opportunity.

23 My charge is 20 pages long. All right. I've put in here
24 a charge as it relates to corporations. In our courts, no
25 distinction is made between corporations and individuals and

1 that's what we have here. A corporation is a person, in the
2 eyes of the law a corporation is entitled to the same fair and
3 impartial consideration and to justice of the same legal
4 standard as an individual. I think that's appropriate here.

5 Duties of judge and jury, burden of proof, direct and
6 circumstantial evidence, credibility of witnesses. When I get
7 down to breach of contract, in this case the plaintiff claims
8 that defendant breached a contract that existed between the
9 parties and that he is entitled to damages. In order to
10 recover from a breach of contract, the plaintiff must prove
11 the claim but a preponderance or greater weight of the
12 evidence. Once being existence of contract. I will tell you
13 that the parties agree that they did, in fact, enter into a
14 contract. Y'all have stipulated -- I mean, that's an
15 agreement. Next, Plaintiff must show by a preponderance of
16 greater weight the defendant unjustifiably breached the
17 contract. The word breach means the failure without legal
18 excuse to perform any promise that forms the whole or a part
19 of the contract. A party breaches a contract when that party
20 does not perform as agreed under the contract by failing to
21 carry out a term, promise, or condition of the contract. I
22 will tell you that the plaintiff and the defendant agree that
23 a breach has occurred. Is that right? Sir?

24 MR. HANNA: Excuse me, Your Honor. The only thing that
25 would concern me would be the wording in the start of the

1 charge about it being justifiable and I don't know that we
2 have gone that far to concede that, but we have conceded that
3 we did not perform, Your Honor.

4 THE COURT: Hold on a second. Unjustifiable?

5 MR. HANNA: Yes, sir. I don't know that that language
6 would have any effect -- right now anyway.

7 THE COURT: Right. I'll say that the defendant breached
8 the contract. All right? And then I've defined what breach
9 is, as I've told you, and then I go straight into damages --
10 the plaintiff must prove by preponderance of greater weight of
11 the evidence that the plaintiff suffered damages which were
12 proximately caused by the defendant's breach of contract.
13 Plaintiff must prove damages by the preponderance or the
14 greater weight of the evidence. This does not mean that the
15 plaintiff must prove damages to a mathematical certainty or
16 produce evidence of the exact amount of damages suffered. I
17 will tell Plaintiff's counsel it looked like the request to
18 charge on damages that you submitted are pretty much exactly
19 what's in my general charge on damages. It looked like what
20 you all had submitted were out of Judge Anderson's Request to
21 Charge book. His is a little more verbose sometimes than I
22 think needs be. But, having said that, I did go back in and
23 put in lost profits as well as special damages, that of which
24 you have requested and what you had submitted to me. I think
25 that's appropriate based upon my prior rulings as well. And

1 in essence my charge on those, I'm not gonna read them because
2 they were given to me by Plaintiff's counsel, provided to
3 defense counsel, which both of you should've had an
4 opportunity to read them. But, they're in essence the same as
5 what Plaintiff's counsel had submitted on that issue, on those
6 two issues. I've put in here a duty to mitigate. I told you
7 that I was gonna look at that. I think that that is
8 appropriate here. I'm going to charge that as well as waiver.
9 What I've put in here on waiver, listen to this, Defendant
10 claims as an affirmative defense that the plaintiff waived his
11 right to enforce the contract. The waiver involves the
12 intentional relinquishment of a known right. That is waiver
13 is a voluntary and intentional abandonment or relinquishment
14 of a known right. It may be implied from circumstances
15 indicating an intent to waive. An implied waiver results from
16 acts in conduct of the party against whom the doctrine is
17 invoked from which an intentional relinquishment of a right is
18 reasonably inferable, and acts that are inconsistent with the
19 continued assertion of right may also give rise to a waiver.
20 A waiver is an affirmative defense. The burden of proof is
21 upon the party who asserts it. Generally, the party claiming
22 waiver must show that the party against whom the waiver is
23 asserted possessed at the time actual or constructive
24 knowledge of his rights or of all the material facts upon
25 which they depended. There's more to that charge on waiver in

1 Judge Anderson's book but I think that sufficiently addresses
2 the issue of waiver in this case.

3 Mr. Jordan?

4 MR. JORDAN: No objection from the defense, Your Honor.

5 THE COURT: Mr. Templeton?

6 MR. TEMPLETON: No objection.

7 THE COURT: All right. And the last is conclusion, which
8 is pretty stand conclusion. I'm not gonna read that to you.
9 And I've got to do a verdict form and I'm gonna simply put on
10 the verdict form, we, the jury, unanimously find the plaintiff
11 has proven damages by a preponderance of the evidence in the
12 amount of and leave a blank for it.

13 Mr. Templeton?

14 MR. TEMPLETON: No objection, Your Honor. I think it's
15 okay, Judge.

16 THE COURT: Mr. Jordan?

17 MR. JORDAN: No objection, Your Honor.

18 THE COURT: All right. Let me ask you this, and I've
19 done it once since I've been on the bench, I'll ask you all.
20 And I kinda like doing it but I won't do it unless you both
21 agree to it, but how do y'all feel about me reading the charge
22 to the jury before you do your closing arguments?

23 MR. HANNA: I think it's a great idea, Your Honor,
24 because then we know what it is, and we know what we can say
25 to the jury in closing.

1 THE COURT: Have you ever done that, Mr. Templeton?

2 MR. TEMPLETON: I'm thinking -- I was sitting here
3 thinking it seems as though I did that, not in South Carolina.
4 I did it -- I think I did it in Mississippi or Texas, that's
5 how they did it.

6 THE COURT: Judge Cottingham used to do it all the time.

7 MR. TEMPLETON: Okay.

8 THE COURT: Have you ever been in front of him?

9 MR. TEMPLETON: That's too far back for me to remember.

10 THE COURT: He hasn't been retired that long. He was on
11 the bench when I got on the bench still.

12 MR. TEMPLETON: Really?

13 THE COURT: Yes, sir.

14 MR. TEMPLETON: Well, no. I haven't been in front of him
15 in a long time. I'm not passionate about that one way or the
16 other. I will defer to the Court's guidance on that.

17 THE COURT: Well, if you object to it ---

18 MR. TEMPLETON: I don't object to that. No, sir.

19 THE COURT: Well, I mean ---

20 MR. TEMPLETON: I think it's within your purview to do it
21 anyway you want to do it.

22 THE COURT: It is, but the last time I did it, I mean, I
23 think the parties liked it like that a little bit better, and
24 it gives you all kind of the last word in this thing as
25 opposed to me. And you can focus on highlights that you.

1 believe are important in a case. Now, in the past I, too,
2 have -- but I'm not gonna do it in this case because I don't
3 think it's overly complicated, but in the past I've given the
4 jury a copy of my charge and taken it back. In Federal Court
5 that's exactly what they do. But, Federal Court charges are
6 100 pages it seems like as opposed to 20 in this one for
7 instance. So -- all right?

8 Anything before I bring the jury out from the plaintiff?

9 MR. TEMPLETON: No, Your Honor.

10 THE COURT: Defense?

11 MR. JORDAN: No, Your Honor.

12 THE COURT: Now, I'll say this, and obviously you all
13 know the order in which we do this. Plaintiff's counsel
14 followed by Defense counsel. Plaintiff's counsel reply -- a
15 reply, not hashing new ground.

16 MR. TEMPLETON: I understand. I do it in full.

17 THE COURT: All right.

18 MR. TEMPLETON: And I also -- I don't like to object in
19 closings. I understand we all have to do things but ---

20 THE COURT: I know.

21 MR. TEMPLETON: I just want it up front that I have to
22 object to arguments that may include facts that are not in
23 evidence.

24 THE COURT: Right. Well, and I will remind you, both of
25 you ---

1 MR. TEMPLETON: That's a warning shot.

2 MR. HANNA: I took it as one, Your Honor.

3 THE COURT: The law requires your arguments to be limited
4 to that which is in evidence, and the reasonable -- and I
5 emphasize reasonable inferences that may be drawn therefrom.
6 All right?

7 All right. Bring me the jury, please, sir.

8 Bring me the jury, please.

9 (REPORTER'S NOTE: Jury enters courtroom @ 2:15 P.M.)

10 CLERK: All jurors present, Your Honor.

11 THE COURT: All right. Thank you very much.

12 CHARGE TO JURY:

13 THE COURT: All right, ladies and gentlemen, I hope you
14 all had a nice lunch and are ready to proceed this afternoon.
15 As I told you before you left for lunch, that you have heard
16 all the evidence or heard all the testimony and all the
17 evidence that's going to be introduced in this case. My
18 exhibits have been introduced. That which remains in this
19 case is the charge on the law by the Court and the closing
20 arguments by counsel.

21 Typically, ever since I've practiced law and since I've
22 been on the bench typically the order has gone wherein the
23 lawyers make their closing arguments and then the Judge gives
24 you the charge on the law. But, I've decided with the consent
25 of the attorneys here today, we're gonna do it a little bit

1 different. I'm gonna give you the charge on the law first and
2 then they're gonna close. You're gonna hear from the lawyers
3 last, not me, you're gonna hear from the lawyers last. Okay?
4 So, please listen very carefully.

5 Jury charges, I have to read it to you to make sure the
6 record's clear and concise on it. Giving jury charges is
7 probably one of the things that I dislike the most about my
8 job. Okay? But it's a necessary part of every case that's
9 tried, so please listen very carefully as I instruct you on
10 the law in this case. Some of this, like I told you from the
11 outset, some of it's gonna be repetitive and I'll apologize to
12 you up front on that but it's important that the record is
13 made clear on what charge I give you in this case so that you
14 hear it clearly and concisely, and so it is clear for my court
15 reporter and concisely in the record. Okay?

16 Well, ladies and gentlemen, as I told you, you've heard
17 the evidence in this case and after I give you this charge the
18 lawyers are gonna make their arguments to you. I am going to,
19 at this time, explain to you the law which applies to this
20 case.

21 Now, the plaintiff in this case claims that the defendant
22 breached a contract that the plaintiff and the defendant had
23 entered into. In bringing this lawsuit the plaintiff claims
24 that the defendant should compensate them for such breach.
25 Now, in our courts, ladies and gentlemen, I want you to

1 understand that there is no distinction made between
2 corporations and individuals. A corporation is a person in
3 the eyes of the law. A corporation is entitled to the same
4 fair and impartial consideration and to justice by the same
5 legal standard as an individual. Now, during this trial, you
6 and I have had certain duties or separate duties to perform.
7 As the trial judge it is my responsibility to preside over the
8 trial of this case and I also have the duty to rule on the
9 admissibility of the evidence offered during the course of
10 this trial. You, ladies and gentlemen, are to consider only
11 the evidence before you. If there was any testimony ordered
12 stricken from the record during the course of this trial you
13 must disregard that testimony. You are to consider only the
14 testimony which has been presented from this witness stand and
15 by any exhibits or by the exhibits which have been made a part
16 of the record in this case, and any stipulations of counsel,
17 if there were any. I have the additional duty, ladies and
18 gentlemen, to charge you on the law that's applicable in this
19 case. To that effect, is it your duty as jurors to accept and
20 apply the law as I now state it to you. As I told you in my
21 opening charge, if you have any preconceived idea as to what
22 the law is or what the law ought to be and it does not agree
23 with what I tell you the law is, you are obligated under your
24 oath to abandon those preconceptions because you are sworn to
25 accept and apply the law exactly as I state it to you. Now,

1 in this trial, ladies and gentlemen, you, you are the sole and
2 exclusive judge of the facts. A trial judge such as myself
3 cannot comment on or make any statement about the facts in
4 this case. Since you are the sole judge of the facts do not
5 think by anything that I have said during the trial that I
6 have any opinion about the facts in this case. The law does
7 not allow me to have an opinion about the facts. As jurors it
8 is your duty alone to determine the effect, the value, and
9 weight of the evidence presented during the course of this
10 trial.

11 Now, in a civil case, ladies and gentlemen, such as this
12 the plaintiff has the burden of proof. The burden of proof in
13 a civil case is proof by a preponderance of the evidence. A
14 preponderance of the evidence simply means the greater weight
15 of the evidence. It is evidence which as a whole shows that
16 the fact sought to be proved is more likely true than not
17 true. This can be illustrated by imagining a set of scales,
18 when the case begins the scales are even. After all of the
19 evidence has been presented, if the scales remain even or if
20 they tip ever so slightly in favor of the defendant, then the
21 plaintiff has failed to meet his burden of proof and would not
22 be entitled to recover in the case. If on the other hand the
23 scales tip ever so slightly in favor of the plaintiff, the
24 plaintiff will have met his burden of proof and you should
25 return a verdict for the plaintiff. Of course, there is no

1 way, ladies and gentlemen, that you weigh evidence except
2 through the exercise of your good common sense and judgment.
3 It is entirely a mental process and the evidence you should
4 give the most weight is that which convinces you of its truth,
5 regardless of the source from which it comes. The
6 preponderance of the evidence is not determined by the number
7 of witnesses. Instead, it must be determined by the greater
8 weight of all of the evidence.

9 Now, there are two types of evidence, ladies and
10 gentlemen, generally presented during a trial, direct evidence
11 and circumstantial evidence. Direct evidence is the testimony
12 of a person who claims to have actual knowledge of a fact,
13 such as an eye witness. It is evidence which immediately
14 establishes the main fact to be proved. Circumstantial
15 evidence is proof of a chain of facts and circumstances
16 indicating the existence of a fact. It is evidence which
17 immediately establishes collateral facts from which the main
18 fact may be inferred. Circumstantial evidence is based on
19 inference and not on personal knowledge or observation. It is
20 proof that does not actually establish the fact in question
21 but that asserts or describes something else from which you
22 may either reasonably infer the truth of the fact or at least
23 reasonably infer an increase in the probability that the fact
24 is true. For circumstantial evidence to be sufficient to
25 warrant a finding of a fact the circumstances must lead to

1 that fact with reasonable certainty. The facts and
2 circumstances should be considered in light of ordinary
3 experience and common sense. The existence of a fact cannot
4 be based on speculation, surmise, or conjecture. The law
5 makes absolutely no distinction between the weight or value to
6 be given to either direct or circumstantial evidence, nor is a
7 greater degree of certainty required of circumstantial
8 evidence than of direct evidence.

9 Now, ladies and gentlemen, in determining what the facts
10 are in this case you, you must judge the credibility, which
11 simply means the believability, of the witnesses and the value
12 of weight to be given to their testimony. You alone must
13 decide the force, effect, and truth of the testimony. In
14 determining the believability of witnesses who have testified
15 in this case you may believe one witness over several
16 witnesses or several witnesses over one witness. You may
17 believe a part of the testimony of a witness and reject the
18 remaining part of the testimony of that same witness. You may
19 believe the testimony of a witness in its entirety or reject
20 the testimony of a witness in its entirety. You may consider
21 whether the witness has an interest in the result of the
22 trial. Whether the witness is prejudice toward either the
23 plaintiff or the defendant. The opportunity for the witness
24 to have seen the matters and things about which the witness
25 may testify and the way the witness acts of the witness stand.

1 Now, ladies and gentlemen, in this case the plaintiff as
2 I've told you from the outset claims that the defendant
3 breached a contract that existed between the parties and that
4 he is entitled to damages. Now, in order to recover for a
5 breach of contract the plaintiff must prove the claim by a
6 preponderance or greater weight of the evidence. Now, the
7 first thing that the plaintiff must prove by a preponderance
8 or greater weight of the evidence is that the parties entered
9 into a binding contract. I will tell you, ladies and
10 gentlemen, the parties agree that they did in fact enter a
11 contract.

12 Next, ladies and gentlemen, the plaintiff must show by a
13 preponderance or greater weight of the evidence that the
14 defendant breached the contract. The word breach means the
15 failure, without legal excuse to perform any promise that
16 forms the whole or a part of the contract. A party breaches a
17 contract when that party does not perform as agreed under the
18 contract by failing to carry out a term, promise, or condition
19 of the contract. I will tell you, ladies and gentlemen, that
20 the plaintiff and the defendant agree that a breach has
21 occurred. Now, finally, ladies and gentlemen, and this is
22 what you will be asked to determine -- and I'm talking about
23 damages. The plaintiff must prove by a preponderance or
24 greater weight of the evidence that the plaintiff suffered
25 damages which were proximately caused by the defendant's

1 breach of the contract. The plaintiff must prove damages by
2 the preponderance or greater weight of the evidence. This
3 does not mean that the plaintiff must prove damages to a
4 mathematical certainty or produce evidence of the exact amount
5 of damages suffered. However, the amount of damages cannot be
6 left to guesswork or speculation. Instead, the evidence
7 presented by the plaintiff must be enough to allow you to
8 determine the amount of damages with reasonable certainty and
9 accuracy. Damages for breach of contract are those that may
10 fairly and reasonably be considered to arise naturally from
11 the breach of contract itself or those that may be reasonably
12 supposed to have been in the minds of the parties at the time
13 the contract was made. The plaintiff may not recover damages
14 for breach of contract unless the plaintiff shows that he has
15 performed his part of the contract or at least was able,
16 ready, and willing to perform at the appropriate time.

17 Actual damages, ladies and gentlemen, are damages to
18 compensate the plaintiff, to put him as closely as possible in
19 the same position he was in before the breach of contract. In
20 other words, actual damages are the actual losses and expenses
21 which the plaintiff has suffered because the defendant
22 breached the contract. Generally, actual damages are the out-
23 of-pocket costs actually paid by the plaintiff as a result of
24 the breach of contract and the gain above the costs that would
25 have been realized if the contract had been performed.

1 Lost profits, profits have been defined as the net
2 pecuniary gain from a transaction. The gross pecuniary gains
3 diminish by the cost of obtaining them. Profits are the net
4 of income over expenditures during a given period. Profits
5 refers to the gross proceeds of a business transaction less
6 the cost of the transaction. Lost profits are recoverable in
7 an action for breach of contract. First, the profits must
8 have been prevented or lost as a natural consequence of the
9 breach of contract. Second, lost profits must reasonably be
10 supposed to have been within the contemplation of the parties
11 at the time the contract was made as a probable result of a
12 breach of contract. When lost profits are contemplated as a
13 measure of damages for a breach of contract, they should be
14 established with reasonable certainty since recovery cannot be
15 had for profits which are conjectural or speculative. While
16 proof with mathematical certainty is not required, the amount
17 of damages cannot be left to conjecture, guess or speculation.
18 There must be a certain standard or fixed method by which the
19 loss may be estimated with a fair degree of accuracy.

20 Special or consequential damages may be recovered if they
21 either flow as a natural consequence of the breach or have
22 been reasonably within the contemplation of the parties at the
23 time of the contract. When a plaintiff seeks special damages
24 for a breach of contract he must prove both the fact of damage
25 and the amount of damage with a reasonable degree of

1 certainty. The fact of damage is proved by showing that the
2 plaintiff realized an actual loss he would not have incurred
3 but for the defendant's breach, and the loss was a natural
4 consequence of the breach which may reasonably be supposed to
5 have been within the contemplation of the parties at the time
6 the contract was made. The amount of damages may be
7 established by proving the actual amount of the out-of-pocket
8 loss or a reasonably accurate estimation thereof. To recover
9 special damages the breach of a contract -- for the breach of
10 a contract the plaintiff must establish the special
11 circumstances under which the contract was made, were
12 communicated by the plaintiff to the defendant. In any
13 instance the plaintiff cannot recover special damages if the
14 special circumstances were wholly unknown to the defendant
15 when the contract was entered into. Notice at the time of the
16 contract the circumstances from which special damages may
17 reasonably be expected to result will make the defendant
18 liable for such damages on the ground that they were within
19 the contemplation of the parties and, therefore, are regarded
20 as forming a part of the contract. Accordingly, special
21 damages such as loss of income or profits are recoverable if
22 they were within the reasonable contemplation of the parties
23 at the time of the making of the contract. However, if the
24 parties -- excuse me -- if the plaintiff's proof is
25 speculative, uncertain, or otherwise insufficient to permit

1 calculation of his special damages, his claim should be
2 denied.

3 Special damages are by their very nature conditioned by
4 the particular circumstances of each case. The party claiming
5 special damages must show that the defendant was clearly
6 warned of the probable existence of unusual circumstances or
7 that because of the defendant's own education, training, or
8 information the defendant had reason to foresee the probable
9 existence of such circumstances. While it is true that the
10 defendant need not foresee the exact dollar amount of the
11 injury, the defendant must know or have reason to know the
12 special circumstances so as to be able to judge the degree of
13 probability that damage will result from a breach of the
14 contract or delayed performance. The special circumstances
15 must exist when the contract was made. When the above
16 elements are met, special damages are considered within the
17 contemplation of the parties at the time the contract was
18 signed.

19 Now, ladies and gentlemen, the plaintiff -- or the
20 defendant has raised a defense of what's called duty to
21 mitigate damages. The plaintiff, I will tell you under the
22 law, a plaintiff has the duty to minimize the damages caused
23 by the defendant's breach of contract. The test is whether
24 the plaintiff has done what an ordinarily prudent person would
25 have done under like circumstances. If the plaintiff has used

1 reasonable care to reduce the losses, the plaintiff may
2 recover the full amount. If the plaintiff has not done so
3 then you would, then you would reduce the damages accordingly.
4 Now, the defendant has also raised what is called the
5 defense of waiver. This is an affirmative defense raised by
6 the defendant of which the defendant must show by a
7 preponderance of the evidence. A waiver involves the
8 intentional relinquishment of a known right. That is waiver
9 is a voluntary and intentional abandonment or relinquishment
10 of a known right. It may be implied from circumstances
11 indicating an intent to waive. An implied waiver results from
12 acts and conduct of the party against whom the doctrine is
13 invoked from which an intentional relinquishment of a right is
14 reasonably inferable. Acts that are inconsistent with
15 continued assertion of a right may also give rise to a waiver.
16 A waiver, as I told you, is an affirmative defense. The
17 burden of proof is upon the party who asserts it, in this case
18 it's the defendant. Generally, the party claiming waiver must
19 show that the party against whom waiver is asserted possessed
20 at the time actual or constructive knowledge of his rights or
21 of all the material facts upon which they depended.
22 Now, ladies and gentlemen, I am now drawing near the end
23 of my charge to you before I turn it over to the lawyers and I
24 want to tell you and I want each of you to be mindful of the
25 importance of your responsibility as I know you will. You're

1 not called upon to serve as jurors very often and the proper
2 performance of the duty requires that each of you to reach the
3 height of freeing your mind of any and all improper
4 influences. As I've already told you under the laws of this
5 state, you are the sole judge on all questions of fact and I'm
6 the judge of the law. I am confident that whatever verdict
7 that you render once this case is given to you will result in
8 you going into that jury room and confining your consideration
9 to the evidence and the law that you have heard in this
10 courtroom, weighing it fairly and impartially.

11 Now, I will say this, I'm gonna at this time let you hear
12 from the lawyers and I'll talk to you very briefly before I
13 send you back; but I will talk to you again briefly before I
14 send you back.

15 At this time, Mr. Templeton -- let me ask this, any
16 exception or objection to the charge to jury by Plaintiff's
17 counsel?

18 MR. TEMPLETON: No, sir.

19 THE COURT: Defense counsel?

20 MR. JORDAN: No objection, Your Honor.

21 THE COURT: All right. Mr. Templeton, you're recognized
22 for closing argument.

23 CLOSING BY TEMPLETON:

24 MR. TEMPLETON: From the start of this case, yesterday
25 with you guys, we started on Monday, I told you that it was a

1 pretty straight forward case, it was about breach of contract.
2 I told you it was about broken promises, that's exactly what
3 it was about. That's what the evidence has shown and that's
4 what you've listened to today. I told you upfront that you
5 were gonna hear a lot of big numbers, talking about a lot of
6 money. And the one thing I want to say to you before we get
7 going on my full argument is that these are two wealthy
8 corporations and whether they are poor or rich the beauty of
9 the American justice system is they get to come into a
10 courtroom and they should get the same treatment under the law
11 whether they're rich or whether they're poor. And so that
12 should not play any part of consideration of who was right and
13 who was wrong. What I also told you at the outset of this
14 case was, I told you it was about three things. Number one, I
15 told you it was about a contract. I told you there was going
16 to be an offer and an acceptance and there was gonna be a
17 breach, and the Judge has just told you that I was correct in
18 that promise that I made to you. There was a contract. It
19 was breached and it was breached by the defendant. What the
20 defendant told you at the outset of the case was it was about
21 impossibility, they couldn't do it. That's not the case,
22 folks. They breached the contract. The two defenses that are
23 being mounted that you've heard are failure to mitigate and a
24 waiver. Those are the two things that the Judge has charged
25 on the law. I'm gonna talk to you about each one.

1 First one I want to talk to you about is mitigation of
2 damages as they have suggested. You will recall Mr. Buck was
3 recalled in his testimony to ask about what he did with the
4 cash money that didn't close. He said he put it in a money
5 market account and there is sat. Why? We had to. Why?
6 Because he wanted to perform on the contract. If he had not.
7 done that the defendants would be arguing where's the money.
8 If you don't have the money to perform you're not ready,
9 willing and able to close. Well, you'll recall yesterday I
10 put a stipulation on the board where the defendants agreed
11 that Plaintiff was at all times in April of 2013 ready,
12 willing, and able to perform on this deal. Don't be confused
13 by mitigation. Plaintiff did nothing wrong. You haven't
14 heard anything from that witness stand as to what they did
15 wrong that caused this contract to be breached, nothing.
16 Nothing has been presented except arguments. Recall the
17 testimony, remember the testimony, there's nothing about that.

18 Now, let's shift over to the waiver. It's a known
19 relinquishment of a known right. Between April 2013 and
20 today, what did the plaintiff do that was inconsistent with
21 the existence of a contract that they wanted to perform?
22 Nothing. The money was in the bank. The earnest money was
23 with the lawyers, and were ready, willing, and able to perform
24 on the contract. They didn't -- they didn't ever release the
25 defendant from this contract. They've been ready to go the

1 whole way. So, why didn't we go? Why didn't we perform?

2 That's what this case is about. That's what the defense has
3 really been about. We've talked about her situation, never
4 about the plaintiff's situation, but her situation, and they
5 offer excuses, none of which justify the breach.

6 The first excuse -- we're gonna talk about the defendant
7 a little bit. And it really goes back to 2008, I guess, I was
8 wrong in part when I told you it was about broken promises. I
9 was really referring to broken promises to the plaintiff, but
10 really what precipitated this whole thing was the broken
11 promises of the defendant to the bank. You'll recall the
12 testimony that in 2011 they wanted more information from the
13 person that they'd lent money to and they didn't want to give
14 it. They didn't want to give it. I get asked to do things
15 all the time that I don't particularly want to do but if I've
16 signed the contract to do it, I'm probably gonna do it. If
17 not there's a consequence. In the real world decisions have
18 consequences. And in this particular case the consequence is
19 they didn't perform and it caused damage to the plaintiff.
20 It's not any more complicated than that. The next excuse
21 that's offered -- let me make sure I get it right -- the next
22 excuse on this and it goes to this waiver notion, is that
23 because the documents were filed at the courthouse related to
24 the mortgage and the note, and because they have done this
25 forbearance agreement in 2011, that the plaintiff should've

1 known they were on constructive notice. They should've known
2 that they would not be in a position to perform on this
3 contract. And that, ladies and gentlemen, does not make any
4 sense. It doesn't pass the smell test. It doesn't pass your
5 common sense. It doesn't pass, and here's why. Because in
6 Exhibit 1, the first document, the contract that brings us
7 here today has a paragraph in it where the plaintiff, excuse
8 me, the defendant -- and you'll have this document -- you'll
9 have this in your deliberations and I encourage you to read
10 it. Here in little two (ii), to the best of the knowledge of
11 the seller there is no actual or threatened action,
12 litigation, proceeding including but not limited to
13 condemnation by any organization, person, individual or
14 governmental authority against the property. We know that's
15 false and we know that the defendant signed the document
16 through her lawyer affirmatively representing that there was
17 no such potential problem. And how do we know that it's
18 false? Exhibit 2, which was back on June 28th of 2012, a
19 letter from the law firm representing the lender which in the
20 document puts her on notice that they're in default, that they
21 need to pay the money, and we've got a problem. And to the
22 extent that document is not clear, we have Exhibit 3, which is
23 a letter from the same lawyer to Ms. Marko, to her company
24 ROA, LLC, and at the end of this document, that's in November
25 -- no, excuse me, I'm one off, I mean, by February, February

1 -- that's Exhibit 6. Same law firm, same recipients, and at
2 the end of the document it says in the last paragraph, nothing
3 in this letter or previous letter is gonna waive or modify or
4 postpone any rights. Right? So, when it's referred back to
5 the earlier letter on November 26, what was said on November
6 26th? If the balances are not paid within 10 days, if they're
7 not paid, attorney's fees stipulated, we encourage you to take
8 guarantee -- where is it? I can't find it. Oh. We will.
9 proceed with collection efforts to include pursuit of any
10 collaterals that carry the note. Collection efforts, we're
11 gonna sue you, that's what's gonna happen. She knew. She
12 knew in November. She knew in February. She knew she was in
13 trouble, yet she entered into a contract.

14 The next excuse that was presented was that Mr. Buck
15 didn't act. He didn't act. Well, every contract has an
16 implied condition of good faith and fair dealing among the
17 parties. That's the whole reason you enter into a contract.
18 You expect the party you're contracted with to do what they
19 say they're gonna do. And, he did ask. He absolutely asked
20 on April 5th, 2013, what was the problem. He sent her an e-
21 mail. She responded back. And what was important about her
22 response back? Help me understand why the closing has not
23 occurred and you're not being responsive. I apologize. I
24 need an extension, and she acknowledges the 1031 exchange.
25 The 1031 exchange is also, you'll see in the contract when you

1 look at back in deliberations, it contemplated the 1031.
2 Everybody knew the 1031 was in play. Everybody knew that it
3 was important. Everybody knew it was part and parcel of this
4 deal. And suggesting that -- it's just ignoring the testimony
5 in this case because they all knew it. Everybody knew it.
6 April 3rd was the day this closing was supposed to happen.
7 You can see it on the contract, April 3rd. What the defendant
8 argues is we had this default period where we had 30 days to
9 fix it. They didn't fix it, but instead the e-mails have been
10 back and forth continuing to suggest that we've got a deal,
11 we're gonna pursue the closing and everything is gonna work
12 out. But, on April 9th, that was the deadline for his 1031,
13 and it was gone. He still wanted to pursue the contract. He
14 still wanted to pursue the contract as we got here. Right?
15 But, it doesn't change the fact that he lost the 1031
16 exchange. What else did he lose? Well, he lost the expenses
17 and the costs that went into this deal, getting ready for this
18 deal. He testified between 17 and \$20,000, that's what he
19 spent, or his company spent. That was another excuse. It's
20 been excuse after excuse. What you've not heard, what you've
21 not heard out of that witness stand, frankly to my surprise,
22 is any acknowledgment by the defendant whatsoever that they
23 might, maybe, possibly could've done something different, did
24 anything wrong or even a little bit remorseful for this
25 scenario that we are in. There's been none of that. There

1 was a contract, it was breached, and it resulted in damage to
2 the plaintiff. ROA sits in exactly the same position they
3 were in five-and-a-half years ago. They have the property.
4 They have full unlimited access to the property. We don't.
5 Something's not right there. That's not why you enter into a
6 contract.

7 The other part of this contract that has been discussed
8 in this case was the fact that it's commercial property and
9 there were tenants in this property and they were generating
10 rent. Rent, you heard Ms. Marko testify that in '13, '14,
11 '15, '16 there were tenants in that building and we went
12 through the revenue that was generated each year. That's
13 Exhibit 25 that you'll have in your deliberations, that they
14 earned benefit of that money. If the deal had gone through,
15 if the deal had gone through, who would've gotten that money?
16 Who would've been in control of that property? Who would've
17 been deciding whether to paint the walls, to paint the fence,
18 the fix the air conditioner, to do whatever they wanted to do
19 to that building. What expense would have been generated?
20 That would've been his decision or his company's decision. It
21 would've been his call, not hers. What we know, what facts we
22 know that are not speculative, that are not guesswork, that
23 are not conjecture because they're on the tax return 2013,
24 '14, '15, and '16, is that they had revenues that range on the
25 low end between \$220,000 and on the high end \$260,000 each

1 year. We don't know what happened in '17. We don't know what
2 happened in the first six months of this year because the tax
3 returns aren't available, and Ms. Marko didn't recall. The
4 other thing that I would like to harken you back to when
5 thinking about this case, when she was on the stand, the
6 closing was supposed to be April 3rd. I asked her directly,
7 did you know when the closing was going to happen? She said
8 she didn't know it was supposed to happen. How do you sign a
9 contract and not know when the closing is? The closing
10 document says 'specifically April 3rd. And then on April 5th
11 she indicated that she got contact from the bank that said
12 that negotiations were off. After that, did she tell Mr. Buck
13 that? No. Did she ever tell Mr. Buck that? No. Did she
14 ever do anything that would lead him to believe that from a
15 waiver standpoint, mitigation standpoint, or again that he did
16 something wrong because that's in essence what they're saying,
17 he did something wrong. She should've told him. It wasn't
18 that hard. Is it ever too late to do the right thing? I
19 don't think so. What's the right thing here? Hey, gotta
20 problem. I can't do it for whatever the reason. That's what
21 you do. So, when you're sitting there, as I would be, well,
22 why? Why not? Why didn't she tell him? I think it's simple.
23 Money. It's very simple. That property has increased in
24 value, she has it, she enjoyed the rent revenue. Money. It's
25 nothing more complicated than that.

1 Now, in the world of technology, I'm sort of an old
2 school guy and use a pen and paper. We've talked about the
3 damages but I want you to see them because I told you at the
4 end of the day it was gonna be a big number. At the top we've
5 talked about the expenses that occurred. That's 17 to
6 \$20,000. The 1031 exchange that he lost, that he testified
7 that he lost. Not a phantom thing, he said he paid the money
8 to the government, that was \$700,000. The loss of rents, the
9 loss that occurred. These are the numbers, this 2013 number,
10 this 17308, that's based on 270 days from April 3rd to the end
11 of the year; 14, 15 and 16 those revenue figures come straight
12 off of Exhibit 25, the tax return. That is what, if we assume
13 for the sake of discussion that he would've run that property
14 the exact same way that she did it, that's the way that the
15 revenue would come in. Now, you've heard no testimony about
16 the expense of owning that property except we know it was a
17 cash deal, so there wouldn't have been a mortgage. There was
18 gonna be any interest that he owed. And you've heard nothing
19 of that witness stand, and Exhibit 25, which is the tax
20 returns, has got certain carrying costs that are listed on it
21 for her. It doesn't apply to him. That's what she incurred.
22 And the natural probable consequence of breaching a contract
23 would've been rents would've gone to him for him to do as he
24 needed to do. 1.6 million and change that's what it is, 1.6,
25 53,418, and just out of transparency that total contemplates

1 the 17, not the 20. So, that's that.

2 Now, ladies and gentlemen, I'll get one more opportunity
3 to talk to you guys before you go to deliberations. Thank you
4 for your attention while I was talking to you.

5 MR. HANNA: You can leave that up there if you'd like.

6 MR. TEMPLETON: I'll take it down.

7 MR. HANNA: Could I borrow it?

8 MR. TEMPLETON: No. Go ahead. You can have it, you
9 don't need to borrow it.

10 MR. HANNA: You'll never change.

11 CLOSING BY HANNA:

12 MR. HANNA: I know all of y'all are ready to go home and
13 I am too to tell you the truth. And, I'm gonna do the very
14 best I can to limit my remarks so you can get out of here as
15 early as you possibly can. So, unlike Mr. Templeton, I'm not
16 gonna rehash my opening statements. I know you've heard the
17 testimony on the witness stand. All I will say is all these
18 things he brings up about misrepresentation and things that
19 they should have done and shouldn't have done, the Court has
20 already ruled that they do not have a cause of action for
21 that. The Court has already ruled that my client has not
22 committed any act of negligent misrepresentation. They've
23 even admitted before we started the trial that the allegations
24 of fraud were not valid against my client. This thing is
25 about damages; that's all this is about right now. We've

1 hashed it out for two days, flushed it out for the Court, all
2 that's left here is the determination of damages. If you say
3 that's the case, if you say we admitted during the course of
4 the trial that there was a breach of contract. And, we
5 admitted during the trial and there were damages suffered by
6 the plaintiff. Why are we here? One word, over reaching --
7 excuse me, two words -- over reaching and greed. That's all
8 it amounts to. For instance, let's look at the loss of
9 profits he wants you to take the gross profits from the tax
10 returns. He didn't want you to consider the light bill, the
11 maintenance bill, any of the bills that go along with it. He
12 wants you to give him gross revenue, not net revenue, not what
13 he would have really gotten from the property if he'd had it.
14 He wants you to give him a windfall that he is not entitled
15 to. We submit to you, Number 25, I think it is, of his
16 exhibits are our tax returns that we gave to them. Take a
17 look at those tax returns when you're going to deliberate. I
18 agree with Mr. Templeton on that. Take a look at those tax
19 returns. Look at the line items in there that she had to
20 spend on expenses that he would've had to expend. If he owned
21 this property I guarantee you he didn't take home \$173,000 --
22 he wouldn't take home \$173,000 net that year. He wouldn't
23 have taken home \$245,000 if he owned this property. You have
24 a light bill, you have a gas bills, he would've had them, too.
25 Look at the tax returns and see if they have met the burden of

1 proof that they have suffered damages that he claims to have
2 sustained. The 1031 exchange -- the 1031 exchange, I don't
3 whether I understand it or not. I've been through one of them
4 in my life, I was fortunate enough to have a piece of property
5 that I could still take advantage of something from Uncle Sam.
6 But, Mr. Buck told you that it is not a loss. This \$700,000
7 is not a loss. Over reaching, greed, again. All he lost by
8 the fact that he couldn't take advantage of the 1031 exchange
9 is that he couldn't defer that down the road. He couldn't
10 kick it down the road. And, I would grant to you that that
11 has a value to it, that I don't have to pay it now I can wait
12 and do it later on. But, did he ever attempt to tell you what
13 that was? Did he ever attempt to explain to you that his real
14 loss was not \$700,000? No, he didn't do it. And I would
15 submit to you that Mr. Buck was in the same place after the
16 breach as he was before he entered into the contract with
17 regard to the 1031 exchange. He went into 1031, signed a
18 contract that was to be performed in April, April the 3rd, I
19 believe it was, with a drop-dead date of April the 9th as far
20 as the IRS was concerned with the 1031 exchange. And his
21 contract he had drafted by his attorney and that he had used
22 time and time again, it had a provision in there with of a 30-
23 day right to cure. So, he knew when he signed that contract
24 that it was a possibility that contract might not close by
25 April the 3rd and that Ms. Marko could by May the 3rd close on

1 it and not be in default. And, yes, we didn't perform. We
2 didn't perform because the bank wouldn't let us perform. We
3 acknowledge that that doesn't take away our obligation to Mr.
4 Buck in certain regards but we're here to be stand up to that,
5 but we're not here to be -- like these fees would reflect.

6 Excuse me one second.

7 And even after he says he would never have entered into
8 this contract if he had known what was happening with the
9 bank. That's not true. It's just simply not true. It
10 doesn't stand up because after the breach, after he knows
11 that he can't close, what does he do? He's contacting the
12 bank trying to see if he can get them to go along with it.
13 That's something he should've done before he ever contracted,
14 because in that contract or in that mortgage that's recorded
15 in the courthouse that by law he's supposed to have notice of,
16 and if he didn't have actual notice of it he should have known
17 about it. There's a provision that says you can't sale the
18 property without the consent of PNC. You cannot. It doesn't
19 say maybe, it says you cannot. He knew about that when he
20 signed the contract and when they failed to get it done on
21 April 3rd, excuse me by May the 3rd he wants to say it's my
22 client's fault and it's not. She simply could not perform.

23 The waiver, the waiver also includes when he knew about
24 it he when he continued to try and buy the property. This has
25 nothing to do with representations, or what was made. It was

1 ability to perform. Ms. Marko told you that there's nobody in
2 this world that would've rather had that thing close than she
3 did. She didn't try to hoo-doo Mr. Buck. She was trying to
4 do what needed to be done under the circumstances that the
5 bank presented.

6 Now, the bottom line is and we readily admit, and I think
7 Mr. Templeton might argue differently on this, but my clients
8 would always take the \$17,500 that he incurred out of pocket
9 in getting ready. But not these two. He didn't suffer these
10 losses, number one. And number two, they're inflated.

11 That being said, I think I've -- let me make sure I've
12 covered all of my items I wanted to before I sit down and let
13 you guys get to the work at hand. I've watched all of you
14 during the trial. I've been doing this for 41 years, and I
15 have never seen a jury pay more attention than you have. I
16 appreciate that. My client appreciates that because this is a
17 very important service. We appreciate it. Thank you.

18 REPLY CLOSING BY TEMPLETON:

19 MR. TEMPLETON: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. TEMPLETON: I'll be brief. I JUST want to take them
22 one at a time. This is not a magical number. It's not. You
23 heard Mr. Buck say that he didn't wait, he didn't do anything
24 with it. In fact he said, when asked about where's the money
25 for the closing, it's in a money market account less what I

1 had to pay the Federal Government. That's what he said. So,
2 he has incurred that number, he's incurred it. These are real
3 numbers. They're not made up by me. They are from her
4 documents that we introduced as Exhibit 25. They're real.
5 They're just as real as that number. They're just as real as
6 what it cost him to get ready for this deal. This is not
7 speculation. This is not conjecture. And you didn't hear
8 anything out of that witness stand about what the liability
9 was or what it would have cost under his watch, you didn't.
10 Greed? I don't think so. I don't think so. This case is not
11 about greed and it's certainly not about Buck Investments
12 greed. And to suggest it is insulting. It's an example of
13 why we're here today because at no other point has it been
14 suggested, acknowledged, embraced, suggested, offered to make
15 them whole. That's your job. It's up to you. And I agree
16 with Mr. Hanna -- I haven't been doing it as long as he has.
17 I've been doing it for 24 years -- but I have not seen a more
18 attentive group of jurors in my career. And we appreciate
19 that just like they do. There's a Latin word that a lot of
20 judges in this state charge, our judge did not, but it's a
21 Latin word called vera dicis and if translated to English it
22 means to speak the truth, literally translated, to speak the
23 truth, that's what you guys get to do. You get to speak the
24 truth as to what was right and what was wrong. And it's never
25 too late to do the right thing. Thank you.

REAL ESTATE SALES AGREEMENT

20 THIS REAL ESTATE SALES AGREEMENT (the "Agreement") is entered into as of this the day of March, 2013 (the "Effective Date") by and between ROA, LLC ("Seller"), and Buck Investments, LC ("Purchaser"). Seller and Purchaser are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS:

- A. Seller owns TMS# 460-16-02-066, 438 King St.
- B. Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, such real property on the terms and conditions of this Agreement.

AGREEMENT:

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which the Parties hereto acknowledge, and in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

1. **PURCHASE AND SALE OF PROPERTY.** Subject to and in accordance with the terms and conditions of this Agreement, Seller agrees to sell and to convey to Purchaser, and Purchaser agrees to purchase from Seller, the following described real property:

(a) The real property located in or near the City of Charleston, County of Charleston, State of South Carolina, more particularly described or graphically depicted on Exhibit A attached hereto and made a part hereof, and any improvements thereon (collectively, the "Land"); and

(b) Together with all right, title, and interest of Seller, including any after-acquired title or reversion, in and to the roads, streets, avenues, and alleys adjoining the Land (all of the foregoing property being hereinafter referred to collectively as the "Property").

(c) Purchaser will at closing assume all leases for space in the Property, but will not assume any management contracts, leasing agent agreements, service contracts or non-lease contracts or obligations of Seller.

2. **PURCHASE PRICE; EARNEST MONEY.** The purchase price and terms of payment, subject to all adjustments and credits hereinafter provided, shall be as follows:

(a) The purchase price for the Property shall be Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) (the "Purchase Price") payable as follows:

(i) Purchaser shall pay Fifty Thousand and 00/100 Dollars (\$50,000.00) representing an earnest money deposit to McNair Law Firm, as escrow agent (the "Escrow Agent"), within three (3) business days after receipt by Purchaser of this Agreement as signed by Seller. As used in this Agreement, "business day" means any day that is not a Saturday, a Sunday, or a day on which banks in South Carolina are closed. The Earnest Money shall be non-refundable to Purchaser except as otherwise set forth in this Agreement. The Earnest Money shall be applied to the Purchase Price at Closing (hereinafter defined); and

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PLAINTIFF'S
EXHIBIT (F)

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(ii) . Purchaser shall pay the balance of the Purchase Price at the time of consummation of the purchase and sale contemplated hereby (the "Closing"), less any prorations as hereinafter provided. Payment under this Section 2(a)(ii) shall be made by wire transfer of funds in accordance with written wire transfer instructions given by Seller to Purchaser before Closing or by delivery of an official bank check or an attorney's or title company's trust account check.

(b) Seller and Purchaser hereby appoint Escrow Agent to serve as escrow agent hereunder, and Escrow Agent signs this Agreement for the sole purpose of accepting its engagement as escrow agent pursuant to the terms of this Agreement and agreeing to be bound by the applicable terms hereof. Seller and Purchaser acknowledge and agree that the Earnest Money shall be deposited by Escrow Agent in a non-interest bearing account. Seller and Purchaser jointly and severally release and waive any claims they may have against Escrow Agent that may result from Escrow Agent's performance in good faith of its function hereunder, specifically including, but not limited to, any delay in electronic wire transfer of funds. Escrow Agent shall be liable only for loss or damage caused by its acts of gross negligence or intentional misconduct while performing services as an escrow agent, and Escrow Agent shall not be liable for any loss or damage resulting from (i) any default, error, action or omission of any other party, (ii) the expiration of any time limit unless such time limit was known to Escrow Agent and such loss is solely caused by failure of Escrow Agent to proceed in its ordinary course of business, or (iii) Escrow Agent complying with any and all legal process, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

3. INSPECTION PERIOD.

(a) From and after the Effective Date, Purchaser and its agents shall have Ten (10) days (as may be extended pursuant to Section 3(b), the "Inspection Period") to study and to inspect the Property and to conduct due diligence on the Property. Promptly after Seller's receipt of a counterpart of this Agreement as signed by Purchaser (but no later than five (5) days after such receipt), Seller shall deliver to Purchaser the following: all leases, copies of title opinions, title insurance policies, deeds, deeds of trust, mortgages, title exceptions, building plans, current survey, and environmental studies.

(b) If Purchaser determines, in its sole discretion, that the Property is not suitable for Purchaser for any reason, then at any time before 5:00 p.m. (Charleston, South Carolina time) on the last day of the Inspection Period, Purchaser may terminate this Agreement by giving Seller and Escrow Agent written notice of such termination (which may be given by facsimile or electronic mail on the last day of the Inspection Period), and upon Escrow Agent's receipt of a copy of such termination, Escrow Agent shall promptly thereafter pay the Earnest Money to Purchaser.

(c) During the Inspection Period, Purchaser shall have a license to enter upon the Property to make any inspections, tests, and studies (excluding environmental assessments) that Purchaser deems necessary with respect to its purchase and use of the Property. Such inspections, tests, and studies shall be conducted in such a manner as to minimize damage to the Property and disturbance to existing Tenant and its business operations; in the event Purchaser does not purchase the Property, Purchaser agrees to repair any damage caused by such inspections, tests, or studies to the extent commercially practicable. Purchaser shall indemnify, defend, and hold harmless Seller and its officers, employees, agents, representatives, invitees, and contractors against any injury or damage caused by the entry of Purchaser or its agents, representatives, consultants, or contractors upon the Property in connection with exercise of the inspection right granted to Purchaser under this Section 3, unless due to any actions of Seller, its employees, agents, representatives, consultants, contractors, or invitees. Purchaser shall



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promptly after receipt provide Seller with a copy of any written and final inspection report(s), tests, and studies prepared by or on behalf of Purchaser regarding the Property.

(d) In conducting any inspections, investigations, or tests of the Property, Purchaser and its agents and representatives shall: (i) not unreasonably interfere with the maintenance of the Property; (ii) not injure or otherwise cause bodily harm to Seller or its respective agents, guests, invitees, contractors, and employees or any tenants or their agents, guests, invitees, contractors, and employees; (iii) comply with all applicable laws; (iv) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (v) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (vi) before conducting any Phase II or other invasive testing of the Property, Purchaser shall first obtain from Seller written authorization, to be granted at Seller's sole discretion, prior to beginning any such testing. Purchaser shall bear the cost of all such inspections or tests. Any liability of Purchaser arising under the obligations of this Section 3(e) shall survive any termination of this Agreement.

4. TITLE EXAMINATION; OBJECTIONS. During the Inspection Period, Purchaser shall conduct an examination of title to the Property, which shall result in the issuance by a title insurance company of Purchaser's choosing (the "Title Company"); of a title insurance commitment or a title opinion or title report with respect to the status of title to the Property (the "Title Report"). Within five (5) business days after receipt of the Title Report and any new survey of the Property obtained by Purchaser, Purchaser shall give Seller copies of such documents. If an exception to title not acceptable to Purchaser appears on the Title Report or the new survey, Purchaser shall give Seller notice of the exception within ten (10) business days after receipt of the Title Report or the survey, as the case may be. Seller shall have a reasonable period, not to exceed fifteen (15) days after receipt of notice from Purchaser (the "Cure Period"), to elect to remove any such exception, as long as Purchaser provides written notice of such exception within the Inspection Period, or to provide Purchaser written notice that it will not remove such exception. If Seller elects not to remove the title exception, or cannot do so within the Cure Period, then Purchaser shall have the right (but not the obligation) to (i) extend the Cure Period, (ii) accept title to the Property subject to the exception, which shall then become a Permitted Exception, without reduction in the Purchase Price; or (iii) terminate this Agreement, in which case Escrow Agent shall promptly return the Earnest Money to Purchaser. In the instance when the Seller elects not to remove an exception and Purchaser elects to terminate the Agreement, then Seller agrees to reimburse Purchaser for expenses incurred by Purchaser directly related to its due diligence. For purposes of clarification, in no event shall an exception which has been removed from the Title Report thereafter be deemed a Permitted Exception hereunder. Seller shall be required to remove at closing those exceptions which can be removed by paying an ascertainable sum of money such as mortgages, liens, unpaid taxes, and special assessments.

5. ESTOPPEL CERTIFICATES. Prior to Closing, Seller shall request estoppel certificate from all Tenants. The estoppel certificate shall be substantially in the form attached hereto as Exhibit B (the "Estoppel Certificate"). Seller will make every good-faith effort to obtain the estoppels from all Tenants.

6. REPRESENTATIONS AND WARRANTIES.

(a) Seller does hereby warrant and represent to Purchaser as follows:

(i) Seller holds fee simple title to the Property, subject to the Permitted Exceptions (as defined herein). For purposes of this Agreement, "Permitted Exceptions" shall be (A) the lien of real estate taxes, taxes imposed by special assessment and water, sewer, vault, public space and other public charges which are not yet due and payable, (B) all applicable laws (including zoning,

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building ordinances and land use regulations), (C) all matters which would be disclosed by a personal inspection or an accurate survey of the Property, and (D) all easements, restrictions, covenants, agreements, conditions, or other matters of record, excluding any such matters that Seller commits in writing to cure prior to Closing pursuant to Section 4 above;

(ii) To the best knowledge of the Seller there is no actual or threatened action, litigation, or proceeding (including, but not limited to, condemnation) by any organization, person, individual, or governmental authority against the Property, or with respect thereto;

(iii) Seller has not received written notice of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property, nor has Seller received written notice that the buildings and improvements thereon, if any, do not comply with all applicable legal requirements with respect to the use, occupancy, and construction thereof; and

(iv) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder. This Agreement has been duly authorized, executed, and delivered by all necessary action on the part of Seller and constitutes the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

(v) To the best knowledge of the Seller and except as may be set forth in the environmental reports, if any, to be furnished to the Purchaser prior to the expiration of the Inspection Period: there are no Hazardous Materials, as hereinafter defined, used, stored, buried or otherwise located on the Real Property or used in the operation of the Property in violation of federal state or local law; the operation of the Property is, in all material respects, in compliance with all Environmental Laws, as hereinafter defined; there are no prior or pending investigations, inspections, audits or claims relating to compliance with Environmental Laws by the Seller, or its predecessors in title to the Real Property.

"Hazardous Materials" means any flammable explosives, radioactive materials, radon, asbestos, and any paints, solvents, chemicals, petroleum products, or other man-made materials with hazardous or carcinogenic or toxic characteristics, including without limitation any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances" or "contaminants" under any applicable federal or state or local laws, ordinances, rules or regulations. "Environmental Laws" means any applicable federal, state or local laws, ordinances, or regulations pertaining to Hazardous Materials, occupational safety, occupational health, industrial hygiene, historic preservation or environmental conditions.

(vi) Seller warrants that the Landlord is in full compliance with its obligations of leases.

(b) All representations and warranties contained in this Section 6 shall be deemed made as of Closing and shall survive Closing for a period of ninety (90) days.

(c) EXCEPT AS OTHERWISE SET FORTH HEREIN OR IN ANY OF THE CLOSING DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING, INCLUDING, WITHOUT LIMITATION, THE DOCUMENTS SPECIFIED IN SECTION 10(f) (the "SELLER CLOSING DOCUMENTS"), SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, MAKE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY. PURCHASER AGREES THAT, WITH RESPECT TO THE PROPERTY, PURCHASER HAS NOT

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RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER, EXCEPT FOR THOSE REPRESENTATIONS OR WARRANTIES SET FORTH HEREIN OR IN ANY OF THE SELLER CLOSING DOCUMENTS, PURCHASER AGREEING THAT IT IS RELYING SOLELY ON ITS OWN DUE DILIGENCE IN PROCEEDING TO CLOSING AFTER EXPIRATION OF THE INSPECTION PERIOD. EXCEPT AS PROVIDED HEREIN, SELLER SHALL SELL AND CONVEY TO PURCHASER, AND PURCHASER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS.

(d) Purchaser does hereby warrant and represent to Seller as follows:

(i) Purchaser has full power and authority to enter into this Agreement and to perform all of its obligations hereunder. This Agreement has been duly authorized, executed, and delivered by all necessary action on the part of Purchaser and constitutes the valid and binding agreement of Purchaser, enforceable against Purchaser in accordance with its terms;

(ii) Purchaser is not insolvent (as such term is defined in Section 101(32) of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code")) and will not become insolvent as a result of entering into and consummating this Agreement or the transactions contemplated hereby (including, without limitation, the purchase of the Property), nor are the transfers to be made hereunder or obligations incurred in connection herewith made or incurred by Purchaser with any intent to hinder, delay, or defraud any creditors to which Purchaser is or becomes indebted. Purchaser acknowledges that it is receiving new, fair, reasonably equivalent value in exchange for the transfers and obligations contemplated by this Agreement, and affirmatively represents that neither its entry into this Agreement nor its consummation of the transactions contemplated hereby constitutes a fraudulent conveyance or preferential transfer under the Bankruptcy Code or any other federal, state or local laws affecting the rights of creditors generally;

(iii) Purchaser is not a nonresident alien or foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder);

(iv) Purchaser is not a disregarded entity as defined in 26 CFR §1.1445-2(b)(2)(iii); and

(v) Neither Purchaser nor any director, officer, agent, employee, or affiliate of Purchaser currently is subject to any United States sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

7. CONDITIONS TO PURCHASER'S OBLIGATION TO PURCHASE. The obligation of Purchaser to purchase the Property from Seller is subject to the satisfaction on or before Closing of the following conditions (collectively, the "Closing Conditions"), any of which may be waived in whole or in part in writing by Purchaser at or prior to Closing:

(a) The representations and warranties made by Seller in this Agreement shall be materially true as of the date of Closing; and

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(b) There shall not be a material adverse change to the condition of the Property following the expiration of the Inspection Period or the condition of title to the Property following the expiration of the Cure Period, which is not caused by Purchaser. In the event that there is a material adverse change to the condition of the Property (including the environmental condition of the Property), or condition of title to the Property as provided above, Purchaser shall provide written notice to Seller identifying such material adverse change and Seller shall have a period of fifteen (15) days from receipt of such notice to correct such material adverse change and Closing shall be postponed as necessary to permit Seller the entire fifteen (15) day correction period. If Seller does not correct such material adverse change within such fifteen (15) day correction period, Purchaser may, in writing, either (i) terminate this Agreement, at which time all of the Earnest Money shall be returned to Purchaser, or (ii) Purchaser and Seller may mutually agree to extend Seller's cure period under this Section 7(b) for at least ten (10) business days.

8. INDEMNIFICATION. Seller agrees to defend, indemnify, and hold Purchaser harmless from and against, and to reimburse such persons with respect to, any and all third-party claims, demands, losses, damages (excluding consequential damages), liabilities, causes of action, judgments, penalties, costs, and expenses (including reasonable attorneys' fees actually incurred at standard hourly rates, expenses reasonably incurred, and court costs and costs of investigation and remediation) incurred by Purchaser arising out of the breach of any representation or warranty of Seller as set forth herein. This Section 8 shall survive Closing for a period of ninety (90) calendar days.

9. BROKERAGE COMMISSION. Seller and Purchaser shall each owe a finder's fee / commission of Fifty Thousand and No/100 (\$50,000.00) Dollars to be paid at Closing to Roadstead, LLC and such finder's fee / commission shall only be earned and paid upon completion of this transaction at Closing. Except as stated above, Seller and Purchaser warrant and represent to the other that neither has employed any investment banker, broker, finder, or intermediary, in connection with the transactions contemplated hereby who is entitled to any compensation, fee, or commission in connection with the execution or delivery of this Agreement or the consummation of the transaction contemplated hereby. Each Party agrees to defend, indemnify, and hold harmless the other against any such claim asserted by any investment banker, broker, finder, or intermediary. This indemnification shall survive Closing.

10. CLOSING.

(a) Unless extended in writing by agreement of the Parties and subject to the satisfaction or waiver of the Closing Conditions, Purchaser and Seller shall consummate and close the sale contemplated by this Agreement on Wednesday, April 03, 2013, or at such earlier date and time if agreed to by both parties. Time is of the Essence.

(b) Ad valorem taxes, assessments, user fees, rents, common area maintenance charges, and other items of income and expense relating to the property for the calendar year in which Closing occurs shall be adjusted and prorated between Seller and Purchaser as of 12:01 a.m. on the Closing Date, based on a 365-day year as follows:

(i) Base rents actually collected prior to the Closing shall be prorated as of the Closing Date. Purchaser shall receive a credit for any amounts of free or reduced rent allowed any tenant of the Property for any time period after the Closing Date. Rent received by Purchaser after Closing shall be first applied to all unpaid rent accruing after the Closing Date, then to the month in which the Closing occurs, and then to periods prior to the Closing Date.

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(ii) To the extent possible, percentage rents collected prior to the Closing shall be prorated at Closing as if received ratably throughout the year.

(iii) Additional rent collected from tenants under the Leases to cover taxes, insurance, utilities, maintenance, marketing and other operating costs and expenses (commonly known as "common area maintenance charges") shall be prorated as of the Closing Date, along with the expenses for which such charges are collected. To the extent estimated payments on account of such charges have been collected from tenants, such payments shall be prorated at Closing. Seller shall provide Purchaser with a statement of current common area maintenance charges, taxes and insurance amounts for each tenant. Such statement shall list the amounts paid and the full amounts owed by each tenant until Closing, and the sums due from or to each tenant. The actual charges for the year in which Closing occurs shall be prorated as of the Closing Date.

(iv) Real estate taxes and assessment for the current year shall be prorated, whether or not due and payable. If real estate taxes for the current year cannot be ascertained, those for the previous year shall be utilized with allowance for the discount allowed by law.

(v) At the end of the calendar quarter following the Closing, Purchaser shall prepare and present to Seller a recalculation of any and all amounts due under this subsection (b), based actual figures rather than estimates, if any, used in calculating the prorations made at Closing, and reflecting the results of the final accounting and adjustments for common area maintenance charges for the year in which the Closing occurs. The parties shall make the appropriate adjusting payment between them within 30 days of delivery of any such recalculation, and shall at Closing enter into a proration agreement to that effect. Prorations for real estate taxes as provided in Section 10(b)(iv) above, however, shall be final and not subject to recalculation post-Closing.

(c) Seller shall pay all required documentary stamps and other transfer taxes as required by state law, as well as Seller's attorney's fees.

(d) Purchaser shall pay the cost of recording the limited warranty deed and Purchaser's attorney's fees.

(e) All security deposits, if any, in the possession of Seller, but Seller shall have no liability to Purchaser for any tenant security deposits not actually paid to Seller.

(f) At Closing, Seller will deliver to Purchaser the following documents:

(i) A Limited Warranty Deed to the Property.

(g) At Closing, Purchaser shall deliver to Seller a sum equal to the balance of Purchase Price as herein provided. Escrow Agent shall deliver the Fifty Thousand Dollar (\$50,000.00) Earnest Money to Seller at Closing.

11. RISK OF LOSS. Seller shall bear all risk of condemnation and of loss, damage, or destruction to the Property prior to Closing.

 PURCHASER [] SELLER HAVE READ THIS PAGE.

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Buck000516

12. DEFAULT.

(a) By Seller. If Seller defaults by failing to close for reasons within the Seller's control, then provided Purchaser is not in default hereunder (and provided Purchaser has notified Seller of the specific nature of the default and allowed Seller a thirty (30) calendar day period to cure such default), Purchaser may declare this Agreement terminated thereby releasing Purchaser from any further obligations to Seller pursuant to this Contract, in which event Purchaser shall have the option of either having all Earnest Money immediately returned and forfeited to Purchaser as liquidated damages or Purchaser may exercise its right to sue for specific performance whereby Seller shall be required to perform. In the event Purchaser shall require specific performance, the Earnest Money shall apply to the Purchase Price.

(b) By Purchaser. If Purchaser defaults in any of its obligations under this Agreement, then provided Seller is not in default hereunder (and provided Seller has notified Purchaser of the specific nature of the default and allowed Purchaser a ten (10) business day period to cure such default), Seller may declare this Agreement terminated thereby releasing Seller from any further obligations to Purchaser pursuant to this Contract, in which event all Earnest Money shall be forfeited to Seller as liquidated damages and as Seller's sole and exclusive remedy, and all other rights and obligations of the Parties shall be terminated.

13. MISCELLANEOUS.

(a) Notices. Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be deemed given if delivered personally or sent by facsimile or email (with confirmation of receipt), by registered or certified mail, postage prepaid, or by recognized courier service, to the addresses set forth below or such other addresses as are specified by written notice delivered in accordance herewith. Notices shall be deemed received when actually received by Seller or Purchaser, as applicable; provided, however, that notices will be deemed received upon transmission of such notice if delivery cannot be accomplished because of a change of address by one Party, but only if such Party did not notify the other Party of such change of address, or because of refusal of a Party to accept delivery of any such notice.

If to Purchaser: Buck Investments, LC
Address: 78 Ashley Pointe Dr, Suite 300
Charleston, SC 29407
Attn: Edgar A. Buck Jr.
Phone: 843-266-4140
Fax: 843-762-5311
Email: Ebuck@Jupiterhd.com

 PURCHASER  SELLER HAVE READ THIS PAGE

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IF to Seller: ROA, LLC

Address: 147 Wappon Creek Drive - Suite 605
Charleston, South Carolina 29412
Attn: Bradshaw & Company, LLC
Phone: 843-795-1909
Fax: 843-795-2349
Email: eb@Bradshaw-Company.com

(b) Law To Govern. This Agreement shall be governed by, construed, interpreted, and enforced under the laws of the state where the Property is located.

(c) No Waiver. The failure of either Party to exercise any power given any Party hereunder or to insist upon strict compliance by either Party of its obligations hereunder, shall not constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

(d) Entire Agreement; Modification. This Agreement contains the entire agreement of the parties to this Agreement with respect to the subject matters discussed herein, and no representations, inducements, promises, or agreements, oral or otherwise between the parties to this Agreement not embodied herein, shall be of any force and effect. No amendment to this Agreement shall be binding on any of the parties to this Agreement unless such amendment is in writing, and such amendment is executed by all of the parties to this Agreement.

(e) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

(f) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one instrument.

(g) Survival of Warranties. All representations, warranties, and agreements contained in this Agreement shall survive Closing to the extent set forth herein.

(h) Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(i) Captions. Captions and headings throughout this Agreement are for convenience and reference only, and they shall not define, limit, modify, or add to the interpretation or meaning of any provisions of this Agreement or in any way affect the scope, intent, or effect of this Agreement.

(j) Force Majeure. Whenever a period of time is provided for in this Agreement for either Party to do or perform any act or thing, said Party shall not be responsible for any delay due to acts of God or other causes beyond the reasonable control of said Party, and in such event the time period shall be extended for the amount of time said Party is so delayed, so long as the Party asserting a delay due to an event of force majeure promptly notifies the other Party of the occurrence of such event; provided, the foregoing shall not apply to the Parties' obligations at Closing.

 PURCHASER  SELLER HAVE READ THIS PAGE

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(k) Assignment. Purchaser shall have the right to assign this Agreement and its rights hereunder, in whole or in part, at any time and from time to time.

(l) Additional Instruments. The parties hereto shall execute and deliver any and all additional documents, certifications, or other instruments and to perform any and all additional actions as shall be necessary to give full effect to and to complete the purpose and intent of this Agreement.

(m) Time is of the Essence. Time is of the essence in this Agreement and each of the covenants and provisions contained herein. This Agreement must be fully executed by Purchaser and Seller by 5:00 P.M. March 20, 2013 or shall become null and void.

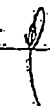
(n) Leases. Seller will not enter into any new leases or modify the terms of any existing lease without the prior written consent of Purchaser. Seller warrants that there is no tenant improvement allowances owed and that there are no future commissions owed on any leases.

(o) Authorization. The persons executing this Agreement on behalf of Seller and Purchaser warrant and represent that each of them is duly authorized to do so and that this Agreement constitutes the valid and binding obligations of Seller and Purchaser, respectively, enforceable against Seller and Purchaser in accordance with its terms.

(p) Non-Disclosure. Purchaser and Seller agree not to disclose, directly or indirectly, the terms of this Agreement to any person, firm, or entity other than their respective attorneys, lenders, accountants, contractors, and representatives, the title company, or other third parties who are required to be informed thereof in connection with their approval of the proposed transactions or the representation of the Parties in connection with this transaction.

(q) Like-Kind Exchange. Either, or both parties may structure the sale and purchase of this Property so as to qualify for like-kind exchange treatment pursuant to Section 1031 of the Internal Revenue Code. Accordingly, prior to Closing, either party may assign this Agreement to a qualified exchange intermediary or other third party and take such other action as necessary to facilitate the exchange and shall give written notice of such assignment identifying the assignee to the other party and the other party shall cooperate and execute such documents as may be requested by the exchanging party, but at no cost to the cooperating party.

[signature page to follow]

 PURCHASER [] SELLER HAVE READ THIS PAGE

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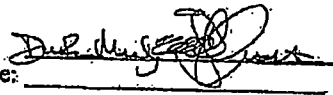
Buck000519

[Signature page to Real Estate Sales Agreement]

IN TESTIMONY WHEREOF, the parties listed below each have signed this Agreement in their respective names, by their duly authorized officers, members, or managers, as the case may be, as of the Effective Date.

SELLER:

ROA, LLC

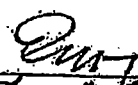
By: 

Name: _____

Title: _____

PURCHASER:

Buck Investments, LC

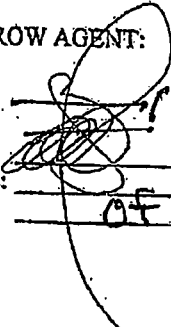
By: 

Name: Gary A. Smith Jr

Title: Manager - member

ESCROW AGENT:

McNair Law Firm, PA.

By: 

Name: J. Sidney Boney Jr

Title: of Counsel

☐ PURCHASER ☐ SELLER HAVE READ THIS PAGE

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EXHIBIT "A"

LEGAL DESCRIPTION

ALL that certain piece, parcel, lot, or tract of land, with the buildings and improvements located thereon, or to be built thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated, in the current numbering system for the City of Charleston, as NO. 438 KING STREET, CITY OF CHARLESTON, as shown on a plat thereof made by Forsberg Engineering and Surveying, Inc., dated May 14, 2007, as revised, and duly recorded in the Office of the RMC for Charleston County, SC, in Plat Book EK at Page 720; SAID property having such size, shape, dimensions, buttings and boundings as will, by reference to said plat, more fully and at large appear.

SUBJECT to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina.

THIS being the same property as conveyed to ROA, LLC, by Deed of 438 King Street, LLC, dated April 17, 2007 and duly recorded in the Office of the RMC for Charleston County, SC, in Book U622 at Page 719; and by Quitclaim Deed of Berry Blue Development, LLC, dated February 06, 2008 and duly recorded in the Office of the RMC for Charleston County, SC, in Book R650 at Page 347.

TMS No.: 4601602066

 PURCHASER  SELLER HAVE READ THIS PAGE

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Buck000521

Exhibit B

Estoppel Certificate

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ESTOPPEL LETTER

Buck Investments, Limited Company
78 Ashley Pointe Drive Suite 300
Charleston SC 29407

HEREBY CERTIFIES THAT:

Tenant

1. _____, the tenant, (the "Tenant") is in possession of premises located at the _____ floor of _____, Charleston, South Carolina (the "Premises").
2. The Tenant holds the Premises under a written Lease between Tenant and _____, South Carolina limited liability company as landlord (the "Landlord") dated _____ as amended, (the "Lease").
3. Attached hereto is a true and correct copy of this Lease. This Lease represents the entire agreement between the Tenant and the Landlord, and there exist no oral agreements or understandings, express or implied, between the Tenant and the Landlord, its agents or employees.
4. As of the date of this Certificate, the Tenant is not in default in the performance of such Lease nor has it committed any breach thereof.
5. So far, as is known to the Tenant, the Landlord under such Lease is not, as of the date of this Certificate, in default in the performance of such Lease nor has it committed any breach thereof.
6. No rent has been paid by the Tenant in advance under such Lease except the rent for the current month.
7. The Tenant has, as of the date of this Certificate, no defenses or offsets the Tenant could allege in any action brought against the Tenant for rent accruing under such Lease.
8. The Tenant is making this Certificate with the understanding that you are purchasing the leased Premises.
9. The Landlord has a Security Deposit of \$ _____ (\$ _____) Dollars.
10. The current Monthly Base Rent is \$ _____ (\$ _____) Dollars.
11. The Additional Rent and other charges currently being paid monthly is \$ _____.

The undersigned declares that the foregoing is true and correct, and that it has the authority to execute this Certificate.

Executed this _____ day of _____, 2013

By: _____

Its: _____

 PURCHASER  SELLER HAVE READ THIS PAGE

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SALES AGREEMENT ADDENDUM

This SALES AGREEMENT ADDENDUM is made and entered into on this ____ day of April, 2013 by and between ROA, LLC, (hereinafter referred to as the "Seller") and Buck Investments, LC (hereinafter referred to as the "Purchaser").

THIS SALES AGREEMENT ADDENDUM shall become part of the Contract between the Seller and the Purchaser dated March 20, 2013 for TMS # 460-16-02-066, further identified as 438 King Street, Charleston, SC, upon execution by both parties.

WHEREAS both the Seller and the Purchaser desire to amend the Sales Agreement;

NOW, THEREFORE, for and in consideration of the foregoing promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Contract as follows:

- 1). The Closing scheduled for Wednesday, April 03, 2013 has been extended to Friday April 5, 2013, at 10:00 AM.
- 2). Time is of the essence.
- 3). The Seller and the Purchaser expressly agree and acknowledge that except as modified in this Sales Agreement Addendum, the Contract, including all terms and conditions, shall remain the same and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals on the day and year first above written.

WITNESSES:

SELLER:

ROA, LLC

By: _____

As to Landlord

Its: _____

Dated: _____

PURCHASER:

Buck Investments, LC

By: _____

As to Tenant

Its: _____

Dated: _____

Buck000523

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

4140 Parklake Avenue / GlenLake One / Second Floor / Raleigh, NC 27612

Tel: 919.877.3800 Fax: 919.877.3799

www.nelsonmullins.com

Terri L. Gardner

Tel: 919.329.3882

terri.gardner@nelsonmullins.com

June 28, 2012

VIA FEDERAL EXPRESS

J. Scott Hale, Esquire

Boydoh & Hale

125 South Elm Street, Suite 400

Greensboro, NC 27401

Re: PNC Bank, National Association and Deborah Rice-Marko, et. al.

Dear Mr. Hale:

On July 15, 2012, Deborah Rice-Marko, GW Dorchester, LLC, Liberty Cottages, LLC, ROA, LLC, Royal Beach Properties, LLC, The Brothers of SC, LLC, The Brothers of NC, LLC and USS Clarksville, LLC (collectively the "Borrowers"), and Deborah Rice-Marko, Liberty Cottages Land, LLC, John E. Marko, Evan R. Marko, and the Estate of Evelyn D. Rice (collectively, the "Guarantors") executed a Forbearance Agreement and related loan documents that are now held by PNC Bank, National Association, as successor to RBC Bank (USA).

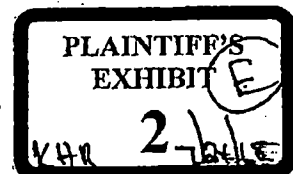
Section 2.1 of the Forbearance Agreement provides:

Upon strict satisfaction of the conditions specified in Article 5 hereof, the Bank shall forbear from exercising its rights and remedies under the Loan Documents and under applicable law as a result of the Existing Defaults to and including July 15, 2013 (the "Forbearance Period"); and shall not, during the Forbearance Period, because of the Existing Defaults:

- 2.1.1 accelerate any of the Loans or demand accelerated payment of the same;
- 2.1.2 require the payment of interest at the Default Rate; or
- 2.1.3 exercise any other remedies under the Loan Documents.

~#4816-1581-2880 v.4 - 17104/01517~

With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia



DRM 000662

Mr. Scott Hale
June 28, 2012
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Section 5.7 provides as follows:

Financial Information. The Obligors shall have delivered to the Bank such personal financial statements; periodic or annual financial statements, and other financial information as the Bank shall request.

Furthermore, Section 4.8. **Financial Reporting** states that within six (6) months from the previous statement date on file with Bank, a detailed financial statement must be provided by Deborah Rice Marko, John Marko and Evan Marko containing a balance sheet at the end of that period (including all contingent liabilities) and a statement of income for that period, in a form approved by the Bank. Also, these individuals are required to provide their federal tax returns within fifteen (15) days of providing the balance sheets and income statements.

Recently, Mr. Stephen Wursta of PNC Bank, National Association requested the following information from Ms. Rice-Marko and provided her forms satisfactory to PNC Bank, National Association:

was this a written request? only verbal request for financials

GW Dorchester LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Current rent roll
- Evidence of insurances
- Evidence of paid real estate taxes

Liberty Cottages, LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Evidence of insurances
- Evidence of paid real estate taxes

ROA, LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Current rent roll
- Evidence of insurances
- Evidence of paid real estate taxes

Mr. Scott Hale
June 28, 2012
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Royal Beach Properties, LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Evidence of insurances
- Evidence of paid real estate taxes

The Brothers of SC, LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Current rent roll
- Evidence of insurances
- Evidence of paid real estate taxes

USS Clarksville, LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Evidence of insurances
- Evidence of paid real estate taxes

Deborah Rice-Marko

- Current, signed, single name Personal Financial Statement
- Evidence of liquidity as reported on PFS
- Identification of contingent liabilities
- Global cash flow
- 2010 Federal Tax Return
- 2011 Federal Tax Return, when available

John E. Marko, Jr.

- Current, signed, single name Personal Financial Statement
- Evidence of liquidity as reported on PFS
- Identification of contingent liabilities
- Global cash flow
- 2010 Federal Tax Return
- 2011 Federal Tax Return, when available

Mr. Scott Hale
June 28, 2012
Page 4

Evan R. Marko

- Current, signed, single name Personal Financial Statement
- Evidence of liquidity as reported on PFS
- Identification of contingent liabilities
- Global cash flow
- 2010 Federal Tax Return
- 2011 Federal Tax Return, when available

Estate of Evelyn D. Rice

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement

Liberty Cottages Land, LLC

- 2010 Federal Tax Return
- 12/31/2011 Internal Financial Statement
- YTD 2012 Internal Financial Statement
- Evidence of insurances
- Evidence of paid real estate taxes

Mr. Wursta must receive this information no later than July 20, 2012, and has asked me to emphasize that failure by your clients to provide this information is an event of default under the Forbearance Agreement. I have enclosed a copy of the Forbearance Agreement for your convenience.

Please contact me if you have any questions.

Regards,

Terri L. Gardner
Terri L. Gardner *by fax*

Enclosure

cc: Stephen Wursta, Jr., Senior Vice President
Cyd B. Wolf, Senior Counsel

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1110 Parklake Avenue / (GreenLake One) Second Floor / Raleigh, NC 27612
Tel: 919.877.3800 Fax: 919.877.3799
www.nelsonmullins.com

Terril L. Gardner
Tel: 919.329.3862
terri.gardner@nelsonmullins.com

November 26, 2012

VIA FEDERAL EXPRESS AND US MAIL

Deborah Rice-Marko
32 South Battery
Charleston, SC 29401

GW Dorchester, LLC
32 South Battery
Charleston, SC 29401

Liberty Cottages, LLC
32 South Battery
Charleston, SC 29401

ROA, LLC
32 South Battery
Charleston, SC 29401

Royal Beach Properties, LLC
32 South Battery
Charleston, SC 29401

The Brothers of SC, LLC
32 South Battery
Charleston, SC 29401

USS Clarksville, LLC
32 South Battery
Charleston, SC 29401

(all of the above hereafter, the "Borrowers")

PLAINTIFF'S
EXHIBIT **E**

11/26/12 3 7/2/12

DRM-000656

Deborah Rice-Mariko
November 26, 2012
Page 2

Deborah Rice-Mariko
32 South Battery
Charleston, SC 29401

Liberty Cottages Land, LLC
32 South Battery
Charleston, SC 29401

John E. Marko, Jr.
32 South Battery
Charleston, SC 29401

Erin R. Marko
32 South Battery
Charleston, SC 29401

(all of the above hereafter the "Guarantors")

RE: Forbearance Agreement dated July 15, 2011 and Amended and Restated
Promissory Notes dated July 15, 2011 from Borrowers to PNC Bank, N.A.
successor to RBC Bank (USA) (the "Bank").

Dear Borrowers and Guarantors:

This Firm has been retained by the Bank regarding the following loans:

(1) That loan in the original principal amount of \$1,595,963.91 (the "DRM Loan")
to Deborah Rice-Mariko, evidenced by the Amended and Restated Promissory Note,
dated July 15, 2011 ("Note 1"). The DRM Loan was evidenced and/or secured by certain
other documents and instruments executed in connection therewith; and

(2) That loan in the original principal amount of \$2,327,500 (the "Dorchester
Loan") to GW Dorchester, LLC, evidenced by an Amended and Restated Promissory
Note, dated July 15, 2011 ("Note 2"). The GW Dorchester Loan was evidenced and/or
secured by certain other documents and instruments executed in connection therewith; and

(3) That loan in the original principal amount of \$430,324.41 (the "Clarksville
Loan") to USS Clarksville, LLC evidenced by an Amended and Restated Promissory Note
dated July 15, 2011 ("Note 3"). The Clarksville Loan was evidenced and/or secured by
certain other documents and instruments executed in connection therewith; and

DRM 000657

Deborah Rice-Marko
November 26, 2012
Page 3

(4) That loan in the original principal amount of \$31,271,220.00 (the "Liberty Loan") to Liberty Cottages, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 4"). The Liberty Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and.

(5) That loan in the original principal amount of \$31,294,197.25 (the "ROA Loan") to ROA, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 5"). The ROA Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and.

(6) That loan in the original principal amount of \$3,396,459.83 (the "ROA Loan #2") to ROA, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 6"). The ROA Loan #2 was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and.

(7) That loan in the original principal amount of \$4,900,000 (the "Brothers Loan") to Brothers of SC, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 7"). The Brothers Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and.

(8) That loan in the original principal amount of \$1,087,495.66 (the "Brothers Loan #2") to Brothers of SC, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 8"). The Brothers Loan #2 was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and.

(9) That loan in the original principal amount of \$3,262,500 (the "Royal Loan") to Royal Beach Properties, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 9"). The Royal Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith.

All of the abovementioned Loans and Notes accompanied a Forbearance Agreement dated July 15, 2011. The Forbearance Agreement contained the following provisions:

Section 4.4 Payment of Liabilities. All expenses and other liabilities of the Borrowers shall remain current, and the Borrowers shall deliver such accounts payable aging reports and other financial information as the Bank may request related thereto.

Section 4.5 Payment of Taxes. Each Obligor shall pay, discharge and perform as the same shall become due and payable or required to be performed all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets and all lawful claims which, if unpaid, would by law become a lien upon its property.

DRM 000658

Deborah Rice-Marino
November 26, 2012
Page 4

Section 4.8 Financial Reporting. Within six (6) months from the previous statement date on file with Bank, a detailed financial statement of each of DRM, JEM and ERM containing a balance sheet at the end of that period (including all contingent liabilities) and a statement of income for that period, all in such form as approved by Bank; and within fifteen (15) days after the filing thereof, personal federal tax returns of each of DRM, JEM and ERM.

By letter to Scott Hale, Esq. dated June 28, 2012, the Bank requested information that fell under the above-mentioned terms of the Forbearance Agreement, and the information has not been provided to the Bank. Furthermore the Borrowers have not provided reports to the Bank on their efforts to sell non-income producing collateral as required by Section 4.3.

Furthermore, the Forbearance Agreement provided as follows:

Section 4.10 Post-Closing Obligations. The Obligors (defined as the Borrowers and Guarantors) shall complete or cause the completion of the following items on or prior to the respective dates set forth below:

4.10.1. On or prior to July 8, 2011, deliver to the Bank such documents and instruments as the Bank may reasonably require in order to evidence its claim against the Estate for the obligations arising pursuant to the Estate's Guaranty Agreement;

4.10.2. On or prior to July 29, 2011, deliver to the Bank fully executed, valid and binding subordination, non-disturbance and attornment agreements executed by Goodwill and BB&T, respectively, as tenants, and the other parties thereto, in form and substance reasonably acceptable to Bank;

4.10.3. On or prior to July 29, 2011, deliver to the Bank such evidence of property and liability insurance as the Bank shall require, in form and substance reasonably acceptable to the Bank, together with such endorsements as the Bank may reasonably require with respect to its status as a mortgagee, loss payee, and additional insured; and

4.10.4. On or prior to July 29, 2011, deliver to the Bank fully executed estoppel certificates from Goodwill and BB&T, respectively, as tenants, in form and substance reasonably acceptable to Bank, including without limitation with respect to the Bank's ability to verify that revenue-producing Collateral generates in excess of \$51,000 per month in net rental income (prior to any reduction for debt service and property taxes).

The documents mentioned above were not delivered to the Lender as required by the Forbearance Agreement.

DRM 000659

Deborah Rice-Marko
November 26, 2012
Page 5

Section 2.2 of the Forbearance Agreement provides that upon the occurrence of any Default or upon the breach or violation of any term of the Forbearance Agreement, the Bank may terminate the Forbearance Period, and all "Obligations" shall at the option of the Bank be immediately due and payable in full, and the Bank may exercise any one or more, or all, of its rights and remedies against any or all Obligor's under the Loan Documents and at law.

The Bank hereby terminates the Forbearance Period, and the following amounts were due as of November 13, 2012:

	Principal	Interest	Late Charges
DRM Loan	\$1,548,703.91	\$183,936.49	\$ 917.68
Dorchester Loan	\$2,185,420.00	\$230,273.15	\$ 1,038.76
Liberty Loan	\$1,241,540.00	\$146,294.42	
Clarksville Loan	\$ 368,804.41	\$ 46,762.52	\$ 247.42
ROA Loan #2	\$3,304,619.83	\$275,648.70	\$ 2,959.37
ROA Loan #1	\$1,259,637.25	\$148,635.53	\$ 744.16
Royal Loan	\$3,175,460.00	\$385,798.93	\$ 1,875.91
Brothers Loan #1	\$ 261,720.43	\$ 13,598.38	\$10,000.00
Brothers Loan #2	\$4,793,790.00	\$475,755.31	\$ 1,634.00
	\$18,139,695.83	\$1,906,703.30	\$19,417.30

From the date of this letter, interest will accrue on the unpaid principal of the Notes at the Default Rate as provided under the Notes. The "Default Rate" is seven percent (7.0%) plus the LIBOR Base Rate.

If the balances due on the Notes are not paid within ten (10) days of the date of this letter, the Bank has requested that we proceed with collection efforts, to include pursuit of any collateral securing the Notes. Furthermore, the Notes provides that if payment is not made when due, the Borrowers agree to pay all of the Bank's costs and expenses of collection, including reasonable attorneys' fees which are stipulated to be 15% of the balance due. Therefore, we encourage the Borrowers and Guarantors to take care of this matter immediately. Please feel free to contact this office for updated payoff balances and to arrange full payment of the Notes.

Nothing contained in this letter shall be deemed to waive or modify any rights or remedies of the Bank available at law or in equity, or as provided in the Loan Documents.

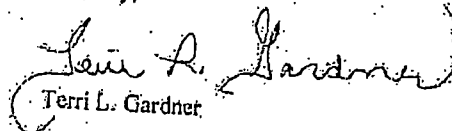
DRM 000660

Deborah Rice-Mariko
November 26, 2012
Page 6

Be advised that any partial payments on the Notes after the date of this letter may be retained by the Bank and applied to the balance of the Notes as determined by the Bank in its sole discretion, but will not reinstate the Notes.

Thank you for your prompt attention to this matter.

Sincerely,


Terri L. Gardner

cc: Stephen Würsta, Jr., Senior Vice-President
Cyd B. Wolf, Senior Counsel

DRM 000661

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

Frank B. B. Knowlton
Tel: 803.255.9588
frank.knowlton@nelsonmullins.com

February 15, 2013

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED and U. S. MAIL - FIRST CLASS

Deborah Rice-Marko
32 South Battery
Charleston, SC 29401

John E. Marko, Jr.
32 South Battery
Charleston, SC 29401

Evan R. Marko
32 South Battery
Charleston, SC 29401

GW Dorchester, LLC
32 South Battery
Charleston, SC 29401

Liberty Cottages, LLC
32 South Battery
Charleston, SC 29401

Liberty Cottages Land, LLC
32 South Battery
Charleston, SC 29401

ROA, LLC
32 South Battery
Charleston, SC 29401

Royal Beach Properties, LLC
32 South Battery
Charleston, SC 29401



With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia

DRM 000652

February 15, 2013

Page 2:

The Brothers of SC, LLC
32 South Battery
Charleston, SC 29401

USS Clarksville, LLC
32 South Battery
Charleston, SC 29401

RE: Forbearance Agreement dated July 15, 2011, and Amended and Restated Promissory Notes dated July 15, 2011, from Borrowers to PNC Bank, N.A. successor to RBC Bank (USA) (the "Bank")
Our File No.: 17104/01517

Borrower:

This firm represents PNC Bank, N.A., successor to RBC Bank (USA) (the "Bank") (hereinafter referred to as "Lender") in connection with the above-referenced matter.

Reference is made to that prior Notice of Default to you dated November 26, 2012, a copy of which is attached hereto ("First Default Notice").

In addition to the defaults outlined in the First Default Notice, you are hereby notified that the Borrower is in default of its obligations under the Loan Documents for failure to make payments required thereunder when due. As a result of the foregoing defaults, effective November 26, 2012, Lender had increased the Interest Rate charged on the outstanding balance under the Note to the Default Rate.

In addition, as a result of the foregoing defaults, Lender has now accelerated the outstanding balances under the Note, and Lender hereby makes demand upon Borrower and the Guarantor for immediate payment of the entire balances owed under the Notes. If Lender does not receive full payment of the entire balances owed under the Notes within ten (10) days of the date of this letter, Lender shall have no alternative but to pursue its rights upon default, including, but not limited to, pursuing litigation to collect on the Notes, foreclosure of the Mortgages and enforcement of the Guarantys.

The entire balance owed under the Note as of February 12, 2013, is as follows:

<u>Dorchester Loan # 605443827</u>	
Principal:	\$2,185,540.00
Interest:	267,671.64
Late Charges	1,620.76
TOTAL:	\$2,450,832.40

DRM 000653

February 15, 2013

Page 3

Liberty Loan # 605445205

Principal:	\$1,239,420.00
Interest:	167,542.00
Late Charges:	212.00
TOTAL:	\$1,407,174.00

ROA Loan # 605420275

Principal:	\$1,257,477.25
Interest:	170,192.67
Late Charges:	960.16
TOTAL:	\$1,428,630.08

ROA Loan # 605420281

Principal:	\$3,298,879.83
Interest:	332,201.94
Late Charges:	3,820.37
TOTAL:	\$3,634,902.14

Royal Loan # 605457764

Principal:	\$3,170,020.00
Interest:	440,143.10
Late Charges:	2,419.91
TOTAL:	\$3,612,583.01

Brothers Loan #1 605840156

Principal:	\$259,905.43
Interest:	18,053.98
Late Charges:	1,974.93
TOTAL:	\$279,934.34

Brothers Loan #2 605395242

Principal:	\$4,785,620.00
Interest:	557,795.97
Late Charges:	2,859.50
TOTAL:	\$5,346,275.47

USS Clarksville Loan # 605840074

Principal:	\$368,084.41
Interest:	53,072.65
Late Charges:	2,818.29
TOTAL:	\$423,975.35

DRM 000654

February 15, 2013

Page 4

Deborah Rice-Marko #605840174

Principal:	\$1,545,748.91
Interest:	210,435.51
Late Charges	<u>11,085.05</u>
TOTAL:	\$1,767,269.47

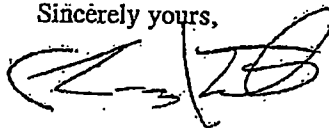
The above does not include interest that will continue to accrue after February 12, 2013, at the Default Rate. The above also does not include any other fees or charges for which the Borrowers and the Guarantors are responsible under the terms of the Loan Documents, or which may later accrue under the terms of the Loan Documents.

If you make any partial payments toward the outstanding obligations under the Note in the future, those partial payments will be applied to the total, accelerated balance pursuant to the terms of the Loan Documents, and Lender's acceptance and application of any partial payments toward the total accelerated balance will not constitute a waiver of the foregoing defaults under the terms of the Loan Documents or of Lender's rights and remedies arising from the foregoing defaults.

Nothing contained in this letter or in previous or subsequent discussions or communications between Borrowers, the Guarantors and Lender, or their respective representatives or counsel shall serve or be deemed to waive or modify any provision of the Loan Documents or of any other document executed by Borrowers or the Guarantors in connection with or otherwise related to the Note, nor waive, modify or postpone any right or remedy of Lender thereunder, and each and every one of said rights and remedies are expressly reserved by Lender. No delay by Lender of exercising any such rights or remedies shall be deemed to operate as a waiver of the same.

This notice is sent to you as a courtesy and is not an admission that any written notice is otherwise due you, nor is it an election of remedies or a waiver of Lender's right to exercise any rights or remedies that may be available at law or in equity.

Sincerely yours,



Frank B. B. Knowlton

FBBK:jak

DRM 000655

VENDOR

BUCK INVESTMENT LTD PARTNERSHIP - GENERAL ACCOUNT
CHARLESTON, SC 29407

6498

OUR REF. NO.	YOUR INVOICE NO.	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
	032213	03/22/13	50,000.00	50,000.00		
CHECK TOTAL						50,000.00

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

Bank of America 6448/539 6498

BUCK INVESTMENT LTD PARTNERSHIP
GENERAL ACCOUNT
78 ASHLEY POINT DRIVE SUITE 300
CHARLESTON, SC 29407

CHECK NO: 006498 CHECK DATE: 03/22/13 VENDOR NO: MCNAIRE

CHECK AMOUNT: ****50,000.00*

FIFTY THOUSAND AND XX / 100

PAY TO THE ORDER OF McNair Law Firm, P.A.
ATTN: Accounts Receivable
P.O. Box 11390
Columbia, SC 29211

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈006498⑈ ⑆053904483⑆ 000729365067⑈

PLAINTIFF'S
EXHIBIT

KAY

7-12-18

Subj: RE: 438 King Street
Date: 3/25/2013 12:11:37 P.M. Eastern Daylight Time
From: jim@bradshaw-company.com
To: christmas4@aol.com
CC: eb@bradshaw-company.com

Good morning, Debbie; following up to see if you've had a chance to gather the information/answer to the email below.

Thanks, Jim

-----Original Message-----

From: James Olson
Sent: Friday, March 22, 2013 3:36 PM
To: Deborah Rice-Marko (christmas4@aol.com)
Cc: Eric Bradshaw
Subject: 438 King Street

Debbie, please see Sid's comments below; can you please provide the Tax ID No. for ROA, LLC, and let me know if this building is, in fact, a majority of the assets of that entity. Also, could I please get copies of all leases and rent rolls/security deposit receipts?

Thanks, Jim

-----Original Message-----

From: Eric Bradshaw
Sent: Friday, March 22, 2013 3:29 PM
To: James Olson
Subject: FW: Scan from a Xerox WorkCentre Deposit on 438 King Street

-----Original Message-----

From: Boone, Sid [mailto:SBoone@mcnair.net]
Sent: Friday, March 22, 2013 3:21 PM
To: Eric Bradshaw
Cc: Tapley, Rhonda; Frank Jackson
Subject: FW: Scan from a Xerox WorkCentre Deposit on 438 King Street

Eric, we have a lot to put together before closing On April 3, 2013 at 300 pm.
Will we need a tax compliance or is this less than a majority of assets of ROA? Will need tax id numbers, and loan release amount which we agreed that you would obtain for me. Also need rent rolls, rents for proration and what rents have been received. We will be using QI funds and need to show the consideration paid by J. Franklin Jackson, Jr. as Qualified Intermediary for Buck Investments, Limited Company and then grant to Buck Investments, Limited Company ("Grantee"). We can work through Estoppel letters and other matters.

J. Sidney Boone Jr.
Of Counsel
sboone@mcnair.net

McNair Law Firm, P.A.
Charleston Office | 100 Calhoun Street | Suite 400 | Charleston, SC 29401
843 723 7831 Main | 843 722 3227 Fax
Mailing: Post Office Box 1431 | Charleston, SC 29402
Bio: <http://www.mcnair.net/Professionals/sboone>
Website: <http://www.mcnair.net>

Thursday, May 01, 2014 AOL: Christmas4



-----Original Message-----

From: Boone, Sid
Sent: Friday, March 22, 2013 3:02 PM
To: Eric Bradshaw; christmas4@aol.com; 'Eddie Buck'
Subject: FW: Scan from a Xerox WorkCentre Deposit on 438 King Street

This is to confirm receipt of the deposit in the amount of \$50,000. Closing is set for April 3, 2013 at 3000 pm.

J. Sidney Boone Jr.
Of Counsel
sboone@mcnair.net

McNair Law Firm, P.A.
Charleston Office | 100 Calhoun Street | Suite 400 | Charleston, SC 29401
843 723 7831 Main | 843 722 3227 Fax
Mailing Post Office Box 1431 | Charleston, SC 29402
Bio: <http://www.mcnair.net/Professionals/sboone>
Website: <http://www.mcnair.net>

-----Original Message-----

From: WorkCentre 7335 [mailto:xerox7335@mcnair.net]
Sent: Friday, March 22, 2013 2:45 PM
To: Boone, Sid
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Number of Images: 1
Attachment File Type: PDF

Device Name: WorkCentre 7335
Device Location:

For more information on Xerox products and solutions, please visit <http://www.xerox.com/>

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Thursday, May 01, 2014 AOL: Christmas4



Boone, Sid

From: Eric Bradshaw [eb@bradshaw-company.com]
Sent: Tuesday, April 02, 2013 11:51 AM
To: Boone, Sid; James Olson
Cc: Christmas4@aol.com
Subject: RE: 438 King Street

Sid:

Just received an email from Debbie moments ago that she has circulated the estoppels both with the out-of-state tenants as well as the local tenants but doesn't yet have them in hand. Most likely going to need to extend the closing deadline a bit. When's Eddie's actual 1031 deadline date? Really very sorry for the inconvenience, but pushing as hard as we can on our end. Thanks Sid.

-e

Eric J. Bradshaw
LL.M. in Taxation

Bradshaw & Company, LLC
147 Wappoo Creek Drive - Suite 605
Charleston, South Carolina 29412

Office: 843.795-1909; Facsimile: 843.795.2349
Cellular: 843.324.1061
www.Bradshaw-Company.com

UNLESS EXPRESSLY STATED OTHERWISE ABOVE, (1) NOTHING CONTAINED IN THIS MESSAGE WAS INTENDED OR WRITTEN TO BE USED, CAN BE USED BY ANY TAXPAYER OR MAY BE RELIED UPON OR USED BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, (2) ANY WRITTEN STATEMENT CONTAINED IN THIS MESSAGE RELATING TO ANY FEDERAL TAX TRANSACTION(S) OR MATTER(S) MAY NOT BE USED BY ANY PERSON TO SUPPORT THE PROMOTION OR MARKETING OF OR TO RECOMMEND ANY FEDERAL TAX TRANSACTION(S) OR MATTER(S) ADDRESSED IN THIS MESSAGE, AND (3) ANY TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR WITH RESPECT TO ANY FEDERAL TAX TRANSACTION OR MATTER CONTAINED IN THIS MESSAGE.

NO ONE, WITHOUT OUR EXPRESS PRIOR WRITTEN PERMISSION, MAY USE ANY PART OF THIS EMAIL IN PROMOTING, MARKETING OR RECOMMENDING AN ARRANGEMENT RELATING TO ANY FEDERAL TAX MATTER TO ONE OR MORE TAXPAYERS.

THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE RECIPIENT(S) NAMED ABOVE. THIS MESSAGE AND ITS ATTACHMENTS MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND, AS SUCH, IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY E-MAIL, AND DELETE THE ORIGINAL MESSAGE.

BEFORE PRINTING, PLEASE THINK ABOUT THE ENVIRONMENT.

From: Boone, Sid [mailto:SBoone@mcnair.net]
Sent: Tuesday, April 02, 2013 11:19 AM
To: James Olson
Cc: Eric Bradshaw; 'Eddie Buck'; Tapley, Rhonda
Subject: RE: 438 King Street

What is status of Seller documents, estoppels, etc for closing tomorrow?



MENAIR
ATTORNEYS

April 4, 2013

J. Sidney Boone, Jr.

sboone@menair.net
T 843.723.7631
F 843.722.3227

Via FedEx

ROA, LLC
Attn: Eric Bradshaw
Bradshaw & Company, LLC
147 Wappoo Creek Drive
Charleston, SC 29412

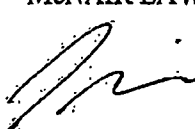
Re: Real Estate Sales Agreement dated March 20, 2013 Between ROA, LLC
as Seller and Buck Investments, LC as Purchaser

Dear Eric:

Pursuant to the referenced contract, closing was to occur on or by April 3, 2013, as set forth in Paragraph 10. (a). This is to advise that Seller is in default and Purchaser reserves all rights as provided in the Agreement if Seller fails to cure the default within thirty (30) days.

Sincerely,

McNAIR LAW FIRM, P.A.


J. Sidney Boone, Jr.

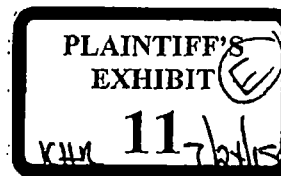
JSBJR:ap

cc: Edgar A. Buck, Jr.

McNair Law Firm, P.A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

menair.net



CHARLESTON 344943v1

Subj: RE: Closing
Date: 4/5/2013 10:35:30 A.M. Eastern Daylight Time
From: ebuck@jupiterhd.com
To: Christmas4@aol.com
Debbie:

Is there something I can help with? The deadline for my 1031 is Tuesday April 9th. We are ready to close and have been and need to close ASAP.
Eddie

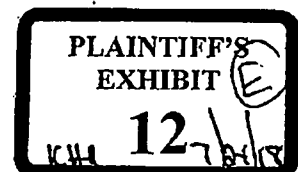
From: Christmas4@aol.com [mailto:Christmas4@aol.com]
Sent: Friday, April 05, 2013 10:31 AM
To: Eddie Buck
Subject: Re: Closing

eddie
i apologize for the inconvenience and i am working very hard at getting this to close:
i will be in touch later this afternoon
obviously i need an extension
what is the latest date you can close with your 1031 deadline
could we have an extension to the 3rd of may
thank you
debbie

In a message dated 4/5/2013 9:04:40 A.M. Eastern Daylight Time, ebuck@jupiterhd.com writes:

Debbie:
Please help me understand why the closing has not occurred as per the contract and you are non responsive.
Eddie.

Tuesday, April 15, 2014 AOL: Christmas4



Subj: RE: Closing
Date: 4/8/2013 5:51:26 P.M. Eastern Daylight Time
From: ebuck@jupiterhd.com
To: Christmas4@aol.com
Anything I can help with?

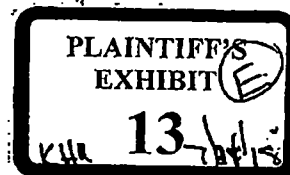
From: Christmas4@aol.com [mailto:Christmas4@aol.com]
Sent: Monday, April 08, 2013 5:50 PM
To: Eddie Buck
Subject: Re: Closing

I am sorry but no

In a message dated 4/8/2013 5:49:38 P.M. Eastern Daylight Time, ebuck@jupiterhd.com writes:

Debbie:
Any chance you will be prepared to close tomorrow?
Eddie

Tuesday, April 15, 2014 AOL: Christmas4



Subj: Re: Closing
Date: 4/11/2013
To: ebuck@jupiterhd.com

I will and again I do apologize for this extended closing
debbie

In a message dated 4/11/2013 3:59:51 P.M. Eastern Daylight Time, ebuck@jupiterhd.com writes:

Please keep me updated.

Eddie

From: Christmas4@aol.com [mailto:Christmas4@aol.com]
Sent: Thursday, April 11, 2013 3:58 PM
To: Eddie Buck
Subject: Re: Closing

In about 2 weeks but I will keep you updated

debbie

In a message dated 4/11/2013 10:15:21 A.M. Eastern Daylight Time, ebuck@jupiterhd.com writes:

Debbie:

When do you hope to be prepared to close?

Eddie

PLAINTIFF'S
EXHIBIT

14-12-115

Subj: Re: 2nd floor lease
Date: 4/24/2013
To: ebuck@jupiterhd.com

i hope to close by may 6th

In a message dated 4/24/2013 5:58:48 P.M. Eastern Daylight Time, ebuck@jupiterhd.com writes:

When does it look like that you will be ready to close?

I want to handle the lease renewal.

Eddie

From: Christmas4@aol.com [mailto:Christmas4@aol.com]
Sent: Wednesday, April 24, 2013 5:53 PM
To: Eddie Buck
Subject: 2nd floor lease

Eddie

I continue to work to get this transaction closed by the end of the 30 days.

I was contacted by the second floor tenant and as you recall I sent to you their offer for lease renewal.

You were not in agreement with their offer.

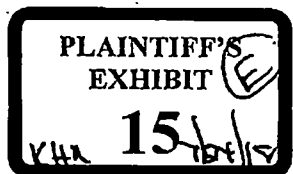
Below is a copy of their email in red:

As you know, our lease on the 2nd floor of 438 King expires in a little over 60 days. We submitted a renewal proposal almost 2 months ago. Is there any guidance you can give us at this point? If we are going to have to relocate, the process is likely to take 3-4 months at a minimum, so we will need to start looking immediately. Any feedback you can provide at this time would be greatly appreciated.

Eddie

I have told NO ONE that we have an agreement and as you recall, confidentiality was a part

Tuesday, April 15, 2014 AOL: Christmas4



of our agreement

I don't want to let this tenant know about our agreement but i need to respond

do you have any suggestions

thank you

debbie

MCNAIR
ATTORNEYS

May 14, 2013

J. Sidney Boone, Jr.

sboone@mcnair.net

T (843) 723-7831

F (843) 722-3227

Via E-mail (eb@bradshaw-company.com)

Eric Bradshaw
Bradshaw & Company, LLC
147 Wappoo Creek Drive
Charleston, SC 29412

Re: Real Estate Sale Agreement dated March 20, 2013 between ROA, LLC
as Seller and Buck Investments, Limited Company as Purchaser

Dear Eric:

The Seller was in default on April 3, 2013 of the referenced Agreement and had thirty (30) days to cure as provided in Paragraph 12(a). The Purchaser reserves all rights under the Agreement arising out the failure to cure the default.

Sincerely,



J. Sidney Boone, Jr.

JSBJR:hfm

cc: Mr. Edgar A. Buck, Jr. (via E-mail ebuck@jupiterhd.com)

McNair Law Firm, P. A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

**PLAINTIFF'S
EXHIBIT**

16

CHARLESTON 345882v1

From: Eddie Buck [mailto:]
Sent: Monday, July 15, 2013 9:14 AM
To: 'Geoffrey Groat' <geoff@roadstead.com>
Subject: FW: 438 King

fyi

From: Christmas4@aol.com [mailto:Christmas4@aol.com]
Sent: Saturday, July 13, 2013 1:50 PM
To: Eddie Buck
Subject: Re: 438 King

Eddie,
As you know, this matter is in litigation and I am unable to respond.
Debbie.

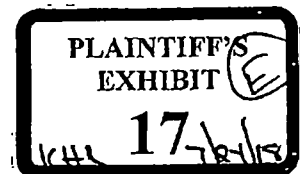
In a message dated 7/10/2013 4:33:49 P.M. Eastern Daylight Time, ebuck@jupiterhd.com writes:

Debbie:

I have not heard from you in several months. Did you forward the contract and discuss with your Lender? We would like to move forward with closing.

Thanks,

Eddie.



Buck000112

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PNC Bank, N.A., successor to RBC
Bank (USA),

Plaintiffs,

vs.

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendants.

IN THE COURT OF COMMON PLEAS

IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-2624

AFFIDAVIT OF DEBORAH RICE-
MARKO

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAY 20 AM 11:45

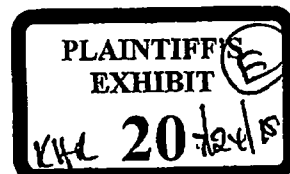
FILED

Personally appeared before me Deborah Rice-Marko, who being first duly sworn,
deposes, and says as follows:

1. I am Deborah Rice-Marko. I am over the age of 21 years and I reside in
Charleston County, South Carolina.

2. In 2005 I opened a revolving line of credit with RBC Centura Bank in
Charleston, SC. The original limit on the line of credit was \$5,000,000. The promissory
note reflecting this line of credit is attached to the complaint in this action as exhibit Y.

3. In 2007, the amount of this line was increased to \$6.5 million, and was
secured by a pledge of securities, including shares of stock in Wachovia Bank. This
loan was classified as Commercial and Industrial within the bank. These new loan
agreement documents were negotiated and amended so as to specifically exclude certain



loan terms such as cross collateralization and cross default, with any of the borrower's outstanding or future commercial real estate loans. The loan agreement required that the outstanding principal balance not exceed 85% of the value of the pledged account.

4. By the end of 2007, I or entities controlled by me had four commercial real estate loans and the revolving line of credit with RBC Centura. Each of these loans stood alone and had varying maturity dates. No loans were to be crossed collateralized or cross defaulted.

5. By the end of 2007, The Brothers of SC, LLC a LLC owned by my sons, John, Jr. and Evan had two commercial real estate loans unrelated and separate from my loans. At no time was I an owner of The Brothers of SC, LLC nor were my loans in any way related to the loans of The Brothers of SC, LLC.

6. During the second half of 2007, the value of the Wachovia stock began to fluctuate and then to decline. This decline in stock value raised concerns relative to the 85% loan to value requirement of the line of credit loan. In January of 2008 RBC Centura requested a meeting with me to discuss this concern. As a result of that meeting I agreed to draw on a HELOC loan secured by my personal residence to reduce the balance on the line of credit.

7. In March of 2008, I pledged over 23,000 additional shares of Wachovia stock to the RBC line of credit in order to add additional collateral to address the declining value of the Wachovia bank stock. All margin calls were met, and there was no default under the line of credit.

8. In April of 2008 my mother died. I owned two insurance policies on her life and the total amount of \$4 million.

9. In June of 2008, the value of the Wachovia stock again declined causing RBC to issue further margin calls to address the loan to value requirement. The loan documents allowed me either to reduce the outstanding balance of the line of credit or post additional security. In a continued good faith effort to work with the bank to try and address margin calls, which were caused by the unforeseen and unprecedented decline in Wachovia bank stock, I drew on other lines of credit that I or entities that I owned had financed with RBC. These lines of were secured by other properties. These other properties included an office building at 438 King St. in Charleston, an ocean front lot on Royal Beach in Kiawah Island, and my personal residence. RBC was willing to advance additional money under these other loans because at that time the value of the properties securing these loans was far more than the outstanding balances due to RBC.

10. In June 2008 I also met the loan to value margin calls by using a significant portion of the proceeds of my mother's life insurance policies as well as other available funds. As a result of these payments to RBC, the outstanding balance of the line was reduced in June, 2008, from \$5.3 million to \$3.5 million, and then to \$1.8 million in January, 2009.

11. From March to September 2008 the Wachovia stock continued to decline and I met all loan to value margin calls and had no payment defaults.

12. Despite this significant reduction in the amount of the debt represented by the line of credit, and notwithstanding that no other loans that I or anyone in my family had with RBC at this time were in default, in September and October of 2008, RBC stopped discussing improving only the collateral for the line of credit and began to discuss how to leverage the line of credit issues into an overall improvement in the

bank's position with respect to all of my loans. In September of 2008, Michael Baker was told by Stephen Draper (Baker's superior at RBC) that "we need to consider all options to bring our Wachovia exposure to a cross collateralized position with other available collateral to improve our overall collateral position." See email attached hereto as Exhibit 1.

13. On October 3, 2008, RBC emailed me saying that they wanted to restructure all of our loans so that they were all cross collateralized by all of the properties. RBC did not tell me at that time that they also wanted a cross default provision in the restructured loans so that any default on any loan would trigger a default on all loans and give the bank the right to demand immediate payment in full of all outstanding amounts. At this time, the outstanding principal balances of all of RBC loans to me and my family was approximately \$21.7 million. The majority of the income for my entire family was tied up in these properties.

14. In December 2008, I received RBC's loan modification documents which included cross collateralization, cross default provisions for my loans as well as the unrelated loan secured with income producing property of my children's LLC. The restructured loan agreement also required additional quarterly payments of \$100,000 each to be applied to the principal balance of the line of credit. These were additional terms that were not previously discussed and were not agreed upon by me.

15. I was opposed to this arrangement because tying all the loans together would seriously impair our ability to sell or re-finance any individual piece of property, and also because a default as to any one loan would have threatened all of the assets, even if some of the loans were performing as agreed.

16. In January of 2009, Michael Baker of RBC told me that if I did not agree to the bank's demands as written and execute the documents as drafted by the bank with no change, RBC would not renew any of our outstanding loans in the future, as they matured. He said failure to renew our notes would ultimately result in bankruptcy for me and my sons. Baker also warned me that a default on RBC loans would trigger defaults with other lenders. Because the financial crisis had made re-financing real estate loans virtually impossible, and the market to sell commercial properties was almost non-existent, the threat by the bank not to renew left me no choice but to agree to its terms or face bankruptcy for my whole family, including John, Jr., Evan and all related entities.

17. During these discussions with Michael Baker I asked him to transfer my loans to the workout department within RBC so I could discuss the possibility of a business solution to the line of credit loan to value margin call. Baker told me that, he did not think there was an internal workout group within RBC.

18. I told the bank that I could not afford to make the \$100,000 quarterly payments and Baker assured me that the bank would work with me. Baker also told me to agree to the bank's terms or go into foreclosure. Under the circumstances, I did not believe I had any choice but to agree because of the threat to my financial welfare and the financial welfare of my children, and the representation by the bank that no alternative solution was possible.

19. Over the course of 2009, I made three quarterly payments totaling \$300,000 to avoid default. I could not afford to make the last \$100,000 payment, which was due in December 2009, and I asked the bank to work with me. RBC asked me for a

4th mortgage on my house. I could not provide another mortgage on my home because such an additional lien would have triggered a default under the exiting third mortgage.

20. In May 2010, once all of the loans were cross defaulted, my loans were transferred to RBC's Asset Resolution Group for the purposes of a workout. I then learned that the purpose for ARG was to workout troubled loans with the borrower, instead of penalizing the borrower with high interest rates and fees and forced foreclosure, as had been originally expressed to me in 2009 by Michael Baker. This is the very option that we requested a few months earlier that Michael Baker told us did not exist. Bill Harrington became my account manager in ARG. In July 2010, Harrington advised me to make payments only on ROA Note #2 (King Street) and BB&T loan.

21. I made payments as instructed. On November 5, 2010, I sent an email to Harrington asking him to confirm that I am not to make payments to the BB&T and ROA #2 (King Street) loans. A copy of that email is attached hereto as Exhibit 2.

22. In June 2011, PNC bank entered into an agreement to purchase RBC Centura Bank.

23. At about that time, RBC requested that I execute a forbearance agreement for all of the loans. I proposed that I be given three years to sell or re-finance the properties, but RBC was only willing to grant me one year. In the end, we compromised and agreed on two years. As a result of the Forbearance Agreement, all of the loans matured simultaneously and were due and payable in July 2013.

24. Representatives of PNC conducted due diligence on all of our loans in November, 2011. I have now seen an internal PNC document that recites that our loans

were in default as of 12/31/11 for failure to provide financial information. See document attached hereto as Exhibit 3. I was never notified of any such purported default, nor at that time, was any financial information requested by RBC not provided by us. On February 9, 2012, Harrington advised his superior that my loans are "performing as agreed." See email attached hereto as Exhibit 4. This is obviously inconsistent with the PNC document attached as Exhibit 3.

25. In early March, 2012, Harrington attended a meeting with several representatives of PNC to discuss the loans under his management, including mine. Harrington deposition at p. 65, Exhibit 5. On March 19, 2012, Harrington called me on my cell phone to warn me that PNC did not like the forbearance agreement, specifically the interest rates, required reserves, and the length of time. Mr. Harrington told me PNC would be looking for a reason to declare a default. He specifically mentioned the failure to provide financial information as an issue that PNC might seize on to declare a technical default.

26. The acquisition of RBC by PNC was completed in March 2012. When PNC took over, Steven Wursta became my account manager.

27. On June 8, 2012 Wursta called me asking for information on the properties. I provided a great deal of information to him during our telephone conversation. I agreed to get him the remaining information that he wanted promptly.

28. I now understand that in June and July 2012, PNC was making preparations to market and sell our loans to third parties through an auction process.

29. On June 14, 2012, only a few days after my telephone conversation with Wursta, Kenneth Nix called me and asked me questions about each property that I had

just described to Wursta. Nix is with a company called LandSouth of Charleston, LLC, which engages in the purchase and sale of distressed loans and properties. See deposition of Kenneth Nix at pp. 6-7, Exhibit 6. Nobody affiliated with me had provided this information to Nix. Kenneth Nix had proven himself to be adversarial to us in the past when he threatened to purchase our notes to gain ownership of other properties.

30. As a result of this call, from Nix I was very concerned that PNC had released confidential information on my loans and properties to third parties. My attorney Scott Hale wrote to PNC to express my concerns and to demand that PNC honor its obligations of confidentiality. See letter attached hereto as Exhibit 7. On the same day that Hale's letter arrives via email, Wursta asks another PNC employee whether Nix is "the person who inquired about purchasing the note." See email attached hereto as Exhibit 8.

31. In July, 2012 I voluntarily met with Wursta and his supervisor named Elizabeth Paulson in Charleston, for the purpose of showing them the properties at their request. At that meeting, Wursta and Paulson pressed me for financial information. I informed them that I would not provide additional financial information because I believed that the information I had previously provided had been used to my detriment. Wursta threatened me by saying, "We can do this the easy way or the hard way." After which Wursta and Paulson abruptly left the meeting. At no time, did PNC offer to keep the requested information confidential.

32. It is now apparent from internal PNC documents that in July and August, 2012, PNC was gathering information to market and sell the notes and loan documents

to third parties. It is my strong belief that the requests for financial information were not related to the management of the loans in the ordinary course of business, but was instead being requested so that it could be provided to prospective purchasers of the loans. From internal PNC emails produced, Karyn Stiller, from PNC's loan selling division, states that note bidders have requested PFS's on me, John, and Evan.

33. On November 26, 2012 I received a default letter for failure to provide the requested financial information. There was no payment default at that time, and no payment default was mentioned in the letter. The letter accelerated the debt and demanded payment in the amount of \$20,065,815. See letter attached hereto as Exhibit 9.

34. I did not have the ability to pay the debts off without selling or refinance as PNC well understood. It was not possible to sell or re-finance the assets within that short period of time.

35. On February 15, 2013, I received a second default letter for failure to pay the amount previously demanded. This was the only payment default under the forbearance agreement. No prior payment had been missed until after we received the November 26, 2012 default letter for failure to provide financials.

36. The declaration of a default by PNC effectively destroyed any ability we had to sell or re-finance the properties for the full balance that secured the loans. Any prospective purchaser will not deal at arms' length with the owner when the purchaser knows that the property may become available in foreclosure or from the lender through acquisition of the loan at a discount.

37. On February 22, 2013, as a part of its marketing efforts to sell the loans, PNC made certain confidential information available to 13 third party note purchasers including a group in Colorado called Summit Investment Management, LLC. Summit Investment Management signed a confidentiality agreement, a copy of which is attached hereto as **Exhibit 10**.

38. On February 25, 2013, Summit Investment Management forwarded this confidential information to LandSouth of Charleston LLC. The PNC confidentiality agreement specifically states that it does not authorize Summit to share this information with third parties. Although not authorized by the terms of the Summit confidentiality agreement, LandSouth signed a document called "Joinder to Confidentiality Agreement." Summit then provided LandSouth with a web portal through which the recipient may access the information provided by the bank. A copy of a portion of the information provided through the portal is attached hereto as **Exhibit 11**. The tabs across the top of the page include links for "Appraised Value," "Occupancy as of Appraisal Date," "Value as of Date," and "Most recent financial statement," among others. The information under the financial statement tab is shown as "NAV," which I understand to mean "not available." This confidential information would have been sent to these third party note purchasers, including unauthorized recipients such as Kenneth Nix of LandSouth of Charleston, if I had provided PNC with the financial information as requested in June 2012. This confirmed my very fear that our confidential information would be misused to my detriment and to the bank's benefit. I have not been provided full access to the information referenced in the portal, however, so I don't know what happened if one had the ability to follow the links that PNC provided all note bidders.

39. Kenneth Nix provided, as part of discovery, the screen shot of the DropBox of files and excel sheet named "Marketing Data Tape" that LandSouth of Charleston received from Summit regarding our loans and properties. Kenneth Nix denied having access himself to this information, but he testified that LandSouth's employee Trey Morrison would have been the one in his office to have seen the information. On February 27, 2013, Trey Morrison contacted Drew Chaplin, who is the leasing agent and one of the tenants of the BB&T building in Florence, which secured the loan of The Brothers of SC, LLC to PNC. Morrison identified himself as working for a company that targets distressed assets and told Chaplin that he had detailed, non-public information about the BB&T building. See affidavit of Drew Chaplin, attached hereto as Exhibit 12. On the same day, Morrison called me to ask that I provide him with updated occupancy information for the building at 438 King St.

40. In the spring of 2013, the bank requested a meeting with me through my counsel. I declined to attend because I no longer trusted that the bank was trying to work with me to find a solution to these issues, but rather was actively working against my interest to put pressure on me to concede defeat and abandon the properties. In March of 2013, Terri Gardner, an attorney working for PNC emails my attorney Bill McCarthy that "it will not bode well for your client if she refuses to meet with the bank."

41. During this time I communicated more than one settlement proposal to the bank. On April 4, 2013 at 9 am, PNC employee Wursta instructed its counsel to reject all offers, move to appoint receiver, and to proceed to foreclosure.

42. In May of 2013, the foreclosure actions were filed.

FURTHER AFFIANT SAYETH NOT.

Deborah Rice-Marko
Deborah Rice-Marko

Sworn to before me this 19 day
of MAY, 2014.

Vanni N. Heptner
Notary Public for South Carolina
My Commission Expires: APRIL 30, 2017

Exhibit 1

From: Baker, Michael (RBC Bank)
To: Brown, Todd (RBC Bank)
CC: Brown, Todd (RBC Bank)
Sent: 9/30/2008 11:39:37 AM
Subject: RE: Debbie Rice-Marko

Stephen is willing to work with Debbie. I'm hoping we can get something done for her. Positive feedback from Stephen.

From: Draper, Stephen (RBC Bank)
Sent: 2008, September, 30 11:34 AM
To: Lending Service Center - Rocky Mount; Baker, Michael (RBC Bank)
Cc: Adams, Jan; Brown, Todd (RBC Bank); Panjwani, Tej
Subject: FW: Debbie Rice-Marko

The attached BBTR dated 9/29/08 is approved downgrading single name and all related borrowing entities to 3+M and WL.

Michael, we need to consider all options to bring our Wachovia exposure to a cross collateralized position with other available collateral to improve our overall collateral position. While not excited about putting out additional funds, if it will bring us to a significantly improved secured position overall, we will consider.

Thanks for jumping on this so soon. Debbie has been a good client and I am fine with working with her to get through this rough time as long as she is working with us and it is not putting us in a less favorable position. The key is identifying cash flow positive positions that will contribute towards maintaining a current interest position with a structure that will work towards paying down the debt that had been supported by and expected to be repaid through the value of the Wachovia stock.

Tej - FYI.

From: Baker, Michael (RBC Bank)
Sent: 2008, September, 30 11:16 AM
To: Draper, Stephen (RBC Bank)
Cc: Brown, Todd (RBC Bank)
Subject: Debbie Rice-Marko

Stephen~

I spoke with Debbie late yesterday afternoon. The margin calls on the two sons margin accounts were met with cash (Debbie only has the two lines of credit). This left her with two margin calls on the two \$6.5MM line of credits. SunTrust has a \$6.5MM line with approximately \$3.5MM outstanding and we have a \$6.5MM with \$3.533M outstanding. The brokerage account we have has cash of \$480M so the exposure tied to VVB stock is approximately \$3,053M. Value of VVB stock is trading around \$2.89/share right now but assuming \$2/share the value of 207,989 shares is \$416M.

SunTrust was already in the process of taking a second mortgage on a property in Columbia, SC. The vacant commercial property is valued at \$11MM with debt of around \$3.5MM. A portion was recently sold to Toyota prior to the \$11MM value.

Strategy for our \$3,053M exposure on the line of credit. Debbie has a contract on a 100% leased income producing property in Asheville, SC (shadow space to a new Wal-mart). She recently sold a dealership property in NC and has \$2.1MM in escrow. The entire amount is taxable to the extent of around \$1MM if not 1031 into new property. I had recently passed on looking at this deal due to exposure, etc. Can we look at financing this purchase and crossing with Line of Credit? LTC would be around 67%. Total equity would be \$2.1MM at 100% of value and \$1.1MM at 85% of value. We could also cross with the brothers (Evan and John) BB&T building in Florence which is fully leased. The value of this building was \$6.2MM and our loan is \$4.9MM. Total equity of \$1.3MM. \$3.4MM in equity at total value. She also has the front beach Klawah lot and front beach Myrtle Beach lot that could be added to the collateral pool.

Line of credit would be reduced to \$3MM. It would be a short-term hold limit exception because TCE would be \$17MM and BRR would change from a 2-H. The two residential properties are listed and do have some activity although nothing firm.

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PNC_Rice-Marko_20390

I would like to try and work with Debbie during this difficult time.
I've also attached a BBTR that takes all loans to a 3+M VWL during the interim until we decide on our strategy.

I've requested a detailed outline of Debbie's cash position, global debt service and coverage, contingent liabilities, tax liabilities, etc.

Honestly, I thought for sure that she would be in a much worse position.

Let me know when you can discuss.

Michael E. Baker

Market Executive

RBC Bank

100 Calhoun Street, Suite 200

Charleston, SC 29401

Office: (843) 958-3706

Fax: (843) 958-3745

Mobile: (843) 224-1562



RBC Bank

Let's do something giant.

This email may be privileged and/or confidential and the sender does not waive any related rights and obligations. Any distribution, use or copying of this email or the information it contains by other than an intended recipient is unauthorized. If you received this email in error, please advise me immediately.

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PNC_Rice-Marko_20391

Exhibit 2

Subj: **bb&t interest payments**
Date: 11/5/2010
To: bill.hamington@rbs.com

bill:

I have just been told that we have not received any interest payment invoices for payment on the BB&T loan and the 438 king street (ROA loan)

I just want to make sure that we are not missing something as we had last paid on these in August
please email me to confirm that I should not be sending any money for these two loans.

also please let me know if I can get a partial release on the approximately 6 acres and the remaining 4+ acres of some portion of that for individual sale to builder...

thank you

debbie

DRM 000055

Exhibit 3



15356

Consolidated Periodic Review
- >\$1MM

Page 4 of 10

Report ID: 02034 Date: 09/23/2013

Charge-Off: Charge-Off Status: Yes
Charge-Off Amount: \$244,760.00
Reserve Info: Reserve Type: N/A - not applicable

Last Charge-Off Date: 03/05/2012

FAS 114 Balance:

Are you calculating a reserve based on
the FAS 114 worksheet?: N
Specific Reserve Period:

FAS 114 Method:
of Years:

Explain why charge-off was not taken at
this time?:

If N/A, does the loan require any of the
following accounting treatments?: SOP03

Reserve / Impairment Notes: This is an SOP 03-3 loan. No Pool or Specific Reserve required. Any Reserve (Impairment) will be calculated through the quarterly cash flow estimation process overseen by Impaired Commercial Loan Committee, a sub-committee of the Reserve Adequacy Committee, by the end of the second month of the quarter.

DEFAULTS		
Default Date	Default Reason	Date Default Notice Sent
12/01/2012	Delinquent Payments	2/15/2013
12/31/2011	Financial Reporting	

COVENANT COMPLIANCE

Are Loans Current?: No
Cross-defaulted: Y
Covenant Notes or Definitions: Require annual financial statements, evidence of real estate tax payments and insurance; not received.

Collateral to Facility Cross-reference	
Collateral ID / Name	Facility ID / Instrument #
156322 / 438 King Street	0605443827
151460 / 8730 Dorchester Rd.	0605443827
150348 / Liberty Cottages	0605443827
147887 / 11 Royal Beach Rd	0605443827
140270 / 1831 W Evans St	0605443827

COLLATERAL

Collateral ID/Name: 140270 / 1831 W Evans St

Is your borrower secured?: Yes
Borrowing Base Associated with:
Customers?: No

Borrowing Base Frequency?:
COBRA Date: 06/12/2013
Bank Liens Exist? / Lien Type: Y: Mortgage
Other Liens Exist? / Lien Type: N
Operations Ceased Date:

Real Estate Secured: Yes

Operations Ceased:
Collateral Category: Real Estate
Collateral Type: Office
Collateral Sub-Type: Suburban Office
Collateral City: Florence
Collateral State: SC
Valuation Date: 08/27/2012
Collateral Value: \$4,700,000.00

Are Taxes Delinquent?: No
Cross-Collateralized?: Yes
Property Class: C

Most Relevant Valuation Type: MAI Appraisal

Method of Evaluation:

Environmental Performed By/Date:

Phase II Date:

Environmental Notes:

Last Inspection Date:

Last Inspection Site:

Condition of Site:

Title Insurance Notes:

Collateral Description: The subject is a 4 story multi-tenant office building containing 43,850 square feet of rentable area. The improvements were constructed in 1990. The site area is 2.57 acres or 111,949 square feet. The ground floor is occupied by a single tenant (BB&T) and has a 4 lane drive-up canopy on the northeast corner. The second and third floors are multi-tenant office suites with above average finish. The fourth floor is currently a single suite with excellent finish. There is ample parking to the rear of the property. Access and visibility are considered excellent. Neighborhood is in transition with many vacated stores and low income housing.

As the Borrower is uncooperative, a current appraisal must be ordered through the court. Bank counsel has petitioned court; we are waiting for Borrower response.

Collateral Notes:

RENT ROLLS

Rent roll as of date: 05/26/2011

Received date: 05/26/2011

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PNC_Rice-Marko_15227

Exhibit 4

From: Harrington, Bill (RBC Bank)
To: Kearney, Johnathan (Risk Mgmt)
Sent: 2/9/2012 11:58:46 AM
Subject: RE: Final Review Required: Top Names for February Board Meeting

Johnathan
The Deborah Rice-Marke relationship status remains unchanged and is performing as agreed.
Thanks
Bill

Bill Harrington | Asset Resolution Group | RBC Bank (USA) | T: (910) 457-7806 | F: (910) 457-7805 | 4961 Long Beach Road |
Southport, NC 28461 | bill.harrington@rbc.com

From: Kearney, Johnathan (Risk Mgmt)
Sent: 2012, February, 08 6:28 PM
To: Risinger, Jay; Adler, Craig (RBC Bank); Imbrigiotta, Susan; Blue, Donald; Stames, Mark (RBC Bank); Garner, Jim;
Williams, Bruce; Harrington, Bill (RBC Bank); Miller, Doug; Shuler, Becky; Gross, Jason (NY); Shuffler, Mark; Griffith, Dean;
Ficich, Larry (RBC Bank); Hartmann, Rick (RBC Bank); Nixon, Andrea (Risk Mgmt); Bacon, Amy; Hihnant, Lane; Herntanoh,
Kamala; Wilby, Tom; Pfeiffer, Geoff; Panjwani, Tej; Sims, Collins.
Subject: Final Review Required: Top Names for February Board Meeting

All,

Please see attached a draft of the Top 25 Relationships, Top 10 Criticized and Top 10 NPL's. The comments included are the most recent received, however, I ask that you final review your assigned relationship and update as appropriate. For the Top Criticized and NPL lists, please update the status and trend if it's changed from what is shown. These lists will be sent to the printer on Monday, so your help in reviewing by noon Friday is greatly appreciated. As always, please don't hesitate to call with questions or forward as necessary to insure completeness.

Regards,
Johnathan

Johnathan Kearney | Director, Commercial Portfolio Management & Analysis | RBC Bank (USA) | T: 919-788-5816
P: Please consider the environment before printing this email.

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PNC_Rica-Marke_21662

Exhibit 5

1 STATE OF SOUTH CAROLINA
2 COUNTY OF FLORENCE COURT OF COMMON PLEAS.

3 PNC Bank, N.A., successor to RBC
4 Bank (USA),

Plaintiff(s),

5 vs. C/A No: 2013-CP-21-1193

6 Liberty Cottages, LLC; GW
7 Dorchester, LLC; USS Clarksville,
8 LLC; Liberty Cottages Land, LLC;
9 ROA, LLC; Royal Beach Properties,
10 LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

11 Defendant(s).

12 ROUGH DRAFT

13 D E P O S I T I O N

14 WITNESS: William H. Harrington, Jr.

15 DATE: Wednesday, May 7, 2014

16 TIME: 9:44 a.m.

17 LOCATION: Nelson Mullins Riley & Scarborough
18 5 Exchange Street
Charleston, South Carolina

19 TAKEN BY: Attorneys for the Defendants

20 REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

21 -----

21 A. At some point, I did have a conversation
22 regarding all of my credits that I managed --

23 Q. Okay.

24 A. -- which certainly included this.

25 Q. All right. Tell me about that. When did

57

1 that happen, as best you can recall?

2 A. I don't remember the timeline. I think we
3 provided information such as this that PNC had
4 requested. Then at some point I -- at some point prior
5 to closing -- no. I think after the closing, probably
6 the week of March the 5th, I sat in a room with PNC
7 people and discussed all of my credits. I also had a --
8 phone conversations with Liz Paulson, and at some point
9 she visited my office. The dates, the timeline there,
10 I'm just not clear on.

11 Q. Okay. Well, let's try to deconstruct that a
12 little bit. When was the closing between RBC and PNC?

13 A. It would have been March 2nd, 2012, as I
14 recall.

15 Q. Okay. And you recall that shortly thereafter,
16 the week of March 5th, you had an in-person meeting with
17 some people from PNC to review all of your portfolio?

18 A. Yes. It was -- it was either the week of
19 March the 5th or the following week --

20 Q. Okay.

21 A. -- because I spent those two weeks in Raleigh.

22 Q. Okay. So you were in Raleigh for two weeks,
23 and you were there because of transition issues; is that
24 that correct?

25 A. Yes, that's correct.

58

1 Q. And so did you have just the one meeting
2 about your loan portfolio?

3 A. I think that's correct.

4 Q. Okay. With whom did you meet from PNC at
5 that time?

6 A. I'm not -- I'm not certain of all the people
7 in the room.

8 Q. Okay.

9 A. I think Cyd Wolf, who is an attorney with the
10 bank; I believe my manager, Steve Chambers; and there
11 were probably three or four other people in the room,
12 and I just don't recall who they were because I didn't
13 know the people at that time.

Exhibit 6

1 STATE OF SOUTH CAROLINA
2 COUNTY OF FLORENCE
3 PNC Bank, N.A., successor to RBC
4 Bank (USA),
5 Plaintiff(s),
6 vs. C/A No: 2013-CP-21-1193
7 Liberty Cottages, LLC; GW
8 Dorchester, LLC; USS Clarksville,
9 LLC; Liberty Cottages Land, LLC;
10 ROA, LLC; Royal Beach Properties,
11 LLC; The Brothers of SC, LLC;
12 Deborah Rice-Marko a/k/a Deborah G.
13 Rice-Marko; Evan R. Marko and John
14 E. Marko, Jr.,
15 Defendant(s).

16
17 D E P O S I T I O N
18
19 WITNESS: Kenneth L. Nix
20 DATE: Wednesday, April 9, 2014
21 TIME: 10:09 a.m.
22 LOCATION: Womble Carlyle Sandridge & Rice
23 5 Exchange Street
24 Charleston, South Carolina
25 TAKEN BY: Attorneys for the Defendants
26 REPORTED BY: HEATHER M. CURLIN
27 Professional Court Reporter
28 - - - - -

29 COMPUSCRIPTS, INC.
30 A Full-Service Court Reporting Agency
31 Post Office Box 7172
32 Columbia, South Carolina 29202
33 803-988-0086
34 1-888-988-0086
35 www.compuscriptsinc.com

1 we know what you mean. I know it's hard; if you can,
2 avoid uh-huhs and huh-uhs. Those don't translate very
3 well into the transcript.

4 A. I'll do my best.

5 Q. I appreciate that. And I'll try to -- if I
6 think it's unclear, I'll try to ask a follow-up
7 question. If you want to take a break at some point,
8 we'll do that. Okay?

9 A. Yes, sir.

10 Q. I think you gave the court reporter your full
11 name, but just repeat it for me, please.

12 A. Kenneth Lance Nix.

13 Q. Okay. How old are you, Mr. Nix?

14 A. 33.

15 Q. And where are you employed?

16 A. Land South of Charleston.

17 Q. All right. Tell me a little bit about Land
18 South of Charleston. What kind of a company is that?

19 A. We are a real estate group. We have a
20 brokerage side. We buy and sell loans, notes.

21 Q. Do you buy and sell real estate as well?

22 A. Yes, sir.

23 Q. Do you have any sort of license, broker's
24 license, real estate license?

25 A. Yes, sir. I'm broker in charge of Land South

1 of Charleston.

2 Q. Okay. So as a real estate broker, do you
3 list properties for sale?

4 A. Personally, no.

5 Q. Does Land South list properties?

6 A. I do have one agent that has a listing.

7 Q. Okay. But listing properties for sale is not
8 really --

9 A. Is not our main forte.

10 Q. All right. Tell me what the main forte of
11 Land South is, please.

12 A. The main forte of Land South is to develop,
13 slash, re- -- for lack of better terms, take distressed
14 assets, work with them to make them positive assets.

15 Q. When you say distressed assets, tell me what
16 you mean by that.

17 A. They -- well, also commercial development in
18 real estate, not just distressed. We do a number of
19 things.

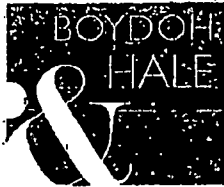
20 Q. Okay. Well, I --

21 A. Our main forte is to make money. That's what
22 we work at every morning.

23 Q. Okay.

24 A. We work with real estate of all kinds. We've
25 worked with planes, buses, a number of things. We -- a

Exhibit 7



Attorneys

June 18, 2012

Writer's contacts:
336.553.0545
shale@boydohale.com

Via Email and U.S. Mail

Stephen Wursta, Jr.
PNC Bank
61 North 3rd Street
Easton, PA 18042
stephen.wursta@pnc.com

Dear Mr. Wursta:

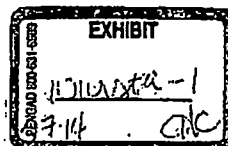
My firm represents Deborah Rice-Marko and various related entities. I understand that you are the banker assigned to handle PNC's dealings with Ms. Rice-Marko and that you recently requested a substantial amount of financial information. Thursday, June 14, 2012, Ms. Rice-Marko received a very disturbing call from a man who identified himself as Kenneth Nix.

Mr. Nix immediately began asking Ms. Rice-Marko if she owned certain specific properties. He told Ms. Rice-Marko that he is interested in purchasing these properties. While Ms. Rice-Marko owns or has owned a significant number of properties, all the properties Mr. Nix inquired about are currently financed by RBC/PNC. He did not inquire about property financed by any other lender.

As a result of Mr. Nix's phone call, Ms. Rice-Marko has grave concerns that PNC may have disclosed confidential information about her and her current financial situation to someone other than a note buyer in the secondary market. If Mr. Nix's intent was to purchase Ms. Rice-Marko's notes from PNC, there would be no need for him to contact her directly. We believe Mr. Nix is unethically leveraging his position to gain information about Ms. Rice-Marko and related business entities. Thus, we fear Mr. Nix's intended purpose is not the purchase of notes on the secondary market but rather to force Ms. Rice-Marko into selling specifically selected PNC financed properties upon terms that she would never consider if Mr. Nix did not have such information.

So far, Ms. Rice-Marko has been able to avoid filing bankruptcy. However, she may have no other alternative if Mr. Nix continues to pursue her and the properties

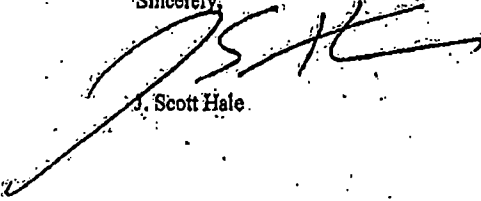
125 S. Elm Street, Suite 400 Greensboro, NC 27401 T 336 272 3706 F 336 272 3892 www.boydohale.com



DRM 000004

financed by PNC, as she has no intention of walking away from those properties. In light of PNC's apparent disclosure of information to an individual like Mr. Nix, Ms. Rice-Marke is not comfortable providing you and PNC with the additional detailed financial information you have requested.

Sincerely,



J. Scott Hale

DRM.000005

Exhibit 8

From: karyn.stiller@pnc.com
To: stephen.wursta@pnc.com
Sent: 6/18/2012 4:22:05 PM
Subject: Re: Fw: Rice-Marko
Attachments: pic01768.jpg

Steve,

A quick thought. Is it possible that this is a stall tactic by the borrower to prevent us from learning the extent of her distress and to delay possible foreclosure actions?

Please contact me with any questions, comments, or concerns.

Karyn Stiller
Vice President
Capital Markets, Structured Products Group

PNC Bank, NA
249 Fifth Avenue, P1-POFF-10-1
Pittsburgh, PA 15222-2707
(p) 412.768.3368 | (c) 412.818.7153 | (f) 412.762.3584
karyn.stiller@pnc.com

From: Stephen Wursta/CredPlcy/FLA/PNC

To: Karyn Stiller/CredPlcy/FGH/PNC@PNC

Date: 06/18/2012 10:27 AM

Subject: Fw: Rice-Marko

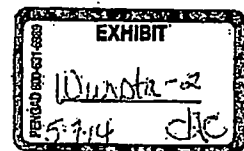
Is this the person who inquired about purchasing notes?

Stephen Wursta Jr.
Senior Vice President
Asset Manager
Asset Resolution Team

PNC Bank
61 North 3rd Street
(Mail Locator: N1-N605-01-1)
Easton, PA 18042
(p) 610-559-5367 (c) 561.252.3352 (f) 610-559-5368
stephen.wursta@pnc.com

This message is intended for the use of the individual or entity to which it is addressed and may contain confidential information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by reply or by telephone at 610-559-5367 and immediately delete this message and all of its attachments.

The contents of this email are for discussion purposes only, and do not constitute an offer, agreement or commitment to forbear or modify existing.



CONFIDENTIAL

PNC_Rice-Marko_12058

financing arrangements, if any. We have no obligation at any time whatsoever to discuss, negotiate or agree to any financial accommodations, including without limitation, any modification, amendment, restructuring, reinstatement of any existing financing arrangements or to forbear or refrain from exercising or enforcing PNC's rights and remedies at any time. Any commitment or binding agreement is subject to internal credit approval and by agreement by all necessary parties and final documentation satisfactory to all parties and their respective counsel. Further, we have made no representations, warranties or other statements in this message regarding same. All rights are reserved.

The sender of this message is attempting to collect a debt. If you are a debtor, this can be considered a communication from a debt collector and any information may be used to collect that debt.

----- Forwarded by Stephen Wursta/CredPly/FLA/PNC on 06/18/2012 10:27 AM -----

From: Secretary <secretary@boydohale.com>
To: "stephen.wursta@pnc.com" <stephen.wursta@pnc.com>
Cc: Scott Hale <shale@boydohale.com>
Date: 06/18/2012 10:17 AM
Subject: Rice-Marko

Mr. Wursta,
Please find attached correspondence relating to the above-referenced subject.

Connie Bolton,
Legal
Assistant
125 S. Elm Street, Suite 400
(Embedded Greensboro, NC 27401
Image moved to 336.272.3706
File: 336.272.3892 fax
pic01768.jpg) secretary@boydohale.com

This e-mail
message
contains
confidential,
privileged
information
intended
solely for
the
addressee.
Please do not
read or
disseminate
this e-mail

CONFIDENTIAL

PNC_Rice-Marko_12059

unless you
are the
addressee.
Thank you.
This e-mail,
any voice
mail and all
other
electronic
communication
s from the
sender and
his firm are
for
informational
purposes only
and are not
intended to
constitute an
electronic
signature or
agreement to
conduct a
transaction
by electronic
means. Any
such
intention or
agreement is
hereby
expressly
disclaimed
unless
specifically
indicated
otherwise.

[attachment "DOC061812.pdf" Deleted By Karyn SFiller/CredPly/PCH/PNC]

CONFIDENTIAL

PNC Rice-Marko 12060

Exhibit 9

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
4140 Parklake Avenue / Glenlake One / Second Floor / Raleigh, NC 27612
Tel: 919.877.3300 Fax: 919.872.3799
www.nelsonmullins.com

Terril L. Gardner
Tel: 919.329.3882
terri.gardner@nelsonmullins.com

November 26, 2012

VIA FEDERAL EXPRESS AND US MAIL

Deborah Rice-Marke
32 South Battery
Charleston, SC 29401

OW Dorchester, LLC
32 South Battery
Charleston, SC 29401

Liberty Cottages, LLC
32 South Battery
Charleston, SC 29401

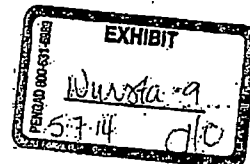
ROA, LLC
32 South Battery
Charleston, SC 29401

Royal Beach Properties, LLC
32 South Battery
Charleston, SC 29401

The Brothers of SC, LLC
32 South Battery
Charleston, SC 29401

USS Clarksville, LLC
32 South Battery
Charleston, SC 29401

(all of the above hereinafter the "Borrowers")



DRM.000656

Deborah Rice-Marko
November 26, 2012.
Page 2

Deborah Rice-Marko
32 South Battery
Charleston, SC 29401

Liberty Coinages Land, LLC
32 South Battery
Charleston, SC 29401

John E. Marko, Jr.
32 South Battery
Charleston, SC 29401

Evna R. Marko
32 South Battery
Charleston, SC 29401

(all of the above hereafter the "Guarantors").

RE: Forbearance Agreement dated July 15, 2011 and Amended and Restated
Promissory Notes dated July 15, 2011 from Borrowers to PNC Bank, N.A.,
successor to RBC Bank (USA) (the "Bank").

Dear Borrowers and Guarantors:

This firm has been retained by the Bank regarding the following loans:

(1) That loan in the original principal amount of \$1,595,963.91 (the "DRM Loan")
to Deborah Rice-Marko, evidenced by the Amended and Restated Promissory Note,
dated July 15, 2011 ("Note 1"). The DRM Loan was evidenced and/or secured by certain
other documents and instruments executed in connection therewith; and

(2) That loan in the original principal amount of \$2,327,500 (the "Dorchester
Loan") to GW Dorchester, LLC, evidenced by an Amended and Restated Promissory
Note, dated July 15, 2011 ("Note 2"). The GW Dorchester Loan was evidenced and/or
secured by certain other documents and instruments executed in connection therewith; and

(3) That loan in the original principal amount of \$430,324.41 (the "Clarksville
Loan") to USS Clarksville, LLC evidenced by an Amended and Restated Promissory Note
dated July 15, 2011 ("Note 3"). The Clarksville Loan was evidenced and/or secured by
certain other documents and instruments executed in connection therewith; and

DRM 000657

Deborah Rice-Marko
November 26, 2012
Page 3

(4) That loan in the original principal amount of \$51,271,220.00 (the "Liberty Loan") to Liberty Cottages, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 4"). The Liberty Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and

(5) That loan in the original principal amount of \$51,294,197.25 (the "ROA Loan") to ROA, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 5"). The ROA Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and

(6) That loan in the original principal amount of \$3,396,459.83 (the "ROA Loan #2") to ROA, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 6"). The ROA Loan #2 was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and

(7) That loan in the original principal amount of \$4,900,000 (the "Brothers Loan") to Brothers of SC, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 7"). The Brothers Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and

(8) That loan in the original principal amount of \$1,087,495.66 (the "Brothers Loan #2") to Brothers of SC, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 8"). The Brothers Loan #2 was evidenced and/or secured by certain other documents and instruments executed in connection therewith; and

(9) That loan in the original principal amount of \$3,262,500 (the "Royal Loan") to Royal Beach Properties, LLC evidenced by an Amended and Restated Promissory Note dated July 15, 2011 ("Note 9"). The Royal Loan was evidenced and/or secured by certain other documents and instruments executed in connection therewith.

All of the abovementioned Loans and Notes accompanied a Forbearance Agreement dated July 15, 2011. The Forbearance Agreement contained the following provisions:

Section 4.4 Payment of Liabilities. All expenses and other liabilities of the Borrowers shall remain current, and the Borrowers shall deliver such accounts payable aging reports and other financial information as the Bank may request related thereto.

Section 4.5 Payment of Taxes. Each Obligor shall pay, discharge and perform as the same shall become due and payable or required to be performed all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets and all lawful claims which, if unpaid, would by law become a lien upon its property.

DRM 000658

Deborah Rice-Matko
November 26, 2012
Page 4

Section 4.8 Financial Reporting. Within six (6) months from the previous statement date on file with Bank, a detailed financial statement of each of DRM, JEM and ERM containing a balance sheet at the end of that period (including all contingent liabilities) and a statement of income for that period, all in such form as approved by Bank, and within fifteen (15) days after the filing thereof, personal federal tax returns of each of DRM, JEM and ERM.

By letter to Scott Hale, Esq., dated June 28, 2012, the Bank requested information that fell under the above-mentioned terms of the Forbearance Agreement, and the information has not been provided to the Bank. Furthermore the Borrowers have not provided reports to the Bank on their efforts to sell non-income producing collateral as required by Section 4.3.

Furthermore, the Forbearance Agreement provided as follows:

Section 4.10 Post-Closing Obligations. The Obligors (defined as the Borrowers and Guarantors) shall complete or cause the completion of the following items on or prior to the respective dates set forth below:

4.10.1. On or prior to July 8, 2011, deliver to the Bank such documents and instruments as the Bank may reasonably require in order to evidence its claim against the Estate for the obligations arising pursuant to the Estate's Guaranty Agreement;

4.10.2. On or prior to July 29, 2011, deliver to the Bank fully executed, valid and binding subordination, non-disturbance and attornment agreements executed by Goodwill and BB&T, respectively, as tenants, and the other parties thereto, in form and substance reasonably acceptable to Bank;

4.10.3. On or prior to July 29, 2011, deliver to the Bank such evidence of property and liability insurance as the Bank shall require, in form and substance reasonably acceptable to the Bank, together with such endorsements as the Bank may reasonably require with respect to its status as a mortgagee, loss payee, and additional insured; and

4.10.4. On or prior to July 29, 2011, deliver to the Bank fully executed stopgap certificates from Goodwill and BB&T, respectively, as tenants, in form and substance reasonably acceptable to Bank, including without limitation with respect to the Bank's ability to verify that revenue-producing Collateral generates in excess of \$51,000 per month in net rental income (prior to any reduction for debt service and property taxes).

The documents mentioned above were not delivered to the Lender as required by the Forbearance Agreement.

DRM 000659

Deborah Rice-Marino
November 26, 2012
Page 5

Section 2.2 of the Forbearance Agreement provides that upon the occurrence of any Default or upon the breach or violation of any term of the Forbearance Agreement, the Bank may terminate the Forbearance Period, and all "Obligations" shall at the option of the Bank be immediately due and payable in full, and the Bank may exercise any one or more, or all, of its rights and remedies against any or all Obligors under the Loan Documents and at law.

The Bank hereby terminates the Forbearance Period, and the following amounts were due as of November 13, 2012:

	Principal	Interest	Late Charges
DRM Loan	\$1,548,703.91	\$183,936.49	\$ 917.68
Dorchester Loan	\$2,183,420.00	\$230,273.15	\$ 1,038.76
Liberty Loan	\$1,241,540.00	\$146,294.42	
Clarksville Loan	\$ 368,804.41	\$ 46,762.52	\$ 247.42
ROA Loan #2	\$3,304,619.83	\$275,648.70	\$ 2,939.37
ROA Loan #1	\$1,259,637.23	\$148,635.53	\$ 744.16
Royal Loan	\$3,175,460.00	\$385,798.93	\$ 1,875.91
Brothers Loan #1	\$ 261,720.43	\$ 13,598.38	\$10,000.00
Brothers Loan #2	\$4,793,790.00	\$475,755.31	\$ 1,634.00
	<u>\$18,139,695.83</u>	<u>\$1,906,703.30</u>	<u>\$19,417.30</u>

From the date of this letter, interest will accrue on the unpaid principal of the Notes at the Default Rate as provided under the Notes. The "Default Rate" is seven percent (7.0%) plus the LIBOR Base Rate.

If the balances due on the Notes are not paid within ten (10) days of the date of this letter, the Bank has requested that we proceed with collection efforts, to include pursuit of any collateral securing the Notes. Furthermore, the Notes provides that if payment is not made when due, the Borrowers agree to pay all of the Bank's costs and expenses of collection, including reasonable attorneys' fees which are stipulated to be 15% of the balance due. Therefore, we encourage the Borrowers and Guarantors to take care of this matter immediately. Please feel free to contact this office for updated payoff balances and to arrange full payment of the Notes.

Nothing contained in this letter shall be deemed to waive or modify any rights or remedies of the Bank available at law or in equity, or as provided in the Loan Documents.

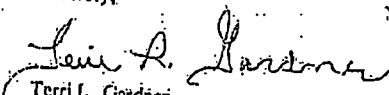
DRM 000660

Deborah Rice-Marko
November 26, 2012
Page 6

Be advised that any partial payments on the Notes after the date of this letter may be retained by the Bank and applied to the balance of the Notes as determined by the Bank in its sole discretion; but will not reinstate the Notes.

Thank you for your prompt attention to this matter.

Sincerely,


Terri L. Gardier

cc: Stephen Wursta, Jr., Senior Vice-President
Cyd B. Wolf, Senior Counsel

DRM:000661

Exhibit 10

JOINDER TO CONFIDENTIALITY AGREEMENT

The Land South of Charleston, LLC ("LSC") agrees to become a party to, and be bound by, that certain Confidentiality Agreement by and between Summit Investment Management LLC ("Summit") and PNC Bank (the "Bank"), dated as of 21 day of February, 2013 (a copy of which is attached hereto as Exhibit A), as such agreement may be amended from time to time.

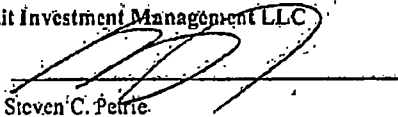
In addition, and notwithstanding to contrary herein or in the Confidentiality Agreement, LSC agrees that it, together with any persons or representatives controlled by it, will not, without the prior written consent of Summit, directly or indirectly, (i) enter into any agreement, arrangement or understanding or any discussions which might lead to such arrangement, agreement or understanding with any person regarding a possible transaction involving the acquisition of, transaction with, or investment in the proposed transaction with the Bank (the "Proposed Transaction") as contemplated in the Confidentiality Agreement or (ii) purchase any securities or invest in any manner in the Proposed Transaction or (iii) contact or otherwise initiate any discussions with any parties involved in the Proposed Transaction or otherwise disclose the fact that Summit is looking at the Proposed Transaction.

Land South of Charleston, LLC

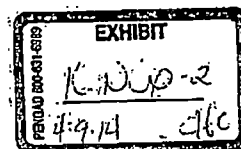
By: _____
Name: _____
Title: _____
Date: _____, 2013

AGREED TO AND ACKNOWLEDGED:

Summit Investment Management LLC

By: 
Name: Steven C. Petrie
Title: Authorized Signatory
Date: February 22, 2013

Joinder of Third Party to Confidentiality Agreement:



.EXHIBIT A
Confidentiality Agreement.

Confidentiality Agreement



In the course of discussions exploring a transaction (the "Proposed Transaction") involving the sale of the loans identified on Schedule A attached hereto (each a "Loan" and collectively, the "Loans") from PNC Bank, National Association (including its parent, subsidiaries and affiliated companies, collectively "PNC") to:

Summit Investment Management LLC limited liability company, Colorado
(Investor's Name) (Corporate Designation, State/Organized)

Reed Gillis (720) 221-3200 (303) 830-9538
(Primary Contact's Name) (Phone Number) (Fax Number)

rgillis@summit-investment.com summit-investment.com
(Primary Contact's Email Address) (Investor's Website)

having its principal place of business located at:

Wells Fargo Center, 1700 Lincoln Street, Suite 2150, Denver, Colorado, 80203
(Investor's Address: Street, City, State, Zip)

(including its parent, subsidiaries and affiliated companies, collectively "Recipient"); PNC may disclose to Recipient certain information that is either non-public, confidential or proprietary in nature. In consideration of PNC furnishing such information and in furtherance of discussions between PNC and Recipient relating to the Proposed Transaction, PNC and Recipient agree, as of the 21st day of February, 2013 (the "Effective Date"), that:

1. Confidential Information. All information which is either non-public, confidential or proprietary in nature, whether oral or written or via computer disk or electronic media or otherwise, which PNC provides or otherwise makes available to Recipient in connection with the Proposed Transaction including, without limitation, all information which PNC provides or otherwise makes available to any of Recipient's Representatives (as defined below) in connection with the Proposed Transaction is referred to in this Confidentiality Agreement (this "Agreement") as "Confidential Information". Confidential Information shall include, without limitation, technology, know-how, processes, software, databases, trade secrets, contracts, proprietary information, historical and projected financial information, business strategies, operating data and organizational and cost structures, product descriptions, pricing information, customer information (including without limitation names, addresses, telephone numbers, account numbers, demographic, financial and transactional information or customer lists), whether provided or otherwise made available before or after the Effective Date. Confidential Information shall exclude information that: (a) is, or becomes publicly available through no fault of Recipient or any of its Representatives; (b) is released by PNC to anyone without restriction; (c) is tightly obtained from a third party who, to the best of Recipient's knowledge, is not under an obligation of confidentiality with respect to such information; (d) was known to Recipient prior to its disclosure without any obligation to protect the confidentiality thereof as evidenced by tangible records kept by Recipient in the ordinary course of business; or (e) is independently developed by Recipient without reference to Confidential Information.

2. Confidentiality of Confidential Information. Recipient: (a) shall hold all Confidential

Information in confidence; (b) shall not disclose any Confidential Information to any third party, other than to its directors, officers, employees, attorneys, accountants, consultants, or similar professionals who have a need to know such information in connection with the Proposed Transaction (collectively, the "Representatives"); and (c) shall not use or permit any of its Representatives to use any Confidential Information for purposes other than in connection with the Proposed Transaction. Recipient shall inform its Representatives of the confidential and proprietary nature of the Confidential Information and of its obligations under this Agreement, shall direct all of its Representatives to treat the Confidential Information confidentially and in accordance with the terms of this Agreement, and shall be responsible for any improper use of the Confidential Information by any of its Representatives. Recipient shall use reasonable controls (but in all events, at least the same degree of care and controls that Recipient uses to protect its own confidential and proprietary information of similar importance) to prevent the unauthorized use or disclosure of the Confidential Information or disclosure of the fact that Confidential Information has been provided or otherwise been made available to Recipient. In addition, Recipient shall adopt appropriate policies and procedures: (x) to protect the security and confidentiality of the Confidential Information; (y) to prevent and protect against anticipated threats or hazards to the security or integrity of the Confidential Information; and (z) to protect against unauthorized access to or use of the Confidential Information that could result in harm or inconvenience to PNC or PNC's customers.

3. Confidentiality of Proposed Transaction. Recipient shall not disclose to any person or entity (other than to its Representatives) the fact that discussions or negotiations are taking place concerning the Proposed Transaction. Any media release or public announcement or disclosure made by Recipient relating to this Agreement or the Proposed Transaction shall be coordinated with and approved, in writing, by PNC, except to the extent reasonably necessary for Recipient to comply with applicable laws, rules and regulations.

4. Disclosure Required by Legal Process. Notwithstanding anything to the contrary contained in this Agreement, Recipient may disclose Confidential Information if legally compelled to do so pursuant to a requirement or request of a governmental agency or pursuant to a court or administrative deposition, interrogatory, request for documents, subpoena, civil investigative demand or other similar legal process or requirement of law, or in defense of any claims or causes of action asserted against it; provided, however, Recipient shall (a) provide advance written notice of such request, requirement or use to PNC, unless such notice is prohibited by applicable laws, rules, regulations or court order; (b) attempt to obtain PNC's written consent to such disclosure; and (c) in the event PNC withholds such consent, permit (at PNC's expense, unless such expense is incurred as a result of a breach of this Agreement by Recipient, in which case it shall be at Recipient's sole expense) a motion to quash, or other similar procedural step, to seek protection against the production or publication of such Confidential Information. In making any such disclosure, Recipient shall preserve the confidential nature of such Confidential Information. Nothing herein shall require Recipient to fail to honor a subpoena, court or administrative order, or a similar requirement on a timely basis. Recipient shall cooperate with PNC (at PNC's expense, unless such expense is incurred as a result of a breach of this Agreement by Recipient, in which case it shall be at Recipient's sole expense) in an effort to reasonably limit the nature and scope of any required disclosure of Confidential Information.

5. Access. Recipient shall not, directly or indirectly, contact or communicate with any borrower, guarantor, surety or any other person or entity obligated under any Loan (each, an "Obligor"), or any officer, director, manager, member, partner or shareholder of thereof, regarding the Proposed Transaction or any matter related thereto, which shall include, without limitation: (a) the validity or enforceability of any document executed and/or delivered in connection with any Loan (collectively, the

"Loan Documents"); (b) the collectability of any Loan; (c) the financial condition of any Obligor; (d) the existence or nature of any collateral securing any Loan; (e) the existence, validity, perfection or priority of any lien or security interest securing any Loan; whether created (or intended to be created) by the Loan Documents or otherwise; (f) the marketability, value, or status of title, ownership or possession of any collateral securing any Loan; (g) the environmental condition of any collateral securing any Loan; (h) compliance with any applicable rule, law or regulation of any governmental authority pertaining to any Obligor, any Loan, the Loan Documents, or any collateral securing any Loan including, without limitation, the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., the Real Estate Settlement and Procedures Act, 12 U.S.C. § 2601 et seq., the Fair Housing Act, 42 U.S.C. § 3601 et seq., the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 et seq., the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., the Gramm-Leach-Bliley Act, Pub.L. 106-102, 113 Stat. 1338, enacted November 12, 1999; and/or Regulations AA, B and/or Z of the Board of Governors of the Federal Reserve System, (i) the existence or basis for any claim, counterclaim, defense, or offset relating to any Loan or the Loan Documents; (j) the future performance of any Obligor; or (k) any facts or matters relating or pertaining to any of the foregoing. In addition, Recipient shall have no access to or right to inspect any collateral securing any of the Loans including, without limitation, any real property securing a Loan, and Recipient shall not enter upon any real property securing a Loan or, directly or indirectly, contact or communicate with any leasing or property manager or any tenant of any real property securing a Loan with respect to the Proposed Transaction.

6. Definitive Loan Sale Agreement. It is understood and agreed that any arrangement relating to the Proposed Transaction is subject to approval by the respective senior management of PNC and Recipient, as applicable, and to the negotiation, execution and delivery of a definitive loan sale agreement between PNC and Recipient containing mutually agreeable terms and conditions. PNC and Recipient shall bear their own costs and expenses in connection with the negotiation and preparation of the definitive loan sale agreement between PNC and Recipient. Each party to this Agreement reserves the right, in its sole discretion, to reject any and all proposals made by the other party regarding the Proposed Transaction and to terminate discussions and negotiations with respect thereto at any time. Each party to this Agreement reserves the right, in its sole and absolute discretion, to negotiate and enter into an agreement with any third party with respect to any transaction, including one similar in nature to the Proposed Transaction, at any time and without prior notice to the other party.

7. Return of Confidential Information. In the event that PNC or Recipient terminates discussions regarding the Proposed Transaction, or PNC and Recipient do not enter into a definitive loan sale agreement with respect to the Proposed Transaction within ninety (90) days after the Effective Date, Recipient shall, within five (5) business days thereafter, return to PNC, or confirm to PNC, in writing, the destruction of, all Confidential Information in the possession, custody or control of Recipient and any of its Representatives, without retaining any copies thereof, and destroy all copies of any analyses, compilations, studies or other documents prepared by or on behalf of Recipient or any of its Representatives containing or reflecting any Confidential Information; provided, however, Recipient may retain such limited media and materials containing Confidential Information to the extent reasonably necessary for Recipient to comply with applicable laws, rules and regulations.

8. No Representations or Warranties. PNC makes no representations or warranties as to the accuracy or completeness of any Confidential Information or the suitability of any Confidential Information for Recipient's purposes. Recipient acknowledges and agrees that PNC will have no liability to Recipient or any of its Representatives resulting from the use of the Confidential Information by Recipient or any of its Representatives. These agreements and understandings regarding restrictions on

representations, warranties and liability shall have no effect on any separate or subsequent representation or warranty or undertaking of PNC. PNC shall have no obligation to update or correct any Confidential Information. To the extent Confidential Information includes any appraisals, environmental studies and other reports prepared by any consultant retained by or for the benefit of PNC (each singly, a "Report", and, collectively, the "Reports"), Recipient acknowledges and agrees that: (a) each Report represents the respective opinion of the person or entity that prepared such Report and not the opinion of PNC; (b) except as permitted by this Agreement, no portion of any Report may be released or provided by Recipient to any third party; (c) Recipient may not rely upon any Report; and (d) each Report was prepared for the sole benefit of PNC. Recipient hereby waives, releases and holds harmless PNC, its agents, employees, representatives, successors and assignees of and from any claims, causes of action, liabilities or obligations of any kind whatsoever arising from or relating to any Report including, without limitation, the review or use thereof by Recipient or any of its Representatives, of the dissemination of any Report (or any part thereof) by Recipient or any of its Representatives to any third party. **RECIPIENT ACKNOWLEDGES THAT IT HAS CAREFULLY READ THE FOREGOING RELEASE, UNDERSTANDS THE CONTENT THEREOF, AND GRANTS THE SAME AS ITS FREE ACT AND DEED.**

9. **No Solicitation.** Recipient will not knowingly solicit or recruit for employment by Recipient any of PNC's employees who have been assigned by PNC to meet with and discuss the Proposed Transaction with Recipient or any of its Representatives and who have become known to Recipient or any of its Representatives as a result of discussing the Proposed Transaction. For purposes of this Section, "knowing" solicitation or recruitment does not include, and therefore this Section does not prohibit, solicitation, recruitment or hiring of any PNC employee who is identified by Recipient or any of its Representatives solely as a result of his or her response to a general advertisement by Recipient or any of its Representatives in a publication of general or trade industry interest or other similar general solicitation.

10. **Title to Confidential Information.** Until the Expiration Date (as defined below), all Confidential Information shall remain the exclusive property of PNC. Except as expressly provided in this Agreement, no disclosure of Confidential Information to Recipient or any of its Representatives shall be construed as granting to or conferring upon Recipient or any of its Representatives any rights, by license or otherwise, in any such Confidential Information or to any invention, discovery or improvement made, conceived or acquired by PNC prior to or after the Effective Date. No patent application that may hereafter be made, and no claim to any trade secret or other protection, shall be prejudiced by PNC's disclosure of any Confidential Information.

11. **Expiration Date.** This Agreement shall expire upon the earlier of: (i) with respect to the Proposed Transaction, generally, one (1) year after the Effective Date; and (ii) with respect to each Loan, the closing under a definitive loan sale agreement between PNC and Recipient with respect to such Loan (the "Expiration Date").

12. **Customer Information.** Notwithstanding anything to the contrary contained in this Agreement, the confidentiality requirements of this Agreement shall apply to all Customer Information (as defined below) for the period(s) required by applicable laws, rules and regulations, shall be protected in all circumstances, and shall survive the Expiration Date. For the purposes of this Agreement, "Customer Information" shall mean customer and consumer information that is nonpublic personal information of consumers as defined by the Gramm-Leach-Bliley Act (Pub. L. 106-102), Section 628 of the Fair Credit Reporting Act, Section 216 of the Fair and Accurate Credit Transactions Act and any

implementing regulations or guidelines adopted thereunder. Customer Information is a subset of Confidential Information.

13. No Brokers. Recipient represents and warrants to PNC that it is acting as a principal and prospective purchaser for Recipient's own account with respect to the Proposed Transaction, and neither Recipient nor any of its Representatives is acting as a broker, finder, agent or representative of or for any other person or entity in connection with the Proposed Transaction.

14. No Waivers. No failure or delay by PNC in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement.

15. Modifications. No change, modification, alteration or addition to any provision of this Agreement shall be binding unless agreed to in writing by the party to be bound by such change, modification, alteration or addition.

16. Remedies. Recipient acknowledges and agrees that any breach of this Agreement by Recipient may result in immediate and irreparable injury to PNC. Accordingly, Recipient further acknowledges and agrees that, in the event of any breach of this Agreement by Recipient, PNC shall be entitled to seek equitable relief, including injunctive relief and specific performance, without the necessity of posting bond, in addition to all other remedies available at law and equity.

17. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles regarding conflicts of law, and without the benefit of any canon, custom or rule of law requiring construction against the draftsman.

18. Assignment. Recipient shall not assign any of its rights or obligations under this Agreement without the prior written consent of PNC.

19. Successors and Assigns. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns.

20. No Joint Venture. This Agreement is not intended to constitute, create, give effect to or otherwise constitute a joint venture, partnership or other form of business organization of any kind and the rights and obligations of PNC and Recipient shall be only those expressly set forth herein.

21. Severability. In the event that any provision of this Agreement is judicially or administratively determined to be invalid and unenforceable, such provision shall be construed to be enforceable to the maximum extent permitted by applicable laws, rules and regulations. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

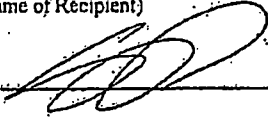
22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be delivered by facsimile or by other electronic format, each of which shall have the same force and effect as if bearing original signatures.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have caused this Confidentiality Agreement to be executed as of the Effective Date set forth above.

PNC BANK, NATIONAL ASSOCIATION

Summit Investment Management LLC
(Name of Recipient)

By: _____

By:  _____

Name: Karyn Stiller

Name: Steven C. Petrie

Title: Vice President

Title: Authorized Signatory

Date: _____

Date: February 21st, 2013

Phone: (720)221-3200

Fax: (303)830-9538

Email: _____

SCHEDULE A

LOANS

Loan Sale 2013-00019

Exhibit 11

Property ID	Property Name	Street Address	County	City	State	Zip Code	MSA
0001	Lot 11 Kiawah Island	11 Royal Beach Drive	Charleston	Kiawah Island	SC	29455	Charleston-North Charleston-Summerville, SC
0002	Liberty Cottages	Park West	Charleston	Mount Pleasant	SC	22407	Charleston-North Charleston-Summerville, SC
0003	G W Dorchester	8730 Dorchester Road	Dorchester	North Charleston	SC	29406	Charleston-North Charleston-Summerville, SC
0004	ROA, LLC	438 King Street	Charleston	Charleston	SC	29403	Charleston-North Charleston-Summerville, SC
0005	Brothers of SC	1831 W. Evans Street	Florence	Florence	SC	29501	Charleston-North Charleston-Summerville, SC
Key:							
NAP = Not Applicable							
NAV = Not Available							

Property Type	Property Sub-Type	Gross Square Feet Land Acres	Rentable Square Feet Units	Year Built	Year Renovated	Ownership Interest	Ground Lease Subordinated	Expiration Date of Ground Lease
Residential	Vacant Lot	0.81 Acres	0.81 Acres	NAP	NAP	Fee Simple	NAP	NAP
Residential	Residual Land Developed Into 32 Lots	13.259 Acres	13.259 Acres	NAP	NAP	Fee Simple	NAP	NAP
Retail	Single Tenant	12,600	12,600	2002	NAP	Fee Simple	NAP	NAP
Office	Multi-Tenant	10,498	9,075	Approx. 1912	2008; 2nd & 3rd Floors 2000; 1st Floor	Fee Simple	NAP	NAP
Office	Multi-Tenant	111,949	43,850	1990	2001	Fee Simple	NAP	NAP

First Lien Status	Second Lien Status	Third Lien Status	Subordinate to First Lien	Appraised Value	Occupancy % of Appraisal Date	Appraisal Report Date	Value as of Date	Phase I Date	Phase II Date
PNC Bank, NA successor in Interest to Centura Bank	NAP	NAP	NAP	\$3,150,000.00	NAP	NAP	2/2/2012	NAP	NAP
PNC Bank, NA successor in Interest to RBC Centura Bank	NAP	NAP	NAP	\$1,600,000.00	NAP	7/2/2012	6/28/2012	4/13/2005	NAP
PNC Bank, NA successor in Interest to RBC Centura Bank	NAP	NAP	NAP	\$1,750,000.00	100.00%	7/9/2012	6/26/2012	10/4/2005	NAP
PNC Bank, NA successor in Interest to RBC Centura Bank	NAP	NAP	NAP	\$3,400,000.00	100.00%	7/11/2012	6/22/2012	3/27/2007	NAP
PNC Bank, NA successor in Interest to RBC Centura Bank	NAP	NAP	NAP	\$4,700,000.00	84.00%	7/10/2012	6/27/2012	9/27/2002	NAP

Engineer/Int Report Date	Most recent financial statement	Most Recent Revenue	Most Recent NOI	Most Recent NOI Revenue Date	Most Recent NOI Financial type	Second most recent financial statement	Second Most Recent Revenue	Second Most Recent NOI
NAP	NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAP	NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAP	NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAP	NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAP	NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAP	NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV

Second Most Recent NOI Revenue Date	Second Most Recent NOI Financial Type	Third most recent financial statement	Third Most Recent Revenue	Third Most Recent NOI	Third Most Recent NOI Revenue Date	Third Most Recent NOI Financial Type	Most Recent Occupancy per Rent Roll
NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAP
NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAP
NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV
NAV	NAV	NAV	NAV	NAV	NAV	NAV	NAV

Most Recent Rent Roll Date	Comments
NAP	This is a Quit-Claim Deed. \$2,086,220 Judgment filed on 3/21/2012 by SunTrust Bank, successor in interest to Central Carolina Bank & Trust, against sponsor and other related parties.
NAP	This is a Quit-Claim Deed.
Per Appraisal dated 7/9/2011	Goodwill occupies the entire space.
Per Appraisal dated 7/11/2012	
Per Appraisal dated 7/10/2012	

Exhibit 12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
	)	
PNC Bank, N.A., successor to RBC	)	Civil Action No. 2013-CP-10-2624
Bank (USA),	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Liberty Cottages, LLC; GW	)	
Dorchester, LLC; USS Clarksville,	)	<u>AFFIDAVIT OF DREW CHAPLIN</u>
LLC; Liberty Cottages Land, LLC;	)	
ROA, LLC; Royal Beach Properties,	)	
LLC; The Brothers of SC, LLC;	)	
Deborah Rice-Marko a/k/a Deborah G.	)	
Rice-Marko; Evan R. Marko and John	)	
E. Marko, Jr.,	)	
	)	
Defendants.	)	

Personally appeared before me R. Andrew Chaplin, Jr., who first being duly sworn, deposes and says as follows:

1. My name is Drew Chaplin. I am over the age of 21, and reside in Florence County, South Carolina.
2. I am managing partner and broker in charge of Palmetto Commercial Real Estate, located at 1831 W. Evans St. in Florence, S.C.
3. Palmetto Commercial Real Estate has served as property and leasing manager for the BB&T building in Florence, which is owned by The Brothers of S.C., LLC.
4. Palmetto Commercial Real Estate is a tenant in the BB&T building.

5. On February 27, 2013, I received a telephone call from a person who identified himself as Trey Morrison of Land South of Charleston. He told me that Land South identifies troubled assets and troubled loans based on information received from lenders. He said that Land South used that information to attempt to purchase the loans or assets at a discount.

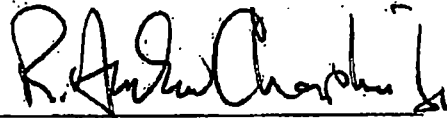
6. Morrison asked me a lot of questions about the BB&T building, and told me that he had a copy of the latest appraisal and was very familiar with the rent rolls. He had a lot of information about the building that I did not provide to him and which is not publicly available.

6. At the time of the call from Morrison, I wasn't aware that there were any issues between The Brothers of S.C., LLC and the lender for the building. I was surprised to learn that this was a "troubled" asset according to Morrison. As a tenant in the building I was concerned that the building might be the subject of actions by Land South undertaken without the knowledge of the owner.

7. Morrison asked me to keep his call confidential.

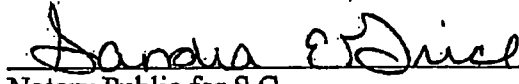
8. He followed up his phone call with an email, which I forwarded to my clients John Marko, Jr. and Evan Marko, who are the principals of The Brothers of S.C. LLC. I included a summary of my telephone conversation with Morrison in my email to the Markos. A copy of the email I received from Morrison and my email to John and Evan Marko are attached hereto.

Further affiant sayeth not.



R. Andrew Chaplin, Jr.

Sown to before me this 12 day of May, 2014.



Notary Public for S.C.

My Commission expires: 1/10/22

John Marko Jr

From: Drew Chaplin (dc@palmettocommercial.com)
Sent: Thursday, February 28, 2013 11:07 AM
To: John Marko Jr; Evan Marko
Subject: FW: 1205 Pamlico HWY
Importance: High

Guys:

The gentleman identified below with Land South of Charleston, called yesterday asking a lot of questions about the BB&T Building. His company apparently targets troubled assets or troubled loans which they receive information from various lenders, in order to pursue discounted acquisitions. He had a copy of your latest appraisal and was very familiar with the rent rolls, pricing and terms. I did not give him any information that he did not already have. I did speak very positively on the recent activity and now loans that have basically taken all of the second and third floors. I asked me to keep his inquiry confidential but of course, I wanted to make you aware.

Regards,



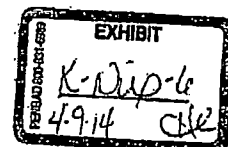
R. Andrew Chaplin, Jr.
Managing Partner BIC
843-667-4999 (Office)
843-667-1310 (Fax)
Palmetto Commercial Real Estate
1831 W. Evans St., Suite 325
Florence, SC 29501
dc@palmettocommercial.com
www.palmettocommercial.com

From: trey.landsouth@gmail.com (mailto:trey.landsouth@gmail.com) On Behalf Of Trey Morrison
Sent: Thursday, February 28, 2013 10:42 AM
To: DC@PalmettoCommercial.com
Subject: 1205 Pamlico HWY

Drew,

Nice talking with you yesterday. The property we have is right in front of the new hospital on 1205 Pamlico Hwy in Florence. I'll try to get you additional info later this afternoon.

4/8/2013



Regards,

Troy

Troy Morrison
Land South of Charleston
480 East Bay St. Suite 100
Charleston, SC 29401
Office: 843.777.6164
Cell: 843.677.6819
Fax: 843.777.6500
www.landsouthofcharleston.com

4/8/2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) IN THE NINTH JUDICIAL CIRCUIT

PNC Bank, N.A., successor to RBC
Bank (USA),

Plaintiffs,

vs.

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendants.

Civil Action No. 2013-CP-10-2624

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants Liberty Cottages, LLC, USS Clarksville, LLC, Liberty Cottages Land, LLC, ROA, LLC, Royal Beach Properties, LLC, and Deborah Rice-Marko a/k/a/ Deborah G. Rice-Marko, do hereby certify that I have served all counsel in this action with a copy of the documents specified below by mailing a copy of the same by email, to the following address:

Documents: Affidavit of Drew Chaplin

Counsel Served: Tara C. Sullivan, Esquire
Frank B. B. Knowlton, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211-1070
tara.sullivan@nelsonmullins.com
frank.knowlton@nelsonmullins.com
Counsel for Plaintiff

Willard D. Hanna, Jr., Esquire

Hanna Law, P.A.

1661 Glenns Bay Road

Surfside Beach, South Carolina 29575

bill@hannalawonline.com

*Counsel for Defendants Evan R. Marko, John E. Marko, Jr,
The Brothers of SC, LLC and GW Dorchester, LLC*

Morgan S. Templeton, Esquire

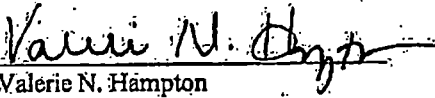
Wall Templeton

Post Office Box 1200

Charleston, South Carolina 29402

Morgan.Templeton@WallTempleton.com

Counsel for Buck Investments, LC


Valerie N. Hampton

Columbia, South Carolina
May 16, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS

) IN THE NINTH JUDICIAL CIRCUIT

PNC Bank, N.A., successor to RBC
Bank (USA),

Plaintiffs,

vs.

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendants.

Civil Action No. 2013-CP-10-2624

CERTIFICATE OF SERVICE

FILED
2014 MAY 20 AM 11:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants Liberty Cottages, LLC, USS Clarksville, LLC, Liberty Cottages Land, LLC, ROA, LLC, Royal Beach Properties, LLC, and Deborah Rice-Marko a/k/a/ Deborah G. Rice-Marko, do hereby certify that I have served all counsel in this action with a copy of the document below, as specified, to the following address:

Documents: Affidavit of Debbie Rice-Marko

Counsel Served: *(via hand delivery)*
Tara C. Sullivan, Esquire
Frank B. B. Knowlton, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211-1070
tara.sullivan@nelsonmullins.com
frank.knowlton@nelsonmullins.com
Counsel for Plaintiff

(via email)

Willard D. Hanna, Jr., Esquire

Hanna Law, P.A.

1661 Glenns Bay Road

Surfside Beach, South Carolina 29575

bill@hannalawonline.com

*Counsel for Defendants Evan R. Marko, John E. Marko, Jr,
The Brothers of SC, LLC and GW Dorchester, LLC*

(via email)

Morgan S. Templeton, Esquire

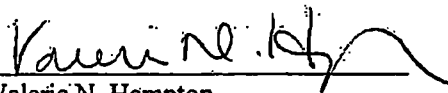
Wall Templeton

Post Office Box 1200

Charleston, South Carolina 29402

Morgan.Templeton@WallTempleton.com

Counsel for Buck Investments, LC


Valerie N. Hampton

Columbia, South Carolina
May 19, 2014



ROBERT E. STEPP
Direct Dial 803 231.7836
Direct Fax 803 231.7886
Email rstegg@sowellgray.com

May 19, 2014

VIA OVERNIGHT MAIL

Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street
106 Judicial Center
Charleston, South Carolina 29401

RE: PNC Bank, N.A., successor to RBC Bank (USA) v. Liberty Cottages, LLC, et al.
Civil Action No.: 2013-CP-10-2624
SGS&L File No.: 6573/1500

Dear Ms. Armstrong:

Enclosed please find the original and one copy of an Affidavit of Debbie Rice Marko in the above referenced matter. Please file the original and return the filed-stamped copy to my office in the self-addressed envelope that is provided.

By copy of this letter, I am serving a copy of same upon all counsel of record.

Very truly yours,


Robert E. Stepp

Enclosures

cc: Frank B. B. Knowlton, Esquire (via hand delivery)
Tara C. Sullivan, Esquire (via hand delivery)
Willard D. Hanna, Jr., Esquire (via email)
Morgan Templeton, Esquire (via email)
Ms. Deborah Rice-Marko

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release ("Settlement Agreement") is entered into this ____ day of ____, 2017 by and between PNC Bank, N.A. ("PNC" or "Bank") and Liberty Cottages, LLC, GW Dorchester, LLC, USS Clarksville, LLC, Liberty Cottages Land, LLC, ROA, LLC, Royal Beach Properties, LLC, The Brothers of SC, LLC, Deborah Rice-Marko a/k/a Deborah G. Rice-Marko, Evan R. Marko, and John E. Marko, Jr., (collectively, "Defendants"). PNC and Defendants are collectively referred to herein as "the Parties" and may be individually referred to as a "Party."

This Agreement is intended by the Parties to resolve all disputes between or among them, including all claims of all Parties that have been made or could have been made in the civil actions listed on Exhibit A hereto ("Litigation"), and further to resolve all issues regarding the loans that are listed on Exhibit B hereto (collectively, "the Loans"). A summary description of the real property that secures the Loans is also listed on Exhibit B attached hereto (collectively, "the Collateral").

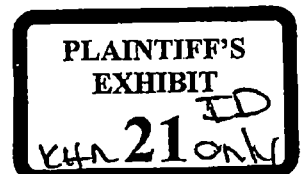
NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties stated in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Terms. The Parties agree to the following settlement terms:

A. Defendants will pay \$12,500,000 ("Settlement Amount") to PNC not later than 365 days from the date of this Agreement ("Settlement Period") in exchange for the release of all Collateral held by PNC in connection with the Loans and the other provisions of this Agreement.

B. During the Settlement Period, Defendants shall have the right to market, sell, or refinance the Collateral. PNC shall be obligated to release its lien(s) as to any piece of Collateral upon payment by Defendants of the net proceeds of any sale or refinancing of any piece of the Collateral during the Settlement Period (or within thirty (30) days thereafter with respect to any Collateral that was under contract at the end of the Settlement Period), provided that: a) Defendants provide PNC with sufficient information regarding the prospective purchaser and source of funds to permit PNC to comply with its requirements under the Bank Secrecy Act, the Patriot Act and regulations promulgated thereunder; and b) that the net proceeds received by PNC from the sale of the below listed Collateral shall not be less than the following amounts (each a "Net Release Amount"):

GW Dorchester, LLC: \$1,000,000.00
King Street: \$4,000,000.00
Royal Beach Properties, LLC: \$2,500,000.00
Liberty Cottages: \$2,500,000.00
BB&T: \$2,500,000.00



Proceeds from any sale or refinancing of Collateral, including any auction sale as provided in paragraph 1 (H) below, as well as any other payments made by Defendants to PNC during the Settlement Period or thereafter as provided herein, including the Rental Payments referenced in paragraph 1 (G) below, shall be applied against the Settlement Amount, and credited against the outstanding balance of the Loans as set forth in paragraph 1(E) below. All proceeds received from any piece of Collateral in excess of the Net Release Amount, as well as any payments made to PNC that are not the result of a sale or refinancing of Collateral, may also be used, on a dollar-for-dollar basis, to reduce the Net Release Amount for any other piece of Collateral as determined by Defendants.

C. Contemporaneously with the execution of this Settlement Agreement, Defendants will execute and deliver deeds and other necessary instruments of conveyance to the Collateral to PNC's external counsel ("PNC's Counsel"), to be held, in escrow, pursuant to the terms of this Settlement Agreement.

D. 1. Contemporaneously with the execution of this Settlement Agreement, Defendants shall execute and deliver to PNC's Counsel a joint and several confession of judgment in the amount of \$15,000,000 in favor of PNC.

2. Upon the closing of the sale or refinancing of any piece of Collateral, in exchange for obtaining PNC's lien release on such Collateral, Defendants shall deliver the net proceeds thereof to PNC, and Defendants shall execute and deliver a new confession of judgment in an amount equal to the amount on the confession of judgment papers being held by PNC's counsel minus the net proceeds paid by Defendants to PNC. The amount of the confession of judgment shall also be reduced by the amount of any other payments made by Defendants to PNC.

E. PNC agrees that proceeds from the sales or refinancing of Collateral, as well as any other payments made by Defendants to PNC shall be applied, on a dollar-for-dollar basis, against the Settlement Amount. PNC agrees that any payments received from Defendants pursuant to this Agreement will be credited against the principal balance of the Loans in the following order of priority:

- Loan 605395242 (The Brothers of SC, LLC);
- Loan 605443827 (GW Dorchester, LLC);
- Loan 605420281 (ROA, LLC) (King Street);
- Loans 605445205, 605420275, 605840074 (Liberty Cottages, LLC, ROA, LLC, USS Clarksville, LLC) (Park West);
- Loan 605457764 (Royal Beach Properties, LLC).

F. PNC shall notify PNC's Counsel of each payment received by PNC pursuant to this Settlement Agreement including the proceeds of sale or refinancing of any piece of the Collateral, the payments received pursuant to this Agreement, the proceeds of any auctions sales as provided in this Agreement, and all other payments made by or on behalf of Defendants, regardless of the source of such funds. PNC's Counsel shall reduce the remaining balance of the Settlement Amount and the amount of the confession of judgment

by all such amounts received by PNC. The amount of the credit against the Settlement Amount shall be determined by the amount disbursed to PNC under the HUD-1/Closing Statement produced as a result of the sale, refinance, or auction of any Collateral, or the face amount of any other check paid to PNC by Defendants where no HUD-1/Closing Statement is issued.

G. During the Settlement Period, Defendants will continue to pay PNC 33% of the rents (collectively, the "Rental Payments") as provided in Judge Nicholson's pending order in the Litigation. If income producing properties are sold, re-financed, or released during the Settlement Period, the percentage of the rents paid to the Bank on the remaining properties will remain the same, but the total amount of the payments will necessarily be reduced.

H. In the event that the Settlement Amount is not paid in full within the Settlement Period (or within thirty (30) days thereafter with respect to any Collateral that was under contract at the end of the Settlement Period as provided in Paragraph 1(B) of this Agreement) or as a result of the auction provided for in this Paragraph, any Collateral remaining unsold at the end of the Settlement Period shall be sold at public auction to be arranged by PNC. The net proceeds of all such sales (after deduction of reasonable and customary sales and closing costs) shall be credited against the Settlement Amount.

I. If the entire Settlement Amount is not paid to PNC during the Settlement Period (or within thirty (30) days thereafter with respect to any Collateral that was under contract at the end of the Settlement Period as provided in Paragraph 1(B) of this Agreement) or as a result of the auction provided for in Paragraph (H) of this Agreement, PNC's Counsel shall deliver the revised confession of judgment to PNC as provided in paragraph 1(D) above, along with the deeds and other instruments of conveyance referenced in paragraph 1(C) above. PNC may thereupon record the deeds and confession papers. PNC will not be entitled, however, to record the deed to any property that has been sold or released during the Settlement Period. PNC reserves the right to file a non-recourse foreclosure action with respect to any property not released during the Settlement Period or thereafter as provided herein. Defendants agree to reasonably cooperate with PNC with respect to any such action. For any deed delivered in escrow, upon sale of a piece of Collateral, the deed in escrow covering such sold Collateral shall thereupon be delivered back to Defendants at the time of sale.

J. Upon full payment of the Settlement Amount during the Settlement Period or thereafter as provided herein, PNC's Counsel shall return the original confession to Defendants, along with the releases, deeds and other instruments of conveyance it is holding, as referenced in paragraph 1(C) above. Any unsatisfied promissory notes relating to the Loans shall, at the option of Defendants, then be assigned to Defendants or their designee(s).

2. **Release by Defendants.** Defendants hereby release and forever discharge any and all claims described below which they may have against PNC and its and officers, directors, shareholders, partners, employees, attorneys, representatives, parents, subsidiaries, predecessors, successors, divisions and affiliates. Claims include any and all claims, demands, damages, causes of action, rights, attorneys' fees and expenses whatsoever, that arise from or relate in any way to

the Loans and the facts, allegations and disputes that are the subject matter of the Litigation, including any claims of any nature whatsoever in law or equity which were, or could have been asserted, in the Litigation. This releases all claims described above, including those of which Defendants are not aware. This Release applies to all claims resulting from anything that has happened up to now, but excludes claims arising under the terms of this Agreement. Defendants are bound by this Release. Anyone who succeeds to any one of any Defendant's rights and responsibilities, or who claims by or through any one of any Defendant's heirs, agents, assigns, parents, subsidiaries, affiliates, officers, directors, and employees, is also bound. This release is made for the benefit of PNC and all who succeed to PNC's rights and responsibilities, and forever discharges PNC and all of its officers, directors, shareholders, partners, employees, attorneys, representatives, parents, subsidiaries, predecessors, successors, divisions and affiliates.

3. **Release by PNC.** Upon either of: (i) the payment of the Settlement Amount to PNC as provided for in Paragraph 1(A) of this Agreement, or (ii) the delivery of the confession of judgment, deeds, and other instruments of conveyance from PNC's Counsel to PNC as provided for in Paragraph 1(I) of this Agreement, at that time, PNC shall release and forever discharge any and all Claims (as defined below) against Defendants (including their officers, directors, shareholders, partners, employees, attorneys, representatives, parents, subsidiaries, predecessors, successors, divisions and affiliates. The term "Claims" is defined herein as any and all claims, demands, damages, causes of action, rights, attorneys' fees and expenses whatsoever, which arise from or relate in any way to the Loans and the facts, allegations and disputes that are the subject matter of the Litigation, but specifically and expressly excludes any obligations of Defendants under this Agreement or the confession of judgment papers delivered in connection with this Agreement. This Release applies to all Claims related to the Loans and Litigation resulting from anything that has happened up to now. For the avoidance of doubt, nothing contained in this Agreement releases Defendants, or their officers, directors, shareholders, partners, employees, attorneys, representatives, parents, subsidiaries, predecessors, successors, divisions and affiliates, from any other loans or obligations to PNC that are unrelated to the Litigation.

4. **Stipulation of Dismissal Without Prejudice.** Concurrent with the execution of this Settlement Agreement, the Parties shall execute a Stipulation of Dismissal Without Prejudice ("Stipulation"), in the form attached here as **Exhibit C. All pending lis pendens will be cancelled upon execution of this Agreement.** By executing the Agreement and the Stipulation, the Parties agree that they will be responsible for their own court and other costs, including attorneys' fees. The Parties agree that a subsequent stipulation of dismissal with prejudice is neither warranted or necessary given the Release provisions located in Paragraphs 2 and 3 of this Agreement ("Release Provisions"), and that the Release Provisions shall act as a complete bar to any subsequent legal action of any kind related to the Loans or Litigation, with the exception of (i) claims arising under the terms of this Agreement and (ii) the confession of judgment described in Paragraph 1(D) of this Agreement.

5. **Unknown Facts.** The Parties agree that should any of them hereafter discover facts or law different from or in addition to those now known or believed to be true with respect to the subject matter of this Settlement Agreement and the Litigation, this Settlement Agreement shall remain effective in all respects notwithstanding such different or additional facts. The Parties are

hereby deemed to have waived any and all rights under any state or federal statute or principle of common law that may have the effect of limiting releases with respect to unknown facts.

6. **No Admission of Liability.** Nothing in this Settlement Agreement or otherwise related to the settlement is, nor shall be deemed to be, an admission of any liability or wrongdoing by the Parties. The Parties dispute all claims, counterclaims and affirmative defenses alleged in the Litigation and expressly deny any liability or wrongdoing. The Parties have agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience and distraction of litigation.

7. **Confidentiality.** The Parties agree that the terms of and all matters relating to this Settlement Agreement, including the negotiation of this Settlement Agreement, shall be confidential and are not to be disclosed except by agreement of the Parties. If any inquiry is made by any person regarding the settlement, the Party may only state that the matter was amicably resolved. Notwithstanding the foregoing, the Parties are permitted to disclose such information: (i) as required to comply with regulatory reporting requirements; (ii) to such Party's attorneys and tax advisors; (iii) in connection with litigation seeking to enforce this Settlement Agreement; and (iv) to comply with an order of a court of competent jurisdiction, a regulatory body, or as otherwise required by law. In the event of a demand from a third party that could result in disclosure pursuant to clause (iv), the Party intending to disclose such information shall immediately notify the other Party so that the other Party may take such action (such as a motion for protective order) as it deems appropriate in response thereto prior to the time response would be required.

8. **Non-disparagement.** The Parties agree that they will not make any public remarks or publish, or participate in the publication of (including electronic publication through social media, blogs, or other methods of publication over the Internet), any statements, accounts or stories disparaging the conduct or character of the other Party and/or their subsidiaries, parents, affiliates, agents, employees, officers, directors, successors or assigns. Notwithstanding anything to the contrary in this Settlement Agreement, the Parties are permitted to (i) make complaints or otherwise provide information to appropriate law enforcement or regulatory agencies; (ii) make disclosures required to comply with regulatory reporting requirements; (iv) provide information to attorneys and tax advisors; and (v) comply with an order of a court of competent jurisdiction or as otherwise required by law.

9. **Tax Implications.** PNC may issue an IRS Form 1099 if it reasonably determines, in its sole discretion, that such issuance is required by IRS regulations, and such Form 1099 is consistent with paragraph 1(E) above. If PNC issues an IRS Form 1099 in connection with this Settlement Agreement, this will not constitute the providing of tax advice or a representation concerning any tax implications. Defendants are solely responsible for obtaining any such advice as is needed to make the appropriate decisions as to the reporting of any tax implications.

10. **No Fees or Costs.** Each Party agrees to bear its own costs and fees, including but not limited to, attorneys' fees, in connection with the Litigation and this Settlement Agreement.

11. **Return of Confidential Information.** The return or destruction of Confidential Documents, as that term is used in the Consent Confidentiality Orders entered on January 3, 2014

(Florence County Civil Action No. 2013-CP-21-1193), January 7, 2014 (Dorchester County Civil Action No. 2013-CP-18-825) and January 9, 2014 (Charleston County Civil Action No. 2013-CP-10-2624) shall be accomplished in accordance with paragraphs 9(a) of those orders, which are incorporated herein by reference.

12. **Governing Law and Exclusive Jurisdiction.** The validity, effect, and construction of this Settlement Agreement and any obligation undertaken pursuant hereto shall be determined in accordance with the laws of the State of South Carolina, without regard to conflict of law principles. Any dispute relating to or arising from this Settlement Agreement shall be adjudicated exclusively in the State of South Carolina.

13. **Entire Agreement.** This Settlement Agreement and its exhibits shall constitute the entire agreement of the Parties with respect to their settlement, and shall supersede all prior oral or written agreements, understandings, representations, and warranties between the Parties as to the terms of the settlement. Each Party acknowledges and represents that in entering into this Settlement Agreement, it is not relying on any representations, by or on behalf of any other Party, not expressly set forth in this Settlement Agreement. This Settlement Agreement may not be terminated, modified, amended, or changed except by a writing signed by the Parties, and it may not be discharged except by performance in accordance with its terms or by a writing signed by the Party to whom performance is to be rendered.

14. **Enforcement/Waiver.** Any waiver by any Party of a breach of any provision of this Settlement Agreement shall not operate as or be construed to be a waiver of any subsequent breach of such provision or of any breach of any other provision of this Settlement Agreement. The failure of a Party to insist upon strict adherence to any term of this Settlement Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Settlement Agreement.

15. **Cooperation.** The Parties agree that, without receiving further consideration, they will sign and deliver such documents and do anything else that is reasonably necessary in the future to make the provisions of this Settlement Agreement effective.

16. **Non-Assignment of Claims.** The Parties represent and warrant that they maintain full and absolute control over the disposition and release of all claims which are being released, and that no such claim has ever been assigned or transferred.

17. **Voluntary Execution/Access to Counsel.** The Parties represent and acknowledge that in executing this Settlement Agreement they have sought and obtained the advice of legal counsel and do not rely and have not relied upon any representations or statements made by each other with regard to the subject matter, basis or effect of this Settlement Agreement, or otherwise. The Parties acknowledge that the Settlement Agreement is executed voluntarily and without any duress or undue influence.

18. **Construction.** This Settlement Agreement shall be construed as if it was drafted by the Parties jointly, and shall not be construed against any party regardless of which party drafted any provision hereof.

19. **Severability.** If any provision or clause of this Settlement Agreement or the application thereof to any person or circumstance is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, such provisions or clause shall be deemed amended to conform to applicable laws so as to be valid and enforceable so long as such amendment does not materially alter the intention of the Parties as expressed in this Settlement Agreement. If it does so materially alter such intention, such provision shall be stricken, and the remaining provisions hereof will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby so long as all of the Parties agree that the Settlement Agreement shall remain in full force and effect.

20. **Headings.** The headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation hereof.

21. **Persons Authorized to Sign on Behalf of Entity.** Each person signing this Settlement Agreement on behalf of any entity warrants and represents that he or she has the full and complete authority to enter into this Settlement Agreement on behalf of that entity.

22. **Notices.** All notices, demands and other communications to be given or delivered under, or by reason of, the provisions of this Settlement Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), (b) upon sending (on the date sent if a business day, or if not sent on a business day, the first business day thereafter) if sent by facsimile or email (with electronic confirmation thereof, or (c) one (1) day after being sent by a nationally recognized overnight carrier to the addresses set forth below (with confirmation of receipt)

If to PNC:

c/o Nelson Mullins Riley & Scarborough LLP, Attn: Frank B.B. Knowlton
P. O. Box 11070
1320 Main Street
Columbia, SC 29205

If to Defendants

Sowell Gray Robinson Stepp & Laffitte LLC, Attn: William H. Jordan
P. O. Box 11449
1310 Gadsden St.
Columbia, SC 29211

Changes to these addresses must be made in writing by the person identified above.

23. **Execution in Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. In addition, for purposes of executing this Settlement

Agreement, a document signed and transmitted by email or facsimile machine shall be treated as an original document.

24. Effective Date. The Effective Date of this Settlement Agreement shall be the last date on which the Parties execute this Agreement.

25. WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. EACH PARTY HERETO ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

Wherefore the Parties have executed this Agreement this ___ day of ___, 2017.

Witnesses:

PNC Bank, N.A.

By: _____

Its: _____

William H. Jones
Vacill H. H.

ROA, LLC

By: Norah R. Marko

Its: managing member

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

William H. Jones
Vacill H. H.

William H. Jones

Liberty Cottages, LLC

By: Norah R. Marko

Its: managing member

GW Dorchester, LLC

By: E. R. M.

Valeri N. Hyn

William B. Jr.
Valeri N. Hyn

William B. Jr.
Valeri N. Hyn

William B. Jr.
Valeri N. Hyn

William B. Jr.
Valeri N. Hyn

Its: Member

USS Clarksville, LLC

By: Deborah Rice-Marko

Its: Managing member

Liberty Cottages Land, LLC

By: Deborah Rice-Marko

Its: Managing member

ROA, LLC

By: Deborah Rice-Marko

Its: Managing member

Royal Beach Properties, LLC

By: Deborah Rice-Marko

Its: Managing member

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

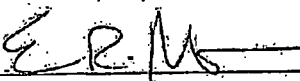
William B. Jr.
Valeri N. Hyn

The Brothers of SC, LLC

By: J. Coz

Its: Member

Deborah Rice-Marko
Deborah Rice-Marko


Evan R. Marko

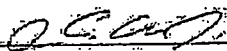

John E. Marko, Jr.

Exhibit A- Civil Actions Subject to Settlement Agreement

1. *PNC Bank, N.A., successor to RBC Bank (USA) v. Liberty Cottages, LLC; GW Dorchester, LLC; USS Clarksville, LLC; Liberty Cottages Land, LLC; ROA, LLC; Royal Beach Properties, LLC; The Brothers of SC, LLC; Deborah Rice-Marko a/k/a Deborah G. Rice-Marko; Evan R. Marko; and John E. Marko, Jr.; County of Charleston, State of South Carolina Civil Action No. 2013-CP-10-2624*
2. *PNC Bank, N.A., successor to RBC Bank (USA) v. The Brothers of SC, LLC; GW Dorchester, LLC; USS Clarksville, LLC; Liberty Cottages, LLC; Liberty Cottages Land, LLC; ROA, LLC; Royal Beach Properties, LLC; The Brothers of SC, LLC; Deborah Rice-Marko a/k/a Deborah G. Rice-Marko; Evan R. Marko; and John E. Marko, Jr.; County of Florence, State of South Carolina Civil Action No. 2013-CP-21-1193.*
3. *PNC Bank, N.A., successor to RBC Bank (USA) v. GW Dorchester, LLC; USS Clarksville, LLC; Liberty Cottages, LLC; Liberty Cottages Land, LLC; ROA, LLC; Royal Beach Properties, LLC; The Brothers of SC, LLC; Deborah Rice-Marko a/k/a Deborah G. Rice-Marko; Evan R. Marko; and John E. Marko, Jr.; County of Dorchester, State of South Carolina Civil Action No. 2013-CP-18-825*¹

¹ All three actions were consolidated into County of Charleston, State of South Carolina Civil Action No. 2013-CP-10-2624 pursuant to the Charleston County Circuit Court Order dated June 11, 2014.

Exhibit B- Loans and Properties Subject to Settlement Agreement

I. Description of Loans

- (1) **"Royal Beach Loan:"** loan to D. Rice-Marko on May 19, 2000, in the original principal amount of \$2,500,000, which was subsequently assumed by Royal Beach Properties, LLC.

The funds were used to purchase Lot 11 on Royal Beach Drive on Kiawah Island ("Kiawah Lot"), and the loan was originally secured by a mortgage dated May 19, 2000, on the Kiawah Lot.

This loan was renewed and/or modified on May 18, 2001, April 14, 2002, May 11, 2004, May 19, 2005, March 23, 2006, April 17, 2007, July 18, 2007, August 26, 2008, January 26, 2009, January 26, 2010, February 19, 2010, and July 15, 2011.

This loan is guaranteed by D. Rice-Marko, E. Marko, and J. Marko.

- (2) **"Brothers \$1.1M Loan:"** loan to The Brothers of NC, LLC, on August 7, 2001, in the original principal amount of \$1,100,000.

This loan was originally secured by a mortgage dated August 7, 2001, on Lot 24, Dunes Ocean Front Development in Horry County ("Horry County Lot").

This loan was renewed and/or modified on July 18, 2002, August 11, 2003, August 9, 2004, August 22, 2005, August 30, 2006, August 28, 2007, August 26, 2008, July 29, 2009, January 29, 2010, and July 15, 2011.

Because The Brothers of NC, LLC, merged into The Brothers of SC, LLC, on August 3, 2004, subsequent renewals and/or modifications were made to The Brothers of SC, LLC.

This loan is guaranteed by E. Marko and J. Marko.

- (3) **"DRM Loan:"** loan to D. Rice-Marko on January 13, 2005, in the original principal amount of \$5,000,000.

This loan was originally secured by a Commercial Pledge Agreement dated January 13, 2005, granting a security interest in D. Rice-Marko's AG Edwards & Sons brokerage account with a value at the time of approximately \$5.6M. The brokerage account generally consisted of Wachovia stock.

This loan was renewed and/or modified January 11, 2007, January 26, 2009, January 26, 2010, February 23, 2010, and July 15, 2011.

- (4) **"Clarksville Loan:"** loan to D. Rice-Marko on January 24, 2005, in the original principal amount of \$550,400, which was subsequently assumed by USS Clarksville, LLC.

As set forth in the next subsection, this loan was originally cross-collateralized with the ROA \$1.763 Loan.

This loan was renewed and/or modified on August 30, 2006, March 22, 2007, February 25, 2008, January 26, 2009, January 26, 2010, February 23, 2010, and July 15, 2011.

This loan is guaranteed by D. Rice-Marko.

- (5) **"ROA \$1.763 Loan:"** loan to ROA, LLC, on June 24, 2005, in the original principal amount of \$1,763,000.

This loan was renewed and/or modified on August 30, 2006, February 26, 2007, March 22, 2007, February 25, 2008, January 26, 2009, January 26, 2010, February 24, 2010, and July 15, 2011.

This loan is guaranteed by D. Rice-Marko and Liberty Cottages Land, LLC.

This loan was originally cross-collateralized with the Clarksville Loan above. The funds from these loans were used to purchase three parcels of land in Park West in Mount Pleasant: Parcel 27-2 consisting of 12.011 acres (TMS No. 594-12-00-470); Parcel 27-3 consisting of 4.817 acres (TMS No. 594-12-00-471); and Parcel 27-4 consisting of 7.68 acres (TMS No. 594-12-00-472) (collectively, "Park West Property").

Both loans were secured by a mortgage by D. Rice-Marko dated June 24, 2005, on Parcel 27-3 and by a mortgage on behalf of ROA, LLC, dated June 24, 2005, on Parcels 27-4 and 27-2.

- (6) **"Dorchester Loan:"** loan to Evelyn D. Rice on November 18, 2005, in the original principal amount of \$2,350,000, which was subsequently assumed by GW Dorchester, LLC.

The funds were used to purchase approximately 2.5 acres of land leased to Goodwill in Dorchester County ("Dorchester Property"), and the loan was originally secured by a mortgage dated November 18, 2005, on the Dorchester Property.

This loan was renewed and/or modified on December 28, 2006, January 16, 2008, February 26, 2008, July 27, 2009, January 22, 2010, and July 15, 2011.

This loan is guaranteed by D. Rice-Marko, E. Marko, and J. Marko.

- (7) **"Liberty Cottages Loan:"** loan to Liberty Cottages, LLC, on March 22, 2007, in the original principal amount of \$2,500,000.

The purpose of these funds was for the development of the Park West Property, which previously secured the ROA \$1.763M loan and the Clarksville loan as set forth above. This loan was originally secured by new mortgages dated March 22, 2007, on the Park West Property executed by both ROA and Clarksville. In other words, the ROA \$1.763M loan, the Clarksville loan, and the Liberty Cottages loan have all been cross-collateralized since their origination.

This loan was renewed and/or modified on February 25, 2008, January 26, 2009, January 26, 2010, February 23, 2010, and July 15, 2011.

This loan is guaranteed by D. Rice-Marko, E. Marko, and J. Marko.

- (8) **"Brothers \$4.9M Loan:"** loan to The Brothers of SC, LLC, on October 11, 2007, in the original principal amount of \$4,900,000.

This loan was originally secured by a mortgage dated October 11, 2007, of property located at the intersection of West Evans Street and Cashua Drive in Florence leased to BB&T and others ("Florence Property").

This loan was renewed and/or modified on January 26, 2009, January 21, 2010, and July 15, 2011.

This loan is guaranteed by E. Marko and J. Marko.

- (9) **"ROA \$3.92 Loan:"** loan to ROA, LLC, on November 9, 2007, in the original principal amount of \$3,920,000.

This loan was originally secured by a mortgage dated November 9, 2007, on 438 King Street in Charleston ("King Street Property").

This loan was renewed and/or modified July 15, 2011.

This loan is guaranteed by D. Rice-Marko,

II. Description of Properties

- 1) the real property identified as ~~TMS No. 594-13-00-414 and consisting of approximately 13 acres in the Park West subdivision in Mount Pleasant;~~
- 2) the real property identified as TMS No. 460-16-02-066 and located at 438 King Street in Charleston;

- 3) the real property identified as TMS No. 264-15-00-078 and located at 11 Royal Beach Drive on Kiawah Island;
- 4) the real property identified as TMS No. 90024-02-006 and located at 1831 West Evans Street in Florence; and
- 5) the real property identified as TMS No. 171-00-00-185-000C and located at 8730 Dorchester Road in North Charleston, SC.

Exhibit C- Stipulation of Dismissal Without Prejudice

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
PNC Bank, N.A., successor to RBC Bank	)	Civil Action No. 2013-CP-10-2624
(USA),	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Liberty Cottages, LLC; GW Dorchester,	)	
LLC; USS Clarksville, LLC; Liberty	)	
Cottages Land, LLC; ROA, LLC; Royal	)	
Beach Properties, LLC; The Brothers of	)	
SC, LLC; Deborah Rice-Marko a/k/a	)	
Deborah G. Rice-Marko; Evan R. Marko	)	
and John E. Marko, Jr.,	)	
	)	
Defendants.	)	
	)	
	)	

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

The Parties have reached an agreement with regard to the issues between them. Pursuant to that agreement, the Parties wish to dismiss this action in its entirety **without prejudice** pursuant to South Carolina Rule of Civil Procedure 41(a)(1).

NOW, THEREFORE, pursuant to South Carolina Rule of Civil Procedure 41(a)(1), the Plaintiff and Defendants stipulate to the dismissal of this action without prejudice.

[Signature Page to Follow]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Frank B. B. Knowlton, SC Bar No. 003588
E-Mail: frank.knowlton@nelsonmullins.com
Thomas William McGee, III, SC Bar No. 11317
E-Mail: billy.mcgee@nelsonmullins.com
Graham S. Mitchell, SC Bar No. 101314
E-Mail: graham.mitchell@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for PNC Bank, National Association, successor to
RBC Bank (USA)

Columbia, South Carolina

_____, 2017.

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

BY: _____

Robert E. Stepp
E-Mail: rstepp@sowellgray.com
Benjamin R. Gooding
E-Mail: bgooding@sowellgray.com
1310 Gadsden Street
P. O. Box 11449
Columbia, SC 29211
(803) 929-1400

Columbia, South Carolina

_____, 2017.

HANNA LAW P.A.

BY: _____

Willard D. Hanna, Jr.
3401 Highway 17 Bypass
P. O. Box 1149
Murrells Inlet, SC 29576

(843) 651-9000

Attorneys for Liberty Cottages; GW Dorchester, LLC; USS
Clarksville, LLC; Liberty Cottages Land, LLC; ROA, LLC;
Royal Beach Properties, LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G. Rice-Marko; Evan R.
Marko and John E. Marko, Jr.,

Murrells Inlet, South Carolina

_____, 2017

4844-7726-1387 v.6

KING STREET
COMMERCIAL
REAL ESTATE

557 King Street, Suite C | Charleston, SC | 29403 | (843) 628 - 5140

Jan 21, 2018

LETTER OF INTENT TO PURCHASE

Dear Debbie:

This Letter represents a general outline of those terms and conditions that we intend to include in formal Purchase Agreements for each individual property, which will be drafted upon final mutual agreement to this Letter of Intent. Your confidentiality in this matter is greatly appreciated.

The following is a summary of the terms and conditions to which Vanderking Acquisition Co, LLC and/or Assigns will be willing to commit to a Purchase Agreement for the following properties.

Addresses:	438 King Street
Purchase Price:	The purchaser offers \$5,125,000 in cash or its equivalent to purchase the above listed property
Earnest Money Deposit:	Equal to 1% of the agreed upon contract Purchase Price to be held in escrow. Upon the expiration of inspection period, assuming the Purchaser elects to proceed to acquire the property, all earnest money shall become non-refundable. All earnest money shall be applicable to Purchase Price at closing.
Inspection Period:	Fifty (50) day term from full execution of mutually acceptable Purchase Agreement. If Purchaser shall for any reason elect to terminate Purchase agreement on or before expiration of Inspection Period, Purchaser shall receive a full and immediate refund of earnest money deposit.
Closing Period:	Thirty (30) days from expiration of Inspection Period.
Seller Docs and Access:	Seller shall provide Purchaser with ALL available documentation requested by Purchaser immediately upon full execution of Purchase Agreement. Seller shall allow Purchaser and Purchaser's agents full and exclusive access to Subject Property during Inspection and Closing Periods.
Brokerage:	No broker other than King Street Commercial, LLC assisted in facilitating this transaction. The Seller agrees to pay a commission of 3% of the purchase price to King Street Commercial, LLC at closing.

It is understood and agreed that this Letter of Intent is a non-binding offer and not a final binding Purchase Agreement, and that this Agreement of the parties when finally reached will be embodied in a definitive Purchase Agreement for each individual property, executed by the parties, containing such additional terms as are in all respects satisfactory to both parties. Neither Seller nor Purchaser shall have any obligations to the other unless and until a definitive Purchase Agreement is executed between Seller and Purchaser.

557 King Street | Suite C | Phone: 843.628.5134

PLAINTIFF'S
EXHIBIT

22^{IP}
only

The Purchase Agreement detailing all rights, duties and obligations will be drafted by Seller and will incorporate all of the terms specified herein, as well as such other terms or conditions as are acceptable to both parties. Seller and Purchaser intend to promptly commence drafting and negotiating the Purchase Agreement as soon as possible. However, if Seller and Purchaser are unable to reach a full and final agreement, neither party will have any claim against the other and all costs incurred by either party will be the sole responsibility of the incurring party.

We look forward to working with you. Thank you again for respecting the confidentiality of my clients. If the above terms and conditions of this agreement are acceptable, please acknowledge its approval by signing this letter and returning one copy to me.

This Letter of Intent will expire at the close of business on 1/31/18 unless executed by the parties.

Thank you.

Purchaser: Vanderburg Agood H.M. Co.
Agreed to

By: Andrew H. Agood

Its: Member

Date: 1/26/18

Seller: _____
Agreed to

By: _____

Its: _____

Date: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BUCK INVESTMENTS, LC,

Plaintiff,

-versus-

ROA, LLC, DEBORAH RICE-MARKO,
PNC BANK, N.A., successor to RBC
BANK (USA),

Defendants.

-and-

ROA, LLC and DEBORAH RICE-MARKO

Third-Party Plaintiffs,

-versus-

EDGAR A. BUCK, JR.,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C.A. NO.: 2016-CP-10-507



STIPULATION

Defendant stipulates that Plaintiff was ready, willing, and able to perform the closing of
438 King Street in April 2013.

July 23, 2018.

Willard D. Hanna, Jr.
Attorney for Defendants

Morgan S. Templeton

From: Bill Hanna <bill@hannalawpa.com>
Sent: Sunday, July 22, 2018 12:51 PM
To: Morgan S. Templeton
Subject: RE: Buck

Agreed provided that we confer before you call him.

From: Morgan S. Templeton [mailto:Morgan.Templeton@WallTempleton.com]
Sent: Sunday, July 22, 2018 12:48 PM
To: Bill Hanna <bill@hannalawpa.com>
Subject: RE: Buck

Bill:

I will not call him in my case in chief, but I will not foreclose the possibility of needing to call him as a rebuttal witness if necessary to rebut something raised in your case. Please confirm the stipulation exists with that clarification.

Morgan

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501



Wall Templeton
ATTORNEYS

Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

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From: Bill Hanna [mailto:bill@hannalawpa.com]
Sent: Sunday, July 22, 2018 12:45 PM
To: Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>
Subject: RE: Buck

P.S.

I should have included the proviso that Plaintiff in return agrees not to call Boone as a witness.

From: Morgan S. Templeton [mailto:Morgan.Templeton@WallTempleton.com]
Sent: Sunday, July 22, 2018 12:13 PM

To: Bill Hanna <bill@hannalawpa.com>
Subject: Buck

Bill:

Per our discussion yesterday, attached is a proposed stipulation in lieu of calling Boone in our case in chief. If you agree, please so advise by email and/or sign the attached and return so I know how to proceed.

Thanks,
Morgan

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501



Wall Templeton
ATTORNEYS

Wall Templeton & Haidrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON:

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) Civil Action No. 2013-CP-10-4517

Buck Investments, LC;

Plaintiff,

vs.

ROA, LLC; Deborah Rice-Marko; and
PNC Bank, N.A., successor to RBC
Bank, (USA);

Defendants.

DEFENDANTS ROA, LLC
AND DEBORAH RICE-MARKO'S
RESPONSE TO PLAINTIFF'S FIRST
REQUEST FOR ADMISSION

The Defendants ROA, LLC AND DEBORAH RICE-MARKO, responding to the
Plaintiff's First Request for Admission, as follows:

1. Admit foreclosure proceedings by PNC had not been commenced on the Subject Property
prior to April 3, 2013.

RESPONSE: Admit.



Willard D. Hanna, Jr.
HANNA LAW, P.A.
1661 Glens Bay Road
Surfside Beach, SC 29575
843.651.9000

*Attorney for Defendants ROA, LLC and
Deborah Rice-Marko*

January 6, 2014

Surfside Beach, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) Civil Action No. 2013-CP-10-4517

Buck Investments, LC,

Plaintiff,

vs.

ROA, LLC; Deborah Rice-Marko; and
PNC Bank, N.A., successor to RBC
Bank, (USA),

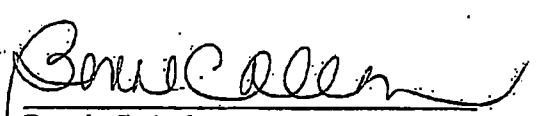
Defendants.

CERTIFICATE OF MAILING

The undersigned, as an employee of the law firm of Hanna Law, P.A., hereby certifies that a copy of the **DEFENDANTS ROA, LLC AND DEBORAH RICE-MARKO'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR ADMISSION** in the above-entitled action was served upon opposing counsel, by depositing same in the United States Mail, first-class postage prepaid, and addressed as follows:

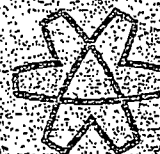
Morgan S. Templeton, Esquire
ATTORNEY FOR THE PLAINTIFF
Wall Templeton & Haldrup, P.A.
P.O. Box 1200
Charleston, SC 29402

on the 8th day of January, 2014.

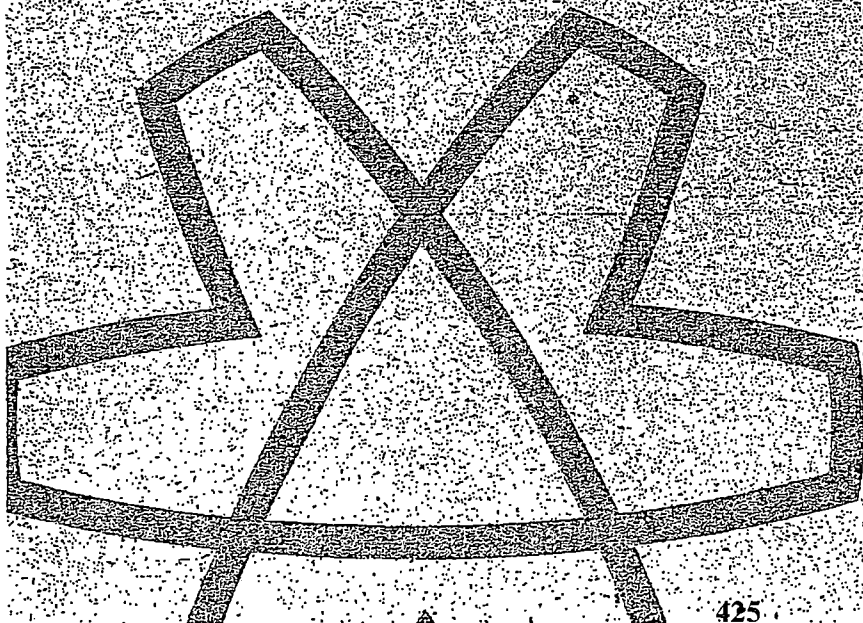
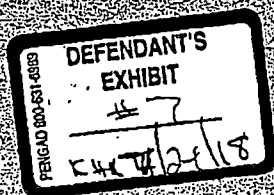

Bonnie C. Anderson

Surfside Beach, South Carolina

complaint w/ Exhibits 1-5



FedEx OfficeSM



FedEx OfficeSM

Myrtle Beach SC Beaver Walmart Node # 4036
(843) 650-0029 fax (843) 650-0036

CALL WHEN DONE ☒



Jonathan Hanna
404.295.5330



STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

PNC Bank, N.A., successor to RBC
Bank (USA)

Plaintiff,

vs.

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendants.

Civil Action No. 2013-CP-10-2624

SUMMONS
(Non-Jury)

FILED
2013 MAY -3 AM 11:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 1320 Main Street, Post Office Box 11070, Columbia, South Carolina 29211, within thirty (30) days after service hereof except as to the United States of America, which shall have sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b), of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Charleston County, which Order

shall, pursuant to Rule 53(b) of the SCRCF, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Frank B. B. Knowlton
E-Mail: frank.knowlton@nelsonmullins.com
SC Bar No. 003588
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

April 28, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

PNC Bank, N.A., successor to RBC
Bank (USA).

Plaintiff,

vs.

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendants.

Civil Action No. 2013-CP-10-

21624

COMPLAINT

Foreclosure/Collection on
Guaranty/Appointment of Receiver

Judgment Demanded Pursuant to

S.C. Code § 29-3-650

(Non-Jury)

2013 MAY -3 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Plaintiff above-named, complaining of the Defendants herein, would respectfully show:

1. Plaintiff is a banking corporation organized and existing under and pursuant to the laws of the United States.

2. Upon information and belief, the Defendant, Liberty Cottages, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

3. Upon information and belief, the Defendant, GW Dorchester, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Dorchester, State of South Carolina.

4. Upon information and belief, the Defendant, USS Clarksville, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

5. Upon information and belief, the Defendant, Liberty Cottages Land, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

6. Upon information and belief, the Defendant, ROA, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

7. Upon information and belief, the Defendant, Royal Beach Properties, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

8. Upon information and belief, the Defendant, The Brothers of SC, LLC, is a limited liability company organized and existing under and pursuant to the laws of the State of South Carolina and doing business in the County of Florence, State of South Carolina.

9. Upon information and belief, the Defendant, Deborah Rice-Marko a/k/a Deborah G. Rice-Marko, is a citizen and resident of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

10. Upon information and belief, the Defendant, Evan R. Marko, is a citizen and resident of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

11. Upon information and belief, the Defendant, John E. Marko, Jr., is a citizen and resident of the State of South Carolina and doing business in the County of Charleston, State of South Carolina.

12. Any defendant described herein as a judgment creditor has, by filing the judgment, designated the attorney entering the judgment as its agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Law (1976) as amended.

13. This Court has jurisdiction over the above captioned matter.

14. The real property which is the subject of the within mortgage foreclosure action is located in Charleston County, South Carolina.

15. Pursuant to the South Carolina Supreme Court's Administrative Order filed on May 22, 2009, the mortgage loan identified herein is a commercial loan which is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is any servicer of the loan participating in the Home Affordable Modification Program (HMP), as referenced in the above Administrative Order. As such, the Administrative Order is not applicable to the loans and mortgages identified herein.

16. Pursuant to South Carolina Supreme Court's Administrative Order filed on May 2, 2011, the real property involved herein is commercial property and is not an "Owner-Occupied Dwelling" as defined in that Order. As such, the Administrative Order is not applicable to this foreclosure.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower – Cottages Note)

17. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

18. On or about March 22, 2007, the Defendant Liberty Cottages, LLC for value received, executed and delivered to RBC Centura Bank, a promissory note in the principal sum of Two Million, Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto (the "Cottages Note"). A copy of said Cottages Note is attached hereto as Exhibit A and incorporated herein by reference.

19. In order to secure the payment thereof, the Defendant, Liberty Cottages Land, LLC, executed and delivered to RBC Centura Bank that certain Mortgage, Assignment of Rents and Security Agreement ("Cottages Mortgage") dated February 25, 2008, and recorded in the Office of the RMC for Charleston County on March 20, 2008, in Mortgage Book L654 at Page 631, wherein and whereby said Defendant mortgaged to Plaintiff the real property (the "Cottages Real Property") more fully described as follows:

ALL that certain piece, parcel and tract of land located in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and shown and designated as "TOTAL TMS 594-12-00-471, 19.244 Ac., 838,263 Sq. Ft" on that certain plat prepared by GPA Professional Land Surveyors dated September 27, 2007, entitled "SHOWING THE SUBDIVISION OF TMS 594-12-00471 TO CREATE NEW TRACT 1- PHASE 1, OWNED BY LIBERTY COTTAGES LAND, LLC, LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" recorded in Plat Book EL at page 086 in the RMC Office for Charleston County, South Carolina; said property having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

LESS AND EXCEPTING ALL that certain piece, parcel or lot of land shown and designated as NEW TRACT 1, PORTION OF TMS 594-12-00-471, 5.312 ACRES, 231,385 SQ. FT. ZONE 'MF' on that certain plat prepared by GPA Professional Land Surveyors entitled SHOWING THE SUBDIVISION OF TMS 594-12-00-471 TO CREATE NEW TRACT 1 - PHASE 1, OWNED BY LIBERTY COTTAGES LAND, LLC, LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA dated September 27, 2007, recorded in Plat Book EL at page 086 in the RMC Office for Charleston County, South Carolina; said property having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

LESS AND EXCEPTING ALL that certain piece, parcel and tract of land located in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as "Total Adjusted Area Obtained and Added to Tract 1 0.673 acres 29,300 sq. ft." on a Plat entitled "PROPERTY LINE ADJUSTMENT AND SUBDIVISION PLAT TO ADJUST THE PROPERTY LINE BETWEEN NEW TRACT 1 OWNED BY LC ACQUISITIONS, LLC AND RESIDUAL PORTION OWNED BY LIBERTY COTTAGES LAND, LLC (0.673 ACRES TO BE ADDED TO NEW TRACT 1) AND THE SUBDIVISION OF NEW TRACT 1 TO CREATE 11 NEW POSTAGE STAMP LOTS OWNED BY LC ACQUISITIONS, LLC LIBERTY COTTAGES LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" by GPA Professional Land Surveyors dated May 5, 2011, and recorded in Plat Book L11 a Page 0203 in the RMC Office for Charleston County. SAID Parcel to be added to and become part of New Tract 1 which is being simultaneously subdivided into 11 Lots and Common Area known as "Liberty Cottages" as more fully shown on the referenced Plat. TO be added to and become a part of former "New Tract 1." (See Plat EL-86).

THIS BEING a portion of the property conveyed to Liberty Cottages Land, LLC by Deed of USS Clarksville, LLC recorded in the Office of the RMC for Charleston County on May 11, 2007 in Book G625 at page 307 and conveyed to Liberty Cottages Land, LLC by Deed of ROA, LLC recorded in the Office of the RMC for Charleston County on May 11, 2007 in Book G625 at Page 250.

TMS No. 594-13-00-414

A copy of said Cottages Mortgage is attached hereto as Exhibit B and incorporated herein by reference.

20. Simultaneously with the execution of the above referred to Cottages Mortgage, and in order to secure the payment thereof, Liberty Cottages Land, LLC executed and delivered to RBC Centura Bank that certain Assignment of Leases, Rents and Profits ("Assignment A") dated February 25, 2008, and recorded in the Office of the RMC for Charleston County on March 20, 2008 in Book N654 at Page 045, wherein and whereby said Defendant assigned to Plaintiff the leases and rents as to the Cottages Real Property. A copy of said Assignment A is attached hereto as Exhibit C and incorporated herein by reference.

21. In order to further perfect its security interest in certain of the fixtures and proceeds located upon the Cottages Real Property, RBC Centura Bank recorded a UCC Financing Statement ("UCC") with the South Carolina Secretary of State as Document Number 080418-1446397 on April 18, 2008. The UCC was also recorded in the RMC Office for Charleston County on March 20, 2008 in Book 2008 at Page 06138. A copy of said UCC is attached hereto as Exhibit D and incorporated herein by reference.

22. On or about January 26, 2009, the Defendant Liberty Cottages Land, LLC executed a Modification Agreement, recorded January 28, 2009 in Book 0032 at Page 074 in which Cottages Mortgage was amended to secure additional indebtedness and obligations as follows:

- a) Note executed by Deborah Rice-Marko, dated January 11, 2007, in the amount of \$6,500,000.00.
- b) Note executed by ROA, LLC dated June 24, 2005, in the amount of \$1,763,000.00.
- c) Note executed by ROA, LLC dated November 9, 2007, in the amount of \$3,920,000.00.

- d) Note executed by USS Clarksville, LLC dated June 24, 2005 in the amount of \$550,400.00.
- e) Note executed by Royal Beach Properties, LLC dated May 19, 2000 in the amount of \$2,500,000.00.
- f) Note executed by The Brothers of SC, LLC dated October 11, 2007 in the amount of \$4,900,000.00.

A copy of said Modification Agreement is attached hereto as Exhibit E and incorporated herein by reference.

23. On or about July 15, 2011, the Defendant Liberty Cottages Land, LLC executed a Modification of Mortgage recorded July 26, 2011 in Book 0198 at Page 815 in which Cottages Mortgage was amended to increase the principal sum secured by Cottages Mortgage to Twenty-Five Million and 00/100 (\$25,000,000) Dollars and secure additional indebtedness and obligations as follows:

- a) Amended and Restated Promissory Note made by Deborah Rice-Marko in favor of Mortgagor dated July 15, 2011, in the principal amount of \$1,595,983.91
- b) Amended and Restated Promissory note made by GW Dorchester, LLC dated July 15, 2011, in the principal amount of \$2,327,500.00
- c) Amended and Restated Promissory note made by USS Clarksville, LLC dated July 15, 2011, in the principal amount of \$430,324.41
- d) Amended and Restated Promissory Note made by Royal Beach Properties, LLC dated July 15, 2011, in the principal amount of \$3,262,500.00
- e) Amended and Restated Promissory Note made by ROA, LLC dated July 15, 2011, in the principal amount of \$1,294,197.25
- f) Amended and Restated Promissory Note made by ROA, LLC dated July 15, 2011, in the principal amount of \$3,396,459.83
- g) Amended and Restated Promissory Note made by The Brothers of SC, LLC dated July 15, 2011, in the principal amount of \$1,087,495.68
- h) Amended and Restated Promissory Note made by The Brothers of SC, LLC dated July 15, 2011, in the principal amount of \$4,900,000.00.

A copy of said Modification of Mortgage is attached hereto as Exhibit F and incorporated herein by reference. As security for these notes, these borrowers executed various mortgages recorded in Charleston, Dorchester and Florence Counties. These

mortgages are the subject of related foreclosure actions and filed contemporaneously herewith.

24. On or about January 26, 2009, the Defendant Liberty Cottages, LLC executed a Modification Agreement, in which the Cottages Note was modified to be secured by additional mortgages:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- b) Assignment of Leases, Rents and Profits, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 738 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- d) Assignment of Leases, Rents and Profits, executed by ROA, LLC, recorded November 14, 2007 in Book B644 at Page 505 in the Office of the RMC for Charleston County.
- e) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.

A copy of said Modification Agreement is attached hereto as Exhibit G and incorporated herein by reference.

25. The Cottages Note was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011 in the amount of One Million Two Hundred Seventy-One Thousand Two Hundred Twenty-Two and 00/100 (\$1,271,220.00) Dollars ("Cottages Amended Note"). The Cottages Amended Note added the following mortgages as security for the Cottages Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the Cottages Amended Note is attached hereto as Exhibit H and incorporated herein by reference. The Cottages Note and Cottages Amended Note are collectively referred to as the "Cottages Note."

26. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing the Cottages Note are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

27. The Plaintiff reserves all rights to all other collateral that secures the Cottages Note.

28. Subsequent to the signing of the Cottages Note and Cottages Mortgage, RBC Centura Bank changed its name to RBC Bank (USA). On or about March 3, 2012, RBC Bank (USA) merged with PNC Bank, National Association. The Plaintiff is the owner and holder of the Cottages Note and Cottages Mortgage it is seeking to foreclose.

29. The Defendant has defaulted in the payment of the Cottages Note and Cottages Mortgage given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Cottages Note and Cottages Mortgage are therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

30. The Cottages Mortgage is a valid first lien on the Cottages Real Property.

31. There is due and unpaid on the Cottages Note and Cottages Mortgage as of April 8, 2013, the principal sum of One Million Two Hundred Thirty-Nine Thousand Four Hundred Twenty and 00/100 (\$1,239,420.00) Dollars, plus interest in the amount of One Hundred Eighty-One Thousand One Hundred Eighty-One and 45/100 (\$181,181.45) Dollars, and late fees in the amount of Four Hundred Twenty-Four and 00/100 (\$424.00) Dollars. Demand has been made upon the Defendant Liberty Cottages, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of One Million Four Hundred Twenty-One Thousand Twenty-Five and 45/100 (\$1,421,025.45) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Cottages Note and Cottages Mortgage.

32. Plaintiff hereby expressly seeks a judgment against the Defendant Liberty Cottages, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Cottages Note in the amount of One Million Four Hundred Twenty-One Thousand Twenty-Five and 45/100 (\$1,421,025.45) Dollars, plus interest thereon, plus

reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Cottages Note and Cottages Mortgage.

33. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Cottages Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A SECOND CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

34. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

35. In consideration of the above referenced Cottages Note, the Defendant, Deborah Rice-Marko, executed an Unconditional Guaranty Agreement ("Cottages Guaranty 1") dated March 22, 2007, whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Cottages Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of Cottages Guaranty 1 is attached hereto as Exhibit I and is incorporated herein by reference.

36. In consideration of the above referenced Cottages Note, the Defendant, Evan R. Marko, executed an Unconditional Guaranty Agreement ("Cottages Guaranty 2") dated March 22, 2007, whereby he individually, jointly and

severally, absolutely and unconditionally guaranteed the payment of the Cottages Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of Cottages Guaranty 2 is attached hereto as Exhibit J and is incorporated herein by reference.

37. In consideration of the above referenced Cottages Note, the Defendant, John E. Marko, Jr., executed an Unconditional Guaranty Agreement ("Cottages Guaranty 3") dated March 22, 2007, whereby he individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Cottages Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of Cottages Guaranty 3 is attached hereto as Exhibit K and is incorporated herein by reference.

38. In consideration of the above referenced Cottages Note, the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Cottages Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is attached hereto as Exhibit L and incorporated herein by reference.

39. As further consideration for Cottages Note, Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. agreed to pay all costs of collection, including reasonable attorney's fees.

40. Plaintiff has declared the entire balance of the Cottages Note and Continuing Guaranty Agreement due and payable and hereby demands payment of the

same, but Defendants have refused to pay, and therefore is in default under the terms of Continuing Guaranty Agreement.

41. There is due and unpaid on the Cottages Note and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of One Million Two Hundred Thirty-Nine Thousand Four Hundred Twenty and 00/100 (\$1,239,420.00) Dollars, plus interest in the amount of One Hundred Eighty-One Thousand One Hundred Eighty-One and 45/100 (\$181,181.45) Dollars, and late fees in the amount of Four Hundred Twenty-Four and 00/100 (\$424.00) Dollars. Demand has been made upon Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of One Million Four Hundred Twenty-One Thousand Twenty-Five and 45/100 (\$1,421,025.45) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Cottages Note.

42. Plaintiff hereby expressly seeks a judgment against the Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Cottages Note and Continuing Guaranty Agreement in the amount of One Million Four Hundred Twenty-One Thousand Twenty-Five and 45/100 (\$1,421,025.45) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute.

Plaintiff reserves the right to any deficiency judgment as to Defendant after crediting the bid.

FOR A THIRD CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower – ROA Note #1)

43. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

44. On or about January 24, 2005, the Defendant ROA, LLC for value received, executed and delivered to RBC Centura Bank a promissory note in the principal sum of One Million, Seven Hundred Sixty-Three Thousand and no/100 (\$1,763,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto ("ROA Note #1"). A copy of said ROA Note #1 is attached hereto as Exhibit M and incorporated herein by reference.

45. In order to secure the payment thereof, the Defendant, ROA, LLC, executed and delivered to Plaintiff that certain Mortgage, Security Agreement and Financing Statement dated June 24, 2005, and recorded in the Office of the RMC for Charleston County on July 12, 2005, in Mortgage Book S544 at Page 714, wherein and whereby said Defendant mortgaged to Plaintiff certain real property. The loan was thereafter modified by that certain Modification Agreement dated February 25, 2008 wherein the Mortgage, Security Agreement and Financing Statement dated June 24, 2005 was deleted as security for the loan and a Lost Satisfaction of Mortgage was recorded in the Office of the RMC for Charleston County on January 12, 2011 in Book 0166 at Page 141. A copy of said Modification Agreement is attached hereto as Exhibit N and incorporated herein by reference.

46. The Modification Agreement further added as security for the loan, that certain Cottages Mortgage and Assignment A as modified and previously attached hereto as Exhibits B and C.

47. On or about January 26, 2009, the Defendant ROA, LLC executed a Modification Agreement, in which ROA Note #1 was modified to be secured by additional mortgages:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- b) Assignment of Leases, Rents and Profits, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 738 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- d) Assignment of Leases, Rents and Profits, executed by ROA, LLC, recorded November 14, 2007 in Book B644 at Page 505 in the Office of the RMC for Charleston County.
- e) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.

A copy of said Modification Agreement is attached hereto as Exhibit O and incorporated herein by reference.

48. ROA Note #1 was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011 ("ROA Amended Note #1") in the amount of One Million Two Hundred Ninety-Four Thousand One Hundred Ninety-Seven and 25/100 (\$1,294,197.25). ROA Amended Note #1 added the following mortgages as security for ROA Note #1:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the ROA Amended Note #1 is attached hereto as Exhibit P and incorporated herein by reference. ROA Note #1 and ROA Amended Note #1 are collectively referred to as "ROA Note #1."

49. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing ROA Note #1 are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

50. The Plaintiff reserves all rights to all other collateral that secures ROA Note #1.

51. The Plaintiff is the owner and holder of the ROA Note #1 and Cottages Mortgage it is seeking to foreclose.

52. The Defendant ROA, LLC has defaulted in the payment of ROA Note #1 and Cottages Mortgage, given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said ROA Note #1 is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

53. There is due and unpaid on ROA Note #1 as of April 8, 2013, the principal sum of One Million Two Hundred Fifty-Seven Thousand Four Hundred Seventy-Seven and 25/100 (\$1,257,477.25) Dollars, plus interest in the amount of One Hundred Eighty-Four Thousand Thirty and 84/100 (\$184,030.84) Dollars and late fees in the amount of One Thousand One Hundred Seventy-Six and 16/100 (\$1,176.16) Dollars. Demand has been made upon the Defendant ROA, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of One Million Four Hundred Forty-Two Thousand Six Hundred Eighty-Four and 25/100 (\$1,442,684.25) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to ROA Note #1 and the Cottages Mortgage.

54. Plaintiff hereby expressly seeks a judgment against the Defendant ROA, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under ROA Note #1 in the amount of One Million Four Hundred Forty-Two Thousand Six Hundred Eighty-Four and 25/100 (\$1,442,684.25) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to ROA Note #1.

55. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Cottages Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A FOURTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

56. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

57. In consideration of the above referenced ROA Note #1, the Defendant, Deborah G. Rice-Marko, executed a Unconditional Guaranty of Payment (“ROA Note #1 Guaranty 1”) dated June 24, 2005 whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of ROA Note #1 to Plaintiff and all extensions and renewals thereof. A true and correct copy of ROA Note #1 Guaranty 1 is attached hereto as Exhibit Q and is incorporated herein by reference.

58. In consideration of the above referenced ROA Note #1, the Defendant, Liberty Cottages Land, LLC, executed a Unconditional Guaranty Agreement (“ROA Note #1 Guaranty 2”) dated February 25, 2008 whereby it individually, jointly and severally, absolutely and unconditionally guaranteed the payment of ROA Note #1 to Plaintiff and all extensions and renewals thereof. A true

and correct copy of ROA Note #1 Guaranty 2 is attached hereto as Exhibit R and is incorporated herein by reference.

59. In consideration of the above referenced ROA Note #1, the Defendants, Deborah Rice-Marko and Liberty Cottages Land, LLC executed a Continuing Guaranty dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of ROA Note #1 to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

60. As further consideration for ROA Note #1, Defendants, Deborah Rice Marko and Liberty Cottages Land, LLC, agreed to pay all costs of collection, including reasonable attorney's fees.

61. Plaintiff has declared the entire balance of ROA Note #1 and Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendant, Deborah Rice-Marko and Liberty Cottages Land, LLC, has refused to pay, and therefore is in default under the terms of the Continuing Guaranty Agreement.

62. There is due and unpaid on ROA Note #1 and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of One Million Two Hundred Fifty-Seven Thousand Four Hundred Seventy-Seven and 25/100 (\$1,257,477.25) Dollars, plus interest in the amount of One Hundred Eighty-Four Thousand Thirty and 84/100 (\$184,030.84) Dollars and late fees in the amount of One Thousand One Hundred Seventy-Six and 16/100 (\$1,176.16) Dollars. Demand has been made upon Defendants Deborah Rice-Marko and Liberty Cottages Land, LLC to

pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of One Million Four Hundred Forty-Two Thousand Six Hundred Eighty-Four and 25/100 (\$1,442,684.25) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to ROA Note #1.

63. Plaintiff hereby expressly seeks a judgment against the Defendants Deborah Rice- Marko and Liberty Cottages Land, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under ROA Note #1 and Continuing Guaranty Agreement in the amount of One Million Four Hundred Forty-Two Thousand Six Hundred Eighty-Four and 25/100 (\$1,442,684.25) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant Deborah Rice-Marko and Liberty Cottages Land, LLC shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendant after crediting the bid.

FOR A FIFTH CAUSE OF ACTION

(Foreclosure of Property and Judgment as to the Borrower – Clarksville Note)

64. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

65. On or about January 24, 2005, the Deborah Rice-Marko for value received, executed and delivered to RBC Centura Bank a promissory note in the principal sum of Five Hundred Fifty Thousand Four Hundred and 00/100

(\$550,400.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto ("Clarksville Note"). A copy of said Clarksville Note is attached hereto as Exhibit S and incorporated herein by reference.

66. In order to secure the payment thereof, the Defendant, Deborah Rice-Marko, executed and delivered to RBC Centura Bank that certain Mortgage, Security Agreement and Financing Statement, dated June 24, 2005, and recorded in the Office of the RMC for Charleston County on July 12, 2005, in Mortgage Book T544 at Page 52, wherein and whereby said Defendant mortgaged to Plaintiff certain real property.

67. On or about March 22, 2007, the Defendant Deborah Rice-Marko executed an Assignment and Assumption Agreement, recorded in the Office of the RMC for Charleston County on March 23, 2007 in Book R619 at Page 503, in which USS Clarksville, LLC assumed the Clarksville Note and all subsequent modifications. The terms of the Assignment and Assumption Agreement are more fully explained by reference thereto. A copy of said Assignment and Assumption Agreement is attached here to as Exhibit T and incorporated herein by reference.

68. The loan was thereafter modified by that certain Modification Agreement dated February 25, 2008 wherein the Mortgage dated June 24, 2005 was deleted as security for the loan and a Lost Satisfaction of Mortgage was recorded in the Office of the RMC for Charleston County on January 12, 2011 in Book 0166 at Page 143. A copy of said Modification Agreement is attached hereto as Exhibit U and incorporated herein by reference.

69. The Modification Agreement dated February 25, 2008 further added as security for the loan, that certain Cottages Mortgage and Assignment A as modified and previously attached hereto as Exhibits B and C.

70. On our about January 26, 2009, the Defendant USS Clarksville, LLC executed a Modification Agreement, in which the Clarksville Note was modified to be secured by additional mortgages:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- b) Assignment of Leases, Rents and Profits, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 738 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- d) Assignment of Leases, Rents and Profits, executed by ROA, LLC, recorded November 14, 2007 in Book B644 at Page 505 in the Office of the RMC for Charleston County.
- e) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.

A copy of said Modification Agreement is attached hereto as Exhibit V and incorporated herein by reference.

71. The Clarksville Note was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011 ("Clarksville Amended Note") in the amount of Four Hundred Thirty Thousand Three Hundred Twenty-Four and 41/100 (\$430,324.41) Dollars. The Clarksville Amended Note added the following mortgages as security for the Clarksville Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the Clarksville Amended Note is attached hereto as Exhibit W and incorporated herein by reference. The Clarksville Note and Clarksville Amended Note are collectively referred to as "Clarksville Note."

72. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing the Clarksville Note are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

73. The Plaintiff reserves all rights to all other collateral that secures the Clarksville Note.

74. The Plaintiff is the owner and holder of the Clarksville Note and Cottages Mortgage it is seeking to foreclose.

75. The Defendant USS Clarksville, LLC has defaulted in the payment of the Clarksville Note given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Clarksville Note is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

76. There is due and unpaid on the Clarksville Note, modified to be secured by Cottages Mortgage, as of April 8, 2013, the principal sum of Three Hundred Sixty-Eight Thousand Eighty-Four and 41/100 (\$368,084.41) Dollars, plus interest in the amount of Fifty-Seven Thousand One Hundred Twenty-Three and 31/100 (\$57,123.31) Dollars and late fees in the amount of Three Thousand One Hundred Seven and 64/100 (\$3,107.64) Dollars. Demand has been made upon the Defendant USS Clarksville, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Four Hundred Twenty-Eight Thousand Three Hundred Fifteen and 36/100 (\$428,315.36) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Clarksville Note and Cottages Mortgage.

77. Plaintiff hereby expressly seeks a judgment against the Defendant USS Clarksville, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Clarksville Note in the amount of Four Hundred Twenty-Eight Thousand Three Hundred Fifteen and 36/100 (\$428,315.36) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Clarksville Note.

78. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Cottages Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A SIXTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

79. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

80. In consideration of the above referenced Clarksville Note, the Defendant, Deborah Rice-Marko, executed a Unconditional Guaranty of Payment (“Clarksville Guaranty 1”) dated March 22, 2007 whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Clarksville Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Clarksville Guaranty 1 is attached hereto as Exhibit X and is incorporated herein by reference.

81. In consideration of the above referenced Clarksville Note, the Defendant, Deborah Rice-Marko executed a Continuing Guaranty Agreement dated July 15, 2011, whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Clarksville Note to Plaintiff and all

extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

82. As further consideration for the Clarksville Note, Defendant, Deborah Rice-Marko agreed to pay all costs of collection, including reasonable attorney's fees.

83. Plaintiff has declared the entire balance of the Clarksville Note and Unconditional Guaranty Agreement due and payable and hereby demands payment of the same, but Defendant, Deborah Rice-Marko, has refused to pay, and therefore is in default under the terms of the Unconditional Guaranty Agreement.

84. There is due and unpaid on Clarksville Note and Unconditional Guaranty Agreement, as of April 8, 2013, the principal sum of Three Hundred Sixty-Eight Thousand Eighty-Four and 41/100 (\$368,084.41) Dollars, plus interest in the amount of Fifty-Seven Thousand One Hundred Twenty-Three and 31/100 (\$57,123.31) Dollars and late fees in the amount of Three Thousand One Hundred Seven and 64/100 (\$3,107.64) Dollars. Demand has been made upon Defendant Deborah Rice-Marko to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Four Hundred Twenty-Eight Thousand Three Hundred Fifteen and 36/100 (\$428,315.36) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Clarksville Note.

85. Plaintiff hereby expressly seeks a judgment against the Defendant Deborah Rice-Marko pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Clarksville Note and Continuing Guaranty Agreement in the amount of Four

Hundred Twenty-Eight Thousand Three Hundred Fifteen and 36/100 (\$428,315.36) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendant after crediting the bid.

FOR A SEVENTH CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower –
DRM Line of Credit Note)

86. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

87. On or about January 13, 2005, the Borrower, Deborah Rice-Marko, for consideration, executed in favor of RBC Centura Bank a promissory note in the total amount of Five Million and 00/100 (\$5,000,000.00) Dollars ("DRM Line of Credit Note"), with interest and payments as stated in said DRM Line of Credit Note. A copy of said DRM Line of Credit Note is attached hereto and incorporated herein as **Exhibit Y.**

88. Simultaneously with the execution of the above referred to DRM Line of Credit Note, and in order to secure the payment thereof, the Defendant, Deborah Rice-Marko, executed and delivered to RBC Centura Bank that certain Commercial Pledge Agreement dated January 13, 2005.

89. On or about January 26, 2009, the Defendant Deborah Rice-Marko executed a Modification Agreement, in which the Commercial Pledge

Agreement was deleted as security for the loan and the following mortgages amended to secure the DRM Line of Credit Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- b) Assignment of Leases, Rents and Profits, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 738 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County.
- d) Assignment of Leases, Rents and Profits, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book N654 at Page 045 in the Office of the RMC for Charleston County.
- e) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.
- f) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- g) Assignment of Leases, Rents and Profits, executed by ROA, LLC, recorded November 14, 2007 in Book B644 at Page 505 in the Office of the RMC for Charleston County.

A copy of said Modification Agreement is attached hereto as Exhibit Z and incorporated herein by reference.

16. The DRM Line of Credit Note was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011, in the amount of One Million Five Hundred Ninety-Five Thousand Nine Hundred Eighty-Three and 91/100 (\$1,595,983.91) Dollars ("DRM Amended Note"). The DRM

Amended Note added the following mortgages as security for the DRM Line of Credit

Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the ROD for Florence County.

A true and correct copy of the DRM Amended Note is attached hereto as Exhibit AA and incorporated herein by reference. The DRM Line of Credit Note and DRM Amended Note are collectively referred to as the "DRM Line of Credit Note."

17. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing the DRM Line of Credit Note are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

90. The Defendant Deborah Rice-Marko has defaulted in the payment of the DRM Line of Credit Note given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said document, and all interest due thereon. Said DRM Line of Credit Note is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

91. There is due and unpaid on the DRM Line of Credit Note, as of April 8, 2013, the principal sum of One Million Five Hundred Forty-Five Thousand Seven Hundred Forty-Eight and 91/100 (\$1,545,748.91) Dollars, plus interest in the amount of Two Hundred Twenty-Seven Thousand Four Hundred Forty-Six and 03/100 (\$227,446.03) Dollars and late fees in the amount of Twelve Thousand Two Hundred Ninety-Three and 29/100 (\$12,293.29) Dollars. Demand has been made upon the Defendant Deborah Rice-Marko to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of One Million Seven Hundred Eighty-Five Thousand Four Hundred Eighty-Eight and 23/100 (\$1,785,488.23) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the DRM Line of Credit Note.

92. Plaintiff hereby expressly seeks a judgment against the Defendant Deborah Rice-Marko pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the DRM Line of Credit Note in the amount of One Million Seven Hundred Eighty-Five Thousand Four Hundred Eighty-Eight and 23/100 (\$1,785,488.23) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and

expenses of this action, plus all other amounts due pursuant to the DRM Line of Credit Note.

93. The Plaintiff also hereby expressly seeks the foreclosure and sale of Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR AN EIGHTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

94. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

95. In consideration for the above referenced DRM Line of Credit Note, Deborah Rice-Marko executed in favor of Plaintiff a Continuing Guaranty Agreement whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the DRM Line of Credit Note to Plaintiff and all extensions and renewals thereof. A copy of said Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

96. As further consideration for the DRM Line of Credit Note, Defendant Deborah Rice-Marko agreed to pay all costs of collection, including reasonable attorney's fees.

97. Plaintiff has declared the entire balance of the DRM Line of Credit Note and Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendant Deborah Rice-Marko has refused to pay, and therefore is in default under the terms of the Continuing Guaranty Agreement.

98. There is due and unpaid on the DRM Line of Credit Note and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of One Million Five Hundred Forty-Five Thousand Seven Hundred Forty-Eight and 91/100 (\$1,545,748.91) Dollars, plus interest in the amount of Two Hundred Twenty-Seven Thousand Four Hundred Forty-Six and 03/100 (\$227,446.03) Dollars and late fees in the amount of Twelve Thousand Two Hundred Ninety-Three and 29/100 (\$12,293.29) Dollars. Demand has been made upon Defendant Deborah Rice-Marko to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of One Million Seven Hundred Eighty-Five Thousand Four Hundred Eighty-Eight and 23/100 (\$1,785,488.23) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the DRM Line of Credit Note.

99. Plaintiff hereby expressly seeks a judgment against the Defendant Deborah Rice-Marko pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the DRM Line of Credit Note and Continuing Guaranty Agreement in the amount of One Million Seven Hundred Eighty-Five Thousand Four Hundred Eighty-Eight and 23/100 (\$1,785,488.23) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant

shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property as later described and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendant after crediting the bid.

FOR A NINTH CAUSE OF ACTION

(Foreclosure of Property and Judgment as to the Borrower – ROA Note #2)

100. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

101. On or about November 9, 2007, the Defendant, ROA, LLC, for value received, executed and delivered to RBC Centura Bank a commercial promissory note in the principal sum of Three Million, Nine Hundred Twenty Thousand and no/100 (\$3,920,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto ("ROA Note #2"). A copy of said ROA Note #2 is attached hereto as **Exhibit BB** and incorporated herein by reference.

102. Simultaneously with the execution of the above referred to ROA Note #2, and in order to secure the payment of the ROA Note #2, the Defendant ROA, LLC executed and delivered to RBC Centura Bank that certain Mortgage, Assignment of Rents and Security Agreement ("ROA Mortgage") dated November 9, 2007, and recorded in the Office of the RMC for Charleston County on November 14, 2007, in Mortgage Book A644 at Page 387, wherein and whereby said Defendant mortgaged to Plaintiff the real property ("ROA Real Property") more fully described herein as follows:

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being in the City of Charleston, County of

Charleston, State of South Carolina, known and designated as 438 King Street on that certain plat entitled "PLAT SHOWING PROPERTY LINE ADJUSTMENTS AT #46 AND #48 JOHN STREET AND #430, #432, #434, #436, #438, THE REAR OF #440 KING STREET AND PARCEL A, IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA. THESE PROPERTIES ARE PRESENTLY OWNED BY RICHARD S.W. STONEY AND THEODORE D. STONEY, JR.:" dated June 17, 2004, recorded in Plat Book EH at Page 219 in the RMC Office for Charleston County, South Carolina; said property having such size, shape dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

This being a portion of the property conveyed to ROA, LLC by deed of 438 King Street, LLC recorded in the Office of the RMC for Charleston County on April 20, 2007 in Book U622 at Page 719.

TMS No. 460-16-02-066
Property Address: 438 King Street

A copy of said ROA Mortgage is attached hereto as Exhibit CC and incorporated herein by reference.

103. Simultaneously with the execution of the above referred to ROA Note #2, and in order to secure the payment thereof, the Defendant ROA, LLC executed and delivered to Plaintiff that certain Assignment of Leases, Rents and Profits dated November 9, 2007, and recorded in the Office of the RMC for Charleston County on November 14, 2007 in Book B644 at Page 505, wherein and whereby said Defendant assigned to Plaintiff the leases and rents as to the ROA Real Property. A copy of said Assignment of Leases, Rents and Profits is attached hereto as Exhibit DD and incorporated herein by reference.

104. In order to further perfect its security interest in certain of the fixtures and proceeds located upon the ROA Real Property, RBC Centura Bank recorded a UCC Financing Statement ("UCC") with the South Carolina Secretary of State as Document Number 071204-1548235 on December 4, 2007 and a Continuation filed on

November 14, 2012, document number 121114-1240356. A copy of said UCC is attached hereto as Exhibit EE and incorporated herein by reference.

105. On or about January 26, 2009, the Defendant ROA, LLC executed a Modification Agreement Supplement in which the ROA Mortgage was amended to secure additional indebtedness and obligations as follows:

- a) Note executed by Deborah Rice-Marko, dated January 11, 2007, in the amount of \$6,500,000.00.
- b) Note executed by ROA, LLC dated June 24, 2005, in the amount of \$1,763,000.00.
- c) Note executed by Royal Beach Properties, LLC dated May 19, 2000, in the amount of \$2,500,000.00.
- d) Note executed by USS Clarksville, LLC dated June 24, 2005 in the amount of \$550,400.00.
- e) Note executed by Liberty Cottages, LLC dated March 22, 2007 in the amount of \$2,500,000.00.
- f) Note executed by The Brothers of SC, LLC dated October 11, 2007 in the amount of \$4,900,000.00.

A copy of said Modification Agreement Supplement is attached hereto as Exhibit FF and incorporated herein by reference.

106. On or about July 15, 2011, the Defendant ROA, LLC executed a Modification of Mortgage, recorded in the RMC Office for Charleston County on July 26, 2011 in Book 0198 at Page 816, in which the ROA Mortgage was amended to increase the principal sum secured by Mortgage to Twenty-Five Million and 00/100 (\$25,000,000) Dollars and secure additional indebtedness and obligations as follows:

- a) Amended and Restated Promissory Note made by Deborah Rice-Marko in favor of Mortgagor dated July 15, 2011, in the principal amount of \$1,595,983.91
- b) Amended and Restated Promissory note made by GW Dorchester, LLC dated July 15, 2011, in the principal amount of \$2,327,500.00
- c) Amended and Restated Promissory note made by USS Clarksville, LLC dated July 15, 2011, in the principal amount of \$430,324.41
- d) Amended and Restated Promissory Note made by Liberty Cottages Land, LLC dated July 15, 2011, in the principal amount of \$1,271,220.00

- e) Amended and Restated Promissory Note made by ROA, LLC dated July 15, 2011, in the principal amount of \$1,294,197.25
- f) Amended and Restated Promissory Note made by Royal Beach Properties, LLC dated July 15, 2011, in the principal amount of \$3,262,500.00
- g) Amended and Restated Promissory Note made by The Brothers of SC, LLC dated July 15, 2011, in the principal amount of \$1,087,495.68
- h) Amended and Restated Promissory Note made by The Brothers of SC, LLC dated July 15, 2011, in the principal amount of \$4,900,000.00.

A copy of said Modification of Mortgage is attached hereto as Exhibit GG and incorporated herein by reference. As security for these notes, these borrowers executed various mortgages recorded in Dorchester and Florence Counties. These mortgages are the subject of related foreclosure actions and filed contemporaneously herewith.

107. On our about January 26, 2009, the Defendant ROA, LLC executed a Modification Agreement, in which ROA Note #2 was modified to be secured by additional mortgages:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- b) Assignment of Leases, Rents and Profits, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 738 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County.
- d) Assignment of Leases, Rents and Profits, executed by ROA, LLC, recorded March 20, 2008 in Book N654 at Page 045 in the Office of the RMC for Charleston County.
- e) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.

A copy of said Modification Agreement is attached hereto as Exhibit HH and incorporated herein by reference.

108. The ROA Note #2 was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011 ("ROA Amended Note #2") in the amount of Three Million Three Hundred Ninety-Six Thousand Four Hundred Fifty-Nine and 83/100 (\$3,396,459.83) Dollars. ROA Amended Note #2 added the following mortgages as security for ROA Note #2:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the ROA Amended Note #2 is attached hereto as Exhibit II and incorporated herein by reference. The ROA Note #2 and ROA Amended Note #2 are collectively referred to as the "ROA Note #2."

109. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing ROA Note #2 are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

110. Subsequent to the signing of ROA Note #2 and the ROA Mortgage, RBC Centura Bank changed its name to RBC Bank (USA). On or about

March 3, 2012, RBC Bank (USA) merged with PNC Bank, National Association. The Plaintiff is the owner and holder of the ROA Note #2 and the ROA Mortgage it is seeking to foreclose.

111. The Plaintiff reserves all rights to all other collateral that secures ROA Note #2.

112. The Plaintiff is the owner and holder of ROA Note #2 and the ROA Mortgage it is seeking to foreclose.

113. The Defendant has defaulted in the payment of ROA Note #2 and the ROA Mortgage given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said ROA Note #2 and the ROA Mortgage are therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

114. The ROA Mortgage is a valid first lien on the ROA Real Property.

115. There is due and unpaid on ROA Note #2 and the ROA Mortgage as of April 8, 2013, the principal sum of Three Million Two Hundred Ninety-Eight Thousand Eighty Hundred Seventy-Nine and 83/100 (\$3,298,879.83) Dollars, plus interest in the amount of Three Hundred Sixty-Eight Thousand Five Hundred Five and 15/100 (\$368,505.15) Dollars and late fees in the amount of Four Thousand Three Hundred Ninety-Four and 37/100 (\$4,394.37) Dollars. Demand has been made upon the Defendant ROA, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Three Million Six Hundred Seventy-One Thousand Seven

Hundred Seventy-Nine and 35/100 (\$3,671,779.35) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to ROA Note #2 and the ROA Mortgage.

116. Plaintiff hereby expressly seeks a judgment against the Defendant ROA, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under ROA Note #2 in the amount of Three Million Six Hundred Seventy-One Thousand Seven Hundred Seventy-Nine and 35/100 (\$3,671,779.35), plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the ROA Note #2 and ROA Mortgage.

117. The Plaintiff also hereby expressly seeks the foreclosure and sale of the ROA Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A TENTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

118. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim

119. In consideration of the above referenced ROA Note #2, the Defendant Deborah Rice-Marko executed an Unconditional Guaranty Agreement dated November 9, 2007 whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of ROA Note #2 to Plaintiff and all extensions

and renewals thereof. A true and correct copy of the Unconditional Guaranty Agreement is attached hereto as Exhibit JJ and is incorporated herein by reference.

120. In consideration of the above referenced ROA Note #2, the Defendant, Deborah Rice-Marko executed a Continuing Guaranty Agreement dated July 15, 2011, whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of ROA Note #2 to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

121. As further consideration for ROA Note #2, Defendant Deborah Rice-Marko agreed to pay all costs of collection, including reasonable attorney's fees.

122. Plaintiff has declared the entire balance of ROA Note #2 and Continuing Guaranty Agreement due and payable and hereby demand payment of the same, but Defendant has refused to pay, and therefore is in default under the terms of the Continuing Guaranty Agreement.

123. There is due and unpaid on ROA Note #2 and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of Three Million Two Hundred Ninety-Eight Thousand Eighty Hundred Seventy-Nine and 83/100 (\$3,298,879.83) Dollars, plus interest in the amount of Three Hundred Sixty-Eight Thousand Five Hundred Five and 15/100 (\$368,505.15) Dollars and late fees in the amount of Four Thousand Three Hundred Ninety-Four and 37/100 (\$4,394.37) Dollars. Demand has been made upon the Defendant ROA, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Three Million Six

Hundred Seventy-One Thousand Seven Hundred Seventy-Nine and 35/100 (\$3,671,779.35) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to ROA Note #2.

124. Plaintiff hereby expressly seeks a judgment against the Defendant Deborah Rice-Marko pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under ROA Note #2 and the Continuing Guaranty Agreement in the amount of Three Million Six Hundred Seventy-One Thousand Seven Hundred Seventy-Nine and 35/100 (\$3,671,779.35) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property as later described, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendant after crediting the bid.

FOR AN ELEVENTH CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower – Royal Note)

125. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

126. On or about May 19, 2000, the Defendant Deborah Rice-Marko for value received, executed and delivered to Centura Bank a promissory note in the principal sum of Two Million, Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto (the "Royal Note"). A copy of said Note is attached hereto as Exhibit KK and incorporated herein by reference.

127. Simultaneously with the execution of the above referred to Royal Note, and in order to secure the payment thereof, the Defendant, Deborah Rice-Marko executed and delivered to Centura Bank that certain Mortgage ("Royal Mortgage") dated May 19, 2000, and recorded in the Office of the RMC for Charleston County on May 23, 2000, in Mortgage Book A348 at Page 632, wherein and whereby said Defendant mortgaged to Plaintiff the real property ("Royal Real Property") more fully described herein as follows:

All that certain piece, parcel or lot of land situate, lying and being on Kiawah Island, Charleston County, South Carolina, known and designated as Lot Number Eleven (11) on a subdivision plat of Royal Beach Club owned by Southeastern Surveying, Inc., dated April 21, 1987, having latest revision dated November 17, 1987, and recorded in Plat Book BP at Page 111 in the RMC Office for Charleston County South Carolina; said property having such size, shape, location, butts, bounds, courses and distances as will by reference to said plat more fully appear.

This being the same property conveyed to Deborah Rice-Marko by deed of Philip P. Vineyard and Sandra T. Vineyard by deed recorded in the Office of the RMC for Charleston County on May 23, 2000 in Book A348 at Page 112. Thereafter Deborah Rice-Marko conveyed the Real Property to Royal Beach Properties, LLC by deed recorded in the Office of the RMC for Charleston County on July 16, 2007 in Book J632 at Page 132.

TMS No. 264-15-00-078

Property Address: 11 Royal Beach Drive

A copy of said Royal Mortgage is attached hereto as Exhibit LL and incorporated herein by reference.

128. The Royal Mortgage was modified from time to time. On or about August 26, 2008, the Defendant Deborah Rice-Marko executed an Assignment and Assumption Agreement, recorded in the RMC Office for Charleston County on September 4, 2008 in Book 0008 at Page 71, in which Royal Beach Properties, LLC

assumed the Royal Note, Royal Mortgage and all subsequent modifications. The terms of the Assignment and Assumption Agreement are more fully explained by reference thereto. A copy of said Assignment and Assumption Agreement is attached hereto as Exhibit MM and incorporated herein by reference.

129. On or about January 26, 2009, the Defendant Royal Beach Properties, LLC executed a Modification Agreement Supplement, recorded in the RMC Office for Charleston County on January 28, 2009 in Book 0032 at Page 76, in which the Royal Mortgage was amended to secure additional indebtedness and obligations as follows:

- a) Note executed by Deborah Rice-Marko, dated January 11, 2007, in the amount of \$6,500,000.00.
- b) Note executed by ROA, LLC dated June 24, 2005, in the amount of \$1,763,000.00.
- c) Note executed by ROA, LLC dated November 9, 2007, in the amount of \$3,920,000.00.
- d) Note executed by USS Clarksville, LLC dated June 24, 2005 in the amount of \$550,400.00.
- e) Note executed by Liberty Cottages, LLC dated March 22, 2007 in the amount of \$2,500,000.00.
- f) Note executed by The Brothers of SC, LLC dated October 11, 2007 in the amount of \$4,900,000.00.

A copy of said Modification Agreement Supplement is attached hereto as Exhibit NN and incorporated herein by reference.

130. On or about July 15, 2011, the Defendant Royal Beach Properties, LLC executed a Modification of Mortgage, recorded in the RMC Office for Charleston County on July 26, 2011 in Book 0198 at Page 814, in which the Royal Mortgage was amended to increase the principal sum secured by the Mortgage to Twenty-Five Million and 00/100 (\$25,000,000) Dollars and secure additional indebtedness and obligations as follows:

- a) Amended and Restated Promissory Note made by Deborah Rice-Marko in favor of Mortgagor dated July 15, 2011, in the principal amount of \$1,595,983.91
- b) Amended and Restated Promissory note made by GW Dorchester, LLC dated July 15, 2011, in the principal amount of \$2,327,500.00
- c) Amended and Restated Promissory note made by USS Clarksville, LLC dated July 15, 2011, in the principal amount of \$430,324.41
- d) Amended and Restated Promissory Note made by Liberty Cottages Land, LLC dated July 15, 2011, in the principal amount of \$1,271,220.00
- e) Amended and Restated Promissory Note made by ROA, LLC dated July 15, 2011, in the principal amount of \$1,294,197.25
- f) Amended and Restated Promissory Note made by ROA, LLC dated July 15, 2011, in the principal amount of \$3,396,459.83
- g) Amended and Restated Promissory Note made by The Brothers of SC, LLC dated July 15, 2011, in the principal amount of \$1,087,495.68
- h) Amended and Restated Promissory Note made by The Brothers of SC, LLC dated July 15, 2011, in the principal amount of \$4,900,000.00.

A copy of said Modification of Mortgage is attached hereto as Exhibit OO and incorporated herein by reference. As security for these notes, these borrowers executed various mortgages recorded in Dorchester and Florence Counties. These mortgages are the subject of related foreclosure actions and filed contemporaneously herewith.

131. The Royal Note was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note in the amount of Three Thousand Two Hundred Sixty-Two Thousand Five Hundred and 00/100 (\$3,262,500.00) Dollars, dated July 15, 2011 ("Royal Amended Note"). The Royal Amended Note added the following mortgages as security for the Royal Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

- c) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- d) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.

A true and correct copy of the Royal Amended Note is attached hereto as Exhibit PP and incorporated herein by reference. The Royal Note and Royal Amended Note are collectively referred to as the "Royal Note."

132. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The other mortgages securing the Royal Note are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

133. The Plaintiff reserves all rights to all other collateral that secures the Royal Note.

134. Subsequent to the signing of the Royal Note and Royal Mortgage, Centura Bank changed its name to RBC Centura Bank, which subsequently changed its name to RBC Bank (USA). On or about March 3, 2012, RBC Bank (USA) merged with PNC Bank, National Association. The Plaintiff is the owner and holder of the Royal Note and Royal Mortgage it is seeking to foreclose.

135. The Defendant Royal Beach Properties, LLC has defaulted in the payment of the Royal Note and Royal Mortgage given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Royal Note and Royal Mortgage are therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

136. The Royal Mortgage is a valid first lien on the Royal Real Property.

137. There is due and unpaid on the Royal Note and Royal Mortgage as of April 8, 2013, the principal sum of Three Million One Hundred Seventy Thousand Twenty and 00/100 (\$3,170,020.00) Dollars, plus interest in the amount of Four Hundred Seventy-Five Thousand Twenty-Eight and 25/100 (\$475,028.25) Dollars and late fees in the amount of Two Thousand Nine Hundred Sixty-Three and 91/100 (\$2,963.91) Dollars. Demand has been made upon the Defendant Royal Beach Properties, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Three Million Six Hundred Forty-Eight Thousand Twelve and 16/100 (\$3,648,012.16) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Royal Note and Royal Mortgage.

138. Plaintiff hereby expressly seeks a judgment against the Defendant Royal Beach Properties, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Royal Note in the amount of Three Million Six Hundred Forty-

Eight Thousand Twelve and 16/100 (\$3,648,012.16) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Royal Note and Royal Mortgage.

139. The Plaintiff also hereby expressly seeks the foreclosure and sale of Royal Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A TWELFTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

140. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

141. In consideration of the above referenced Royal Note, the Defendant, Deborah Rice-Marko, executed an Unconditional Guaranty Agreement dated August 26, 2008, whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Royal Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Unconditional Guaranty Agreement is attached hereto as **Exhibit QQ** and is incorporated herein by reference.

142. In consideration of the above referenced Royal Note, the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the

Royal Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

143. As further consideration for the Royal Note, Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. agreed to pay all costs of collection, including reasonable attorney's fees.

144. Plaintiff has declared the entire balance of the Royal Note and Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. have refused to pay, and therefore is in default under the terms of the Continuing Guaranty Agreement.

145. There is due and unpaid on the Royal Note and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of Three Million One Hundred Seventy Thousand Twenty and 00/100 (\$3,170,020.00) Dollars, plus interest in the amount of Four Hundred Seventy-Five Thousand Twenty-Eight and 25/100 (\$475,028.25) Dollars and late fees in the amount of Two Thousand Nine Hundred Sixty-Three and 91/100 (\$2,963.91) Dollars. Demand has been made upon Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Three Million Six Hundred Forty-Eight Thousand Twelve and 16/100 (\$3,648,012.16) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Royal Note.

146. Plaintiff hereby expressly seeks a judgment against the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr., pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Royal Note and Continuing Guaranty Agreement in the amount of Three Million Six Hundred Forty-Eight Thousand Twelve and 16/100 (\$3,648,012.16) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

147. The judgment entered against Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A THIRTEENTH CAUSE OF ACTION

(Foreclosure of Property and Judgment as to the Borrower – Brothers Note #1)

148. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

149. On or about August 7, 2001, the Defendant The Brothers of NC, LLC for value received, executed and delivered to Centura Bank a promissory note in the principal sum of One Million, One Hundred Thousand and no/100 (\$1,100,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto (the "Brothers Note #1"). A copy of said Note is attached hereto as **Exhibit RR** and incorporated herein by reference.

150. Brothers Note #1 is secured by that certain Mortgage and Security Agreement, executed by The Brothers of NC, LLC, recorded on August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Horry County.

151. On August 3, 2004, The Brothers of NC, LLC filed Articles of Merger with the South Carolina Secretary of State in which The Brothers of NC, LLC merged with The Brothers of SC, LLC. The Articles of Merger were filed with the ROD Office for Horry County on September 18, 2007 in Book 3277 at Page 724. A copy of said Articles of Merger are attached hereto as Exhibit SS and incorporated herein by reference.

152. The Brothers Note #1 was thereafter modified from time to time by the parties pursuant to certain note amendment agreements, with the last note amendment agreement dated July 15, 2011 in the amount of One Million Eighty-Seven Thousand Four Hundred Ninety-Five and 68/100 (\$1,087,495.68) Dollars ("Brothers Amended Note #1"). Brothers Amended Note #1 added the following mortgages as security for Brothers Note #1:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- d) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.

A true and correct copy of the Brothers Amended Note #1 is attached hereto as Exhibit TT and incorporated herein by reference. The Brothers Note #1 and Brothers Amended Note #1 are collectively referred to as the "Brothers Note #1."

153. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing Brothers Note #1 are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

154. Subsequently, The Brothers of SC, LLC sold the real property covered by the Mortgage and Security Agreement, executed by The Brothers of NC, LLC, recorded on August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Horry County, as evidenced by the deed recorded August 12, 2011 in Book 3535 at Page 621 in the Office of the ROD for Horry County. The consideration paid for the purchase of that property to The Brothers of SC, LLC was applied to the balance of Brothers Note #1 and that real property will not be foreclosed.

155. The Defendant has defaulted in the payment of the Brothers Note #1 given to Plaintiff by failing to pay Plaintiff, on demand, the remaining principal and interest due under said document after application of the sale proceeds, and all interest due thereon. Said Defendant is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

156. There is remaining due and unpaid on Brothers Note #1 as of April 8, 2013, the principal sum of Two Hundred Fifty-Nine Thousand Nine Hundred Five and 43/100 (\$259,905.43) Dollars, plus interest in the amount of Twenty Thousand Nine Hundred Fourteen and 16/100 (\$20,914.16) Dollars and late fees in the amount of Two Thousand Three Hundred Nine and 90/100 (\$2,309.90) Dollars. Demand has been made upon the Defendant The Brothers of SC, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #1.

157. Plaintiff hereby expressly seeks a judgment against the Defendant The Brothers of SC, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note in the amount of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #1.

158. The Plaintiff also hereby expressly seeks the foreclosure and sale of Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A FOURTEENTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

159. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

160. In consideration of the above referenced Brothers Note #1, the Defendant, John Edward Marko, Jr., executed an Unconditional Guaranty Agreement dated December 28, 2001 whereby he individually, jointly and severally, absolutely and unconditionally guaranteed the payment of Brothers Note #1 to Plaintiff and all extensions and renewals thereof. A true and correct copy of Unconditional Guaranty Agreement is attached hereto as Exhibit UU and is incorporated herein by reference.

161. In consideration of the above referenced Brothers Note #1, the Defendants, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of Brothers Note #1 to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

162. As further consideration for Brothers Note #1, Defendants, John E. Marko, Jr. and Evan R. Marko, agreed to pay all costs of collection, including reasonable attorney's fees.

163. Plaintiff has declared the entire balance of Brothers Note #1 and the Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants have refused to pay, and therefore are in default under the terms of the Continuing Guaranty Agreement.

164. There is due and unpaid on Brothers Note #1 and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of Two Hundred Fifty-Nine Thousand Nine Hundred Five and 43/100 (\$259,905.43) Dollars, plus interest in the amount of Twenty Thousand Nine Hundred Fourteen and 16/100 (\$20,914.16) Dollars and late fees in the amount of Two Thousand Three Hundred Nine and 90/100 (\$2,309.90) Dollars. Demand has been made upon Defendants John E. Marko, Jr. and Evan R. Marko to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #1.

165. Plaintiff hereby expressly seeks a judgment against the Defendants John E. Marko, Jr. and Evan R. Marko pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under Brothers Note #1 and the Continuing Guaranty Agreement in the amount of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and

49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against the Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A FIFTEENTH CAUSE OF ACTION

(Foreclosure of Property and Judgment as to the Borrower – Brothers Note #2)

166. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

167. On or about October 11, 2007, the Defendant The Brothers of SC, LLC for value received, executed and delivered to RBC Centura Bank a promissory note in the principal sum of Four Million, Nine Hundred Thousand and 00/100 (\$4,900,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto ("Brothers Note #2"). A copy of said Brothers Note #2 is attached hereto as **Exhibit VV** and incorporated herein by reference.

168. Brothers Note #2 is secured by that certain Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded on October 12, 2007 in Book B139 at Page 715 in the Office of the ROD for Florence County, and Assignment of Leases, Rents and Profits, executed by The Brothers of SC, LLC, recorded on July 29, 2011 in Book B139 at Page 738 in the Office of the ROD for Florence County.

169. On our about January 26, 2009, the Defendant The Brothers of SC, LLC executed a Modification Agreement, in which Brothers Note #2 was modified to be secured by additional mortgages:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- b) Assignment of Leases, Rents and Profits, executed by ROA, LLC, recorded November 14, 2007 in Book B644 at Page 505 in the Office of the RMC for Charleston County.
- c) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.
- d) Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County.
- e) Assignment of Leases, Rents and Profits, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book N654 at Page 045 in the Office of the RMC for Charleston County.

A copy of said Modification Agreement is attached hereto as Exhibit WW and incorporated herein by reference.

170. The Brothers Note #2 was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011, in the amount of Four Million Nine Hundred Thousand and 00/100 (\$4,900,000.00) Dollars ("Brothers Amended Note #2"). Brothers Amended Note #2 added the following mortgages as security for Brothers Note #2:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.

- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the Brothers Amended Note #2 is attached hereto as Exhibit XX and incorporated herein by reference. The Brothers Note #2 and Brothers Amended Note #2 are collectively referred to as the "Brothers Note #2."

171. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing Brothers Note #2 are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

172. The Defendant has defaulted in the payment of Brothers Note #2 given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Brothers Note #2 is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

173. There is due and unpaid on Brothers Note #2 as of April 8, 2013, the principal sum of Four Million Seven Hundred Eighty-Five Thousand Six Hundred Twenty and 00/100 (\$4,785,620.00) Dollars, plus interest in the amount of Six Hundred Ten Thousand Four Hundred Sixty and 33/100 (\$610,460.33) Dollars and late fees in the amount of Three Thousand Six Hundred Seventy-Six and 50/100 (\$3,676.50) Dollars. Demand has been made upon the Defendant The Brothers of SC, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Fifty-Six and 83/100 (\$5,399,756.83) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #2.

174. Plaintiff hereby expressly seeks a judgment against the Defendant The Brothers of SC, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note in the amount of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Fifty-Six and 83/100 (\$5,399,756.83) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #2.

175. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Cottages Real Property, ROA Real Property and Royal Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute.

Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A SIXTEENTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

176. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

177. In consideration of the above referenced Brothers Note #2, the Defendant, John E. Marko, Jr., executed an Unconditional Guaranty Agreement (“Brothers Note #2 Guaranty 1”) dated October 11, 2007 whereby he individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Brothers Note #2 to Plaintiff and all extensions and renewals thereof. A true and correct copy of Brothers Note #2 Guaranty 1 is attached hereto as Exhibit YY and is incorporated herein by reference.

178. In consideration of the above referenced Brothers Note #2, the Defendant, Evan R. Marko, executed an Unconditional Guaranty Agreement (“Brothers Note #2 Guaranty 2”) dated October 11, 2007 whereby he individually, jointly and severally, absolutely and unconditionally guaranteed the payment of Brothers Note #2 to Plaintiff and all extensions and renewals thereof. A true and correct copy of Brothers Note #2 Guaranty 2 is attached hereto as Exhibit ZZ and is incorporated herein by reference.

179. In consideration of the above referenced Brothers Note #2, the Defendants, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally,

absolutely and unconditionally guaranteed the payment of Brothers Note #2 to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit L.

180. As further consideration for Brothers Note #2, Defendants, John E. Marko, Jr. and Evan R. Marko, agreed to pay all costs of collection, including reasonable attorney's fees.

181. Plaintiff has declared the entire balance of Brothers Note #2 and Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants have refused to pay, and therefore are in default under the terms of the Continuing Guaranty Agreement.

182. There is due and unpaid on Brothers Note #2 and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of Four Million Seven Hundred Eighty-Five Thousand Six Hundred Twenty and 00/100 (\$4,785,620.00) Dollars, plus interest in the amount of Six Hundred Ten Thousand Four Hundred Sixty and 33/100 (\$610,460.33) Dollars and late fees in the amount of Three Thousand Six Hundred Seventy-Six and 50/100 (\$3,676.50) Dollars. Demand has been made upon Defendants Evan R. Marko and John E. Marko, Jr. to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Fifty-Six and 83/100 (\$5,399,756.83) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #2.

183. Plaintiff hereby expressly seeks a judgment against the Defendants Evan R. Marko and John E. Marko, Jr. pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note and Continuing Guaranty Agreement in the amount of Five Million Three Hundred Ninety-Nine Thousand Seven Hundred Fifty-Six and 83/100 (\$5,399,756.83) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendant shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendant after crediting the bid.

FOR A SEVENTEENTH CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower – Dorchester Note)

184. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

185. On or about November 18, 2005, Evelyn D. Rice for value received, executed and delivered to RBC Centura Bank a commercial promissory note in the principal sum of Two Million, Three Hundred Fifty Thousand and no/100 (\$2,350,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto (the "Dorchester Note"). A copy of said Dorchester Note is attached hereto as Exhibit AAA and incorporated herein by reference.

186. The Dorchester Note is secured by that certain Mortgage, Assignment of Rents and Security Agreement, executed by Evelyn D. Rice, dated November 18, 2005, and recorded in the Office of the RMC for Dorchester County on

November 23, 2005, in Mortgage Book 5046 at Page 49 and Assignment of Leases, Rents and Profits dated July 15, 2011, and recorded in the Office of the ROD for Dorchester County on July 29, 2011 in Book 7961 at Page 1.

187. On or about August 30, 2006, the Evelyn D. Rice executed an Assignment and Assumption Agreement, recorded in the RMC Office for Charleston County on January 26, 2007 in Book 5822 at Page 233, in which GW Dorchester, LLC assumed the Dorchester Note and all subsequent modifications. The terms of the Assignment and Assumption Agreement are more fully explained by reference thereto. A copy of said Assignment and Assumption Agreement is attached hereto as Exhibit BBB and incorporated herein by reference.

188. The Dorchester Note was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011 in the amount of Two Million Three Hundred Twenty-Seven Thousand Five Hundred and 00/100 (\$2,327,500.00) Dollars ("Dorchester Amended Note"). Dorchester Amended Note added the following mortgages as security for the Dorchester Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- b) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the RMC for Florence County.
- d) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.

- e) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the Dorchester Amended Note is attached hereto as Exhibit CCC and incorporated herein by reference. The Dorchester Note and Dorchester Amended Note are collectively referred to as the "Dorchester Note."

189. The Mortgage, Assignment of Rents and Security Agreement, executed by Liberty Cottages Land, LLC, recorded March 20, 2008 in Book L654 at Page 631 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the First Cause of Action. The Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Ninth Cause of Action. The Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County, is to be foreclosed herein as set forth in the Eleventh Cause of Action. The other mortgages securing the Dorchester Note are the subject of related foreclosure actions filed contemporaneously herewith in Dorchester and Florence Counties.

190. The Defendant GW Dorchester, LLC has defaulted in the payment of the Dorchester Note given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said Dorchester Note is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

191. There is due and unpaid on the Dorchester Note as of April 8, 2013, the principal sum of Two Million One Hundred Eighty-Five Thousand Five Hundred Forty and 00/100 (\$2,185,540.00) Dollars, plus interest in the amount of Two Hundred Ninety-One Thousand Six Hundred Seventy-Eight and 86/100 (\$291,678.86) Dollars and late fees in the amount of Two Thousand Eight and 76/100 (\$2,008.76) Dollars. Demand has been made upon the Defendant GW Dorchester, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Dorchester Note.

192. Plaintiff hereby expressly seeks a judgment against the Defendant GW Dorchester, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Dorchester Note in the amount of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Dorchester Note.

193. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Cottages Real Property, ROA Real Property and Royal Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute.

Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

194. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

195. In consideration of the above referenced Dorchester Note, the Defendant, Deborah Rice-Marko, executed an Unconditional Guaranty Agreement dated July 27, 2009, whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Dorchester Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Unconditional Guaranty Agreement is attached hereto as Exhibit DDD and is incorporated herein by reference.

196. In consideration of the above referenced Dorchester Note, the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Dorchester Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Unconditional Guaranty Agreement is previously attached hereto as Exhibit L.

197. As further consideration for the Dorchester Note, Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. agreed to pay all costs of collection, including reasonable attorney's fees.

198. Plaintiff has declared the entire balance of the Dorchester Note and Unconditional Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. have refused to pay, and therefore is in default under the terms of the Unconditional Guaranty Agreement.

199. There is due and unpaid on the Dorchester Note and Unconditional Guaranty Agreement, as of April 8, 2013, the principal sum of Two Million One Hundred Eighty-Five Thousand Five Hundred Forty and 00/100 (\$2,185,540.00) Dollars, plus interest in the amount of Two Hundred Ninety-One Thousand Six Hundred Seventy-Eight and 86/100 (\$291,678.86) Dollars and late fees in the amount of Two Thousand Eight and 76/100 (\$2,008.76) Dollars. Demand has been made upon Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Dorchester Note.

200. Plaintiff hereby expressly seeks a judgment against the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr., pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Dorchester Note and Unconditional Guaranty Agreement in the amount of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62)

Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A NINETEENTH CAUSE OF ACTION
(Receiver)

201. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

202. By virtue of the default, Plaintiff seeks the appointment of a receiver to protect and preserve the Cottages Real Property, ROA Real Property and Royal Real Property and to do all acts necessary or required in connection with the administration and management of the Cottages Real Property, ROA Real Property and Royal Real Property, including but not limited to the processing and administering of proceeds as to the Cottages Real Property, ROA Real Property and Royal Real Property.

WHEREFORE, the Plaintiff prays as follows:

1. A Receiver be appointed for the Cottages Real Property, ROA Real Property and Royal Real Property.

2. That the amount due Plaintiff on the above-referred to the DRM Line of Credit Note, Dorchester Note, Clarksville Note, Cottages Note, ROA Note #1, ROA Note #2, Royal Note, Brothers Note #1, Brothers Note #2, Cottages Mortgage, ROA

Mortgage and Royal Mortgage and Continuing Guaranty Agreement to be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

3. That Plaintiff recover judgment against the Defendants in the amount found to be due, together with attorney's fees and the costs of this action.

4. That the Court ascertain which lien or liens, if any, are prior to that of Plaintiff.

5. That Plaintiff's Cottages Mortgage, ROA Mortgage and Royal Mortgage be declared to be a valid lien against the above referred to Cottages Real Property, ROA Real Property and Royal Real Property with the appropriate priority, and that the Plaintiff have judgment of foreclosure against the Defendants subject to the liens of any mortgages found to be prior to the Cottages Mortgage, ROA Mortgage and Royal Mortgage held by Plaintiff, for the amount found to be due, together with attorney's fees and costs of this action.

6. That Plaintiff's Cottages Mortgage, ROA Mortgage and Royal Mortgage upon the above referred to Cottages Real Property, ROA Mortgage, Royal Mortgage be foreclosed, subject to the lien of any mortgages found to be superior to that of Plaintiff, the equity of redemption barred, and the Cottages Real Property, ROA Real Property and Royal Real Property be sold under the direction of this Court.

7. That the proceeds of the sale be applied as follows:

- a. to the costs, disbursements, and expenses of this action, including a reasonable attorney's fee for the plaintiff's attorney;
- b. to the amount due Plaintiff; and

c. the surplus, if any, be held subject to the further order of this Court.

8. That the Plaintiff be granted judgment against the Defendants for the full amount due under the DRM Line of Credit Note, Dorchester Note, Clarksville Note, Cottages Note, ROA Note #1, ROA Note #2, Royal Note, Brothers Note #1, Brothers Note #2, Cottages Mortgage, ROA Mortgage, and Royal Mortgage and Continuing Guaranty Agreement at the hearing on the matter, with subsequent credit to be entered against said judgment after the foreclosure sale of the Cottages Real Property, ROA Real Property and Royal Real Property pursuant to S.C. Code Ann. § 29-3-350.

9. For such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Frank B. B. Knowlton
E-Mail: frank.knowlton@nelsonmullins.com
SC Bar No. 003588
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

April 20, 2013

STATE OF PENNSYLVANIA)
)
COUNTY OF NORTHAMPTON)

VERIFICATION

RE: Charleston County Real Property

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says: That she/he is the authorized representative for PNC Bank, N.A., successor to RBC Bank (USA), and as such is authorized to verify the foregoing Complaint and the matters and things therein stated are accurate based on his review of the books and records maintained by the Plaintiff in the ordinary course of business, except those matter and things therein stated on information and belief, and those she/he believes to be true.

PNC Bank N.A., successor to RBC Bank
(USA)

By: *Stephen Wurst Jr.* SP.

Print Name: STEPHEN WURST JR

Its: Senior Vice President

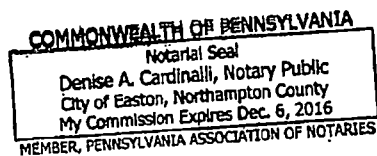
SWORN to and subscribed before me

this 15th day of APRIL, 2013

Denise A. Cardinalli (L.S.)

Notary Public for Pennsylvania

My Commission Expires: 12/06/2016



~#4834-4488-2707 v.1 - 17104/01517~

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Space Above Line for Processing Data

Return To:

Prepared By:
Mark S. Sharpe
Post Office Box 1254
Charleston, South Carolina 29402

State of South Carolina

County of Charleston

RBC Centura

Mortgage, Assignment of Rents and
Security Agreement
(Future Advance; Non-Consumer)

This record, in addition to covering other property is filed as a fixture filing and covers goods that are or are to become fixtures. The real property to which the foregoing is related is described hereinbelow. The "Secured Party" is the Bank identified below and the "Debtor" is the Mortgagor identified below. The record owner is the Mortgagor. This document serves as a fixture filing under the South Carolina Uniform Commercial Code (S.C. Code §36-9-502).

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Mortgage"), entered into as of the effective date as stated in the **Mortgage Supplement & Information Schedule** ("Information Schedule") attached to this Mortgage, by ROA, LLC, a South Carolina limited liability company (whether one or more, "Mortgagor"), with a mailing address of 32 South Battery, Charleston, South Carolina 29401, to RBC CENTURA BANK, a North Carolina banking corporation ("Bank"), with a mailing address of Post Office Box 1220, Rocky Mount, North Carolina 27802-1220, which address is the place to which all notices and communications should be sent to Bank regarding this Mortgage.

A. Mortgagor desires to secure (1) the payment of the Obligations (as defined in the Information Schedule), with interest thereon, and all extensions, renewals, modifications, amendments, substitutions and replacements thereof and therefor, in whole or in part, (2) the payment of all other sums, with interest thereon, advanced in accordance with the Obligations or herewith to protect the security of this Mortgage, or advanced to protect the rights of Bank hereunder or under the Obligations, (3) the performance of the covenants and agreements contained herein and (4) the performance of the covenants and agreements contained in the Obligations and those in all documents

evidencing, securing or relating to the Obligations, by a conveyance of Mortgagor's interest in the lands and improvements and a grant of the security interests hereinafter described.

B. The maximum principal amount of the Obligations, including present and future advances and obligations, that may be secured by this Mortgage at any one time is an amount up to Eight Million and No/100 Dollars (\$8,000,000.00).

C. The period within which any and all future advances and obligations may be incurred under the Obligations is set forth in the Obligations, but in no event shall such period exceed fifteen (15) years from the effective date of this Mortgage. No written instrument or notation shall be required to evidence or secure any future advances and obligations hereunder.

D. Subject to the terms of the Obligations, the maximum amount available under the Obligations may be borrowed and repaid or reduced by partial payment and from time to time reborrowed and repaid (i.e., decrease or increase from time to time), provided the unpaid balance of the principal outstanding under the Obligations shall never exceed the maximum principal amount, including present and future advances and obligations, stated above. Nothing contained herein shall obligate Bank to make any advances to or extend credit to or for the benefit of any person obligated on the Obligations, and any such advances and extensions shall be under the terms and conditions contained in the Obligations or otherwise in the discretion of Bank.

E. The Obligations, including those presently in existence and those which may in the future come into existence, shall be evidenced by one or more instruments (to include promissory notes), chattel paper, general intangibles (to include payment intangibles), accounts, letters of credit, supporting obligations (to include guarantees), commitment letters, loan agreements, credit agreements, agreements relating to derivatives transactions (e.g. interest rate swaps, caps, floors or collar transactions, or other similar transactions made pursuant to an International Swap Dealers Association, Inc. Master Agreement or similar agreement) and other evidences of an indebtedness or other obligation owing to Bank by the person identified on the Information Schedule under the heading "Obligations" as the obligor or other person obligated on the Obligations, such evidences of indebtedness or other obligation and all extensions, renewals, modifications, amendments, substitutions and replacements thereof and therefor to be in a written or tangible medium, an electronic medium or in some other medium which is retrievable in a perceivable form, the terms and conditions (including the maturity dates of the Obligations) of which are incorporated herein by reference, and which Obligations may contain provisions for the adjustment of the interest rate or rates, adjustments in payments, extension or renewal of the term or terms, among other things.

NOW, THEREFORE, in consideration of the premises and for the purpose of securing the Obligations and the other indebtedness and obligations as aforesaid, and in further consideration of the sum of Ten Dollars (\$10) paid to Mortgagor by Bank, receipt of which is hereby acknowledged, Mortgagor has given, granted, bargained, sold, conveyed and mortgaged, and by these presents does give, grant, bargain, sell, convey and mortgage to Bank, its successors and assigns, upon the representations, warranties, covenants, terms and conditions set forth in this Mortgage, all of Mortgagor's right, title and interest in and to (1) the parcels of land described on **Exhibit A**, (2) the rights and benefits appurtenant to said parcels of land and (3) the buildings and other improvements (to include manufactured homes) now located thereon and thereunder and those which in the future may be or may come to be located thereon and thereunder (collectively, the "Property"), together with all equipment, fixtures, standing timber (to include timber to be cut, but this inclusion does not permit cutting of timber unless Bank agrees to such cutting in advance thereof), crops grown, growing and to be grown on the Property (to include crops that are produced on trees, vines and bushes, and aquatic goods) and other farm products (to include livestock - born and unborn, supplies and products of crops and livestock), oil, gas and other minerals and as-extracted collateral (but inclusion of as-extracted collateral does not permit extraction unless Bank agrees to such extraction in advance thereof) owned by Mortgagor and that in which the Mortgagor has any rights and interests, both now existing and located in, on, over and under the Property and that which may be hereafter acquired and located as aforesaid, whether used in connection with the ownership, possession, operation and maintenance of the Property, or otherwise (collectively, the "Collateral" and the Collateral includes any and all of the proceeds and products thereof, including insurance and condemnation proceeds, accessions and additions thereto, and replacements and substitutions therefor). **AND, IF THIS MORTGAGE SECURES A LEASEHOLD INTEREST**, Mortgagor expressly agrees that if Mortgagor shall,

at any time prior to payment in full of the Obligations and other indebtedness and obligations secured hereby, acquire fee simple title or any other greater estate to the premises described in whole or in part in this Mortgage and subject to such leasehold interest, the lien of this Mortgage shall attach to, extend to, cover and be a lien upon such fee simple title or such greater estate.

TO HAVE AND TO HOLD the Property and Collateral, with all the rights, privileges and appurtenances thereunto belonging or appertaining, to Bank, its successors and assigns, forever.

Mortgagor covenants with Bank that it is seized of the Property in fee, or if Mortgagor's interest in the Property is or includes a leasehold estate, that it holds a valid leasehold estate and interest in the Property, and in either case, that it is seized of the Collateral in fee, and has the right to convey its interest in the Property and Collateral as provided herein; that title is marketable and free and clear of all encumbrances; and that it will warrant and defend the title to the Property and Collateral against the lawful claims of all persons whomsoever, except for the exceptions set forth in the **Information Schedule** under the heading "Permitted Liens", or such other exhibit or schedule, if any, attached to this Mortgage.

Mortgagor represents, warrants, covenants and agrees with Bank as set forth above and in the Sections set forth hereinbelow:

Section 1. Future Advances. All terms and conditions under which future advances may be made, if any, are set forth in the Obligations. Bank shall make, and be obligated to make, future advances only in accordance with the terms and conditions of the Obligations, as the same may be amended or modified, from time to time.

Section 2. Ground Lease Provisions. If Mortgagor's interest in and to the Property is in whole or in part a leasehold interest, the provisions in **Section 2.1** through **Section 2.4** shall apply, in addition to the other terms and conditions hereof.

2.1 Performance of Leasehold Covenants. Mortgagor will: (1) pay the rent reserved by any and all leases under which it holds a leasehold interest in the Property, and through which it holds a leasehold interest in the Property if its leasehold interest is a subleasehold interest (collectively, the "Ground Lease"), as the same becomes due and payable; (2) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed or observed by the tenant under the Ground Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (3) promptly notify Bank in writing of the exercise of any options to renew, extend or purchase under the Ground Lease, or of the commencement of a proceeding under the federal bankruptcy laws by or against the landlord under the Ground Lease; (4) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Bank pursuant to the requirements of the Ground Lease or the Obligations, promptly notify Bank in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (5) promptly notify Bank in writing of (i) any default under the Ground Lease by any party thereto, including, without limitation, Mortgagor, (ii) the nature of any default and the steps being taken to cure said default, and (iii) any action taken or threatened to be taken by any party to the Ground Lease on account of the default; and (6) promptly notify Bank in writing of any request made by any party to the Ground Lease to the other party or parties thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings, and promptly deliver to Bank a copy of the determination of the arbitrators or appraisers in each such proceeding.

2.2 Surrender of Leasehold Interest. So long as there is any balance due under the Obligations secured hereby, or any other indebtedness or obligations secured hereby, Mortgagor will not surrender nor permit the Ground Lease or any leasehold estate and interest therein to be surrendered, nor terminate or cancel or permit the termination or cancellation of the Ground Lease, and will not, without the prior written consent of Bank, modify, change, supplement, alter or amend the Ground Lease, either orally, in writing or electronically, and as further security for the repayment of the Obligations and other indebtedness and obligations hereby secured and for the performance of the covenants, agreements, obligations and conditions herein or in the Ground Lease contained, Mortgagor hereby assigns to Bank all of its rights, privileges and prerogatives under the Ground Lease to terminate, cancel, modify, change, supplement, alter and amend the Ground Lease and any such termination, cancellation, modification, change,

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