

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

ORIGINAL

Case No. 2009-CP-08-3652

First National Bank of
Spartanburg, Div. of First
National Bank of the South,

Respondent,

v.

Liberty Village, LLC,

Appellant.

RECORD ON APPEAL
VOLUME II OF II

April 10, 2014



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SC Court of Appeals

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Certificate of Counsel

Certificate of Compliance

Proof of Service

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELY)
)
 First National Bank of Spartanburg,)
 Div. Of First National Bank of the)
 South,)
)
 Plaintiff,)
)
 vs.)
)
 Liberty Village, LLC,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL DISTRICT
 CASE NO. 2009-CP-08-3652

**MEMORANDUM IN SUPPORT OF
 DEFENDANT’S MOTION TO ALTER
 OR AMEND ORDER DENYING
 DEFENDANT’S MOTION FOR A
 JURY TRIAL**

Defendant Liberty Village, LLC, by and through its undersigned attorneys, hereby submits the following memorandum in support of their Motion to Alter or Amend the Order Denying Defendant’s Motion for a Jury Trial as follows:

I. OVERVIEW

The right to a jury trial is a fundamental right and curtailing such a right is presumptively unconstitutional. Because Rule 38 of the South Carolina Rules of Civil Procedure sets limitations on an individual’s right to a jury trial it must be deemed unconstitutional and this court’s order denying Defendant Liberty Village, LLC’s motion to remove this case to the jury trial roster

must be altered or amended. Furthermore, because the right to a jury trial is a fundamental right, the court abused its discretion by denying Defendant Liberty Village’s demand. Additionally, there are genuine issues of material fact that, when viewed in the light most favorable to Defendant make summary judgment improper.

II. THE RIGHT TO A JURY TRIAL IS A FUNDAMENTAL RIGHT

Both the Federal Rules of Civil Procedure and more importantly, the South Carolina Rules of Civil Procedure recognize the right to a jury trial. “The right of a trial by jury as

declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.” FED. R. CIV. P. 38(a). “The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate.” S.C. R. CIV. P. 38(a). It is clear from the plain language of both the Federal rule and the State rule there is a right to a trial by jury.

The Supreme Court of South Carolina recognizes the constitutional right to a trial by jury. Lane v. Gilbert Construction Co., 383 S.C. 590, 600, 681 S.E.2d 879, 884 (2009) (citations omitted). The Lane Court not only recognizes the constitutional right to a jury trial but states unequivocally that, “The right to trial by jury is a fundamental right.” Id.

The relevant question in determining the right to a jury trial is whether the action is legal or equitable, as there is no right to a jury trial for equitable actions. Bateman v. Rouse, 358 S.C. 667, 673, 596 S.E.2d 386, 389 (S.C. Ct. App. 2004). Here, there is no question this is a legal action as Defendant Liberty Village, LLC seek counterclaims of unfair and deceptive trade practices, fraud, negligent misrepresentation, breach of contract, breach of contract accompanied by a fraudulent act, constructive fraud, and monetary damages from Plaintiff. Thus a jury trial is not only permitted but is required. Further, the Plaintiff’s causes of action of breach of contract are legal.

III. THE COURT’S DECISION AND SCRPC UNCONSTITUTIONALLY INFRINGE UPON LIBERTY VILLAGE’S FUNDAMENTAL RIGHTS

The right to a trial by jury is a long standing right with deep roots in American jurisprudence dating back to the ratification of the Bill of Rights. The Seventh Amendment to the Constitution of the United States states, “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . “ U.S. CONST. amend.

VII. Also, the South Carolina constitution reads, “The right of a trial by jury shall be preserved inviolate.” S.C. Const. Art. 1 §14.

Some liberties are so important that the Supreme Court of the United States has deemed them fundamental rights. As mentioned above, the Supreme Court of South Carolina has categorized the right to a jury trial a fundamental right. When analyzing the constitutionality of a fundamental right, a “strict scrutiny” test is used. Hamilton v. Board of Trustees, 282 S.C. 519, 523, 319 S.E.2d 717, 720 (S.C. Ct. App. 1984). In such a case, the government *cannot* infringe upon a fundamental right unless the government is able to demonstrate a compelling purpose.

By denying Defendant Liberty Village, LLC the right to a jury trial the Court has unconstitutionally infringed on one of Defendant’s fundamental rights. SCRCP 38(d) declares that a mere inadvertent failure to demand the fundamental right to a jury trial within 10 days of pleadings waives that right. This completely contradicts the law of waiver which, “requires a voluntary and *intentional* relinquishment or abandonment of a known right” and significantly interferes with the exercise of this fundamental right. See Jervey v. Martint Environmental, Inc., 396 S.C. 442, 451, 721 S.E.2d 469, 474 (S.C. Ct. App. 2012).

a. There are insufficient State interests to support denying Defendant a jury trial

If a right is deemed fundamental, the government must present a compelling interest to justify an infringement. See In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (citations omitted) (holding legislation that restricts or impairs a fundamental right is subject to strict scrutiny in determining its constitutionality). Any law or policy that restricts or impairs a fundamental right is subject to strict scrutiny in determining its constitutionality. Hamilton at 523. Strict scrutiny analysis requires the government to demonstrate a compelling State interest and be narrowly tailored to effectuate that interest. In re

Treatment and Care of Luckabaugh at 140. The only state interest the movant can fathom behind SCRPC Rule 38 is an interest in judicial efficiency. Even if we accept for present purposes that this is a legitimate and substantial interest, the South Carolina legislature, pursuant to the South Carolina Rules of Civil Procedure Rule 39(b) allows, “the court in its discretion upon motion,” to “order a trial by jury of any or all issues.” SCRPC Rule 39(b); Patterson v. McNeill-Patterson & Assocs., 312 S.C. 471, 472 (S.C. Ct. App. 1994). If the State’s concern was judicial efficiency, giving the court the discretion to circumvent Rule 38 makes clear the intent to preserve the right to a jury trial “inviolable.” As a fundamental right a jury trial demand should not be denied absent an extraordinary circumstance. No such circumstance exists here.

b. The Court’s means are not sufficiently related to the Court’s purpose

Rule 38 is not closely tailored to effectuate its purpose. Rule 38 clearly state’s its purpose is to preserve the right to a jury trial “inviolable” unless it be waived. Under strict scrutiny it is not enough for the State to prove a compelling purpose behind a law; the government must also show that the law is closely tailored to effectuate only those interests. See Zablocki v. Redhail, 434 U.S. 374, 98 S.Ct. 694 (1978). Rule 38’s mechanism is tailored in a manner that creates a waiver of a fundamental right without any affirmative act to do so and without and demonstration of an intent by the party to do so. It unnecessarily places a burden on the litigant to demand that the State protect its fundamental rights under the Constitution rather than the State being required to do so as mandated. A much more narrowly tailored rule would presume all matters which are afforded the fundamental right to a jury trial are preserved unless that right be specifically waived in writing. As it reads now, the exact opposite is how the rule is tailored. As drafted, the purpose of preserving the right to a jury trial is defeated, essentially creating a carve-out with respect to the law of waiver and an unfair, unnecessary, and unconstitutional

impingement upon a party's fundamental right to a jury trial. Accordingly, it is the movant's position that SCRCF Rule 38 is unconstitutional and the Court's denial of Defendant Liberty Village, LLC's motion was an abuse of discretion and in error and must be vacated.

IV. THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH RESPECT TO DEFENDANT'S UNFAIR TRADE PRACTICES ACT CLAIMS

Viewed in the light most favorable to Defendant Liberty Village, LLC there are genuine issues of material fact regarding Defendant's Unfair Trade Practices Act claim of which this court erred and which must be altered, amended and/or vacated.

Plaintiff established a course of conduct and standard procedure for refinancing loans when they came due. In order to induce Defendant Liberty Village, LLC to take out a loan with Plaintiff, Plaintiff explained their refinancing procedure and assured Defendant that this course of conduct would continue through Plaintiff's relationship with Defendant. In his deposition, Mitch Sells, former loan production officer for First National Bank of the South, explained the purpose of commitment letters and that they contained the terms and conditions for loans. Sells Dep. 106:25 – 107:1-9. Attached in its entirety as Exhibit A. When asked whether the contents of the commitment letters would supplement the contents of the Note, Sells responded, "Yeah, I agree with that." *Id.* at 107:10-16. Sells also admits that Plaintiff insinuated the loan documents contained a temporary agreement by which a renewal would eventually be worked out. *Id.* at 116:8-25. The email exhibits attached to his deposition support this testimony. Because of the value of Defendant's property, Plaintiff abandoned this course of conduct and have initiated the current foreclosure action. Plaintiff's actions violate the Unfair Trade Practices Act.

Plaintiff admits in their Amended Complaint that Defendant delivered a promissory note to Plaintiff dated August 15, 2007, as amended, modified and/or renewed by written instrument dated March 23, 2009. Am. Compel. 2. Pursuant to the terms of the promissory note, Defendant

promised to pay Two Million Two Hundred Thirty Two Thousand Four Hundred Thirty Five and 48/100ths (\$2,232,435.48) Dollars, together with interest. Id. Plaintiff's pleading goes on to state that there is past due and owing as of October 29, 2009, the sum of Two Million Three Hundred Twenty Nine Thousand Nine Hundred Forty and 05/100ths (\$2,329,940.05) Dollars which includes past due interest and late charges, and other costs and fees and that the entire balance of the Note is now immediately due and payable. Id. at 3. However, this practice differs from Plaintiff's regular course of conduct that includes among other things, the regular refinancing of commercial loans.

Former First National Bank of the South advisory board member, Charles Shaw testified that with regards to commercial loans he had with First National Bank of the South during the same time as Defendant Liberty Village, LLC's commercial loans, Shaw's loans were refinanced.

Q: Were any of your -- all of your current loans that you hold now, were they in existence with the bank in '08, '09, 2010?

A: Yes.

Q: . . . Any of them come due during that time?

A: Yes.

Q: How was that resolved? Did you repay them or --

A: They refinanced the loan.

Shaw Dep. 24:1-11. Attached in its entirety as Exhibit B. Shaw further testified that when a customer's loan was coming due, one of Plaintiff's loan officers would initiate contact with the customer and order an appraisal of the property.

At that time your loan officer would come to you and say -- all commercial loans are typically, however they were originally set up, I have never

had one where anyone would go more than five years – so at the end of the five years when they were coming due, *they would get in touch with you and order any appraisal on the property. And then when the appraisal came in, then they would ask us to sit down and look at it. It was renegotiated interest and how far the appraisal was upside down.* (emphasis added).

Id. at 25:11-23. When questioned as to whether the maturity date had come and gone before the refinancing took place, Shaw answered, “Yeah.” Id. at 26:13. Shaw elaborated on Plaintiff’s course of conduct and explained that typically Plaintiff’s loan officer would extend the maturity date 45 to 60 days in order to, among other things, get appraisals submitted. Id. at 27:3-7. Shaw explained that during this time Plaintiff would continue to accept payments until the parties agreed on a refinancing arrangement. Id. at 26:20-23. When asked whether the refinanced loan contained a similar five-year maturity Shaw stated, “Yeah, everything was financed the same.” Id. at 28:15-17. Plaintiff’s former advisory board member also explained that there was never a need for an adjustment in principal. Id. at 20-22. Here, Plaintiff’s attempts to call this note due in conflict of their regular business practices can further be demonstrated by Shaw’s testimony that the refinancing conduct related to situations in which there was equity in the customer’s property and again a 30 to 45 day window after the maturity date would be given.

Q: The Second PIC and Marina Time 3, those had equity in the property as the time of the refinance?

A: Yeah.

Q: How long did that process take to refinance?

A: Couldn’t have been more than 30 or 45 days. Well, I would say 30 to 45 days after it became matured, but realistically, probably 90 days, 90-day window to refinance.

Id. at 29:19 – 30:3.

Finally, Shaw testified that Plaintiff's loan officer Don Brown, the same loan officer who worked with Defendant Liberty Village, LLC was the individual who worked to refinance Plaintiff's customer's loans.

Q: And through the end you are only dealing with Don Brown?

A: Yes.

Q: Nobody else stepped in and said, I am so-and-so and I am from some other part of the bank and we are going to hand this with you? It was always Don Brown?

A: Yeah.

Id. at 30:24 – 31:6. Here, Plaintiff knew that Defendant would be unable to obtain financing from any other lender as no other banks were making loans with customers containing raw land.

Q: Did you look for any other takeout financing to get rid of First National Bank?

A: Yes.

Q: Who did you speak to?

A: Every bank east of the Mississippi.

Q: What kind of response did they give you?

A: If I take it to my team, I'll get laughed out of my job.

Q: Why was that?

A: As I understood it that the regulators had basically told the banks not to get into any more of the raw land deals.

Q: Okay. So your experience, if I can characterize it as this, your experience was that the lending on raw land, that the financing or raw land had essentially gone away?

A: Yes.

Q: So you were at a point where your loan was – had matured and you had nothing to provide any lender with the exception of a mortgage on raw land. Do you feel you were bankable at the time?

A: Yes, I do.

Q: Okay. But that wasn't your experience by calling on every lender east of the Mississippi?

A: Right.

Barber Dep. 73:10 – 74:11. Aug. 12, 2012. Attached in its entirety as Exhibit C. Plaintiff then pulled the rug out from under Defendant in contravention of their normal practice. It is reasonable to infer that this conduct was designed to unfairly and deceptively mislead Liberty Village into continuing negotiations and foregoing other lending options in a ruse to get the property in the Plaintiff's hand because of the many millions of dollars of equity existing at the time and still existing today. See Exhibit D. This is a question of fact to be determined by the fact finder. Accordingly, summary judgment is improper and should be denied.

CONCLUSION

As demonstrated above, there is a genuine issue of material fact when viewed in the light most favorable to Defendant, supporting Defendant's Unfair Trade Practices Act counterclaim. Thus, the court erred in granting Plaintiff's motion for partial summary judgment and the court's order requires amendment, alteration and/or vacation.

[Signature page to follow]

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December 7, 2012
Mt. Pleasant, South Carolina

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EXHIBIT A

Deposition of Mitch Sells

1 STATE OF SOUTH CAROLINA, COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY CASE NO. 2009-CP-08-3652

3
4 First National Bank of)
5 Spartanburg, Div. of)
6 First National Bank of)
7 the South,)
8 Plaintiff,)
9 vs)
10 Liberty Village, LLC,)
11 Defendant.)

12 DEPOSITION
13 OF
14 MITCHELL C. SELLS

15
16
17 Taken by Defendant
18 Monroe, North Carolina
19 November 17, 2011

20 Reported by: Cindy A. Hayden, RMR-CRR
21
22
23
24
25

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13 DFT. EXH. 5, Credit Memo 157 9
14 DFT. EXH. 6, News Article Titled Feds Swoop In, Close First National Bank of the South 192 6
15
16
17
18 DFT. EXH. 7, E-mail dated 12/23/08 from Scott N. Warren to Freeman Barber 209 24
19
20

21 (Exhibit copies are attached to transcripts)
22
23 Reporters Note: This transcript contains
24 quoted material. Such material is reproduced
25 as read or quoted by the speaker.

1 APPEARANCES

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18 (aaron@richterfirm.com)

1 On November 17, 2011, commencing at
2 11:05 a.m., the deposition of MITCHELL C.
3 SELLS was taken pursuant to Notice and
4 pursuant to the South Carolina Rules of Civil
5 Procedure on behalf of the Defendant at
6 SunTrust Bank, 114 West Jefferson Street,
7 Monroe, North Carolina.
8

9 PROCEEDINGS

10 Whereupon,
11 MITCHELL C. SELLS,
12 having been duly sworn, was examined and
13 testified as follows:

14 EXAMINATION

15 BY MR. EDWARDS:
16 Q. Mr. Sells, can you state and spell
17 your full name, legal name, for the record,
18 please.
19 A. Yes. Mitchell Carl Sells,
20 M-I-T-C-H-E-L-L, C-A-R-L, S-E-L-L-S.
21 Q. All right. And you understand you
22 are here as a witness in the matter relating
23 to First National Bank and Liberty Village?
24 A. Yes.
25 (Off-the-record conference.)

Deposition of Mitch Sells

Page 5

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1 BY MR. EDWARDS:
 2 Q. I'd like to get a little background
 3 information on you first and then we'll get
 4 into the -- the meat of the case. Where were
 5 you born?
 6 A. Albemarle, North Carolina.
 7 Q. All right. And you grew up in North
 8 Carolina?
 9 A. Yeah, Stanly County.
 10 Q. How did you end up in Charleston or
 11 were you in Charleston at the time?
 12 A. Actually, I worked for First National
 13 Bank of the South in Indian Trail, which is
 14 about 15 minutes this -- north of Monroe.
 15 Q. Okay.
 16 A. Ran a loan production office for
 17 about a year and a half. They shut the office
 18 down, moved me to Spartanburg, and then in --
 19 out of nine months about -- out of that nine
 20 months I think about -- probably after four
 21 months I was kind of assigned Char --
 22 Charleston area and then I would travel from
 23 Spartanburg to Charleston --
 24 Q. So there was --
 25 A. -- on and off.

1 Q. What do you do with SunTrust?
 2 A. I'm a -- I was thinking '09. I came
 3 to SunTrust in 2010. I went to Bank of
 4 America in '09 and worked there for a year and
 5 came here, been here a year and a half.
 6 Q. What did you do at Bank of America?
 7 A. Special assets for Florida.
 8 Q. Same -- same thing as --
 9 A. Same thing.
 10 Q. -- as First National?
 11 A. Correct.
 12 Q. And what do you do for SunTrust?
 13 A. I'm a business banker, make loans and
 14 have relationships with the bank on the
 15 business side.
 16 Q. Okay. Now, did you graduate college?
 17 A. Actually, I went to Appalachian State
 18 for my undergrad in business, then went back
 19 to Pfeiffer, which is a private Methodist
 20 college -- well, university in Charlotte, and
 21 I graduated in 2000 with my MBA.
 22 Q. From Pfeiffer?
 23 A. Pfeiffer, yeah.
 24 Q. Where did you get your undergraduate
 25 degree?

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1 Q. -- a First National in Indian Trail
 2 before Spartanburg?
 3 A. Just a loan production office.
 4 Q. Okay. And it went by First National
 5 Bank of the South?
 6 A. Yes.
 7 Q. When was that?
 8 A. I want to say 2007 to 2008 range.
 9 Q. In Indian Trail?
 10 A. Indian Trail.
 11 Q. Okay. And then you went to
 12 Spartanburg and ended up in Charleston?
 13 A. Correct.
 14 Q. When did you leave Charleston?
 15 A. 2009. I looked at it the other day.
 16 August of 2009.
 17 Q. What was the reason?
 18 A. I was working on the road, had a wife
 19 and two kids, and I'd leave out Monday, come
 20 home Friday and that wasn't family sensitive.
 21 Q. Okay. So you voluntarily resigned?
 22 A. Correct.
 23 Q. In August of '09 you came up here to
 24 SunTrust?
 25 A. Correct.

1 A. Appalachian State.
 2 Q. Okay. And you have a postgraduate
 3 education?
 4 A. That's all.
 5 Q. What was your undergraduate degree?
 6 A. It was a business degree with a
 7 concentration in marketing.
 8 Q. Okay. How did you get in the banking
 9 field?
 10 A. Went to work for the State Employees'
 11 Credit Union shortly after -- probably a
 12 couple years after college I worked for
 13 Coca-Cola Bottling Company but got into
 14 banking at the State Employees' Credit Union.
 15 After I graduated from Pfeiffer went straight
 16 to downtown Charlotte, First Union, and got
 17 into commercial lending.
 18 Q. When was that?
 19 A. I'm trying to think. About 2001.
 20 Q. How long were you at First Na --
 21 First Union?
 22 A. First Union, yeah. First Union
 23 bought Wachovia --
 24 Q. Okay.
 25 A. -- and changed the name. There five

Deposition of Mitch Sells

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1 years and then worked at First Charter five
 2 years and then came to First National.
 3 Q. And that was in '07, '08?
 4 A. Let's see. Yeah. Or actually,
 5 probably -- First Charter might have been
 6 three or -- three-and-a-half to four years
 7 then, not five years.
 8 Q. Is that Indian Trail branch still
 9 operating?
 10 A. No, it's not actually. It was just a
 11 business office to lease out and it was a loan
 12 production office, so it wasn't a full-service
 13 branch.
 14 Q. What do you mean when you say loan
 15 production office?
 16 A. Banks will go into another state with
 17 just an office to produce loans only to get a
 18 portfolio built up so that they have enough
 19 revenue before they actually rent or lease or
 20 buy brick-and-mortar to open a branch.
 21 Q. Okay.
 22 A. That way when you go into that state
 23 you have a production or at least a revenue
 24 stream from loans there and you have a
 25 customer base before you commit to that

1 Spartanburg?
 2 A. Yes, sir.
 3 Q. Now, you're back in the lending
 4 business now with SunTrust?
 5 A. Yeah.
 6 Q. Out of special assets?
 7 A. Correct.
 8 Q. Part of it. When did you first start
 9 in the special assets arena?
 10 A. When I left Indian Trail to go to
 11 Spartanburg.
 12 Q. And this was something that you
 13 wanted to do or what they assigned you to do?
 14 A. I had an option to take severance or
 15 to take the role of special assets, and due to
 16 the economy I chose to continue my employment.
 17 Q. Was that a demotion in your eyes?
 18 A. No. Actually --
 19 Q. Better than losing a job, right?
 20 A. Yeah, kind of a lateral move.
 21 Q. Okay.
 22 A. You know, no in -- no difference in
 23 pay.
 24 Q. Okay. But different
 25 responsibilities?

Page 10

Page 12

1 expense.
 2 Q. So no deposits, anything like that?
 3 A. They actually came out with a remote
 4 deposit capture machine a couple years before
 5 we did that, and so that technology allowed us
 6 to have deposits because you could scan a
 7 check and it would actually go in your account
 8 200 miles away.
 9 Q. In Spartanburg?
 10 A. In Spartanburg. And so we had about
 11 6 million in deposits and 20 million in loans.
 12 Q. Okay. And what happened with that
 13 loan production office?
 14 A. They -- the bank made a decision to
 15 close that branch because they decided not to
 16 go into North Carolina when the economy slowed
 17 down.
 18 Q. Was there any other North Carolina
 19 branches?
 20 A. No, sir.
 21 Q. Okay. Do you remember when that was
 22 they made that decision?
 23 A. I want to say -- I think sometime in
 24 '07.
 25 Q. Okay. Is that the reason you went to

1 A. Correct.
 2 Q. Different duties?
 3 A. Correct.
 4 Q. Okay. What exactly is a special
 5 assets division?
 6 A. Probably the best description of
 7 special assets is managing nonperforming
 8 assets for the bank.
 9 Q. Okay. And what does that entail?
 10 A. Any loan that is past due more than
 11 90 days becomes a nonperforming asset, and at
 12 that point the bank will -- will want to have
 13 a special asset officer manage that
 14 relationship because it's different than a
 15 traditional bank line that's paying escrow and
 16 things.
 17 Q. Okay. So 90 days is the benchmark?
 18 A. Yeah.
 19 Q. And that was at First National?
 20 A. First National.
 21 Q. Okay. Is it the same at Bank of
 22 America?
 23 A. Correct. Yeah, the same.
 24 Q. And what do special assets -- the
 25 people in special assets, what are they to do

1 with those special assets?

2 A. Your -- your main goal is to
3 rehabilitate those loans or, you know, if
4 you -- if you can rehabilitate them you do
5 that, if you can move them out. It's -- it's
6 to come to some conclusion with that.

7 Q. What do you mean move them out?

8 A. If the loan has matured and say, for
9 example, if you can't rehabilitate the loan
10 and the bank moves to foreclosure to get those
11 assets back, you're really trying to get the
12 money back for the bank. You're a collector.

13 Q. Do you have to take title to the
14 property in that case?

15 A. Correct.

16 Q. And sell it to get your money back?

17 A. Correct.

18 Q. And that's an option with the special
19 asset?

20 A. One option, yeah, not --

21 Q. Is that the first option?

22 A. No. The first option would be
23 rehabilitation if possible. If there's no
24 resolve or the bank can't come to an
25 agreement, that would be more of a -- you

1 know, kind of a final option.

2 Q. So try to -- another option before
3 foreclosing would be to modify or renew it or
4 work out some different loan term?

5 A. If possible.

6 Q. Okay. How many -- at that time when
7 you were at First National -- all the same for
8 Bank of America?

9 A. Correct.

10 Q. If there's anything different with
11 Bank of America just --

12 A. Right. Yeah.

13 Q. -- let me know. I'm -- I'm asking
14 specifically about First National, but if
15 there is something different with Bank of
16 America, I'd like to know.

17 The special assets that you dealt
18 with, how many got worked out and how many got
19 foreclosed on ball -- percentagewise?

20 A. I don't know and the main reason
21 being South Carolina's a judicial state. You
22 know, I was on the front end, and when I
23 exited to go to Bank of America I didn't have
24 an account. So I don't know the number to
25 tell you.

1 Q. Okay.

2 A. Because I was on the front end and by
3 the time I left, you know, we had just formed
4 the special asset group, gathered information,
5 and so I don't have a number to tell you on
6 the -- the end side.

7 Q. Would you say that more -- that more
8 loans were foreclosed than were worked out?

9 A. There again, I don't know.

10 Q. Okay. I thought you said that you
11 came -- maybe I got my time line wrong. I
12 thought you came to Spartanburg in '08.

13 A. Yeah, I think it was February of '08
14 is when I'm thinking, and I left in August --
15 I've probably got the time line wrong for you.
16 Let me think here.

17 (Off-the-record conference.)

18 THE WITNESS: I'm going to do a time
19 line for you here. I thought I did one the
20 other day and I --

21 BY MR. EDWARDS:

22 Q. Okay.

23 A. I went -- I became a special asset
24 officer for First National Bank of the South
25 in February of 2008, but I actually started

1 with First National Bank in 2007.

2 Q. Okay.

3 A. To me it was kind of a break because
4 I went from being in Indian Trail to
5 Spartanburg, but that's the -- that's the
6 right time line for me.

7 Q. All right. And when you came in
8 February of '08 is that when you went down
9 Charleston?

10 A. I'd say probably around May to June
11 of '08 is when I went to Charleston, somewhere
12 in that range.

13 Q. Okay. Has there always been a
14 special asset division at First National?

15 A. No, not until February of 2008.

16 Q. Okay. Who formed that?

17 A. Myself, Robert Hintlemann, which goes
18 by Cedar, and the bank brought in a guy
19 shortly after named Charles Clark and he was
20 our manager.

21 Q. Charles Clark?

22 A. Yeah.

23 Q. Were these people -- where were they
24 located, Spartanburg?

25 A. Yeah. Spartanburg, yeah.

1 Q. Yourself, Charles Clark and who was
 2 the other guy?
 3 A. Robert Hintlemann, but he goes by
 4 Cedar.
 5 Q. Cedar?
 6 A. Cedar. Yeah, he's the manager now of
 7 the special asset group still with -- I think
 8 they go by Capital Bank now.
 9 Q. Yeah. What about Charles Clark, is
 10 he still there?
 11 A. To my knowledge he's at another bank.
 12 He's kind of a consultant kind of status now.
 13 Q. Consultant for who?
 14 A. Hissself. Yeah, he's a -- yeah.
 15 Q. A banking consultant?
 16 A. Yeah.
 17 Q. In the same type of field, special
 18 assets, handling those types of loans and
 19 workouts?
 20 A. Yes. Yeah.
 21 Q. Do you know what bank he's with or is
 22 he out on his own?
 23 A. I think he -- he was with a bank in
 24 Asheboro, North Carolina, but I think that's
 25 wrapped up. I -- I hadn't spoke to him in

1 Q. -- whatever loan you're talking
 2 about?
 3 A. Correct.
 4 Q. Pros and cons?
 5 A. Pros and cons.
 6 Q. What do you think we should do?
 7 A. We would actually prepare proposals
 8 and recommendations and then we'd take their
 9 feedback and their approvals. They could
 10 approve a deal or decline a deal.
 11 Q. Did you do that with the Liberty
 12 Village loan?
 13 A. I don't recall.
 14 Q. Is there any reason why you wouldn't
 15 have done that?
 16 A. I -- I don't recall why we wouldn't
 17 other than just -- I can't remember that one.
 18 I know -- I remember the deal, but I can't
 19 remember --
 20 Q. Yeah. Was that a common practice for
 21 the special assets to prepare a proposal and
 22 take it to the board?
 23 A. Yes.
 24 Q. So you can't think of any unusual
 25 circumstance that would in this case make you

1 months.
 2 Q. Okay. Has anybody replaced him or
 3 yourself or is it just Hintlemann?
 4 A. Hintlemann is the manager.
 5 Q. He's the only guy there now?
 6 A. He may have folks underneath him, but
 7 he's the only one I know there.
 8 Q. At the time you were there was it the
 9 same setup?
 10 A. Mr. Clark was our manager and Cedar
 11 and myself were the special asset officers.
 12 Q. Okay. How did that work? When you
 13 say he's the manager --
 14 A. Yeah.
 15 Q. -- did he have ultimate
 16 decision-making authority?
 17 A. Actually, ultimate decision-making
 18 authority was the board's. We could actually
 19 make recommendations, but the board was -- he
 20 would facilitate transactions, but the
 21 board -- we'd go present to the board for
 22 approval.
 23 Q. So you would actually go to the board
 24 and present --
 25 A. Yes. Yeah.

1 not make a proposal to the board?
 2 A. Right. Right. Right.
 3 Q. Okay. All right. Who would maintain
 4 that type of documentation?
 5 A. I would say probably Capital Bank now
 6 that bought First National.
 7 Q. The board members --
 8 A. Yeah.
 9 Q. -- or whoever's --
 10 A. Well --
 11 Q. -- running the board now?
 12 A. Yeah, correct.
 13 Q. Okay. Do you know anything about the
 14 bank's filing system, if you have a loan and
 15 you have a loan number and then there's a bank
 16 file and a loan number and there's certain
 17 things in there?
 18 A. Right.
 19 Q. And then it sounds like this would be
 20 relating to the bank file but it wouldn't
 21 be --
 22 A. Right.
 23 Q. -- actually in the bank file; it
 24 would be some separate --
 25 A. Right, right.

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1 Q. -- board file?
 2 A. Yeah -- well, yeah, probably the
 3 special assets. We maintain files there of
 4 each --
 5 Q. So you had -- you did that for all
 6 the loans including --
 7 A. Yes.
 8 Q. -- the Liberty Village loan?
 9 A. Yes, sir.
 10 Q. You were the primary person assigned
 11 to this particular --
 12 A. Yeah, when I was there I had that --
 13 that relationship.
 14 Q. Okay. Any particular reason why?
 15 A. I had the Charleston area --
 16 Q. Okay.
 17 A. -- and Cedar had the Columbia area.
 18 That was our two biggest territory kind of --
 19 you take Columbia, I'll take Charleston.
 20 Q. And Clark oversaw it?
 21 A. Yeah.
 22 Q. Okay. Were there a lot of loans
 23 assigned to the special assets in '08, '09?
 24 A. Yeah.
 25 Q. Can you give me a ballpark?

1 million dollars?
 2 A. Correct.
 3 Q. Was that the same for Columbia?
 4 A. Correct.
 5 Q. Were most of the loans -- commercial
 6 loans from First National at the time, were
 7 they usually more than a million dollars?
 8 A. The majority, yes. I'd say
 9 probably -- yeah. They're bigger ones.
 10 Q. All right. And was there any
 11 distinction drawn from the special assets
 12 division between a loan or a line of credit
 13 or --
 14 A. No.
 15 Q. -- any other type of lending?
 16 A. No, because we didn't -- you know, we
 17 were the only group they had.
 18 Q. Okay. And so the board -- you said
 19 the board created this and put you all in
 20 there?
 21 A. Correct.
 22 Q. Was there some special skill set that
 23 you and Clark and Hintlemann had?
 24 A. Actually, the reason they chose
 25 myself and Mr. Hintlemann is we knew how to

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1 A. I think -- are you looking for
 2 numbers or are you looking for dollar size
 3 or --
 4 Q. Either one. Whichever one --
 5 A. I would say I probably had at
 6 least -- 40 credits at least.
 7 Q. 40 loans or lines?
 8 A. Right.
 9 Q. Do you know how much?
 10 A. Total aggregate I would say -- during
 11 that time it probably was on an -- increasing
 12 month to month, so I would say probably -- at
 13 any one time probably 40, 50 million, in
 14 that -- in that range.
 15 Q. Okay. So these were larger loans and
 16 lines?
 17 A. Yeah. Yeah.
 18 Q. What about the smaller business loans
 19 or commercial loans, did they go to special
 20 assets?
 21 A. Yeah, any -- any size past 90 days.
 22 I had some very small, some very large. We --
 23 I mean, we were the only people that were
 24 managing those -- all those assets, so --
 25 Q. Okay. Were most of yours over a

1 underwrite loans where a lot of -- you know,
 2 if they looked at who they were going to put
 3 in this group, that was one skill set we had
 4 that we could actually, you know, underwrite
 5 financials without having to be taught how to
 6 do that.
 7 Q. So you could take a look at the
 8 borrower, their financial situation --
 9 A. Right, and assess it.
 10 Q. And does that include assessment of
 11 the collateral --
 12 A. Correct.
 13 Q. -- and all that?
 14 Okay. Did you have experience doing
 15 that --
 16 A. Correct.
 17 Q. -- before, underwriting loans?
 18 A. Actually, both at -- well, at First
 19 Charter I had the most experience doing that
 20 and then at First National I had experience
 21 doing that.
 22 Q. Did you do it with this Liberty
 23 Village loan?
 24 A. No. Well, I reviewed financials. I
 25 didn't -- of course didn't make the loan, so I

1 didn't do it on the front end. I reviewed
 2 financials, whatever we had in the file.
 3 Q. Okay. When did you first get
 4 involved with the Liberty Village loan?
 5 A. Probably around, I'd say, May to June
 6 of 2008. That was when we made the
 7 distinctions of who takes what area.
 8 Q. Okay. And was it a nonperforming
 9 loan at that time?
 10 A. Yes.
 11 Q. Did you say May of '08?
 12 A. May of '08.
 13 Q. Okay. And by nonperforming more than
 14 90 days past due?
 15 A. Correct.
 16 Q. Other than that -- did you determine
 17 that or was it just somebody sends you
 18 something and that must be the case?
 19 A. Basically, the lenders would manage
 20 it up to that -- the -- the status would be,
 21 you know, say, a 90-day or -- or prior -- like
 22 if it was more current than 90 days they would
 23 have it.
 24 Q. The loan officer would handle it --
 25 A. Officer, yeah.

1 when I was taking the deal over.
 2 Q. Handled this loan?
 3 A. Correct.
 4 Q. Okay. Was there any kind of
 5 management structure in place where there's a
 6 head guy who would -- the people underneath
 7 him would report to him and he would do
 8 whatever he did and if it -- if he determined
 9 it would need to go to Spartanburg then that
 10 would happen or did Scott Warren or the
 11 Spartanburg people have their hands in
 12 everything?
 13 A. I think the Spartanburg folks managed
 14 the Charleston area and they -- they would
 15 make any decisions like that.
 16 Q. Is there a reason why they didn't
 17 appoint someone to manage and run the
 18 operations in Columbia and Charleston?
 19 A. That I wouldn't know. That wasn't
 20 my, you know, detail or anything.
 21 Q. Is that a typical setup in the
 22 banking world? I mean, the people in
 23 Charlotte don't have their hands in every Bank
 24 of America --
 25 A. Well, actually --

1 Q. -- up until that point?
 2 A. Yeah, that -- the loan officer or the
 3 lender, they would actually maintain it until
 4 it was made on their side of the bank to send
 5 it to the special asset department.
 6 Q. Did -- I'm sorry. Go ahead.
 7 A. And then they would transfer it to
 8 the special asset department.
 9 Q. Did the loan officer have any say in
 10 that?
 11 A. In terms of what gets sent and what
 12 doesn't?
 13 Q. Um-hum.
 14 A. No. It actually would be probably
 15 his manager or, you know, whatever they
 16 determine, but we were not involved in that
 17 part of it.
 18 Q. Okay. Do you know who -- how the
 19 setup was in Charleston at the time, who was
 20 at the head, who was under?
 21 A. Yeah. Actually, Bob Whittemore and
 22 Scott Warren were the two guys in Charleston.
 23 Q. Okay. And which one was in charge?
 24 A. That -- I don't know who they
 25 originally had, but Scott Warren handled it

1 Q. -- branch, do they, or do they? I --
 2 A. -- they do, yeah. Like, for example,
 3 my manager's in Charlotte. I cover Union
 4 County. He's in Charlotte. I'm the only guy
 5 in Union County, so --
 6 Q. Okay. But if -- that's probably a
 7 bad example because this is a small area, but
 8 the guys in Charlotte don't manage BOA
 9 branches in Charleston, do they, or do they?
 10 A. I guess if you go up high -- high
 11 enough in layers they do at some point.
 12 Q. Okay.
 13 A. But like different banks depending on
 14 how big they are have more layers of
 15 management versus not.
 16 Q. Okay.
 17 A. But that I -- I'm not sure what
 18 decisions on that side would be.
 19 Q. Is SunTrust owned by any larger bank?
 20 A. No, we're independent.
 21 Q. Okay. All right. So you got the
 22 Liberty Village loan sent to you. Who -- who
 23 brought it to you?
 24 A. Probably Charles Clark assigned it to
 25 me at that time.

1 Q. Okay. Any particular reason other
 2 than you were doing the Charleston area?
 3 A. That would be the only reason.
 4 Q. Okay. And what did he tell you about
 5 the loan, if anything?
 6 A. Actually, he probably didn't tell me
 7 a whole lot of anything. I probably picked up
 8 the file and started reviewing -- I would just
 9 get a file. There wasn't really a whole lot
 10 of information given. I would have to start
 11 reviewing documents.
 12 Q. And do you remember doing that with
 13 Liberty Village?
 14 A. Yeah.
 15 Q. And what did you learn when you
 16 reviewed whatever file was given to you?
 17 A. I saw the project, looked at the
 18 note, looked at all the guaranties, who the
 19 principals were involved --
 20 Q. Do you remember who -- how many there
 21 were?
 22 A. I think there was four, which the
 23 project was, you know, the type of project,
 24 who signed -- you know, who signed the notes.
 25 Q. Okay. I didn't mean to cut you off.

1 Q. Yeah, that's a bad question. Let's
 2 assume that in this case there was an
 3 extension or modification or renewal, whatever
 4 verbiage you want to use, I don't know that it
 5 really matters, but there was a maturity date
 6 and then there was a new maturity date.
 7 A. Right.
 8 Q. And as I understand the way things
 9 happened, it went to you before the new
 10 maturity date. Is that the way you understood
 11 it?
 12 A. I don't recall. I would -- I don't
 13 want to guess on it, but I don't recall if I
 14 got it before or after to tell you the truth.
 15 Q. Was that normal for you to get
 16 something that was not 90 days past due?
 17 A. I'm just trying to think of different
 18 scenarios for you.
 19 Q. Did you have any loans while you were
 20 at special assets that had not the due date --
 21 the maturity date had not yet come to pass?
 22 A. The majority, no. Like most of my
 23 loans were past due.
 24 Q. But there were some that were not
 25 past due?

1 A. That's all right. I mean, really I'd
 2 always used an overview on a file any loan I
 3 got.
 4 Q. And when you got it had there been
 5 any change to the original note or was it --
 6 had it been modified or renewed or extended
 7 when you got it?
 8 A. I'm not sure of the time line of
 9 that, but there was a -- there was a -- an
 10 extension in the file because I remember
 11 reviewing an extension. So I think that was
 12 done -- I don't recall. I don't know if that
 13 was done before or after.
 14 Q. Okay. Did you have any part in that,
 15 drawing up any of that paperwork?
 16 A. No, not -- not that side.
 17 Q. Okay. So if something happened while
 18 it -- after it had gone to you that would have
 19 been something that was done in Spartanburg?
 20 A. Right. That might have been done by
 21 the lender prior to me getting that file.
 22 Q. All right. If that happened would it
 23 still be considered a special asset if the --
 24 A. You said that happened. Like what,
 25 if --

1 A. Well, I guess I want to clarify.
 2 Like if I had one loan that was past due but I
 3 had three loans that were current just by the
 4 cross-default language, you know, I could have
 5 some loans that were not in default but one
 6 would be in default. There would have to be
 7 some breach or some default for me to have
 8 that.
 9 Q. So you're talking about a borrower
 10 may be in default on one loan --
 11 A. Right.
 12 Q. -- and there's three other loans --
 13 A. Correct.
 14 Q. -- that maybe aren't?
 15 A. Correct.
 16 Q. You would get the whole package?
 17 A. I'd get the whole package, yeah.
 18 Q. Is that what happened with Liberty
 19 Village?
 20 A. I don't -- I don't know if they had
 21 any other loans or not. I remember one. I
 22 don't remember any other loans, but I don't --
 23 I just remember one loan.
 24 Q. I only know of one loan, so at least
 25 we're on the same page with that.

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1 Were you asked by -- are you
 2 represented here today by Mr. Kerr?
 3 A. Yes.
 4 Q. Okay.
 5 A. Well --
 6 MR. KERR: No, he's not.
 7 THE WITNESS: Oh, okay. All right.
 8 MR. KERR: He's not an employee of my
 9 client --
 10 THE WITNESS: Well --
 11 MR. KERR: -- and he hasn't retained
 12 me independently, so --
 13 THE WITNESS: He's the only attorney
 14 I know.
 15 BY MR. EDWARDS:
 16 Q. I'm sorry.
 17 A. Would I need to have an attorney
 18 here?
 19 Q. Well, I'm not suing you. Have you
 20 spoken with Mr. Kerr?
 21 A. Actually, I talked to him about
 22 getting this meeting set up. That's the
 23 extent other than he shared pleadings with me.
 24 I read those, but we did not discuss this deal
 25 in length.

1 tell me time to time -- I tried to, you
 2 know -- more or less we just kind of just by
 3 being friends kept up with each other.
 4 Q. Okay. Now, going back -- you don't
 5 have any personal knowledge other than what
 6 you've heard from --
 7 A. No. No, I don't have any inside
 8 information or anything.
 9 Q. Going back to the Liberty Village
 10 loan, and as I understood what you've told me,
 11 you didn't decide to snatch up the loan and --
 12 A. No.
 13 Q. -- move it to special assets --
 14 A. Correct.
 15 Q. -- in Spartanburg?
 16 A. Correct.
 17 Q. Those people did it?
 18 A. Right. They were assigned to our
 19 group.
 20 Q. Okay. Now, when you got the Liberty
 21 Village loan what did you -- did you give --
 22 did you have any marching orders, first of
 23 all?
 24 A. No -- no like goals or agendas other
 25 than, you know, review the file, find out

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1 Q. Okay. You didn't review any bank
 2 files or anything like that?
 3 A. No. No, sir. And sorry for my fuzzy
 4 memory.
 5 Q. Yeah.
 6 A. It's been about three years.
 7 Q. Sure, I understand. Have you ever
 8 been asked to -- you don't maintain any
 9 records from --
 10 A. No, sir.
 11 Q. -- when you were at First National?
 12 A. No.
 13 Q. They would all be in the bank's
 14 possession?
 15 A. Right.
 16 Q. Okay. Were you there when the bank
 17 got taken over?
 18 A. No, sir. I think I was at B -- B of
 19 A at least the -- I think about three or four
 20 months prior to that happening.
 21 Q. Do you know anything about that?
 22 A. Yeah. Actually, I -- I'm friends
 23 with Cedar Hintlemann. He and I shared -- you
 24 know, we worked at First Charter and we worked
 25 at First National, so he -- you know, he would

1 everything about the property, you know, go
 2 take a site visit of the property, basically
 3 standard special asset kind of -- you know,
 4 kind of just getting to know that file, kind
 5 of identify what the loan is, who the -- who
 6 the borrowers are and that kind of thing.
 7 Q. Did you do that?
 8 A. Yes, sir.
 9 Q. Visit the site?
 10 A. Yes, sir.
 11 Q. And was it acceptable?
 12 A. Define acceptable. What --
 13 Q. I don't know what is --
 14 MR. KERR: Accessible or acceptable?
 15 MR. EDWARDS: Acceptable.
 16 MR. KERR: Oh, I'm sorry.
 17 BY MR. EDWARDS:
 18 Q. I don't know what the bank considers
 19 an acceptable site location or --
 20 A. I mean, it was -- it was raw land, I
 21 mean, very few improvements to the property,
 22 you know, as far as -- you know, I didn't see
 23 any contamination or anything of that nature,
 24 but, I mean, it was raw land.
 25 Q. Yeah. Did -- in reviewing the file

1 did you learn what the project was and what
 2 the purpose of the loan was?
 3 A. Correct. I did, yeah.
 4 Q. And did having -- with that in
 5 mind --
 6 A. Right.
 7 Q. -- when you'd go out and visit the
 8 site did it appear that what the project was
 9 and what the loan was intended for --
 10 A. Right.
 11 Q. -- did they all kind of --
 12 A. Yeah. I mean, it --
 13 Q. -- comply with what you expected to
 14 see when you went out there?
 15 A. Right. Yeah. Actually, the -- the
 16 loan was made to purchase the asset. They had
 17 the asset -- they had the raw land intact.
 18 There had been some improvements on the
 19 property. You know, that part was done. I
 20 didn't know exactly how much improvements, I
 21 guess, needed to be made at that point, but in
 22 the end, you know, it -- there were some
 23 improvements on the property.
 24 Q. Okay. Was there -- are you familiar
 25 with that stage of --

1 didn't do the work you were supposed to do,
 2 you didn't do enough or you did it improperly
 3 or anything like that?
 4 A. I didn't have that conversation or I
 5 didn't -- didn't make that --
 6 Q. You didn't make that determination?
 7 A. Right. Right. I just wanted to see
 8 what actually we had as collateral at that
 9 point --
 10 Q. All right.
 11 A. -- and saw the site.
 12 Q. So the actual work that was done on
 13 the property, was that a factor or nonfactor
 14 in what ultimately happened with the loan?
 15 A. That was not my concern on that part
 16 of it.
 17 Q. Okay.
 18 A. I was kind of looking at it as is.
 19 Q. Yeah, okay. That's fine. I'm just
 20 trying to understand how you --
 21 A. Right.
 22 Q. -- your puzzle piece fits in here.
 23 A. Right.
 24 Q. Now, you visited the site, you
 25 reviewed the file and you reviewed, I assume,

1 A. Yeah.
 2 Q. -- clearing and developing the land?
 3 A. Right. Yeah.
 4 Q. Was there a lift station out there?
 5 A. Yes.
 6 Q. Was there roads?
 7 A. Dirt roads.
 8 Q. Dirt roads, okay.
 9 A. Yeah.
 10 Q. Do you remember where the project was
 11 supposed to have been at that time, what
 12 was -- what to be completed and what was, in
 13 fact, completed when you went out there?
 14 A. Basically, I think -- I didn't have
 15 a -- I didn't have a schedule of what all
 16 improvements were to be made. A lot of times
 17 those were done depending on who would, you
 18 know, buy a project or not.
 19 Q. Yeah.
 20 A. But in the end mainly the lift
 21 station was done. The -- the land had been
 22 cleared and that was the -- the bulk of the
 23 things that were done, so --
 24 Q. So you didn't have any issue -- you
 25 didn't take issue with there's -- you all

1 the borrower and its guarantors?
 2 A. I reviewed whatever we had in file
 3 and whatever the borrow -- borrower would send
 4 us. So if we asked for updated financials --
 5 and I can't remember where we got those from
 6 this client, but if I would get an updated
 7 financial statement I would review that. Some
 8 borrowers would provide that, some wouldn't
 9 depending on the borrower.
 10 Q. Do you remember if they -- if you
 11 asked for that in that case?
 12 A. I'm sure I asked for it. I don't
 13 remember if I got it, though, on that deal.
 14 Q. All right. And what else were you
 15 considering in reviewing the loan and where it
 16 stood in your assessment of the asset?
 17 A. Mainly it was the maturity date on
 18 this one. I -- I don't know -- that was
 19 probably the -- the biggest issue, I think, we
 20 looked at on this one.
 21 Q. All right. Did anybody ever mention
 22 to you that the borrowers wanted a meeting --
 23 a live meeting --
 24 A. Yes.
 25 Q. -- with certain individuals?

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1 A. Yes.
 2 Q. Tell me what you know about that.
 3 A. I -- I believe Mr. Barber was the one
 4 I think I had contact with and I think he
 5 requested a -- you know, a meeting of that
 6 sort or some nature. And I'm not sure if they
 7 ever had that one after I left or -- I know
 8 he -- he asked about getting that done.
 9 Q. But before you had left it had not
 10 happened?
 11 A. To my knowledge, no.
 12 Q. Do you know why?
 13 A. I don't.
 14 Q. Did you have any say in that?
 15 A. No, I wouldn't have any say of
 16 actually -- I might have relayed that over to
 17 a manager or some sort, but I know -- I was in
 18 the Charleston area to meet with different
 19 folks, but I think Mr. Barber wanted to meet
 20 with higher-up folks.
 21 Q. Do you know why?
 22 A. Just for the fact of discussing the
 23 loan.
 24 Q. But you don't know any particular
 25 reason why it is he was requesting a meeting

1 another loan after the fact.
 2 Q. Did he tell you that it was what
 3 Scott Warren had told him?
 4 A. He actually never -- and I -- I asked
 5 Mr. Barber, I said, well, did Mr. Warren
 6 promise anything, do anything? He never
 7 really put the -- that in a statement that he
 8 did, but actually, he felt like he was
 9 insinuated that he would.
 10 Q. Did you understand that Mr. Barber at
 11 least was under the impression that what they
 12 had signed was not the end-all --
 13 A. He shared that comment to me.
 14 Q. It -- they -- it was a stopgap
 15 measure to -- for bank filing purposes so you
 16 have some paperwork before a new renewal or
 17 renegotiated loan could be worked out?
 18 A. He -- yeah, he made that -- he made
 19 that concern to me and we discussed, yeah --
 20 and there again, my point was the actual
 21 agreement had it very boldfaced. You know,
 22 why would you sign an agreement that way?
 23 Q. Sure.
 24 A. So that was our two stances. We
 25 never came to agreement on that.

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1 with people in Spartanburg other than to
 2 discuss the loan?
 3 A. I mean, I think I -- the main -- main
 4 premise that Mr. Barber shared with me was
 5 that the extension that was signed -- I think
 6 there was a hard maturity date -- he disagreed
 7 with. He wanted an additional loan of some
 8 sort. That was his main premise.
 9 Q. All right. And what was your
 10 response to that?
 11 A. The conversation I had with
 12 Mr. Barber was I reviewed the actual
 13 extension. It -- there was a line that stated
 14 in there no future draws or advances and a
 15 maturity date of X, and we had a conversation
 16 on that line about, you know -- my question
 17 was, you know -- that was written there in
 18 bold face. That was -- my only concern was,
 19 you know, why did you sign the extension if
 20 you had any issues with that? And that was
 21 my -- my question to the borrower.
 22 Q. And what did he say?
 23 A. He said that he went ahead and signed
 24 it to get the extension. Basically, he felt
 25 like, you know, that he would be able to get

1 Q. Yeah. Having had that discussion
 2 with Mr. Barber, did you try to work out a
 3 loan that was anywhere near what he was under
 4 the impression was coming when they signed
 5 that modification?
 6 A. At that point we were looking to be
 7 paid in full and the maturity date was past as
 8 I recall.
 9 Q. Well, the maturity date on the
 10 modification hadn't come and gone, had it?
 11 A. I don't -- what -- I don't recall the
 12 maturity date.
 13 Q. Okay.
 14 A. I think this was after the fact.
 15 Q. All right.
 16 A. I don't -- I don't have a copy of
 17 that. It might be there, but --
 18 Q. Okay. But it's your recollection
 19 that it was after --
 20 A. Yeah.
 21 Q. -- the second maturity date?
 22 A. Yes, yes.
 23 Q. Okay.
 24 A. I mean, do we have a way to check
 25 that date or --

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1 Q. Sure, we do. And I'll run you
 2 through some documents here in a minute.
 3 A. Okay.
 4 Q. Was there anything particularly
 5 attractive about this loan in the eyes of the
 6 bank?
 7 A. Attractive in what --
 8 Q. Well, the bank's not in the business
 9 of owning land, is it?
 10 A. No. No. From that regard if the
 11 bank -- you're saying would the bank see that
 12 land as attractive to have an asset?
 13 Q. Yes, sir.
 14 A. No. No.
 15 Q. Then why did they foreclose on it?
 16 A. I would -- I would know the bank
 17 would only -- if it was mature and we were not
 18 getting repaid we had no -- like once that
 19 maturity's there the loan should be paid in
 20 full and that was not happening, so they would
 21 foreclose on it to get repaid if the borrower
 22 couldn't pay it back.
 23 Q. Were they willing -- the bank -- was
 24 Liberty Village and its members willing to
 25 continue paying on the note?

1 think he just -- I -- I think he made a
 2 comment that they were financially strong.
 3 Q. But you don't remember whether or not
 4 they were?
 5 A. No. I was not familiar with them.
 6 Q. Okay. Did you want to review their
 7 financial strength?
 8 A. Yeah, I would like -- yeah, I would
 9 actually like to see everybody -- every
 10 guarantor's financial strength so we could
 11 know who the borrowers were and what their
 12 position was.
 13 Q. Did you do that?
 14 A. I'm sure we requested, but I -- I
 15 don't recall if we had that -- updated
 16 financials or not.
 17 Q. Okay. Do you know whether or not
 18 that request -- did you make the request for
 19 updated financials?
 20 A. I'm sure, yeah. I would have asked
 21 for updated financials on every loan I had.
 22 Q. And what was the response you got?
 23 A. I don't remember if they gave them or
 24 not. I don't remember. I don't know.
 25 Q. I understand that, but do you

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1 A. I don't recall if they were willing
 2 or not. I think their request was mainly a
 3 new loan at that point.
 4 Q. Which they would pay on?
 5 A. I mean, that was maybe their request,
 6 but our stance was the loan had matured and we
 7 needed to get payment in full.
 8 Q. Okay. Did it make any difference
 9 that the loan-to-value ratio was 27 percent?
 10 A. No. Actually, we just looked at the
 11 amount owed and needed to have it repaid.
 12 Q. If it was under water would you have
 13 been more likely to work out a new loan?
 14 A. Actually, we would try to get repaid
 15 back a hundred percent regardless of loan to
 16 value even, you know, from the borrower or the
 17 guarantors.
 18 Q. Okay. What was the financial
 19 strength of the borrower, in this case Liberty
 20 Village?
 21 A. The two outside partners had more
 22 financial strength, but I don't recall ever --
 23 I think Mr. Barber shared that with me that
 24 they did have strength, but I don't recall
 25 whether or not we had updated financials. I

1 remember whether or not there was a response
 2 to the effect of, no, I'm not going to give it
 3 to you or --
 4 A. That I --
 5 Q. -- well, I haven't filed my taxes
 6 this year yet or --
 7 A. Yeah.
 8 Q. -- it's in the works. My
 9 accountant's in Timbuktu and I'm trying to get
 10 ahold of him?
 11 A. Yeah, that part I don't remember. I
 12 had so many credits and it's been so long. I
 13 don't know if they ever provided financials
 14 while I was there or not.
 15 Q. Okay. Was it your normal practice to
 16 receive updated financials prior to making a
 17 recommendation?
 18 A. We always ask for the financials, but
 19 a lot of times we -- you know, we would have
 20 some borrowers who'd give us financials and
 21 some of them wouldn't. We wouldn't always
 22 wait until we got financials because some just
 23 refuse not to. I will tell you that on the
 24 grand scheme of things, you know, we would try
 25 to make a decision if we could get updated

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1 financials, but if we don't get them, you
2 know, we have to sometimes ultimately make a
3 decision without them.

4 Q. Okay. Was the bank trying to get rid
5 of these loans that were sent to special
6 assets?

7 A. Yeah, we actually would want to be
8 repaid, yeah, as fast as possible. You know,
9 that would be the one goal to have them pay it
10 off.

11 Q. Well, how did you plan to execute
12 that plan if you're dealing only with loans
13 that are 90 days past due? How did the bank
14 expect to get paid?

15 A. Basically, if the borrower couldn't
16 repay the note then we would collect the asset
17 and foreclose on it and sell and repay the
18 note, but --

19 Q. Does that typically make the bank
20 whole, the foreclosure process, selling it at
21 the courthouse steps?

22 A. When you say like just on a grand
23 like generic kind of general practice --

24 Q. Sure.

25 A. -- it pays -- various deals could

1 A. I can't really speak for the bank for
2 the fact that, you know, one, every deal is
3 different, but in a case where if a loan was
4 past due to not being; you know, paid and
5 there was no way of a repayment source, then
6 they would try to collect the asset to sell it
7 to, you know, recoup the --

8 Q. Right. I understand that in a
9 general sense, but what I'm asking is at this
10 time with the special assets that were --

11 A. Right.

12 Q. -- sent to you, was the bank inclined
13 to do that or were they just wanting to get
14 rid of them as quickly as possible?

15 A. I mean, I think we were just normal,
16 you know -- had discussions with the borrower.
17 The loan was mature. We asked to be paid in
18 re -- you know, re -- repaid in full. That
19 couldn't happen so we moved to start
20 foreclosure.

21 Q. Is that what happened with all the
22 special assets or were there some that were
23 worked out, modified, extended or renewed?

24 A. I'd say probably, you know -- even
25 though a loan might be in foreclosure, there's

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1 be -- I mean, every deal's different. I mean,
2 if an asset had --

3 Q. It's pennies on the dollar though,
4 isn't it?

5 A. Yeah, I would say, you know, you try
6 to recover as much as you could from a
7 foreclosure sale.

8 Q. But for the most part, the bank's
9 going to lose money?

10 A. There -- I would say probably
11 generally, yes.

12 Q. They're not going to sell it for what
13 they are owed on it normally, right?

14 A. Right.

15 Q. Plus, they're going to have to pay
16 lawyers and other things -- other expenses,
17 tax lien to foreclose on it --

18 A. Right.

19 Q. -- right?

20 A. But you'd get something back as soon
21 as possible.

22 Q. All right. And the bank would rather
23 do that than renegotiate a loan where they
24 would be gaining interest and principal
25 paydowns?

1 always an open possibility that, you know,
2 another deal could be struck, but we would,
3 you know -- on an asset we would start a
4 foreclosure and if we reached an agreement in
5 that process, you know, that could be --

6 Q. Did that happen?

7 A. No, not to my knowledge while I was
8 there.

9 Q. Can you remember any loans that you
10 handled in special assets that were --
11 something other than foreclosure was the
12 result?

13 A. We had a few borrowers who just paid
14 the loan off once they were in special assets
15 and just, you know -- once we got in special
16 assets, had a few discussions, they moved the
17 loan, refinanced it, paid it off. You know,
18 sometimes guarantors might have the strength
19 to do that. Some may move it to another bank.

20 Q. So that happened in your own
21 portfolio?

22 A. Some, yeah. I won't say a big
23 percentage, but --

24 Q. A handful?

25 A. Yeah, I'd probably say maybe a

1 handful would be fine.
 2 Q. Do you remember?
 3 A. I don't, not exact number.
 4 Q. Do you remember the people involved?
 5 A. You're talking about different loans
 6 and stuff?
 7 Q. Yes.
 8 A. No, I don't.
 9 Q. Okay. Well, did you ask Liberty
 10 Village if they would be willing -- well, did
 11 you ask them why it was not being paid?
 12 A. Yes. Yes.
 13 Q. And what was the response?
 14 A. Basically because they wanted to have
 15 another loan made, and basically our -- our
 16 premise was the loan has matured. We need to
 17 be paid re -- in full, not, you know, a
 18 partial amount or a re -- a new loan.
 19 Q. Yeah. Did they tell you that Scott
 20 Warren told them they would get a renewal?
 21 A. Freeman, from my recollection, he
 22 never said that Scott actually said that but
 23 kind of insinuated that he did.
 24 Q. Okay.
 25 A. And so he never said, Scott said I

1 A. I can't remember if we got that
 2 extension before I got it or after I got it.
 3 I was -- from my recollection I saw it in the
 4 file so I would think that would have happened
 5 before I got it. And to my knowledge, you
 6 know, that -- that would have been something
 7 on Scott's side that they may have, you know,
 8 tried to do some things on their side to get
 9 some things done. I don't remember if that
 10 was done after I got the file.
 11 Q. Let's assume that it was done before
 12 you got the file.
 13 A. Okay.
 14 Q. I'm trying to understand why it is
 15 you would have received the file at that point
 16 if the maturity date was not either due or 90
 17 days past due.
 18 A. The only thing I can think is if the
 19 line side -- like Scott Warren's side sent it
 20 over for some reason I'm not aware of that we
 21 got it. I don't recall why they would have
 22 sent it over. I don't know. I don't
 23 remember. I mean, I don't remember a reason
 24 why they would send it if it wasn't mature.
 25 Q. Okay. So you didn't have any

1 would get a loan, or anything of that nature.
 2 He actually just said that he felt like that
 3 there was a possibility of getting a loan, but
 4 it was more of a very --
 5 Q. What -- what did Scott Warren say
 6 about it?
 7 A. I talked to Scott. He said he -- at
 8 no time did he ever promise that we'd make a
 9 loan, but he said he would work really hard to
 10 try to get a new loan for them, a poss -- you
 11 know, possible approval, but never guaranteed
 12 that he could get that done.
 13 Q. Why didn't the bank just foreclose on
 14 it in the first place?
 15 A. Well, we started foreclosure.
 16 Q. Why didn't you do that before
 17 modifying or extending it?
 18 A. Before modifying the actual note?
 19 Q. Yeah. You understand that there was
 20 a modification --
 21 A. Yeah, yeah.
 22 Q. -- or an extension of some sort?
 23 A. Right.
 24 Q. Why didn't the bank foreclose before
 25 then?

1 discretion in that? That decision was made by
 2 whom?
 3 A. The line side would send over
 4 anything they had 90 days over past due. So
 5 if it was past 90 days they'd send it to
 6 special assets.
 7 Q. Is that a bank policy of some kind?
 8 A. Yes. Actually --
 9 Q. Is it a written policy?
 10 A. Yeah, written.
 11 Q. 90 days past due?
 12 A. 90 days past due. That's true --
 13 really the true definition of nonperforming
 14 asset. Once it goes past 90 days you have to
 15 take them off.
 16 Q. Industry standard 90 days past due?
 17 A. Yeah, yeah.
 18 Q. Okay. Okay. Okay. Did you speak
 19 with anybody in Spartanburg during -- after
 20 you got the file and before you made your
 21 recommendation?
 22 A. Well, at that time -- now, what
 23 recommendation are you talking about?
 24 Q. When did you make a recommendation on
 25 the file?

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1 A. Yeah, I -- I think mainly when I got
 2 that file I actually did my overview on it,
 3 brought in Mr. Kerr at some point to start the
 4 foreclosure process. I don't think we ever
 5 got to any recommendation point. I had a
 6 discussion with Mr. Barber, Mr. Warren, but
 7 really never made a true recommendation.
 8 Q. When was the -- the decision to
 9 foreclose made?
 10 A. It would have probably been after it
 11 was a maturity default -- default on the note,
 12 after it was mature and everything.
 13 Q. Do you remember when, how long after?
 14 A. I don't. It had to be after the
 15 maturity date before we had ever looked at
 16 doing a foreclosure.
 17 Q. Okay. Did you have any role in the
 18 modification?
 19 A. I -- I don't recall. Again, I think
 20 that was done prior to me actually having it.
 21 Q. Do you know how that process works at
 22 First National?
 23 A. Yeah.
 24 Q. How -- how does it work?
 25 A. You're talking about an extension?

1 know if they actually record those or not. I
 2 don't -- I don't know.
 3 Q. All right. Have you never been
 4 involved in -- on the loan officer side?
 5 A. No, I have, and I was thinking -- I
 6 mean, I've always had extensions signed by the
 7 client and kept in the bank file, but I don't
 8 know if they ever actually recorded that
 9 document. I know like our lien would be on
 10 a -- a lien would be recorded or like in South
 11 Carolina a mortgage here a deed of trust would
 12 be, but as far as a --
 13 Q. A new deed of trust or a new mortgage
 14 would be recorded?
 15 A. No, no. I'm saying the original one
 16 would be there, but as far as anything being
 17 recorded on just an extension, I don't know
 18 that there's anything that's actually
 19 recorded, but it would be kept on file with
 20 the bank.
 21 Q. What about for a document that
 22 modifies -- is not just an extension but
 23 modifies the interest rate, principal, the due
 24 date?
 25 A. Yeah, I don't -- I don't know if it

1 Q. Um-hum.
 2 A. Basically, the lender would ask for
 3 an extension for the maturity. I'd usually,
 4 you know -- they would try to gather updated
 5 financials and have a reason to extend it. I
 6 don't know -- in this case I don't know what
 7 reason they would have for extension, but
 8 basically, they would have submitted it, got
 9 approval and did like a short-term extension.
 10 Q. The loan officer would submit it for
 11 approval?
 12 A. Correct.
 13 Q. And then that would be approved or
 14 not approved by the board?
 15 A. An extension can be done by probably
 16 the credit guy -- chief credit guy, probably
 17 Jeff Benjamin.
 18 Q. Do you know how that worked in this
 19 case with Liberty Village?
 20 A. I don't.
 21 Q. Do you know whether or not that
 22 document is to be recorded?
 23 A. Actually, I don't. I know the
 24 extension would be signed like a -- almost
 25 like an extension of the note, but I don't

1 would be recorded, but it would be kept in the
 2 bank file for that -- that client, the part
 3 of -- the extension of the promissory note.
 4 Q. Okay. Okay. Well, in that -- in
 5 this case with Liberty Village did you know
 6 that the modification altered the interest
 7 rate, the principal amount, the time frame?
 8 A. Yes.
 9 Q. You did know that?
 10 A. I think it lowered the loan amount,
 11 raised the interest rate and set a new
 12 maturity date.
 13 Q. Doesn't that affect the bank's lien
 14 on the property?
 15 A. Maybe I don't understand that
 16 question. I think basically if we have a lien
 17 on a property and we have a first lien, then
 18 basically that lien's at the courthouse and
 19 then basically --
 20 Q. The lien is in a -- in an amount,
 21 right, the amount that's been loaned?
 22 A. Yeah, I mean, there is a lien amount,
 23 but the main thing is having the first --
 24 who's first, second or third. I mean, in the
 25 end if you're first and -- the amount's really

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1 not as significant as the position, the lien
2 position.

3 Q. All right. So --

4 A. So if I'm in first whether I have a
5 dollar or I have a million dollars on it I'm
6 in first position.

7 Q. Could that be why the bank doesn't
8 record the modification, for fear of losing
9 their first lien priority?

10 A. I--

11 MR. KERR: I object to the form of
12 the question because I think what you're
13 asking are -- is him to practice law. But you
14 can answer if you can.

15 THE WITNESS: No, I -- I don't think
16 I understand that question of -- because I
17 think for me my -- my knowledge of a lien
18 versus a promissory note, I mean, you're --
19 you have your -- you have your lien on the
20 property, then you have -- you know, if your
21 lien's there -- we actually -- once a note is
22 paid in full we go take that lien off versus
23 if that -- if that note's still out there and
24 it's still there that lien stays in place.

25 BY MR. EDWARDS:

1 A. Well, I mean, I think we're kind
2 of -- we're kind of hypothetically thinking
3 about -- all right. You said there's a
4 note -- I'd really rather just not answer.
5 I'm getting kind of lost in what --

6 Q. Well, my question is whether or not
7 that -- in that scenario that new agreement,
8 if that's the same as the old agreement or if
9 that's a new agreement.

10 MR. KERR: I object to the form of
11 the question.

12 THE WITNESS: Right.

13 MR. KERR: Answer the question if you
14 can. Don't -- don't pay attention to me.
15 I'm --

16 THE WITNESS: Okay. Oh, okay.

17 MR. KERR: I'm doing something for
18 the record.

19 THE WITNESS: Oh, I got you. I got
20 you.

21 MR. KERR: I'm not telling you to do
22 anything. I'm not instructing you not to
23 answer. I'm not instructing you --

24 THE WITNESS: Right.

25 MR. KERR: -- to answer. I'm -- I'm

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1 Q. What if the note's not there anymore?
2 What if there's a note for 5 million dollars
3 and the bank records a first mortgage on the
4 property --

5 A. Right.

6 Q. -- and based on that note some time
7 goes by and any number of things happen and a
8 new deal is struck --

9 A. Okay.

10 Q. -- and the bank and the borrower say
11 they're making 2-1/2 million dollars. The
12 interest rate is going to be different. It's
13 going to be X number of months and it's going
14 to mature on this date. It's not going to be
15 a line of credit; it's going to be a fixed
16 loan or vice versa?

17 A. Okay.

18 Q. That's a new deal, isn't it?

19 MR. KERR: Object to the form of the
20 question. You can answer it.

21 THE WITNESS: I'd rather not because
22 I'm --

23 BY MR. EDWARDS:

24 Q. I'm not asking you to make any legal
25 conclusions. I'm just --

1 simply --

2 THE WITNESS: Okay.

3 MR. KERR: -- making a record based
4 on counsel's question.

5 THE WITNESS: I got you. I got you.

6 MR. KERR: So answer --

7 THE WITNESS: So basically -- all
8 -- right. Your question -- you're saying -- is

9 your question is that note -- is that a new
10 note or is that a new --

11 BY MR. EDWARDS:

12 Q. Yeah. There's two documents that
13 have signatures on it, one for X number of
14 dollars, an interest rate, revolving line of
15 credit or fixed loan --

16 A. Right.

17 Q. -- maturity date of X.

18 A. It would be an amendment --

19 Q. Second -- second document --

20 A. It would be an amendment of the
21 original note.

22 Q. Okay. What if the parties are
23 different?

24 A. If the parties like the guarantors,
25 companies and --

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1 Q. Or the actual borrower.
 2 A. It would still be an amendment to the
 3 note.
 4 Q. Okay.
 5 A. If that's what -- I think I'm
 6 answering your question, what you're asking.
 7 I think what I was kind of thinking about was
 8 the lien -- back on the lien, but you're
 9 actually asking about the note itself.
 10 Q. Um-hum. Well, it ties back into the
 11 lien --
 12 A. Right.
 13 Q. -- because the lien is now different,
 14 isn't it?
 15 A. The lien would stay in place, but the
 16 note would actually modify the original
 17 note --
 18 Q. Sure.
 19 A. -- terms.
 20 Q. But the lien only stays the same
 21 because it's not recorded; isn't that right?
 22 MR. KERR: Object to the form of the
 23 question.
 24 THE WITNESS: Well, that's the part,
 25 you know -- ask your question -- to my

1 Q. That's right. And not record it?
 2 A. No, just -- we record once at the
 3 original signing of the original note.
 4 Q. Okay. And how is that -- is that
 5 document, that second amended note, is that
 6 sent through an attorney typically?
 7 A. Not a -- just amendment, no. If
 8 you're going to change -- let's say, for
 9 example, if you add additional collateral,
 10 you'd have, you know, other pieces of real
 11 estate, you would have another -- maybe a
 12 recording of a new mortgage on that piece of
 13 real estate, but you're saying without
 14 changing collateral would you have it
 15 rerecorded with an attorney, no. You just
 16 have an agreement signed to modify the note.
 17 Q. Yeah. No, that's not what I'm
 18 asking, but -- I'm asking whether or not that
 19 agreement itself is sent to the buyer's
 20 attorney or if it's just done between the
 21 borrower and the bank.
 22 A. We'd send it to the borrower, but if
 23 the borrower wanted his own attorney or
 24 counsel to review that they could. And
 25 actually, to my recollection, I think one of

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1 knowledge we only record one time on the same
 2 file --
 3 BY MR. EDWARDS:
 4 Q. Yeah.
 5 A. -- for the same note, and then when
 6 you just do an extension of that note you
 7 really hadn't changed the note; you just --
 8 you've changed the note, but you've amended
 9 the note. You haven't really created a new
 10 note. Is that --
 11 Q. Well, you changed the terms.
 12 A. You've amended the terms of the
 13 original note.
 14 Q. And how do you -- how do you know --
 15 okay.
 16 A. You're saying that if the same
 17 note -- I mean, you can -- you can amend the
 18 original note, but -- you're saying keep the
 19 same collateral so you're really just amending
 20 the note, and that's what the modification,
 21 hence, is, I mean, just basically modifying
 22 the existing note that you had signed back on
 23 the original closing date and you're saying,
 24 hey, all parties agree to amend this note on
 25 this piece of paper.

1 the borrowers or the guarantors was an
 2 attorney.
 3 Q. Um-hum. Do you know whether or not
 4 it's First National's practice to send it to
 5 an attorney -- the buyer's attorney?
 6 A. If they request it we would have. I
 7 don't remember if they requested that.
 8 Q. Okay. When you spoke with -- how
 9 many times did you speak with Freeman Barber?
 10 A. I don't recall. Various times. I'd
 11 say probably -- I know at least three to five
 12 times at least.
 13 Q. And they all -- I mean, did they all
 14 have to do with his understanding and request
 15 for a renewal?
 16 A. Mostly.
 17 Q. Okay. Was the bank ever prepared to
 18 do that?
 19 A. That was not my -- my main request
 20 for him was to be paid off in full because it
 21 was mature, but I would say, you know, my --
 22 my -- my request to him was, you know, hey, we
 23 need repayment in full, and we talked about
 24 him having the ability to pay that back. I
 25 asked him, you know, can you just pay the

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1 whole thing off in full and that was my
 2 request to him.
 3 Q. Do you know why a 45-day extension
 4 was granted?
 5 A. I did then but I don't remember -- I
 6 don't -- I think they shared that with me
 7 probably back when I had the file and reviewed
 8 it but I don't remember.
 9 Q. Who shared that with you?
 10 A. Probably in the file it probably
 11 stated why. I probably talked to Mr. Warren
 12 and said, hey, why did we do this extension?
 13 I don't remember the actual reason we did
 14 that.
 15 Q. Did it have anything to do with
 16 interest payments that were or were not made
 17 on behalf of the bank?
 18 A. I don't recall on that one because I
 19 think that was done after I had the file.
 20 Q. What was done after you had the file?
 21 A. I -- I mean, not after the file, but
 22 I think that was done before I got the file.
 23 So that was after the fact of whatever took
 24 place beforehand, if I remember correctly.
 25 I -- I don't remember why it was done.

1 payments out of the reserve were made in a
 2 timely manner by the bank.
 3 A. I mean, I would assume they are, but
 4 I -- I don't know.
 5 Q. You don't know?
 6 A. No.
 7 Q. Okay.
 8 A. I mean, I would assume that they
 9 were -- were made.
 10 Q. Was that discussed at all when you
 11 got the file?
 12 A. Mainly -- my main discussion with
 13 Freeman was, hey, you know, can we do a new
 14 note, and my -- my main discussion with him
 15 was, we need to be paid in full. I mean, that
 16 was kind of our -- our discussion lines about
 17 every time we talked. We didn't really -- we
 18 didn't talk about anything really to any
 19 specific other than that.
 20 Q. Did you discuss the interest payments
 21 with anybody at the bank?
 22 A. If I did I don't -- I don't remember
 23 having that conversation.
 24 Q. Scott Warren never mentioned anything
 25 about that?

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1 Q. Do you know anything about whether or
 2 not the interest payments were made in a
 3 timely manner by the bank?
 4 A. From a -- like you're saying the bank
 5 making interest payments?
 6 Q. Yeah. Do you know how the balloon
 7 was structured here?
 8 A. I believe it probably had some sort
 9 of interest reserve.
 10 Q. It did?
 11 A. Yeah.
 12 Q. And the bank paid itself every
 13 month --
 14 A. Yeah.
 15 Q. -- out of that reserve; you
 16 understand that?
 17 A. Yeah, yeah, I understand that part,
 18 but I don't know if -- I don't know if -- I
 19 mean, besides that's the way that those are
 20 structured, I don't know that there's any
 21 problem with that to be for the -- is that --
 22 you're saying is -- why was the extension
 23 signed? I'm not sure.
 24 Q. No. I'm -- I'm asking if you know
 25 anything about whether or not those interest

1 A. I -- I would remember that, but I
 2 don't remember. I don't remember.
 3 Q. Did he ever mention that things had
 4 fallen through the cracks on his end that
 5 resulted in some late notices being sent out
 6 to the borrowers when they shouldn't have
 7 been?
 8 A. I don't remember that. Only thing I
 9 remember -- well, I'm just trying to think. I
 10 don't recall. I'm trying to think of that
 11 deal versus another deal of a similar type.
 12 Q. Do you know whether or not the
 13 borrower, Liberty Village, ever failed to make
 14 any payment that was due?
 15 A. The main one they failed to -- to
 16 make is really just the maturity to pay it off
 17 in full. That was the one I know that they
 18 weren't able to do or couldn't do, and that
 19 was the premise for me to have the note and to
 20 try to work it out to either be paid in full
 21 or to go foreclosure route.
 22 Q. Up until that point, maturity date,
 23 had they made every single payment?
 24 A. I assume they had, but I don't know
 25 for -- for sure.

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1 Q. Okay.

2 A. My -- my main concern was after I got

3 the file and it was mature.

4 Q. Yeah. What about the bank, did the

5 bank fund all of the draws that were

6 requested?

7 A. I don't know. I mean, I -- again, I

8 just -- I didn't deal with it from that part.

9 Q. Okay. What -- was that something

10 that you took into consideration when you were

11 analyzing an asset -- a special asset?

12 A. Well, I wouldn't have went back and

13 looked at interest reserves and whether they

14 all got paid or not. My main thing was here's

15 a note that's matured. You know, what's our

16 options from this point on?

17 Q. Well --

18 A. I don't recall that being an issue at

19 that point.

20 Q. Yeah. No, I -- I understand that.

21 Does it not matter -- or did it not matter to

22 the special assets division whether or not the

23 bank held up its end of the bargain?

24 A. That was not my -- I mean, I -- I

25 never would make that -- that wasn't my job to

1 A. Yeah, actually. Yeah.

2 Q. You do know circumstances?

3 A. Right. Like, for example, if -- if

4 there's work to be done and it's not

5 completed, we won't give a draw on incomplete

6 work.

7 Q. Okay.

8 A. I mean, there's various, you know,

9 situations that you could not advance because

10 something didn't happen.

11 Q. Sure. Justifiable reasons.

12 A. Right. Right.

13 Q. What about a draw request that's

14 within the scope -- proper scope of what's to

15 be funded, completed in a satisfactory manner

16 and submitted the way they had always been

17 submitted?

18 A. You're talking about just any deal or

19 this deal?

20 Q. Well, any deal if you know of any

21 other deals and if you know specifically on

22 this deal.

23 A. I don't know specifically on this

24 deal, but, you know, the bank would have to be

25 satisfied that everything was done, you know,

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1 make a decision on that part. I -- I mean,

2 I -- I would assume that we did everything we

3 were supposed to do and, you know, I'm taking

4 it from there. I mean, I'm thinking -- my

5 thought is --

6 Q. May be an invalid assumption.

7 A. Well, it might have been.

8 MR. KERR: Object to the form of the

9 question --

10 THE WITNESS: I mean, I just --

11 MR. KERR: -- or statement.

12 THE WITNESS: That wasn't

13 something -- I wasn't -- I wasn't -- my job

14 wasn't to look at the file and say did we do

15 everything absolutely correct.

16 BY MR. EDWARDS

17 Q. Yeah. Whose job was that?

18 A. I don't know, I mean -- I mean, other

19 than -- you know, I took control of it once it

20 came to me and that was my responsibility for

21 what I did, that part going forward.

22 Q. Do you know if First National ever

23 declined or refused to pay draws in any loan

24 where there was a draw schedule or some sort

25 of draw obligation?

1 per that request and they'd have to have it

2 inspected by, you know, an inspector that

3 would go out and say all the work's completed,

4 and if everything meets those criterias, yeah,

5 they would advance the funds.

6 Q. Do you know of any circumstance when

7 the bank would just refuse to fund a draw --

8 A. I don't --

9 Q. -- period, without investigating the

10 work or anything of that nature?

11 A. On this deal?

12 Q. On any deal.

13 A. Or any deal? No, I actually -- I

14 don't recall a situation to meet those, you

15 know, criterias or whatever.

16 Q. Okay. Do you know whether or not

17 First National had the cash on hand to pay all

18 its obligation in '08 and '09?

19 A. I don't know. Probably that would be

20 a CFO question.

21 Q. Who is the CFO?

22 A. Kitty Payne, K-I-T-T-Y, P-A-Y-N-E,

23 I'm pretty sure.

24 Q. It's a female?

25 A. Yes.

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1 Q. Is she still at the bank?

2 A. I think so. I don't know what her
3 job title is, though, but she was the CFO
4 while I was there.

5 MR. KERR: Can we go off the record
6 just for a second?

7 (Off-the-record conference.)

8 BY MR. EDWARDS:

9 Q. So you don't know anything about the
10 financial strength of the bank at this time?

11 A. As far as like whether they could pay
12 all their obligations at that time, I mean, I
13 know that we were special assets and -- and we
14 were there for a reason, we had bad loans, but
15 I didn't know the specifics of where we were,
16 where we were at. I mean, I knew that it kind
17 of wasn't good. We had special assets. But I
18 didn't know what our cash balances were at any
19 given time.

20 Q. Okay. Okay.

21 A. That was one of the -- you know, we
22 were in -- you know, in discussions on loans
23 only with the board, but we didn't get in the
24 innerworkings of the bank and the -- the
25 financial side.

1 file a mechanic's lien if -- you know, if the
2 borrower chose just not to pay something. He
3 can do a -- you know, a modification on the
4 building and just not pay on it and they could
5 throw a mechanic's lien on it, but, you know,
6 the bank may not even be involved in that kind
7 of situation.

8 Q. Do you know whether or not the bank
9 ever refused to fund any draws to see if a
10 mechanic's lien would be filed?

11 A. No.

12 MR. KERR: Object -- object to the
13 form of the question. I didn't understand the
14 question.

15 MR. EDWARDS: Well, let me rephrase
16 it.

17 BY MR. EDWARDS:

18 Q. I think you understood it, didn't
19 you? I'll ask it again.

20 A. All right.

21 Q. Do you know whether or not First
22 National or anybody at First National refused
23 to fund any draw that was requested to see
24 whether or not the borrower would pay or if a
25 mechanic's lien would be filed?

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1 Q. Yeah. Do you know whether or not --
2 what happens on a loan when there's a
3 mechanic's lien filed?

4 A. Basically, you know, a contractor
5 will go out and file a lien on a piece of
6 property and those will stay out there, and in
7 case the property's ever sold, you know,
8 those -- those liens would be repaid at the
9 point of sale.

10 Q. And they take priority over the
11 bank's liens, don't they?

12 A. Yeah, they actually -- if it was sold
13 then basically -- well, I know they would be
14 there to be paid if there's any proceeds that
15 would go, but that's one of those I would say,
16 hey, guys, you all are charging what? In the
17 end if it's sold, though, you get a potential
18 to be repaid. Far as taking priority to the
19 bank now, I'm not sure.

20 Q. Is that typically a default on a loan
21 if a mechanic's lien is filed?

22 A. No, not -- I mean -- well, I'd say
23 it -- it can be kind of 50/50. I mean, you
24 can have a contractor who's just upset with a
25 client who's current on the loan and they can

1 A. No.

2 Q. Okay. Do you know if that's
3 happened?

4 A. No, I wouldn't know if that happened,
5 but -- yeah, I -- no, that wouldn't happen.

6 Q. I may have already asked you this.
7 Do you know when the loan was defaulted, the
8 Liberty Village loan?

9 A. I know you had the pleadings that I
10 got from Mr. Kerr, but -- I don't know the
11 actual date off the top of my head, but
12 whatever that maturity date was, that was the
13 last maturity we had. And I've got -- I've
14 got the pleadings. I need those, but --

15 THE WITNESS: Do you have them?

16 MR. KERR: Answer the question.

17 That's all I can say, answer the question.

18 THE WITNESS: That's right.

19 MR. KERR: You need to answer the
20 question.

21 THE WITNESS: Oh. Yeah, just --

22 MR. KERR: Do you know?

23 THE WITNESS: No.

24 BY MR. EDWARDS:

25 Q. Did you ever meet with anybody other

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1 than Freeman Barber?
 2 A. No.
 3 Q. Do you know whether or not First
 4 National was trying to sell --
 5 A. And, actually, I never met Freeman
 6 Barber. I've talked to him on the phone,
 7 never met him.
 8 Q. Okay. All right. He called you?
 9 A. Both. I called him, he called me,
 10 e-mails.
 11 Q. Okay. Did anybody at the bank ever
 12 tell you they were trying to liquidate?
 13 A. Liquidate?
 14 Q. Anything, get cash.
 15 A. Are you talking about the bank as a
 16 whole trying to build up assets?
 17 Q. Yes.
 18 A. Nobody came and said, hey, here's
 19 what we're -- guys, we're doing. That was not
 20 shared with employees if they did.
 21 Q. Maybe not explicitly, but did you
 22 know whether or not that was the case?
 23 A. I mean, nobody ever told me that
 24 anybody was doing anything. I mean, I -- no,
 25 nobody told me.

1 A. I mean, it could have been people
 2 after I left, but I never remember being
 3 involved in selling the note.
 4 Q. Is that something that you did in the
 5 special assets?
 6 A. That was an option, but I don't
 7 recall ever selling a note when I was there.
 8 That was an option that you had, but --
 9 Q. Who would you sell it to, typically?
 10 A. Banks could sell notes to any
 11 investor that would want to buy notes. That
 12 could be investment groups, you know. It
 13 could be actually the borrowers itself and
 14 those folks.
 15 Q. And how does that normally work?
 16 They sell it for less than what they're owed?
 17 A. Actually, I never -- I never handled
 18 a transaction so I don't really know exactly
 19 how that would work. That was theoretically
 20 one that we always could have an option, but
 21 me being in the special asset role at that
 22 time, I heard about people selling notes, but
 23 I never handled a transaction like that.
 24 Q. Do you know whether First National
 25 made private offerings of loans and notes and

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1 Q. If they were -- well, why was the
 2 special assets division created?
 3 A. We were created to collect
 4 nonperforming assets for the bank.
 5 Q. All of them?
 6 A. Indirectly, yeah, but -- and in --
 7 that was -- our main -- main thing was to
 8 collect the bad debts of the bank.
 9 Q. Okay. Were there nonperforming
 10 assets that were not sent to special assets?
 11 A. I would say no. Everything that was
 12 nonperforming was sent to us across the board.
 13 Q. Was there any other loans involving
 14 Freeman Barber that you dealt with in special
 15 assets other than this Liberty Village loan?
 16 A. Liberty Village is the only one I
 17 remember working with Freeman.
 18 Q. Do you know if he had any other loans
 19 with First National?
 20 A. I don't recall.
 21 Q. Okay. Did you ever try to sell the
 22 note?
 23 A. I never was involved in selling the
 24 note.
 25 Q. Who would be involved in that?

1 things of that nature?
 2 A. I think they did to different groups
 3 but I wasn't involved in those transactions.
 4 Those were done at a higher level that I
 5 wasn't involved in.
 6 Q. Who --
 7 A. The board.
 8 Q. The board would make that decision
 9 and they would -- how would they determine who
 10 to sell or offer to sell to?
 11 A. Probably agreed price that they -- a
 12 target price that they would take for an
 13 asset.
 14 Q. Would it matter -- would the
 15 borrow -- would the buyer who they're selling
 16 to --
 17 A. Right.
 18 Q. Were they trying to sell it to people
 19 who had the wherewithal to purchase the
 20 notes --
 21 A. Yeah, they --
 22 Q. -- or did they not care who bought
 23 it?
 24 A. Oh, they -- you know, I mean, I
 25 think -- that's pretty broad, but basically,

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1 they'd have to have the wherewithal to buy the
2 note to make the transaction work. But, you
3 know, basically, it wouldn't matter who bought
4 the note as long as it was a target price that
5 the bank wanted for that.

6 Q. Do you know why First National would
7 offer to sell certain notes to the members of
8 Liberty Village?

9 A. Do I -- what was the first part of
10 that?

11 Q. Why the bank, First National, would
12 offer to sell these notes -- similar notes to
13 the members of First -- of Liberty Village.

14 A. I don't -- I don't know that they
15 ever did.

16 Q. That was never discussed with you?

17 A. I don't remember discussing that
18 part. I don't even think that was an option
19 when I had it.

20 Q. Maybe not an option for you. I'm
21 talking about --

22 A. Okay.

23 Q. -- before it came to you --

24 A. I would --

25 Q. -- whether or not Scott Warren told

1 met -- the members of Liberty Village met with
2 Scott Warren to discuss issues that they were
3 having with the bank funding draw requests?

4 A. The only one I remember is the
5 actual -- whenever he met to get a
6 modification signed. I don't remember a
7 second meeting or anything like that.

8 Q. He didn't talk to you about that?

9 A. If he did I don't -- I don't recall
10 that conversation.

11 Q. He didn't tell you that Scott Warren
12 assured him that the future draw requests
13 would be funded?

14 A. Again, back to my earlier comments, I
15 asked Scott about was there anything promised
16 to the client, and he said no, and actually,
17 Freeman Barber never stated that Mr. Warren
18 promised or guaranteed anything, that -- he
19 basically said that they discussed it but
20 not -- there was no -- nothing guaranteed or
21 nothing promised. Mr. Warren just, you know,
22 stated that he would work as hard as he could
23 to try to do something for him, but, you know,
24 it was only a possibility.

25 Q. A possibility that future draw

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1 you that he offered to sell bad notes to --

2 A. I don't know.

3 Q. -- the members of Liberty Village.

4 A. I have no recollection of that.

5 Q. Did he ever tell you he met with the
6 members?

7 A. Yes, actually, he -- you know, he --
8 he was their account officer.

9 Q. Yeah. And did he tell you he met
10 with them around Christmastime '08?

11 A. I don't recall.

12 Q. But that's where they -- I'm sure
13 Freeman Barber must have told you that's where
14 everyone walked away with the understanding
15 that funds would be -- draws would be funded.
16 They were having problems with draws being
17 funded; did you know that?

18 A. I think I might have -- I don't
19 recall that conversation for December, having
20 that with Scott.

21 Q. What about with Freeman?

22 A. I mean, he -- he basically, you know,
23 wanted a new note under my side of handling
24 the deal, but --

25 Q. But didn't he tell you that they

1 requests would be funded?

2 A. No. Actually, just a new note or new
3 loan or something like that, just basically
4 saying, hey, I'll -- I'll help you out as much
5 as I can if I can get you a new note or a new
6 deal but nothing --

7 Q. I'm talk -- I'm talking specifically

8 about draw requests.

9 A. I don't recall anything about draw
10 requests. You're talking about from Freeman?

11 Q. Um-hum.

12 A. I don't -- my main concern was about
13 the mature note. I don't really remember --
14 unless he just said he was unhappy about
15 things, whatever. That was not my -- my main
16 concern there.

17 Q. Were you never told to take into
18 consideration the history of the loan when
19 deciding what to do with a special asset?

20 A. What do you mean history of the loan,
21 like --

22 Q. Well --

23 A. If a note came mature it didn't
24 matter if you paid every payment on time all
25 the time. If it was mature then it was -- you

1 know, it was a mature default. So it didn't
2 matter if you made all the payments or if you
3 missed every payment. If it was mature then
4 that note was matured. It -- it needed to be
5 paid in full.

6 Q. What if the bank didn't do what it
7 was supposed to do? What if it didn't pay any
8 interest or fund the draws but the borrower
9 kept paying the payments? Does that not make
10 a difference to you in your assessment of the
11 loan?

12 A. I just don't remember any deal that I
13 had like that.

14 Q. Nobody told you that about the
15 Liberty Village loan?

16 A. Again, I -- I don't recall that being
17 an issue I looked at on this note.

18 Q. Have you ever heard of O.L. Thompson?

19 A. No.

20 Q. Okay. Freeman Barber never told
21 you --

22 A. Oh, wait a minute. I saw that
23 yesterday in the pleadings. OLT?

24 Q. Yeah.

25 A. OLT. Okay. Before yesterday seeing

1 the note, but there might be something --
2 language of a default language. There might
3 be a covenant or something that says if
4 there's any liens filed it could be in
5 default, but that would be dependent on that
6 note whether it had that in the language or
7 not.

8 Q. Was that a typical provision in your
9 experience?

10 A. You know, it might have been on some.
11 I know -- that's not one I guess what I would
12 say is I look for in a lot of them.

13 Cross-default covenants, debt service ratio
14 covenants, those kind of things.

15 Q. What do you mean when you say
16 cross-default covenants and --

17 A. If you're --

18 Q. -- debt service --

19 A. If you have five loans, you're in
20 default on one loan, you're in default on all
21 loans.

22 MR. EDWARDS: I'm going -- do you
23 want to take a break before we do this?

24 THE WITNESS: I'm good if you guys
25 are.

1 the pleadings I never heard of that -- that
2 contract.

3 Q. So you didn't know that a draw
4 request was made by the bank to pay
5 O.L. Thompson \$160,000 that was never made?

6 A. I don't remember that part.

7 Q. And then I guess then you don't know
8 that the borrowers actually paid out of their
9 own pocket --

10 A. I don't recall that either.

11 Q. -- to avoid a mechanic's lien?

12 A. I just don't remember that part of
13 that deal. That -- what I remember mainly on
14 that -- that deal was not about draws that
15 were happening prior to it.

16 Q. Okay. Well, a mechanic's lien would
17 have been -- you don't know whether or not it
18 would have been a default?

19 A. I mean, you know, if -- if there's --
20 you're saying -- you're asking me a question
21 would a loan be in default, any loan, if
22 there's mechanic's liens filed; is that your
23 question?

24 Q. Yeah.

25 A. Yeah, it could be -- it depends on

1 (Off-the-record conference.)
2 (DFT. EXH. 1, Promissory Note, was
3 marked for identification.)

4 BY MR. EDWARDS:

5 Q. You've been handed Defendant's
6 Exhibit Number 1.

7 A. Okay.

8 Q. Have you ever seen this before?

9 A. Yes. This is a promissory note for
10 the original note.

11 Q. Okay. And did you review this
12 whenever the file was presented to you?

13 A. Yes.

14 Q. Okay. Did you actually review the
15 terms?

16 A. At that time, yeah, when I first got
17 the file.

18 Q. Can you point out the provision where
19 the bank would be in default? The default
20 section is on the second page.

21 A. Are you saying the covenants part.

22 Q. Yeah, the default.

23 A. I think Number 1 really. I read
24 through all of them, but I fail to make a
25 payment on time or in the amount due.

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1 Q. For the bank? I'm talking about the
 2 bank.
 3 A. Oh. So you're saying basically not
 4 the borrower in default but why would the bank
 5 be in default?
 6 Q. Is there anything the bank is
 7 prohibited from doing?
 8 A. This is basically defaults on what
 9 the borrower does or doesn't do.
 10 Q. Okay. So that's what would make the
 11 borrower in default?
 12 A. Correct.
 13 Q. You see on the first page the very
 14 first line, I promise to pay you or your order
 15 principal sum of \$2,550,000?
 16 A. Um-hum.
 17 Q. Do you know whether that happened?
 18 A. You're saying whether they paid the
 19 whole amount off?
 20 Q. Um-hum.
 21 A. No, they did not.
 22 Q. Whether the bank paid \$2,550,000 to
 23 the borrower.
 24 A. But if you look right here, though --
 25 I mean, this is a construction loan, and it

1 A. Typically those are performance-based
 2 requests so, you know, things have to be done
 3 before draws can be made.
 4 Q. What do you mean when you say that?
 5 The work has to be performed?
 6 A. Work has to be performed as, you
 7 know -- to standard.
 8 Q. Well, I'm saying once the worked is
 9 performed and it's up to par what right does
 10 the bank have to say no? Haven't they agreed
 11 to do it here?
 12 A. Well, it's really -- I mean, the
 13 biggest thing it has to be contemplated by the
 14 bank, so I think there's still -- there's room
 15 there that there could be other reasons that
 16 they could or could not, you know, honor that
 17 draw request.
 18 Q. I don't understand.
 19 A. I think --
 20 Q. Any reason at all the bank decides I
 21 don't want to pay it because I didn't
 22 contemplate it?
 23 A. I mean, I think in the end it just
 24 has to meet the -- the bank's discretion that
 25 everything is done in the way --

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1 says basically that's the total amount of the
 2 note, but the principal sum is the maximum
 3 amount of the note and you're receiving X
 4 amount for future principal amounts as are
 5 contemplated.
 6 Q. Um-hum.
 7 A. So you're asking me did the 2-1/2
 8 million get funded or what --
 9 Q. Well, I'm asking you whether or
 10 not -- yeah. Doesn't that say the bank's -- I
 11 promise to give you 2-1/2 million dollars?
 12 A. No.
 13 Q. What does it mean?
 14 A. That's the line amount for the
 15 potential the note can be. That's the maximum
 16 amount that we can lend you up to.
 17 Q. Okay. And under what -- when does
 18 the bank have the discretion to decline to
 19 give that amount of money?
 20 A. Per draw request.
 21 Q. Okay. And there would have to be a
 22 reason for that, correct?
 23 A. Right.
 24 Q. Could it just be any reason? Could
 25 it be I don't want to pay it?

1 Q. Okay.
 2 A. I don't --
 3 Q. So by not funding it they'd have to
 4 have some reason why --
 5 A. Right.
 6 Q. -- the fund was --
 7 A. Right. They would have to give --
 8 Q. -- improper?
 9 A. -- a reason, yeah.
 10 Q. Would an appropriate reason be we
 11 couldn't afford it?
 12 A. Well, I mean -- no, I -- I don't -- I
 13 don't have any comment on that.
 14 Q. The bank doesn't give that kind of
 15 leeway to the borrower when they say I can't
 16 afford to make the payments, do they?
 17 A. I mean, it's a -- it's a bank note.
 18 Basically, the bank is the lender. The
 19 borrower's the one borrowing the money to pay
 20 it back on our terms.
 21 Q. It's almost assuming that the bank
 22 would be able to pay whatever it is they need
 23 to pay, right?
 24 A. Well, I mean, I think -- I'll just
 25 refer back to the note. Conditions for future

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1 advances are upon completion of work and
2 inspection of the mortgaged property by an
3 approved appraiser for First National Bank of
4 the South.

5 Q. Yeah. I'm telling you to assume
6 those things, the work was appropriate and
7 done correctly.

8 A. If the work was done I think we
9 would, you know -- if it was to the bank's
10 discretion and it met their -- their -- if the
11 work was done and completed as the bank, you
12 know, saw that it was then they would, you
13 know --

14 Q. They'd be required to fund the draw?

15 A. It has to fund the draw as is, yeah.

16 Q. If they didn't and they didn't have
17 an adequate excuse for it, could they
18 foreclose on the note?

19 A. What's a adequate reason, though?

20 Q. Whatever an adequate reason would be
21 under the terms of the note.

22 A. I mean, if there's a --

23 Q. Let's assume that the -- that --

24 A. If there's an adequate reason that
25 the draws are not made and the -- the loan

1 Q. All right. What would you say if
2 somebody came to you with a note in that
3 scenario?

4 A. If somebody came to me with a note --

5 Q. If somebody sent it to special assets
6 and told you that, what I just told you.

7 A. My main concern would be the status
8 of the -- the note being matured or not, so --

9 Q. Does it -- does it not make a
10 difference that the bank didn't fund the draw?

11 A. You know, my thought would be -- I
12 maybe would want to know why the -- the draw
13 wasn't funded, but my main concern would be
14 the status of the -- the note outstanding.

15 Q. Well, why should the borrower be
16 obligated to adhere to what it promised when
17 the bank isn't?

18 A. It's at the bank's discretion on the
19 draws.

20 Q. So in their sole discretion?

21 A. We're the -- we're the lender and
22 these are our terms and agreements and it's
23 our discretion of what draws we --

24 Q. So could the bank not fund any
25 draws --

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1 matures, they could foreclose on the note for
2 the maturity date.

3 Q. It's -- let me give you a set of
4 facts and then you can answer. A draw request
5 is made -- contemplated by the parties within
6 the scope of the contemplated work. It's
7 performed and it's completed in a satisfactory
8 manner --

9 A. Right.

10 Q. -- within the terms of the note --

11 A. Okay.

12 Q. -- and the draw request is made to
13 the bank and they don't fund it. The borrower
14 pays out of its pock -- their own pocket to
15 pay the contractor.

16 A. Okay.

17 Q. Can the bank in that scenario --
18 would the bank in your experience foreclose on
19 that note?

20 MR. KERR: Object to the form.

21 Answer his question if you can.

22 BY MR. EDWARDS:

23 Q. Have you ever had an --

24 A. I've never had an experience like
25 that, yeah.

1 A. If they had --

2 Q. -- and then foreclose on the note?

3 A. If they had a adequate reason, yes.

4 Q. If they didn't have an adequate
5 reason, they just refused to do it.

6 A. You know, I would think there -- you
7 know --

8 Q. They enter into an agreement with the
9 borrower that says, I promise to pay you 2-1/2
10 million dollars if you make draw requests,
11 draw requests are made, they don't fund it,
12 borrower comes out of their pocket, pays 2-1/2
13 million dollars to upfit the property, the
14 bank can then foreclose and take the property
15 and benefit from all the work that the
16 borrower has done?

17 MR. KERR: Object to the form of the
18 question.

19 THE WITNESS: If the -- if the bank
20 saw reason -- an adequate reason not to give
21 the -- the draws, then they would have a right
22 to foreclose on it. I think the biggest
23 question is adequate.

24 BY MR. EDWARDS:

25 Q. Okay.

1 (Off-the-record conference.)
2 (DFT. EXH. 2, Commitment Letter, was
3 marked for identification.)

4 BY MR. EDWARDS:

5 Q. You've been handed Defendant's
6 Exhibit Number 2.

7 Do you recognize this document?

8 A. Yeah, I recognize it.

9 Q. Have you seen it before?

10 A. I've seen that in a file.

11 Q. Can you tell me what it is?

12 A. I want to just make sure --

13 commitment letter for the note. I was looking
14 for a date. I don't see a date. Okay. It
15 looks like this is the commitment letter for
16 the note.

17 Q. The commitment letter for the note?

18 A. Yeah, for Liberty Village.

19 Q. Okay. And does this -- I don't want
20 to use any magic legal words, but do the terms
21 that are contained in this commitment letter,
22 do they survive the execution of that note?

23 MR. KERR: Object to the form of the
24 question.

25 THE WITNESS: The note would take

1 A. It does not have that exact language,
2 no.

3 Q. It doesn't say anything about release
4 of collateral, how that's going to work?

5 A. No, not in the note. Now, there
6 could be other documents that were at closing
7 like a -- for example, a commercial loan
8 agreement that might have these other
9 documents, but on a promissory note it's just
10 mainly -- it's specific to the amount, rate,
11 term, that kind of thing.

12 Q. Okay. So other collateral
13 arrangements could be contained in here,
14 something like a commitment letter?

15 A. In a commercial loan agreement.

16 Q. Um-hum.

17 A. Yeah. Sometimes. But I don't know
18 if you have that. Do you have --

19 Q. Are you -- are you calling Number
20 1 -- Exhibit Number 1 a commercial loan
21 agreement?

22 A. No, no. That's actually -- this is
23 just a promissory note.

24 Q. Okay.

25 A. A commercial loan agreement would be

1 precedent after the note's signed.

2 BY MR. EDWARDS:

3 Q. Okay. And where do you get that
4 understanding?

5 A. That's my understanding of just my
6 past experience.

7 Q. Okay. So do any of the terms that
8 are listed in this commitment letter that are

9 not contained in this note -- are you saying
10 that they don't apply?

11 MR. KERR: Object to the form of the
12 question.

13 THE WITNESS: Once the note's signed
14 we would focus on the note and what the note
15 said.

16 BY MR. EDWARDS:

17 Q. That's a form note, isn't it?

18 A. Parts are form, parts are customized
19 to that note itself.

20 Q. Which parts are customized?

21 A. Amount, dates, rates. You know,
22 basically, it's a -- a form that basically is
23 used to make it specific to that note.

24 Q. But it doesn't say, for example, the
25 purpose of the loan, does it?

1 other closing documents at closing that would
2 go more in detail.

3 Q. Is there such a document in the
4 Liberty Village file?

5 A. I don't know if there is on this one
6 or not.

7 Q. Is that common practice for First
8 National or was it at the time?

9 A. I don't recall. Some banks use them
10 on some deals. They don't use them on every
11 deal. It just depends on the loan itself.
12 Some banks use them on every one and some
13 banks just use them on different deals.

14 Q. What does First National do?

15 A. I don't remember. I know they could
16 have been various and used on different deals.

17 Q. I'm sorry. I didn't -- I'm not sure
18 I followed that. There's no --

19 A. This information is not in that
20 document --

21 Q. Right.

22 A. -- not everything.

23 Q. But you're referencing a commercial
24 loan agreement, and I'm asking you whether or
25 not First National as common practice had

1 executed a commercial loan agreement or if
 2 they just relied on a commitment letter or if
 3 they just relied on the promissory note or if
 4 it's just like the Wild West and they did
 5 whatever they wanted to do.
 6 MR. KERR: Object to the form of the
 7 question.
 8 THE WITNESS: I don't remember
 9 whether or not they had a commercial loan
 10 agreement or not on this particular loan.
 11 Some loans may have had them. Some -- some
 12 didn't. It depended on the size, the type,
 13 that kind of thing.
 14 BY MR. EDWARDS:
 15 Q. Okay. So there's no --
 16 A. I can't tell you --
 17 Q. There was no First National policy
 18 that you are aware of --
 19 A. Right.
 20 Q. -- that the following documents are
 21 to be executed for this type of loan?
 22 A. Right. Right.
 23 (Off-the-record conference.)
 24 BY MR. EDWARDS:
 25 Q. So who would make the decision what

1 conditions of the loan as described in the
 2 foregoing commitment letter, what we're
 3 reading here, will survive the closing loan
 4 and will remain effective --
 5 A. Right.
 6 Q. -- as long as any portion of this
 7 obligation remains outstanding.
 8 A. Yeah. I've never seen that heading.
 9 I didn't remember that one, but, yeah, okay.
 10 Q. All right. So whatever's in here
 11 would, in fact, survive --
 12 A. Yeah.
 13 Q. -- and supplement --
 14 A. Okay.
 15 Q. -- the note; you agree with that?
 16 A. Yeah, I agree with that.
 17 Q. Okay.
 18 (DFT. EXH. 3, Commercial Debt
 19 Modification Agreement, was marked for
 20 identification.)
 21 BY MR. EDWARDS:
 22 Q. Looking at Defendant's Exhibit 3,
 23 have you ever seen that before?
 24 A. Yes.
 25 Q. Can you tell me what that is?

1 documents were executed and what documents
 2 weren't executed?
 3 A. Jeff Benjamin.
 4 Q. Okay. And he's the chief credit
 5 officer?
 6 A. Yes.
 7 Q. So he may require a commercial loan
 8 agreement in one case and not in another?
 9 A. Potentially, yeah.
 10 Q. Do you know why that would be?
 11 A. The type deal, and I don't recall if
 12 development deals had them and equipment loans
 13 didn't, that kind of thing. It would depend
 14 on how complex the deal might be. Say like,
 15 for example, this could be one that had one or
 16 not.
 17 Q. Okay. So there's no policy -- bank
 18 policy?
 19 A. Not that I remember.
 20 Q. Okay. Will you turn to Page 3 for
 21 me, please. Do you see the heading commitment
 22 letter/loan agreement?
 23 A. Okay. I actually hadn't seen that
 24 before.
 25 Q. And that -- that says, the terms and

1 A. This is the modification agreement
 2 that modified the -- the maturity date.
 3 Q. Okay. Do you know when this was
 4 executed?
 5 A. The date is 3/23/2009.
 6 Q. Had the maturity date already come
 7 and gone by that point on the original note?
 8 A. Where's the maturity date here?
 9 2/14/2009. Actually, yeah, the maturity date
 10 came one month roughly earlier. Well, a month
 11 and a half earlier.
 12 Q. Okay. You were never notified at
 13 that time in the special assets division?
 14 A. I'm looking at the dates. I mean, I
 15 don't know if I've got my time lines wrong or
 16 not. I don't remember being notified any time
 17 before the note matured.
 18 Q. The original note?
 19 A. Right.
 20 Q. All right. And it's your
 21 understanding that this agreement is not a new
 22 agreement but is a modification of the prior
 23 agreement?
 24 A. Correct.
 25 Q. Do you know why the form refers to --

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1 calls itself a note?
 2 A. Where do you see that at?
 3 Q. Well, if you look down at the bottom
 4 where it says signatures, borrower agrees to
 5 the terms contained in this note. Borrower
 6 also acknowledges receipt of a copy of this
 7 note.
 8 A. I just think it's saying it's a
 9 document.
 10 Q. Well, it's a term of art, isn't it?
 11 It's capitalized, note.
 12 A. Well, this is really an extension of
 13 this document, so in essence it's still a part
 14 of this note.
 15 Q. Okay.
 16 A. I mean, it's not -- this goes in one
 17 and the same.
 18 Q. So borrower agrees to the terms
 19 contained in this document you said? You
 20 don't think the note --
 21 A. I just --
 22 Q. -- the fact that it's capitalized has
 23 any significance?
 24 A. I think it's just saying this is the
 25 same extension of the original note.

1 gone?
 2 A. Correct.
 3 Q. And not any other terms or conditions
 4 of the agreements?
 5 A. That was my main premise, the note
 6 had matured and we needed to get that note,
 7 you know, either repaid in full -- and that
 8 was our, you know, primary, you know, goal was
 9 to get the loan repaid in some way, whether
 10 from the borrower, from foreclosure. Yeah,
 11 that was the -- the goal.
 12 Q. Are you familiar with the
 13 principle -- any contract principles?
 14 A. You talking about like contract law?
 15 Q. Well, it doesn't have to be a law. A
 16 lot of it's common sense.
 17 A. I'm familiar with bank documents.
 18 Q. You're familiar with a handshake
 19 agreement, too, right?
 20 A. No. I've heard of it, but being in
 21 North Carolina for as long as I was and only
 22 in South Carolina for nine months -- is that a
 23 South Carolina law?
 24 Q. A handshake agreement?
 25 A. Yeah.

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1 Q. Okay. What about the commitment
 2 letter?
 3 A. Well, this is a commitment letter,
 4 but that heading is saying loan agreement. So
 5 basically, I mean, this is serving as both.
 6 Basically, that's kind of serving as your loan
 7 agreement.
 8 Q. So is that -- Defendant's Exhibit
 9 Number 2, does that apply anymore after this
 10 commercial debt modification agreement is
 11 executed?
 12 A. It --
 13 MR. KERR: Object to the form of the
 14 question. Answer if you can.
 15 THE WITNESS: The wording says it
 16 will survive closing of the loan and remain in
 17 effect as long as any portion of this
 18 obligation remains outstanding, so I take it
 19 that it will survive.
 20 BY MR. EDWARDS:
 21 Q. Okay. But as I understand what you
 22 said your focus in the special assets division
 23 was the maturity date --
 24 A. Um-hum.
 25 Q. -- and whether or not it had come and

1 Q. That's a playground law.
 2 A. Oh, you're talking about -- yeah, but
 3 I thought there was something in South
 4 Carolina that was a handshake agreement,
 5 but -- but, no, I mean, I'm familiar with a
 6 handshake, yeah.
 7 Q. I mean, what it signifies, you and I
 8 come to an agreement --
 9 A. Yeah, yeah.
 10 Q. -- we shake hands on it and we've got
 11 an agreement?
 12 A. Right.
 13 Q. Okay. Does it have to be reduced to
 14 a writing?
 15 MR. KERR: Object to the form of the
 16 question.
 17 THE WITNESS: In -- in my role I
 18 always dealt with documents.
 19 BY MR. EDWARDS:
 20 Q. Yeah, sure. Banks are like that.
 21 I -- and I understand that. Do you think it's
 22 fair for a bank through its employees to
 23 assure a borrower, a client, a customer of the
 24 bank of one thing and, in fact, tell them
 25 they're going to do one thing and then put a

1 piece of paper in front of them that says
 2 something different?
 3 MR. KERR: Object to the form of the
 4 question.
 5 THE WITNESS: Are you strictly
 6 talking about this loan or are you talking
 7 about just any in general?
 8 BY MR. EDWARDS:
 9 Q. Let's talk about any in general and
 10 then we'll talk about this loan.
 11 A. Okay. And let's assume writing --
 12 any bank just, you know, in general would want
 13 to have everything documented by writing and
 14 would not want to, you know -- if you're
 15 saying would they want to verbally commit to
 16 something --
 17 Q. No. I'm asking you whether or not
 18 it's fair for the bank to tell the customer
 19 one thing and then put a piece of paper in
 20 front of them that says something completely
 21 different and make them sign it but they
 22 understand the agreement to be what was told
 23 to them?
 24 MR. KERR: Object to the form of the
 25 question.

1 Q. I'm not sure I followed that. Do you
 2 know what was told to Liberty Village and its
 3 members about this document, Number 3, what it
 4 is, what it does and what the purpose of it is
 5 or was?
 6 A. I mean, I know what the document
 7 says. I had a conversation with Freeman
 8 Barber. Again, he said that things were
 9 insinuated but not ever promised. I talked to
 10 Mr. Warren, and he said he never made any
 11 promises other than this document.
 12 Q. Didn't he tell him that this was a
 13 temporary measure to fill the bank's file with
 14 paper until a renewal could be negotiated?
 15 A. Mr. Warren never shared that with me
 16 that it was a temporary document. He had this
 17 signed as a permanent document and the
 18 borrower made requests for other loans.
 19 Q. Well it is, in fact, a temporary --
 20 from time line perspective a temporary deal,
 21 isn't it? It's 45 days.
 22 A. I mean, 45 days is not, you know, a
 23 lengthy date. I mean, it's a short-term
 24 agreement.
 25 Q. Isn't it -- it's enough time to

1 THE WITNESS: On any --
 2 BY MR. EDWARDS:
 3 Q. I'm just asking you if that's fair.
 4 I know a bank likes documents and they like
 5 paper and they -- they do all those things,
 6 but I'm asking you as a -- either --
 7 whatever --
 8 A. Not a banker but just an individual
 9 or --
 10 Q. Whatever hat you want to wear,
 11 whether or not that's fair.
 12 A. I mean, can I not answer the
 13 question? Because I don't think -- my
 14 personal opinion of what's fair and what's not
 15 is pretty open.
 16 Q. No, you can't not answer the
 17 question.
 18 A. Okay. All right. Well, I'm just
 19 asking. I don't know because I -- I mean, I
 20 would think it would be fair to put something
 21 in writing to a client. I would not think it
 22 would be fair to tell somebody one thing and
 23 then, you know, have any kind of personal
 24 lender liability on something. I'd want it
 25 done in writing.

1 negotiate a renewal, isn't it?
 2 A. It's -- yeah, it's -- I mean, I guess
 3 what he's saying negotiate, negotiate could
 4 take a long time or a short time, but, you
 5 know, that -- it does give additional time --
 6 Q. Um-hum.
 7 A. -- for other additional negotiations.
 8 Q. Um-hum. And you used the word
 9 promise and guarantee a lot when you're
 10 talking about what Scott Warren said or didn't
 11 say and what Freeman Barber understood or
 12 didn't understand.
 13 A. Right.
 14 Q. Clearly Freeman Barber understood
 15 that there -- this was a temporary agreement
 16 to get them to a renewal, didn't he?
 17 MR. KERR: Object to the form of the
 18 question.
 19 BY MR. EDWARDS:
 20 Q. Whether the --
 21 A. When I spoke to Freeman and I asked
 22 him point blank, was anything promised to you,
 23 he said, no. There were things maybe
 24 insinuated but never said anything was
 25 promised to him. And when I talked to

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1 Mr. Warren he confirmed that nothing was ever
 2 promised to Mr. Barber.
 3 Q. Okay. Are you familiar with the
 4 concept of lulling?
 5 A. Somewhat.
 6 Q. I -- I tell you -- I don't promise
 7 you anything, but I slickly assure you
 8 something's going to happen without ever
 9 saying I promise to do this or I guarantee to
 10 do it. It's called lulling; do you understand
 11 that?
 12 A. Right.
 13 Q. Are you familiar with that?
 14 A. Yeah, I'm familiar with it. In terms
 15 of this deal the only thing that would maybe
 16 have been lulling was that, hey, I'll -- I'll
 17 take a request into consideration, so --
 18 Q. Did that happen?
 19 A. I think he actually did because I
 20 think he submitted a request that was declined
 21 or -- or not approved, and I think that's
 22 just -- he did take the request, but he never
 23 promised that he'd get something approved.
 24 Q. Well, why didn't they just start
 25 foreclosure proceedings when the due date on

1 know why the extension was signed. I don't
 2 know the reasons.
 3 Q. Freeman Barber never led you to
 4 believe that they entered into this agreement
 5 because they wanted to pay it off in full in
 6 45 days?
 7 A. He never had that conversation with
 8 me.
 9 Q. Did he ever lead you to believe that
 10 that's why Liberty Village signed this
 11 commercial debt modification agreement?
 12 A. He -- he had the conversation with me
 13 that he was signing this one in hopes to get
 14 another deal, but I -- my question was, why
 15 did you sign it if you knew that the maturity
 16 date would be here and there's no other draws?
 17 Q. And isn't the answer to that, because
 18 we were assured we'd get a renewal?
 19 A. When we talked about it he said -- he
 20 never said he was assured and Mr. Warren never
 21 said he promised or assured him that he
 22 would -- would get any additional lending.
 23 Q. Did he ever say, we planned on --
 24 when we signed this we intended to pay X
 25 number of dollars in 45 days?

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1 February 15th, '07, came and went? Why would
 2 they need to do this in the first place?
 3 Liberty Village didn't want more time to pay
 4 it off in full, did they?
 5 MR. KERR: Object to the form of the
 6 question.
 7 BY MR. EDWARDS:
 8 Q. Did you ever get --
 9 MR. KERR: Multiple questions.
 10 THE WITNESS: I don't -- I don't know
 11 why the --
 12 BY MR. EDWARDS:
 13 Q. Let me rephrase it. Did you ever get
 14 the impression speaking with Freeman Barber or
 15 anybody else at Liberty Village that they
 16 signed this because they needed 45 days to pay
 17 it off in full?
 18 A. I don't remember why this extension
 19 was signed. I don't remember --
 20 Q. There was no reason for it, is there?
 21 A. I don't know of a reason.
 22 Q. Liberty Village would have had to
 23 pay, assuming they had defaulted, \$2,300 --
 24 232,435.48; isn't that right?
 25 A. Yeah, I -- I don't recall. I don't

1 A. He never told me he would pay it off
 2 in 45 days.
 3 Q. Is there any reason at all for
 4 Liberty Village to sign this agreement other
 5 than to buy 45 days to work out a new deal?
 6 A. There again, I don't remember why
 7 this thing was signed. I don't remember what
 8 their reasons were for signing it and why the
 9 bank had that -- that signed. I -- I remember
 10 seeing this document, but I don't remember the
 11 reasons for it being signed.
 12 Q. Well, wouldn't that some -- be
 13 something that was important to you in
 14 determining -- making a decision on this
 15 special asset?
 16 A. Again, I was looking at the maturity
 17 date and working on getting paid in full from
 18 this point on.
 19 Q. Okay. So the answer is no, the
 20 reasons for the execution of this agreement
 21 were not important to your determination on
 22 the asset?
 23 A. My -- my thought, this was in the
 24 past and my role was looking at anything from
 25 this point in the future. So if we came up

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1 with another agreement, if they were able to
 2 do something, it was not --
 3 Q. Well, who was going to come up with a
 4 new agreement? Weren't you handling the loan
 5 at that point?
 6 A. Yeah. Actually --
 7 Q. Scott Warren was taken out of the
 8 loop.
 9 A. He was out of the loop, yeah. It
 10 would be something that if we reached an
 11 agreement or if we -- if they were able to pay
 12 us in full or if they had anything they would
 13 bring to the table for us -- because that was
 14 one thing we had a communication with them is
 15 if there's anything that, you know, you want
 16 to bring to us at this point to pay us off in
 17 full or come up with some kind of scenario
 18 we're open to any discussion, but, you know,
 19 our thing was we started the foreclosure
 20 process, you know, as a -- you know, as a part
 21 to just start that process at any time we
 22 could, you know, negotiate anything at that
 23 point, so --
 24 Q. Okay. And do you know why Liberty
 25 Village has fought the foreclosure process?

1 A. I don't recall. I don't remember
 2 the -- I don't remember the -- why the
 3 extension was signed and why it bumped them 45
 4 days.
 5 Q. Didn't the -- didn't the bank need
 6 something to work from because they had
 7 refused to fund the draw under the original
 8 note?
 9 A. I don't -- I don't recall. I
 10 don't --
 11 Q. So they needed a new agreement -- or
 12 new document signed that could be sent and
 13 foreclosed on?
 14 A. For the reasons why this thing was
 15 signed -- I'm not aware of any reasons why it
 16 was signed or why they signed or why they
 17 didn't sign.
 18 Q. And it didn't matter -- once Scott
 19 Warren was taken out of the loop it didn't
 20 matter anymore what he had to say?
 21 A. It actually -- I mean, it did matter,
 22 but -- more or less I had a conversation with
 23 him and Mr. Barber.
 24 Q. Would it have made a difference to
 25 you if Scott Warren said, I promised these

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1 A. Nobody wants to be foreclosed on.
 2 Q. I'm sorry?
 3 A. Nobody wants to be foreclosed just in
 4 general. They don't want to lose an asset. I
 5 mean, I understand the reason why they
 6 would --
 7 Q. You've read --
 8 A. -- not want --
 9 Q. -- the pleadings, right?
 10 A. I've read over them yesterday,
 11 skimmed over them.
 12 Q. Did you get any understanding about
 13 the issues with the loan and the reasons why
 14 they are upset with what's happened in this
 15 transaction?
 16 A. Yeah, I mean, basically, the -- when
 17 I saw that OLT it said something about some
 18 work and some draws and things not being done
 19 to their -- their satisfaction, but --
 20 Q. Weren't -- weren't paid by the bank.
 21 A. Right. And, I mean, I -- that was
 22 actually news to me on that part, the
 23 pleadings.
 24 Q. Well, isn't that why the bank didn't
 25 foreclose in February?

1 guys the following thing?
 2 A. If he would have told me that, it
 3 would have made a bigger difference on that.
 4 Q. How so?
 5 A. It would have been a lender liability
 6 issue that he had promised that he would do
 7 something that he couldn't do, and that was
 8 not -- in my interview with him that was not
 9 the case and in my interview with Mr. Barber
 10 that was not the case with him either.
 11 Q. Do you see the box down there --
 12 A. Yeah.
 13 Q. -- with the -- the unchecked --
 14 A. Um-hum.
 15 Q. -- box that says, oral agreements or
 16 commitments to loan money, extend credit or to
 17 forebear from enforcing repayment of the
 18 debt --
 19 A. Um-hum.
 20 Q. -- including promises to extend or
 21 renew such debt are not enforceable?
 22 A. Right.
 23 Q. And it's unchecked?
 24 A. Yeah. But --
 25 Q. Didn't -- who filled out this form?

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1 A. This form was actually taken to the
 2 client from my understanding by Scott and
 3 signed by -- by all parties.
 4 Q. Nobody at Liberty Village checked
 5 that box, did they?
 6 A. No.
 7 Q. Nobody at the bank checked that box
 8 either?
 9 A. No.
 10 Q. Doesn't that indicate to you that
 11 that was done intentionally?
 12 A. I mean, my thought is there had to be
 13 oral agreements made that would have been
 14 checked if we had made those. If we had
 15 promised to do something orally we would have
 16 checked it before it was signed.
 17 Q. This box says, oral agreements are
 18 not enforceable, so if it's checked that means
 19 whatever we agreed to before --
 20 A. Oh, yeah, you're right.
 21 Q. -- is not enforceable.
 22 A. Yeah, I read it wrong. Sorry.
 23 Sorry.
 24 Q. So by unchecking it doesn't that say
 25 oral agreements may be enforceable?

1 documents and conduct the closing? They have
 2 to review everything and make sure everything
 3 is done the right way?
 4 A. On real estate, yes. Real estate.
 5 Q. The same rule in North Carolina?
 6 That's the rule in South Carolina?
 7 A. Yeah, yeah. Yeah, the same rule,
 8 yeah.
 9 Q. And did you know that in South
 10 Carolina --
 11 A. Well, actually, let me come back. On
 12 certain size deals. Title companies can
 13 actually -- on smaller transactions can
 14 actually do some of the background so they
 15 don't have to have every real estate done in
 16 North Carolina.
 17 Q. Okay.
 18 A. But you're saying in South Carolina
 19 every real estate deal has to have it?
 20 Q. Yes, sir.
 21 A. Yeah. Got you.
 22 Q. Did anybody ever tell you that at
 23 First National?
 24 A. I think I just assumed on every real
 25 estate deal we had to have attorneys just

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1 A. I mean, my thought is -- I don't know
 2 if any oral agreements were ever made, and I
 3 don't think -- I don't know why or why not
 4 they would not even check those.
 5 Q. Do you know who filled it out?
 6 A. Loan docs probably prepared the
 7 documents, and to my knowledge, Scott Warren
 8 had it signed by all parties.
 9 Q. Loan docs?
 10 A. Yeah, like our back room folks that
 11 prepare loan documents.
 12 Q. Bank employees?
 13 A. Yeah, yes.
 14 Q. Are you familiar with the South
 15 Carolina rules about real estate transaction
 16 drafting certain agreements and filing
 17 recording documents?
 18 A. Not -- not very good because I've
 19 been -- I was in South Carolina nine -- nine
 20 months and then I hadn't been back for years.
 21 Q. Okay. In North Carolina are you
 22 familiar with those rules?
 23 A. Deed of trust, yeah.
 24 Q. Do you -- in North Carolina is it
 25 required that an attorney prepare the

1 because being --
 2 Q. That -- well, that's right, but it's
 3 not --
 4 A. Yeah.
 5 Q. -- an independent attorney. Do you
 6 understand the difference between a partial
 7 attorney and an independent attorney? So I
 8 represent Liberty Village, LLC. I'm --
 9 A. Right.
 10 Q. I'm not independent as --
 11 A. I got you, yeah.
 12 Q. -- it applies to First National --
 13 A. You can't have one single closer.
 14 Yeah. Okay. Yeah, I got you. I've been kind
 15 of out of that world for a while, but --
 16 Q. I mean, was that ever anything that
 17 was discussed or were there any policies or
 18 procedures that were in place at First
 19 National to comply with those requirements?
 20 A. I'm sure there were probably in
 21 our -- probably loan manual. I just -- I
 22 forgot whatever we had in the files, I mean,
 23 what the manuals stated. Because, see, I was
 24 a loan officer for North Carolina and me being
 25 in North Carolina I adhere to these rules, and

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1 then when I got in South Carolina I mainly
 2 dealt with attorneys that, you know, handled
 3 the foreclosure side, but I wasn't really
 4 making new loans.
 5 Q. Okay. So you don't -- you just
 6 don't --
 7 A. I never was --
 8 Q. -- there may be some -- something
 9 somewhere in one of the bank's files, but you
 10 just don't -- not familiar with it?
 11 A. My thought is I'm sure it's in the
 12 loan manual, but, for example, me being a
 13 lender in North Carolina it was different
 14 than, say, in South Carolina.
 15 Q. Do you know --
 16 A. And I never made loans in South
 17 Carolina.
 18 Q. Do you have any idea what the purpose
 19 behind a rule requiring an independent
 20 attorney to draft and review and record and --
 21 A. Yeah.
 22 Q. -- all those things related to a
 23 trans --
 24 A. I think just keeping the --
 25 MR. KERR: Guys, one at a time.

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1 THE WITNESS: All right.
 2 BY MR. EDWARDS:
 3 Q. All those things related to a real
 4 estate transaction, you understand what the
 5 point of that rule is?
 6 A. Yes, I do.
 7 Q. What is your understanding?
 8 A. Just, you know, a law that keeps the
 9 borrower's interest in mind.
 10 Q. Do you know whether or not an
 11 independent attorney prepared this document?
 12 MR. KERR: Which document?
 13 MR. EDWARDS: I'm sorry, Number --
 14 Exhibit Number 3.
 15 MR. KERR: Thanks.
 16 THE WITNESS: First National used,
 17 you know, loan docs from like, I think,
 18 LaserPro and those are attorney-approved
 19 documents for the banks.
 20 BY MR. EDWARDS:
 21 Q. LaserPro? Is that a company that
 22 provides --
 23 A. Yeah.
 24 Q. -- financial documents?
 25 A. Right.

1 Q. Do you know where they're located?
 2 A. I don't.
 3 Q. Do you know whether or not an
 4 independent attorney prepared or reviewed
 5 Exhibit Number 1?
 6 A. I don't. Actually, you know what,
 7 here's the name of it. Banker Systems, Inc.
 8 They're the ones that prepared that form
 9 for --
 10 Q. Oh, I see it down there.
 11 A. Yeah, sorry.
 12 Q. So you didn't answer my question or
 13 did you? Do you know whether or not an
 14 independent attorney prepared or reviewed
 15 Exhibit Number 1?
 16 A. That's no. Yeah, I don't know.
 17 Q. Okay.
 18 (DFT. EXH. 4, Loan Application, was
 19 marked for identification.)
 20 BY MR. EDWARDS:
 21 Q. You have been handed Defendant's
 22 Exhibit Number 4. Have you ever seen -- it's
 23 a seven-page -- eight-page document -- no,
 24 seven-page document, Bates labeled numbers at
 25 the bottom. Have you ever seen that before?

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1 A. Yes, I've seen this.
 2 Q. Can you tell me what that is.
 3 A. Basically, it's the loan application
 4 for approval. Basically, when a loan was made
 5 the lender would submit this and have
 6 signatures for approval, and actually, of a
 7 certain size it would have board approval and
 8 that's on the -- see the loan committee there.
 9 Some of those folks were there. Basically
 10 just tells the terms and the -- terms of the
 11 loan and that kind of thing. It would be done
 12 to reach approval.
 13 Q. Who -- who prepares this document?
 14 A. Actually -- which page are you on
 15 there?
 16 MR. KERR: Yeah, I don't think you
 17 guys --
 18 BY MR. EDWARDS:
 19 Q. Well, is there --
 20 A. You talking about --
 21 Q. Is this all one document or are these
 22 separate?
 23 A. Separate.
 24 Q. Okay. Who does the modification
 25 checklist to your knowledge in a commercial

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1 loan application?
 2 A. This is done by back room folks, bank
 3 employees.
 4 Q. Is this a typical document that's
 5 filled out by the bank?
 6 A. Yes. For First National at the time.
 7 Q. All right. When is that normally
 8 done?
 9 A. Once the approval comes in and the
 10 girls start working on the documents to
 11 prepare the -- the note, they would get a
 12 checklist to go through, make sure they had
 13 everything there. That way they know the
 14 approval's there, the -- the exposure, the
 15 authorized signatures, everything has been,
 16 you know, checked off as having everything
 17 done so they can prepare a note.
 18 Q. So when is it done?
 19 A. Prior to the loan closing.
 20 Q. Is there a closing required for the
 21 modification?
 22 A. Basically just a signature with the
 23 borrowers. That would be the --
 24 Q. Okay. So you don't have -- they
 25 don't have to go to a lawyer's office and sit

1 They -- this could have been at just the time,
 2 but I have no knowledge of whether they have
 3 the original or not.
 4 Q. Have you ever seen it?
 5 A. I can't recall. I know I had copies
 6 of it, but I don't -- I don't know if we had
 7 original or not. We kept the -- the original
 8 documents in a vault, we didn't take those out
 9 much, just for security.
 10 Q. Do you ever take them out?
 11 A. To make copies and we take the copies
 12 and work off those.
 13 Q. What if you sell a note?
 14 A. Then those -- those files would go
 15 with the purchaser.
 16 Q. The originals do?
 17 A. Yes.
 18 Q. Okay. Do you see underneath that
 19 there's a box checked that says, correct LOB?
 20 What does LOB stand for?
 21 A. Oh, right here?
 22 Q. Yeah.
 23 A. Different banks use different
 24 acronyms, but I think that -- well, that --
 25 that should be correct exposure. That's all

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1 around and have it signed and --
 2 A. To my knowledge, no.
 3 Q. Okay. Do you see the review date up
 4 at the top right?
 5 A. We're still on Page 2?
 6 Q. Yes.
 7 A. Yeah.
 8 Q. 4/15/09?
 9 A. Um-hum.
 10 Q. Does that mean it was prepared on
 11 4/15/09 or --
 12 A. That means this was looked over after
 13 the fact on this date to make sure -- like
 14 kind of an audit reason.
 15 Q. Do you know who -- whose initials are
 16 above that date that says, reviewed by?
 17 A. Yeah, I don't know. I don't know. I
 18 don't know who the initials are.
 19 Q. And you see the -- underneath the
 20 purpose of the modification it's a big circle
 21 that says, missing original modification?
 22 A. Yeah, um-hum.
 23 Q. Do you know whether or not the bank
 24 has an original of this document?
 25 A. I don't know that. I don't know.

1 loans that are with a certain client.
 2 Q. But there's only one loan with
 3 Liberty Village, isn't there?
 4 A. Yeah, I'm skipping over here. Looks
 5 like there's other loans and other entities
 6 that if a borrower was on there he would be
 7 linked by the name of the LLC or the
 8 guarantor.
 9 Q. Is that disclosed to the borrower?
 10 A. No, the -- that's bank information to
 11 know who's got what.
 12 Q. So -- so the bank doesn't tell the
 13 borrower that they're considering not only the
 14 LLC itself but any other obligations that any
 15 member may have through some other company?
 16 A. It's not -- this is not something
 17 banks disclose.
 18 Q. Well, don't you think the borrower
 19 ought to know that?
 20 A. Well, the borrower would know that if
 21 it's -- if -- if a borrower had three entities
 22 and he had three different loans he would know
 23 how much he owed anyway, and that's really
 24 just what this is saying is this one
 25 individual borrower owes X amount.

1 Q. Sure, he may know that --
 2 A. Yeah.
 3 Q. -- but the bank --
 4 A. The bank --
 5 Q. -- doesn't tell him that that's
 6 what's being considered in determining to
 7 approve a loan, modification or extension, do
 8 they?
 9 MR. KERR: Object to the form of the
 10 question.
 11 BY MR. EDWARDS:
 12 Q. Isn't that what you said?
 13 A. No, basically, that's not -- it's
 14 just not -- banks just don't say, hey, we know
 15 your total exposure is X. They just don't --
 16 that's not common practice to tell -- give a
 17 summary of what you owe.
 18 Q. Okay. You're looking now, if you'll
 19 turn to the next page, commercial loan
 20 application.
 21 A. Okay.
 22 Q. You said there's a -- a number limit
 23 that requires additional approval?
 24 A. Right.
 25 Q. Do you remember what that limit is?

1 loan committee?
 2 A. Correct.
 3 Q. Okay. Do you see the hand -- do you
 4 know what the collateral code means?
 5 A. I know -- I know what it -- pretty
 6 much operated under this, but I don't remember
 7 what the codes were there anymore.
 8 Q. You don't know the difference between
 9 144 and 135?
 10 A. No, I don't.
 11 Q. Okay. Do you see the handwriting at
 12 the -- on the right side?
 13 A. Yeah, I can make out some of it.
 14 Q. Do you recognize the handwriting?
 15 A. I don't.
 16 Q. Okay. Can you read what it says?
 17 A. Modification, extension and
 18 collapse -- is it collapsing the line of
 19 credit at current balance of 2,232,435 at
 20 renewal to amortize and look at funds for
 21 extension of roads, also subject to
 22 satisfactory review of appraisal.
 23 Q. Does that indicate to you that they
 24 anticipated a renewal and that when it was
 25 renewed it was to amortize?

1 A. I don't.
 2 Q. And this -- in fact, this document is
 3 signed by the in-house loan committee by a few
 4 people --
 5 A. Right.
 6 Q. -- and not signed by any board loan
 7 committee, if you look to the next page, Page
 8 Number 4. Is that --
 9 A. Well, actually -- see, Jerry Calvert
 10 is J.C.
 11 Q. Um-hum.
 12 A. There's one other, I think, that --
 13 oh, that's Jeff Benjamin. It's not -- but,
 14 yeah, Jerry Calvert's the only one that's down
 15 there at the bottom. So he didn't sign there.
 16 Q. Well, is that because the loan was
 17 over the thresh -- the threshold amount?
 18 A. Or under, probably under.
 19 Q. What was the threshold amount; do you
 20 know?
 21 A. I don't know now.
 22 Q. And if it was under it didn't require
 23 board loan committee approval?
 24 A. Right.
 25 Q. It could just be done by the in-house

1 A. Now, here again, I don't know if that
 2 was written by, say, the loan officer, say
 3 Scott, and then they approved something
 4 differently or if that was just his notes
 5 prior.
 6 Q. But he signed off on it, didn't he?
 7 A. Yeah, but I think --
 8 Q. You're not suggesting that someone
 9 came in and wrote that in after they signed?
 10 A. No, I'm not suggesting that. I just
 11 don't know if they didn't strike through it
 12 when they were going through or not, but
 13 modification -- modification, extension -- and
 14 really that's kind of open ended. I mean, it
 15 says, review of appraisal. I mean, that could
 16 have just been written by the loan officer.
 17 Q. And signed off by the in-house loan
 18 committee including Jerry Calvert who was --
 19 A. Yeah, this is internal --
 20 Q. What was his title at the time?
 21 A. He's a CEO or --
 22 Q. Top guy, whatever it is?
 23 A. Yeah, yeah, CEO. President I think
 24 at one point, so -- but yeah, this is a --
 25 that's a bank internal document.

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1 Q. Have you ever seen it?
 2 A. Have I ever seen this one? Yeah. I
 3 actually --
 4 Q. That was in the file?
 5 A. It was in the file.
 6 Q. And did you read that handwriting at
 7 the time?
 8 A. I probably -- yeah, probably read it
 9 at the time, yeah.
 10 Q. Did you make further inquiry about
 11 the statement that says, at renewal to
 12 amortize?
 13 A. No. Actually, my -- my main concern
 14 was over the maturity of the note, and I don't
 15 know if there was anything done in terms of
 16 the rest of that -- that paragraph.
 17 Q. Does that suggest to you that there
 18 were discussions about renewing?
 19 A. It does suggest there might have been
 20 discussions. I don't know if they ever got
 21 approved or not.
 22 Q. Freeman Barber told you about the
 23 discussions about renewing, didn't he?
 24 A. He asked about getting renewed. You
 25 know, we didn't -- I mean, nothing was ever --

1 A. I have no idea because I wasn't
 2 involved on that side.
 3 Q. If anything had been done would there
 4 be internal bank documents reflecting it?
 5 A. If anything was done to amortize the
 6 loan it would have had it in a -- in almost a
 7 form like this.
 8 Q. And if nothing had been done there
 9 would be nothing in the bank file?
 10 A. Right. Correct.
 11 Q. So if there is nothing in the bank
 12 file, safe to conclude that nobody in the
 13 bank --
 14 A. Nothing was ever --
 15 Q. -- did anything --
 16 A. -- approved.
 17 (Off-the-record conference.)
 18 BY MR. EDWARDS:
 19 Q. If nothing's in the bank file, safe
 20 to conclude that nobody at the bank did
 21 anything about a renewal?
 22 A. Correct.
 23 Q. Do you know when this loan was taken
 24 away from Scott Warren?
 25 A. I don't remember the specific date.

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1 Q. And this was prepared by somebody at
 2 the bank which means somebody at the bank knew
 3 about the renewal.
 4 A. Well, I think Scott -- Scott Warren
 5 would have prepared this page, Number 3.
 6 Q. What makes you think that?
 7 A. It's the -- what the lender would
 8 actually prepare. The first document was the
 9 back room. This is actually a document that
 10 he would have prepared to send over for
 11 approval.
 12 Q. Okay.
 13 A. And so that's what makes me think it
 14 could be Scott's, it could be anybody, but he
 15 may have wrote this out and say, here's my
 16 request. They might have approved it.
 17 Q. All right. So at -- between the date
 18 of this document, which is March the 15th,
 19 2009 --
 20 A. Um-hum.
 21 Q. -- and May the 7th, 2009, which is
 22 the maturity date identified on Exhibit 3 --
 23 A. Okay.
 24 Q. -- what steps were taken regarding a
 25 renewal to amortize?

1 Q. Was it before you got it?
 2 A. It would have been -- I mean, it
 3 would have been taken away from him, sent to
 4 special assets and then been assigned to me.
 5 Q. So it would have been before you got
 6 it?
 7 A. Oh, yeah, it -- yeah. I see what
 8 your question -- yeah.
 9 Q. Who decides that?
 10 A. The -- I guess the loan side like
 11 whoever Scott reported up to at that time. I
 12 can't remember his manager. It would have
 13 been made a decision on their side once the --
 14 the date was matured to be sent to special
 15 assets.
 16 Q. Do you know whether or not Scott
 17 Warren went up to Spartanburg and presented
 18 anything on this loan?
 19 A. I don't recall.
 20 Q. You just don't know one way or the
 21 other?
 22 A. Right. Yeah, I don't know.
 23 Q. Do you see the guarantor's
 24 information there?
 25 A. On the -- Page 4?

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1 Q. Right.
 2 A. Yeah.
 3 Q. Page 4 and Page 5.
 4 A. Oh, yeah, okay.
 5 Q. Did you know that Aubrey J. Woody,
 6 Jr., Joseph Bartone and Anthony Bartone were
 7 substituted guarantors?
 8 A. I do think I recall that they were
 9 not on the original note and they had signed
 10 some point along the loan.
 11 Q. Aren't they stronger financially than
 12 Judson Stringfellow who was the gentleman they
 13 replaced?
 14 A. I don't remember what those guys
 15 looked like.
 16 Q. Did you not look at the original
 17 guarantors?
 18 A. I probably did at the time, but I
 19 don't remember what they -- what their net
 20 worths were. I didn't know if they were --
 21 what reason they had for getting on or off the
 22 deal.
 23 Q. Do you know whether or not they are,
 24 in fact, a stronger financial --
 25 A. I don't know.

1 Q. Did you know that in March of '09
 2 they had not filed their '08 tax returns?
 3 A. I didn't know that.
 4 Q. And they don't typically do it until
 5 September anyway because they're complex?
 6 A. Yeah, I -- I didn't know that.
 7 Q. Okay. Scott Warren never told you
 8 that?
 9 A. If he did, I didn't recall.
 10 Q. That wasn't factored into your
 11 analysis?
 12 A. What's that? Was what now?
 13 Q. Well, was -- you made a comment about
 14 the dates of the financial statements.
 15 A. Right.
 16 Q. I'm asking if that was a factor in
 17 your decision, if you ever made it --
 18 A. I mean, I can only -- I can only go
 19 off what I have, but -- what decision are you
 20 referring to?
 21 Q. Well, that's what I was going to ask.
 22 Sounds like you never made a decision on it.
 23 A. Yeah, I mean, basically, you know,
 24 besides we started the foreclosure process, we
 25 talked to the client, we never reached any

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1 Q. -- group than Judson Stringfellow?
 2 A. I don't recall the Stringfellow guy.
 3 Q. They're stronger than -- according to
 4 these than Freeman Barber, aren't they?
 5 A. Well, the thing I'm looking at is the
 6 documents on the Bartones, one is '07. The
 7 one on Anthony Bartone is '07.
 8 Q. Um-hum.
 9 A. The information on Barber is '09, and
 10 the other guy, Woody, is on '08. So during
 11 that particular time in -- from '07 to '09,
 12 it's hard to compare apples and apples on that
 13 one because Barber could have lost
 14 considerable strength. I don't know what the
 15 Bartones are worth.
 16 Q. Did you know -- do you know anything
 17 about the conversations between Scott Warren
 18 and this group of people about getting
 19 financial documents?
 20 A. I'm sure he would have asked for
 21 them, but I -- I don't know of any specific
 22 conversation.
 23 Q. Did you know he asked for tax
 24 returns? Is that normal?
 25 A. Yeah, that would be normal.

1 kind of agreement to pay the loan off, and
 2 then --
 3 Q. Would it have mattered to you if you
 4 had up-to-the-date current tax return and
 5 financial statements and bank account balances
 6 and things like that?
 7 A. I think we -- we might have had
 8 different negotiations of some possibilities,
 9 but, I mean, I can't say it would have made
 10 any difference, because the fact really came
 11 back to the loan was matured.
 12 Q. And the bank wanted to be paid?
 13 A. Yes.
 14 Q. How many loans in the special assets
 15 division had a loan-to-value ratio of 27
 16 percent?
 17 A. I have no idea.
 18 Q. Was it many?
 19 A. I don't know.
 20 Q. Were there any other than Liberty
 21 Village?
 22 A. I have no specific knowledge of that,
 23 but there could have been. I don't know. I
 24 just don't know.
 25 Q. Were there many less than 50 percent?

1 A. I don't know. We didn't have -- I
 2 didn't have anything I could really -- I can't
 3 remember having anything that I just looked at
 4 just that particular point.
 5 Q. Sure. There's a number of factors
 6 you look at.
 7 A. Right.
 8 Q. But do you remember any of the loans
 9 that got sent to special assets being that
 10 liquid?
 11 MR. KERR: Object to the form of the
 12 question.
 13 THE WITNESS: I mean, I -- I don't
 14 know during that -- that point -- I mean, I
 15 don't know your explanation of -- or your
 16 definition of liquid because it didn't matter
 17 if it was high LTV or low LTV real estate, you
 18 know. I don't know what you consider what's
 19 liquid.
 20 MR. KERR: Cash.
 21 THE WITNESS: I mean, it --
 22 BY MR. EDWARDS:
 23 Q. Cash.
 24 A. Cash is liquidity, but, I mean, you
 25 know, something can sell -- the loan amount on

1 Q. Okay. In fact, they could sell the
 2 property and make a profit on it, couldn't
 3 they?
 4 MR. KERR: Object to the form of the
 5 question.
 6 THE WITNESS: If you can sell it.
 7 Depends on what price you get for it.
 8 BY MR. EDWARDS:
 9 Q. Sure. Assuming the appraised value
 10 is accurate, 9,444 -- \$9,440,000, the bank is
 11 into it a little over 2 million, they could
 12 sell it for 4 or 5 to somebody who was
 13 interested in buying property at half price
 14 and the bank could make 2 million dollars;
 15 isn't that right?
 16 A. If you can find that buyer. If you
 17 can find that buyer.
 18 Q. Did that thought never enter your
 19 mind?
 20 A. I don't ever remember looking at
 21 probably selling it other than just, you know,
 22 looking at the value of foreclosing it.
 23 Q. Couldn't the bank also foreclose it
 24 and hold it and still have equity in the
 25 property unless the value went down all the

1 a property, wouldn't matter whether it sells
 2 fast or not in a lot of cases.
 3 Q. Do you know what the property was
 4 worth?
 5 A. I could look here probably to find --
 6 Q. It's on Page 3.
 7 A. As of '08 November 9,440,000.
 8 Q. And the loan-to-value ratio was 27
 9 percent?
 10 A. 27 percent. That was -- that was
 11 actually done on -- yeah, okay. Yeah, that
 12 would be right.
 13 Q. Wouldn't that be one of the bank's
 14 better loans?
 15 A. Again --
 16 Q. From that perspective.
 17 A. -- you're being -- I mean, a lower
 18 LTV would be more attractive than a higher
 19 LTV, but, you know, a loan that's paid off
 20 would be better than a loan that's not paid
 21 off.
 22 Q. Well, isn't it more likely that the
 23 loan could be paid off by foreclosing with the
 24 low LTV?
 25 A. Yeah, I agree.

1 way from 9.440 to 2.2?
 2 A. You could hold it. You could hold
 3 that property until you sold it.
 4 Q. And it's -- it's likely given that
 5 loan-to-value ratio that it would still be --
 6 it would still have equity in it --
 7 MR. KERR: Object to the form of the
 8 question.
 9 BY MR. EDWARDS:
 10 Q. -- even with the market conditions
 11 being what they were?
 12 A. I think --
 13 MR. KERR: Object to the form.
 14 THE WITNESS: Our primary objective
 15 was to pay the loan off as quick as possible,
 16 not to try to hold an asset and try to sell
 17 it.
 18 BY MR. EDWARDS:
 19 Q. Well, how were they going to -- how
 20 did the bank plan to pay it off as quickly as
 21 possible by foreclosing if there was no buyer?
 22 A. You know, you can't sell it until you
 23 foreclose on it. So, I mean, that would be --
 24 I mean, I think -- are you talking about
 25 intent or are you talking about --

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1 Q. Well, you said the bank's objective
 2 was to get their money back.
 3 A. Right.
 4 Q. And the only way to do that by
 5 fore -- through foreclosure is to take it
 6 through the judicial process --
 7 A. Right.
 8 Q. -- sell it to somebody in an amount
 9 that makes the bank whole --
 10 A. Right.
 11 Q. -- or that profits the bank; that's
 12 the only way to do it?
 13 A. Well, not the only way. The
 14 borrower --
 15 Q. Through foreclosure.
 16 A. -- could have sold it. Well, the
 17 borrower could have sold the property during
 18 the foreclosure process and repaid the bank
 19 and they could have profited from that as
 20 well --
 21 Q. Okay.
 22 A. -- to avoid losing the property. And
 23 they could have, you know -- you know, went to
 24 another bank, paid -- paid the bank off -- I
 25 mean, there's a lot of different options that

1 MR. KERR: Object to the form of the
 2 question.
 3 THE WITNESS: I'm not saying that.
 4 They could -- if they enter into a sell
 5 agreement they could have sold it for whatever
 6 they worked out with that sell agreement.
 7 That would be their option -- that would be
 8 their decision. That would be their option.
 9 The bank ultimately -- if they could not repay
 10 us we would foreclose on the property, but,
 11 you know, they have a -- their -- their
 12 options -- that was under their kind of
 13 discretion.
 14 BY MR. EDWARDS:
 15 Q. Why would they sell it for 2.3 when
 16 it's worth 9.4?
 17 A. That would be their decision to sell
 18 it for 2.3.
 19 Q. Were there buyers at that time?
 20 A. I -- I don't know. I -- we were not
 21 marketing the property because we were in the
 22 middle of the foreclosure part. We wouldn't
 23 market the property until after we had
 24 foreclosed on it.
 25 Q. Who were you going to sell it to?

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1 could have happened, but we're focusing on
 2 just one --
 3 Q. Yeah.
 4 A. -- what the bank could have done, but
 5 there's other options there.
 6 Q. Well, that's -- that's -- I like that
 7 option. Let's -- let's see -- let's play that
 8 out. The borrower sells it for what's owed.
 9 Now the borrower is out. They're not title
 10 holder anymore, but the bank has been paid and
 11 some new person is in there owning the
 12 property. Are you with me on that so far?
 13 A. Um-hum.
 14 Q. There's a question coming, I promise.
 15 Now the new buyer holds a 27 percent
 16 loan-to-value ratio or whatever they're into
 17 it value ratio. The borrower has lost all
 18 that, haven't they?
 19 A. The borrower would have to agree to
 20 the sale.
 21 Q. But under your scenario the bank is
 22 foreclosing on them and that's almost the only
 23 option they -- one of the only options they
 24 could have is to sell it for something that's
 25 less than they should.

1 A. We had no -- that was not -- we were
 2 in the middle of foreclosure. We were not
 3 looking to sell the property. We're not
 4 trying to market the property so we had no --
 5 no idea about sellers -- or buyers.
 6 Q. Wasn't the bank trying to get rid of
 7 all these loans anyway, the bad --
 8 A. We --
 9 Q. -- bad loans, not ones that have 27
 10 percent loan-to-value ratio?
 11 A. This loan was matured. It was in
 12 default. We had to get --
 13 Q. I understand.
 14 A. -- repaid.
 15 Q. Sure. I hear what you're saying, but
 16 that compared to many of the other loans that
 17 were upsidedown, the borrowers didn't have the
 18 ability to pay it --
 19 A. If it was past due it was past due.
 20 It made no difference to the bank on the LTV
 21 side.
 22 Q. But the bank as a whole had
 23 overextended itself, hadn't it?
 24 MR. KERR: Object to the form of the
 25 question.

1 THE WITNESS: Clarify.
 2 BY MR. EDWARDS:
 3 Q. Aren't their ratios that the bank is
 4 supposed to adhere to?
 5 A. I never dealt with ratios with the
 6 bank. That was the board and the higher-level
 7 guys.
 8 Q. Okay.
 9 (DFT. EXH. 5, Credit Memo, was marked
 10 for identification.)
 11 MR. KERR: Can we take two minutes?
 12 MR. EDWARDS: Sure.
 13 (A recess transpired.)
 14 BY MR. EDWARDS:
 15 Q. Defendant's Exhibit Number 5, have
 16 you ever seen this before?
 17 A. Yes, I've seen this.
 18 Q. Can you tell me what it is?
 19 A. A credit memo that Mr. Warren -- he
 20 would actually have written this up to have
 21 gotten approval for the initial loan. It
 22 actually just covered everything about the
 23 loan from a financial standpoint and also just
 24 the collateral background of the borrowers,
 25 that kind of thing.

1 tells you the financial side of the borrowers,
 2 the project itself, pretty much all the
 3 details so that way the credit officers and
 4 the folks looking at it can, you know, have
 5 this in the document and be able to look at it
 6 and any questions they had they could get most
 7 of those questions answered at the time of
 8 approval.
 9 Q. Okay. And it's not necessary when
 10 modified?
 11 A. Not typically unless something was --
 12 like an extension on maturity date there
 13 wouldn't be a whole lot to add to it because
 14 on this loan application it would have the
 15 last financial information and that's what
 16 they would review.
 17 Q. What about for a renewal?
 18 A. For a renewal it depends on how
 19 much -- or what the request was for renewal.
 20 If it was going to be a real complex thing
 21 they could actually fill this out and put it
 22 with a new application.
 23 Q. All right. What about a -- is this
 24 just something that's done for a new customer?
 25 A. It actually can be new or existing

1 Q. Was a similar memo generated at
 2 modification?
 3 A. Well, actually, let me come back. I
 4 guess because of the size amount, too, Warren
 5 would have probably gave a lot of information.
 6 Actually, Robbie Rohrer, because it's probably
 7 over 2-1/2 million, she actually helped write
 8 this with Scott.

1 clients.
 2 Q. Do you know whether or not -- well,
 3 was Liberty Village a new client?
 4 A. I don't know.
 5 Q. Was Freeman Barber?
 6 A. I don't -- I don't know, but I can
 7 actually look on this document. Okay. Here
 8 we go. If you look at this document,

9 Q. Okay. Was a similar memo generated
 10 for the subsequent modification?
 11 A. To my -- my knowledge, no, because on
 12 a modification it would just be this
 13 application filled out for you.
 14 Q. Is that normal?
 15 A. Was that --
 16 Q. Is that normal --
 17 A. Yeah, that's pretty normal.
 18 Q. -- for First National?
 19 A. Yeah.
 20 Q. Okay. So what is the purpose of the
 21 credit memo?
 22 A. Credit memo is reviewed by the folks
 23 that would be approving it. It basically
 24 would just explain everything about the note,
 25 the request, what the request was for. It

9 commercial loan application, Page 3, it should
 10 tell us the dates. Everything looks like it
 11 was done on all these loans around 2007,
 12 August and December of '07. It looks like
 13 everything was done around '07 so he -- based
 14 on this he might have been new to the bank.
 15 Q. Okay. And that would be a reason why
 16 this would be generated?
 17 A. Well, this would be generated for
 18 every loan request depending on the size, but
 19 like -- there would be a credit memo written
 20 for every new loan request. But now for like
 21 extensions, it wouldn't have to be done mainly
 22 for an extension.
 23 Q. Did you -- I thought you said earlier
 24 that Freeman Barber was talking to you about a
 25 new loan. Was he asking about a new loan, a

1 renewal, extension?

2 A. Yeah, he was asking. We never -- we
3 never wrote an application, never got to the
4 point where there was a -- you know, a formal
5 request that we -- we did like this because --

6 Q. Why not?

7 A. Special assets, they do not make new
8 loans. They only work on existing loans.

9 Q. Well, isn't one way to work out an
10 existing loan by doing a new loan?

11 A. Usually through a modification but
12 not a new -- new loan for new money. I mean,
13 kind of clarify that, but we -- we would not
14 make new money loans. Like, for example,
15 if -- if he owed us the balance, we would not
16 make a loan to make new money in special
17 assets. That was not my job to make new
18 loans. It was just to work out what we have.
19 Now, we can negotiate repayment terms of
20 existing debt but not make new money.

21 Q. When you're talking about new money
22 in addition to -- in this case the 2.55 would
23 be new money?

24 A. Right. Or actually the 2.3
25 something.

1 property, what -- at the start of the loan
2 what was supposed to be done versus what
3 wasn't. I just looked at the loan as is and
4 what we had.

5 Q. Nobody told you that it hadn't been
6 completed?

7 A. I'm sure they told me there was
8 improvements not done, but that was not
9 something I dove into.

10 Q. If there were improvements that were
11 not completed, they couldn't have completed
12 them after the modification, could they?

13 A. No, after modification that loan
14 was --

15 Q. Because they were --

16 A. -- was locked down to that balance.

17 Q. Because there was no more line of
18 credit available?

19 A. Right. Correct.

20 Q. Whereas before there was \$270,000 --

21 A. Correct.

22 Q. -- that could have been used to fund
23 improvements?

24 A. Prior to the modification, yeah, but
25 after the modification any line amount was

1 Q. 2 -- yeah, what was the number, 2 --

2 A. 2 million -- 2,232,435.48.

3 Q. So there would have been enough in
4 that line to fund a \$160,000 draw request?

5 A. You're talking about prior to this
6 modification or after the modification?

7 Q. Prior.

8 A. Prior there was. After the
9 modification they -- they locked the line of
10 credit down to that balance. And then once it
11 become special assets then --

12 Q. Do you know why that was?

13 A. Again, I don't -- I don't remember
14 why that modification was done. I don't know
15 the specifics of why it was done by them.

16 Q. I'm talking about why the principal
17 amount was knocked down.

18 A. I believe that was the balance
19 outstanding at the time of that modification.

20 Q. Right. Was the work completed?

21 A. The only work I saw was that pump
22 station and the land being cleared. I didn't
23 have a schedule of really what was to be done.
24 I don't -- I can't tell you whether -- what
25 improvements they were going to do to that

1 taken away.

2 Q. Do you know where First National --
3 where the funds came from to fund a draw
4 request? Did they hold an account at the
5 bank, this is the money we're going to use to
6 fund our commercial loan draw request?

7 A. I believe the bank had various

8 sources, but one was like a line of credit
9 from another funding institution. And banks
10 actually use usually funding institutions for
11 like a -- a line they would advance to -- now,
12 some may be -- you know, it may be a
13 combination also of accounts, but I don't know
14 the specifics of that. I just know that most
15 banks have like a -- some kind of home -- home
16 funding line that they use.

17 Q. Do you know if First National had
18 that type of line in place?

19 A. They had it at -- at some point while
20 I was there. I know they had a line for that.

21 Q. Do you know who it was from?

22 A. I don't remember the name of it.

23 Q. Was it Nexity Bank?

24 (Off-the-record conference.)

25 THE WITNESS: I've heard of that

1 name, but I don't know if that was the one for
 2 the funding -- for the load funding.
 3 BY MR. EDWARDS:
 4 Q. What do you know about Nexity Bank?
 5 A. Other than just hearing the name I
 6 know that we had some outstanding obligation
 7 on some debt.
 8 Q. Nexity had loaned First National some
 9 money?
 10 A. Right.
 11 Q. First National couldn't pay it back?
 12 A. I'm -- I don't -- I'm not sure what
 13 they could or couldn't do but --
 14 Q. They didn't pay it back; do you know
 15 that?
 16 A. I didn't know they didn't pay it
 17 back.
 18 Q. What have you heard?
 19 A. I knew that we had a -- we had a
 20 funding source. I remember hearing the name
 21 Nexity a few times. I think after I left I
 22 didn't really pay attention to much of the
 23 innerworkings of First National.
 24 Q. And that was in August of '09?
 25 A. Yeah, August of '09 is when I went to

1 Q. Did that happen?
 2 A. Yeah, because actually, they gave us
 3 a presence in Columbia.
 4 Q. Is that still around?
 5 A. I don't know. I assume it is.
 6 They -- they were all-one entity and I think
 7 they all were bought -- because First National
 8 was one entity when it was bought I think by
 9 Capital Bank.
 10 Q. What I'm asking is the Carolina
 11 National Banks that were bought by First
 12 National are still around and functioning?
 13 A. The branches? I don't know the
 14 specific knowledge, but I -- I don't know.
 15 Q. Okay. Do you know whether or not --
 16 how the -- how First National -- I'm not sure
 17 how to word this, but First National gets a
 18 loan from Nexity for some amount for some
 19 purpose. The bank has to pay that back out of
 20 what source of funds? We talked about earlier
 21 draw requests, whether there was a pool of
 22 funds and maybe there's a line that they --
 23 they draw off of. Is it the same for a loan
 24 from a bank like Nexity, they draw off another
 25 line, or do they actually have some accounts

1 B of A.
 2 Q. Do you remember when -- do you
 3 remember when First National bought Carolina
 4 National Bank?
 5 A. Yes.
 6 Q. When was that?
 7 A. I remember the event happening. I
 8 don't know the specific date. It was while I
 9 was a lender.
 10 Q. Do you know anything about Carolina
 11 National Bank?
 12 A. They're out of Columbia, and I just
 13 know they were probably like a 4 or 500
 14 million dollar bank.
 15 Q. And on the grand scheme of things
 16 where does that rank as far as banks go?
 17 A. It's a small community bank.
 18 Q. How big in comparison to First
 19 National?
 20 A. They were about -- almost the same
 21 size as First National, maybe a little bit
 22 smaller.
 23 Q. Do you know why they bought it?
 24 A. Just to grow throughout South
 25 Carolina.

1 somewhere that they can pay that loan?
 2 A. That I don't -- I don't know. I
 3 don't know how that actually works.
 4 Q. Who would know that?
 5 A. Kitty Payne.
 6 Q. Looking at Number 5 --
 7 A. Okay.
 8 Q. --- we talked about --- if you go to
 9 Page 256, do you see down there the risk
 10 analysis at the bottom --
 11 A. Um-hum.
 12 Q. -- the strengths and weaknesses?
 13 A. Yes.
 14 Q. Do you see the strengths, interest
 15 reserve sufficient to service the debt? Do
 16 you know whether or not that interest reserve
 17 was exhausted?
 18 A. I don't know.
 19 Q. That was a strength identified on the
 20 front end. Global cash flow is sufficient to
 21 service the debt. Does that mean from the
 22 guarantors?
 23 A. Yeah. Well, that is the entity and
 24 the guarantors.
 25 Q. Right. Management experience in real

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1 estate development, that's obviously based on
 2 the guarantors because Liberty Village was
 3 fairly new?
 4 A. Right. Right.
 5 Q. Would that be Barber?
 6 A. I know he had a background in it.
 7 Other than -- other than Barber I don't know
 8 the other -- other folks.
 9 Q. Okay. What about the new guarantors?
 10 A. I don't know. I never -- never was
 11 able to speak with them.
 12 Q. So you don't know if they have
 13 management experience in real estate
 14 development?
 15 A. Yeah, I -- I think they were just
 16 the, you know -- more just guarantors on the
 17 note.
 18 Q. Okay. Another one's loan structure
 19 to remain within bank policy and supervisory
 20 loan-to-value guidelines at 21 percent at that
 21 time.
 22 A. Okay.
 23 Q. So that's a strength. And then a
 24 guarantor -- the guarantor financial
 25 positions, meaning the guarantor's actual

1 looked like, because they were off the deal by
 2 the time I even looked at it.
 3 Q. What do you mean they were off the
 4 deal?
 5 A. If they weren't a guarantor on the
 6 note, then, you know, really it wouldn't --
 7 somebody that was still on the note that we
 8 had dealings with.
 9 Q. You're talking about Stringfellow?
 10 A. Yeah.
 11 Q. Okay. It actually talks about him.
 12 A. Is he over here as well?
 13 Q. Sure. On the previous page, 255.
 14 A. Oh, okay. All right.
 15 Q. Do you see all that?
 16 A. Yeah. I think probably the main
 17 thing, I didn't really focus on him just
 18 because if he was off he was off the deal.
 19 Q. Yeah. Well, I'm asking you now to
 20 look at him --
 21 A. Okay.
 22 Q. -- look at him with your underwriting
 23 experience and then take a look at the
 24 financials of --
 25 A. Yeah, okay.

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1 financial strength?
 2 A. Right.
 3 Q. Okay. Did any of those things
 4 change?
 5 A. Yeah, actually -- I mean, the -- I
 6 think -- I don't know what the other
 7 appraisal -- the appraisal went, you know -- I
 8 guess went down a little bit --
 9 Q. You're right, it did.
 10 A. -- 6 percent.
 11 Q. Um-hum.
 12 A. Not much.
 13 Q. It went from 21 percent to 27 percent
 14 loan to value.
 15 A. The guarantors changed --
 16 Q. Um-hum.
 17 A. -- but I think, you know, the
 18 Bartone -- Baritones (sic) had the --
 19 Bartones, actually, had, you know, financial
 20 net worth.
 21 Q. The guarantors actually got better,
 22 didn't they?
 23 A. I can't remember what Stringfellow
 24 looked like then. It may say on here
 25 somewhere, but I don't know what those guys

1 Q. -- the new guarantors.
 2 A. I mean, my only -- 11 -- almost 12
 3 million in assets, \$700,000 in liquidity.
 4 Anthony Bartone is about -- his net worth's
 5 10.5. Oh, the other guy -- that's right. One
 6 of the guys is 30 million dollars.
 7 Q. Collectively they're stronger?
 8 A. Yeah, yeah, they're stronger, yeah,
 9 especially that one.
 10 Q. Okay. So that's a strength that has
 11 actually gotten stronger?
 12 A. Yeah.
 13 Q. Loan to value's diminished a little
 14 bit. Interest reserve maybe not an issue at
 15 that time?
 16 A. Right.
 17 Q. Okay. Global cash flow, can you --
 18 is that something that you can read through
 19 your banker lenses and see --
 20 A. No. I mean, the biggest I can do is
 21 if you look up there at the line above it, you
 22 know, they're saying 1.9, and then if you
 23 stress it and increase the line -- the
 24 interest rate they'd be at 1.8, you know.
 25 Typical banks look at 1.25 to 1.5 as being

1 a -- kind of a threshold, so they're above the
 2 threshold based on that analysis there.
 3 Q. I don't have any idea what you're
 4 talking about.
 5 A. Okay. Right here.
 6 Q. So explain it to me as if --
 7 A. Okay.
 8 Q. -- I -- I have no knowledge of
 9 banking.
 10 A. Basically, if you're familiar with
 11 debt-to-income ratios --
 12 Q. Um-hum.
 13 A. -- with clients, think of a business
 14 transaction as an income-to-debt ratio. So
 15 basically --
 16 Q. Okay.
 17 A. -- the income of a guarantor and a
 18 project basically --
 19 Q. Versus the debt?
 20 A. -- versus the debt, yeah.
 21 Q. Okay.
 22 A. Let's say that for every, you know,
 23 dollar of debt you have \$1.90 to -- to help,
 24 you know, repay that or left over for you.
 25 Q. So this means that they have \$1.90

1 anybody.
 2 Anyway, you were talking about those
 3 numbers, and those -- 1.9, 1.8, those are
 4 better income-to-debt ratios than would kind
 5 of be a floor?
 6 A. Right.
 7 Q. What would the floor be?
 8 A. Probably 1.25 to 1.5 would be kind of
 9 the floor, so you'd want to be somewhere north
 10 of that.
 11 Q. Okay. So even if there's a 3 percent
 12 increase in the interest rate --
 13 A. Correct.
 14 Q. -- they would still have been at at
 15 that time a 1.8?
 16 A. Um-hum.
 17 Q. And they, in fact, got stronger by
 18 adding three additional guarantors, so that
 19 number probably would have at least stayed the
 20 same if not gotten stronger as well; is that
 21 right?
 22 A. Yeah.
 23 Q. Okay. All right. So all the
 24 strengths are still there. Now, the
 25 weaknesses -- do you remember we talked about

1 income versus the debt there?
 2 A. For -- for every debt they have,
 3 yeah.
 4 Q. And --
 5 A. Based on the loan payment that you
 6 have.
 7 Q. Right.
 8 A. Right. Or debt service.
 9 Q. And you -- you said that this number
 10 is --
 11 A. It's north of the -- the number so
 12 like an example --
 13 Q. So that's a good thing?
 14 A. That's a good thing, yeah.
 15 Q. Okay.
 16 MR. KERR: One at a time.
 17 BY MR. EDWARDS:
 18 Q. They hate that. They never say it.
 19 Sometimes they do say it, but it's very
 20 difficult for the court reporters to -- to get
 21 it all correct, and it's very important that
 22 we get it all correct because we -- none of us
 23 will remember this tomorrow let alone a week,
 24 two weeks, a month, three months from now. So
 25 we need to be very cognizant. I'm as bad as

1 bank ratios?
 2 A. Um-hum.
 3 Q. You see the first identified
 4 weakness? Under new interagency guideline,
 5 this credit will increase our commercial real
 6 estate concentration, which as of 3/31/07 was
 7 at 317 percent for construction land
 8 development and other land and 606 percent for
 9 other commercial real estate, exceeding the
 10 100 and 300 percent respective benchmarks.
 11 A. I've never actually seen that in a
 12 credit memo.
 13 Q. That's three times construction land
 14 development ratio and double other commercial
 15 real estate ratio than what's recommended,
 16 isn't it?
 17 A. Tell you the truth I'm not real
 18 familiar with those guidelines that they ever
 19 had at First National like that. I actually
 20 never remember seeing that, that being a -- a
 21 target they would put in there.
 22 Q. Was that not something that was
 23 discussed with the special assets division?
 24 A. Tell you the truth, no. Tell you the
 25 truth, I don't even know if they even

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1 discussed it with the lenders, but --
 2 Q. What do you mean discussed it with
 3 the lenders?
 4 A. Like, for example, Robbie Rohrer,
 5 who's the person that helped Scott Warren
 6 write this credit memo --
 7 Q. Um-hum.
 8 A. -- she may have added that in under
 9 something that neither the lenders ever looked
 10 at any kind of ratio like that because that's
 11 not a typical concern from a lender
 12 standpoint. They let, you know, the bank kind
 13 of look at that. So she might have just put
 14 these percentages in for something that they
 15 did. You know, we're not as -- even lenders
 16 like the lender like Mr. Warren or -- he would
 17 not be given those percentages.
 18 Q. The credit department would?
 19 A. Right.
 20 Q. Robbie Rohrer?
 21 A. Right.
 22 Q. And Jeff Benjamin would be familiar
 23 with that as well?
 24 A. Right. Yeah. They might know more
 25 about those kind of things.

1 I don't agree when you say it's a better
 2 purchase for another bank or anything of that
 3 nature. I don't --
 4 Q. Well, what would be a good purchase
 5 for a bank, a good loan?
 6 A. A building that's fully leased with a
 7 tenant that for whatever reason, you know, has
 8 got cash flow on it.
 9 Q. And they assign you the rents?
 10 A. Yeah. And that may -- well -- and I
 11 know that sounds crazy, but those are the
 12 types of deals that we would consider a better
 13 transaction.
 14 Q. Yeah. What -- what about this type
 15 of transaction, a real estate development loan
 16 where a group of people got some raw land and
 17 they're going to clean it up, fix it up,
 18 package it and they're going to sell it to
 19 some tract builders? And on that scenario
 20 what kind of loan is this or what would -- let
 21 me strike that.
 22 What would be a good loan for that
 23 type of situation?
 24 A. One that had a buyer. I mean, I
 25 think the biggest thing is just, you know, if

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1 Q. But do you know why they were so
 2 high?
 3 A. You know, I don't know if they --
 4 that would have to come from either -- well,
 5 actually, to answer your question, no.
 6 Q. Do you think that has anything to do
 7 with the bank going under?
 8 A. I would say it had something to do
 9 with it just from a common sense approach.
 10 Q. Do you think many of these loans were
 11 some of the loan -- poor loans that resulted
 12 in upsidedown properties and things of that
 13 nature?
 14 A. I mean, I think some of those could
 15 fall in these categories here because I think
 16 those are just concentrations that they
 17 probably fall into.
 18 Q. Sure. Clearly this loan -- this
 19 specific loan would have been one of the
 20 better buys for a bank? I mean, it's not a 95
 21 percent loan to value or anything like that
 22 where if the market goes down just a little
 23 bit --
 24 A. I mean, I think there's some
 25 strengths on the type project, but I don't --

1 you had a -- the interest of a buyer there
 2 that would be a good -- good loan for you.
 3 Q. Okay. Anything else?
 4 A. That's basically it.
 5 Q. In the absence of a hard-and-fast
 6 contract for sale?
 7 A. I mean, I think that in that
 8 situation, you know, this falls under the land
 9 development side. You know, that was not --
 10 you know, the -- the market was slow on
 11 that -- that side. So, I mean, I don't
 12 know --
 13 Q. So maybe they shouldn't have made the
 14 loan in the first place considering how
 15 extended they were?
 16 MR. KERR: Object to the form of the
 17 question.
 18 THE WITNESS: Yeah. I have no, you
 19 know, comment on that. I think --
 20 BY MR. EDWARDS:
 21 Q. Well, in the grand scheme of things
 22 the borrowers, the collateral, the amount of
 23 the loan, the value of the collateral all were
 24 good things for the bank in entering into a
 25 loan transaction; you'd agree with that?

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1 A. Yeah, I agree that this was a loan
 2 that the bank made an assessment risk, and
 3 based on the -- you know, the gar -- the
 4 guarantors', you know, knowledge, you know,
 5 their -- their income, their -- their
 6 liquidity and that kind of thing that, you
 7 know, they mitigated that risk that --
 8 obviously they approved the loan.
 9 Q. Okay. And the next weakness, prior
 10 principal repayment source is speculative in
 11 nature, is that what you're talking about
 12 having a buyer on hand?
 13 A. No. Actually, the principal
 14 repayment source is speculative in nature,
 15 that -- that was saying that -- that this
 16 project will sell out either in phases or
 17 pro -- you know, this thing will -- there is
 18 no guarantee on a development deal that you'll
 19 sell a project off, but your -- it's a
 20 development loan made to be sold. It's not --
 21 there's not -- the revenue generated only
 22 comes from the sale of assets and that -- and
 23 that's what --
 24 Q. They've got to -- they have to spend
 25 the money first --

1 nowhere?
 2 A. Not being real familiar with that --
 3 I'm not familiar with that area per se, but --
 4 Q. Well, Goose Creek's kind of out in
 5 the middle of nowhere, but --
 6 A. Okay. I mean, I know --
 7 Q. But I'm talking about the actual
 8 parcel of land as it relates to other
 9 development --
 10 A. Yeah, related to other -- other --
 11 other residential developments.
 12 Q. Surrounded by other residential
 13 developments.
 14 A. Okay, yeah.
 15 Q. Is that a fair --
 16 A. Yeah, I know two --
 17 Q. -- statement?
 18 A. -- two entries, yeah.
 19 Q. Okay.
 20 A. Yeah.
 21 Q. So with that in mind, it's reasonable
 22 to conclude, don't you think, that at some
 23 point it would be built out?
 24 A. Back at that point I would say
 25 probably, you know, reasonable.

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1 A. Right.
 2 Q. -- and then they'll sell it and
 3 that's how you get the money back?
 4 A. Right.
 5 Q. And if you don't sell it --
 6 A. You fall back on the secondary source
 7 of repayment, which is the guarantor strength.
 8 Q. Did you know whether or not any of
 9 the surrounding land had been sold?
 10 A. When I drove out to see the site
 11 when -- there's like a development that you go
 12 through until you get to that property and
 13 then it became the -- the property and it kind
 14 of L shaped over and then there was another
 15 residential development at the other end. And
 16 I'm going off kind of memory here, but the
 17 property, I think the first thing -- it had --
 18 it had some vacant lots here, then our
 19 property, then there was another neighborhood
 20 off to the side, I think, and I think there
 21 was some road connections. I think there was
 22 a main way here -- there. Like there's a main
 23 road on one end of it and then a development
 24 on the other.
 25 Q. Yeah. It wasn't out in the middle of

1 Q. Okay. Even now, wouldn't it?
 2 A. I haven't been to that part of
 3 Charleston in about four years.
 4 Q. Okay.
 5 A. I have no idea.
 6 Q. Okay.
 7 A. Three, four years.
 8 Q. Okay. My point is just there was no
 9 buyer, but it was -- and I understand that
 10 aspect of it, but it was in an area that of
 11 all areas was likely to have somebody come in
 12 and say, I can put my homes in here and sell
 13 some -- some homes.
 14 A. It was surrounded by other
 15 residential neighborhoods, yeah.
 16 Q. Okay. The next one is interest
 17 reserves not being established as a deposit
 18 account. Why is that a weakness?
 19 A. If you have a borrower establish a
 20 deposit account for interest reserve that
 21 doesn't add to the debt service, so that
 22 lowers their cost of that loan so they don't
 23 have to -- when you do an interest reserve
 24 you're just piling on top of that debt, which,
 25 you know, costs more interest, more interest

1 expense. If they put in money to the side and
 2 say, hey, this is going to be set aside to pay
 3 interest, then their loan amount would not
 4 increase month to month on interest reserves.
 5 Q. Okay. And so having established a
 6 deposit account would do what?
 7 A. It would be a -- it would be -- that
 8 would actually be probably a strength because
 9 that would -- if they'd -- if they made a
 10 deposit account to pay interest, then they
 11 wouldn't be borrowing as much money, which
 12 would be less risk to the bank.
 13 Q. Okay. All right. Do you know
 14 whether or not that was a requirement of the
 15 borrower that it not be used as a deposit
 16 account?
 17 A. A requirement of the borrower?
 18 Q. Um-hum.
 19 A. It probably was asked and they
 20 probably requested an interest reserve is
 21 probably --
 22 Q. Well, what's the benefit to a
 23 borrower for having an interest reserve versus
 24 a deposit account?
 25 A. The benefit by having an interest

1 Borrower has not supplied the bank
 2 with a detailed use of all loan proceeds, what
 3 does that mean? Do you know what that means?
 4 A. Borrower -- yeah. Actually -- and
 5 maybe that's one reason -- when I was talking
 6 to you earlier about not knowing what the
 7 phases of the projects were, usually a
 8 borrower will say, okay, I'm going to take
 9 this loan amount, X amount's going to purchase
 10 the land, and every detail -- it's going to
 11 tell me exactly how much the utilities are
 12 going to be, how much the road's going to be,
 13 how much all these things are going to be, and
 14 it's going to map out all what those uses of
 15 money is for. In this case what the credit
 16 memo is stating is we never received that, so
 17 there is no, you know, roadmap to say where
 18 this money's going to.
 19 Q. Well, doesn't it say it in the
 20 commitment letter, the purpose of the loan?
 21 A. Yeah, but it doesn't break it out. I
 22 mean, it -- the use of proceeds will be like
 23 wiring, \$30,000, pipes -- you know, it breaks
 24 every incremental improvement that totals up
 25 to the 2,550,000. And so basically what the

1 reserve on a deposit account would be it would
 2 save them money. The benefit to the borrower
 3 for having interest reserve is -- well, it
 4 would keep them from having to put liquidity
 5 up front, but in the end it would cost them
 6 more in the long run. It would tie up less of
 7 their money. But there's benefits on both
 8 sides.
 9 Q. Okay.
 10 A. Using their cash would save them
 11 overall interest expense. Having an interest
 12 reserve would just keep their money more
 13 liquid for other things.
 14 Q. Okay. So they could actually use
 15 that money for something else --
 16 A. Yeah, yeah.
 17 Q. -- versus --
 18 A. Right.
 19 Q. -- just using it to pay interest --
 20 A. Right.
 21 Q. -- which is what an interest reserve
 22 would do?
 23 A. Right. Because if there's a deposit
 24 account it would be frozen, so --
 25 Q. Try not to talk over one another.

1 credit memo is saying is, you know, we don't
 2 have a detailed broken out of what the
 3 construction costs are going to be.
 4 Q. So that's something the bank would
 5 like to have --
 6 A. Yes.
 7 Q. -- just for planning purposes?
 8 A. Correct.
 9 Q. All contingent liabilities are not --
 10 the next weakness, all contingent liabilities
 11 are not be disclosed -- that must be a typo --
 12 for borrower or guarantors, what does that
 13 mean?
 14 A. Right. Basically we want to know
 15 every debt that any of the guarantors are on
 16 no matter how big or small, so we pull their
 17 personal credit. But if they're a member of
 18 any LLC or any other C corps, S corps, we want
 19 to know what they're obligated to pay.
 20 Q. And you didn't get that?
 21 A. We got most of it it sounds like, but
 22 it says all contingent liabilities are not
 23 being disclosed for borrower and guarantor.
 24 So there might have been a few minor LLCs no
 25 matter how big or small that they may not have

1 had, and I think they're just stating that to
 2 say, you know, here's a weakness.
 3 Q. All right. But none of those things
 4 were glaring enough to say no, let's not do
 5 it?
 6 A. Correct.
 7 Q. Let's turn to the next page,
 8 recommendation and summary comments. Is this,
 9 by the way, a similar format to what you would
 10 present to the board on -- if you were to make
 11 a presentation on a special asset?
 12 A. More amended. We would have this as
 13 a exhibit in that file, so we wouldn't
 14 reinvent this. We would actually have this as
 15 like an Attachment A.
 16 Q. Okay. But you might have a similar
 17 type of loan amount, type --
 18 A. Right.
 19 Q. -- purpose, collateral, guarantors --
 20 A. Right. Yeah, more amended --
 21 Q. -- so on and so forth?
 22 A. More shortened version.
 23 Q. Okay. All right. And you did
 24 present those to the board for some loans?
 25 A. Yes.

1 always in process.
 2 Q. Okay. See the recommendations,
 3 mitigating factors, the management experience?
 4 A. Yeah.
 5 Q. That would be the prior real estate
 6 development experience?
 7 A. Correct.
 8 Q. Exit strategy?
 9 A. Right.
 10 Q. Liquidation of collateral?
 11 A. Right.
 12 Q. What does that mean to the bank?
 13 A. Ultimately foreclosure.
 14 Q. All right. So --
 15 A. That's a -- that's like one of the
 16 repayment sources.
 17 Q. And that's what the exit strategy
 18 would be?
 19 A. Yeah. Basically, about every loan
 20 that you ever see you'll see a liquidation of
 21 collateral, whether it's equipment, land, you
 22 know, any on the commercial side, because in
 23 the end if they're holding that asset -- we're
 24 holding that asset for a reason. I mean, if
 25 we were doing an unsecured note we'd say, you

1 Q. You just don't remember about this
 2 one?
 3 A. Yeah, I think this one actually -- by
 4 the time I left the bank we had started
 5 foreclosure proceedings and really had
 6 conversations but never came to any kind of
 7 conclusion.
 8 Q. Okay. After the foreclosure
 9 proceedings began what does the bank do then
 10 as far as trying to work it out or is it --
 11 A. We're always open to negotiating
 12 anything with the borrower at that time.
 13 Basically, you know, once we started on the
 14 foreclosure a lot of times we'd rather that go
 15 through our attorney, counsel, and really, I
 16 mean, you know, it comes down to if -- if
 17 there's, you know, a potential sale that the
 18 borrower had the property sold or if the --
 19 the -- if they wanted to buy the note or if
 20 they want to do something, really we'd be open
 21 to negotiating on anything; however, we would
 22 still be going down the road to foreclosure.
 23 In the event we didn't get anything, you know,
 24 worked out, then we would go ahead and proceed
 25 with the foreclosure, but -- but foreclosure's

1 know, guarantor strength, liquidity or
 2 something of that nature, but any time you
 3 hold an asset it will typically say,
 4 liquidation and collateral.
 5 Q. Okay. All right.
 6 (DFT. EXH. 6, News Article Titled
 7 'Feds Swoop In, Close First National Bank of
 8 the South, was marked for identification:)
 9 BY MR. EDWARDS:
 10 Q. See what has been handed to you
 11 marked Defendant's Exhibit Number 6. Have you
 12 seen this news article?
 13 A. I don't know if I've seen this
 14 article, but I -- I saw a few articles back
 15 when I heard that they were taken over.
 16 Q. Okay. And this is dated July 17th of
 17 2010?
 18 A. 2010, yeah.
 19 Q. Does that sound about right to you as
 20 the time when they were taken over?
 21 A. Yeah, yeah.
 22 Q. All right. Turn to Page 2. Do you
 23 see the second paragraph, a note posted on
 24 First National's door?
 25 A. Right.

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1 Q. Have you ever heard that, that a note
 2 was posted on the door and it said certain
 3 things?
 4 A. Yeah.
 5 Q. Where did you hear that?
 6 A. Tell you the truth, that's
 7 basically -- how all the banks were closing,
 8 that was pretty well standard boilerport --
 9 boilerplate language at that time, that they
 10 would all say, you know, the dissipation of
 11 assets and -- due to unsafe and unsound
 12 practices.
 13 Q. What would those be, the unsafe and
 14 unsound practices?
 15 A. I'd probably call the OCC and ask
 16 them. So there could be a lot of various
 17 things, but basically just a blanket, you
 18 know, here we're closing the bank and here's,
 19 you know -- basically bad assets or something
 20 like that.
 21 Q. Do you know of any unsafe or unsound
 22 practices engaged --
 23 A. No, no --
 24 Q. -- by First National?
 25 A. No, no specifics other than just

1 approval, but, I mean, even cash-secured loans
 2 have risks.
 3 Q. Right. Every loan has a risk.
 4 A. Um-hum.
 5 Q. I got that. But that in and of
 6 itself does not make an unsafe or unsound
 7 practice, right?
 8 A. Right. I mean, I --
 9 Q. And banks loan money. That's what
 10 they do.
 11 A. Right.
 12 Q. So that -- lending money is not an
 13 unsafe practice or an unsound practice, is it?
 14 A. I would say it's an unsafe practice.
 15 Q. It may be unsafe. I will --
 16 A. Because like you and I -- our
 17 personal money, that would be an unsafe
 18 practice because there is a risk that it won't
 19 be paid back.
 20 Q. But is it --
 21 A. I think --
 22 Q. But the unsound portion goes to the
 23 decision-making, doesn't it?
 24 A. I mean, again, I think we'd have to
 25 ask OCC. I mean, I think in the end the

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1 nonperforming assets.
 2 Q. You think that's what they're talking
 3 about?
 4 A. Yes.
 5 Q. Well, what's unsafe and unsound about
 6 a borrower who doesn't pay?
 7 A. That's a risk you take when you make
 8 a loan, I guess. If he doesn't pay you back
 9 that's a risk to the bank. It hits the bottom
 10 line and expenses go up, income goes down.
 11 Q. Well, isn't the unsafe and unsound --
 12 assuming that is what they're referring to,
 13 isn't the unsafe and unsound practice on the
 14 front end by the bank in filtering their loan
 15 requests and approvals?
 16 A. I mean -- I mean, it -- any time you
 17 make a loan -- any time SunTrust makes a loan,
 18 it's, you know -- there's a risk there.
 19 Q. Sure, but some are riskier than
 20 others, wouldn't you agree?
 21 A. I mean, I -- I think that the more
 22 risky loans, you know, you try to underwrite
 23 the best to mitigate those risks, and, I
 24 mean -- and I would say that any loan you make
 25 the bank has a -- some level of comfort to get

1 bank -- they're saying it was -- basically the
 2 reason that was posted on the front door is
 3 saying that, hey, you had a number of bad
 4 loans that exceeded their requirements and
 5 they're saying, you know, the number of
 6 loans -- that's why they said that -- that
 7 statement.
 8 Q. The 100 and 300 percent, is that an
 9 OCC guideline?
 10 A. That I don't know.
 11 Q. What types of guidelines are you
 12 referring to?
 13 A. Whatever the OCC requirements are.
 14 Q. Do they have requirements?
 15 A. Yeah, they -- yeah, they have
 16 requirements, guidelines. I don't know them.
 17 The higher-ups at the bank would, but
 18 basically the OCC regulates national banks,
 19 and they set requirements that the bank had to
 20 adhere to. Obviously they didn't adhere to
 21 them.
 22 Q. What types of requirements?
 23 A. I don't know. I mean, I would say
 24 probably, you know, asset levels number --
 25 level -- number one, nonperforming asset

1 levels may have exceeded the -- whatever
2 requirement they had to have.
3 Q. And that's not something that you
4 were dealing with, that's a -- a requirement
5 or recommendation that comes from the OCC to
6 the bank, meaning whoever it is makes the --

7 A. Right.

8 Q. -- decisions for the bank?

9 A. Yeah, all banks that are national.

10 Q. Is First National a national bank?

11 A. They were -- yeah, they were a
12 national bank. They were nationally
13 chartered, and then there's opposite, the
14 state-chartered banks, and the FDIC regulates
15 those.

16 Q. All right. So do you know why the
17 FDIC would take over?

18 A. Yeah, they -- the FDIC is there for
19 any bank closure whether it's national or
20 state, but when it comes to national banks and
21 state banks the OCC regulates the -- the
22 large -- most of the time large but the
23 national banks and the FDIC takes an actual
24 role in regulating the state banks. But when
25 any banks close the FDIC comes in for the FDIC

1 April --

2 A. Yeah.

3 Q. -- the company received a three-month
4 extension from Nexity Bank to pay back the
5 modified 3.5 million dollar loan it used to
6 purchase Carolina National Bank of Columbia in
7 2007?

8 A. Okay.

9 Q. In the next paragraph, Nexity had
10 agreed to forgive 6.1 million dollars of the
11 original 9.6 million dollar loan and fourth
12 quarter interest of \$150,000.

13 Is that a typical practice for banks
14 to forgive two-thirds of the amount owed on a
15 loan?

16 A. Not typical practice.

17 Q. Do you -- do you know why it is that
18 Nexity would agree to forgive so much to First
19 National?

20 A. Unless Nexity -- I don't know the
21 financial status of Nexity.

22 Q. You're saying Nexity needed 3 million
23 dollars more than they needed to fight over
24 the remaining 6 million?

25 A. I don't know much about them. I've

1 insurance requirements and to make sure that
2 transaction's handled right.

3 Q. All right. Do you know whether or
4 not First National made many real estate
5 residential loans?

6 A. Why they did or they didn't?

7 Q. If they did or was it predominantly
8 commercial lending?

9 A. I know they made mortgage loans. I
10 don't know if they made a lot or a little, but
11 they made mortgage loans, personal mortgage.
12 Because I only dealt with the commercial side
13 of the bank.

14 Q. Yeah. Were there many that you know
15 of real estate -- residential real estate
16 mortgages?

17 A. I -- I don't know the number. I just
18 know they offered those services.

19 Q. Do you know one way or the other
20 whether or not the majority of loans were
21 commercial or residential?

22 A. I don't know. I never got -- I never
23 got any statistics on that side of the bank.

24 Q. Okay. On Page 2, go down. You see
25 there it starts off the paragraph it says, in

1 just heard of that name and I'm not sure
2 what -- I don't know.

3 Q. Okay. Well, they're talking about
4 fourth quarter interest. They must be talking
5 about fourth quarter 2009 since this was dated
6 July 17th, 2010.

7 A. Let's see. Where are you -- where
8 are you at there?

9 Q. Down in the paragraph that starts off
10 Nexity, fourth paragraph up from the bottom on
11 Page 2.

12 A. Unless that was going to be the 150
13 for the 2010 fourth quarter to be paid. Well,
14 the next sentence -- yeah. Yeah, it would be
15 fourth quarter, yeah.

16 Q. So they had forgiven that debt
17 sometime in '09 --

18 A. Um-hum.

19 Q. -- assuming this is true?

20 A. Right.

21 Q. Which means they couldn't pay back 6
22 million of the 9 million dollars they
23 borrowed?

24 A. Right.

25 Q. Where did the 9 million dollars go?

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1 A. I don't have that information.
 2 Q. Well, they got 9 million dollars in
 3 2007, and between 2007 and 2009 in two years
 4 they had spent it and hadn't made enough money
 5 back to pay it off.
 6 A. They didn't say --
 7 MR. KERR: Where did the 9 million go
 8 that they borrowed? Is that the question?
 9 MR. EDWARDS: Um-hum. He already
 10 said he doesn't know.
 11 MR. KERR: All right. I thought it
 12 said that --
 13 THE WITNESS: Borrowed it to buy the
 14 bank.
 15 MR. KERR: -- it was the loan to
 16 purchase the --
 17 THE WITNESS: Yeah.
 18 MR. KERR: -- Carolina National Bank.
 19 THE WITNESS: They paid the
 20 shareholders, I guess.
 21 MR. KERR: Sorry.
 22 BY MR. EDWARDS:
 23 Q. Do you think that has anything to do
 24 with the reason for the formation of the
 25 special assets division?

1 don't really use the word stale as long as
 2 they're making the payments.
 3 Q. If all payments have been made and
 4 the maturity date has not yet come, is the
 5 loan considered performing or nonperforming?
 6 A. As long as the -- all the payments
 7 have been made and the maturity date hadn't
 8 occurred, then it would be performing under
 9 the nonperforming kind of definition.
 10 Q. And you left in August 2009?
 11 A. Yeah, that's from my -- from my
 12 dates, yes, that's what I --
 13 Q. Best you can recall?
 14 A. Best I can recall, yeah. I
 15 changed -- had two banks in there, so --
 16 Q. Do you remember if it was in early
 17 August or late August, middle of August?
 18 A. I believe I left it was about the
 19 middle of August and I started B of A like on
 20 August 29th, and I don't think I had but like
 21 a week in between the two, week and a half at
 22 best.
 23 Q. And foreclosure proceedings had
 24 already been started on this Liberty Village
 25 loan, right?

1 A. No.
 2 Q. Why not?
 3 A. I think the reason for the special
 4 assets being formed was because they started
 5 taking on nonperforming assets that were going
 6 past due -- you know, 90 days past due on the
 7 payments, loans that matured but couldn't be
 8 repaid, and I think that's why they set up the
 9 special asset group, to try to get a -- a
 10 group that would actually manage those to try
 11 to keep those from growing.
 12 Q. And to get some money?
 13 A. Basically, a nonperforming asset, I
 14 mean, is just that. It's not -- it's not
 15 income producing. It's just costing you
 16 money.
 17 Q. Um-hum. What is a stale loan?
 18 A. I'd say nonperforming asset.
 19 Q. What makes a loan stale?
 20 A. Being past due 90 days paymentwise or
 21 maturity date.
 22 Q. And up until the maturity date can a
 23 loan be either nonperforming or stale?
 24 A. Long as it's paying the -- the
 25 payments -- I mean, I don't know if you -- we

1 A. To my recollection, yes.
 2 Q. If the due -- if the maturity date
 3 was May the 7th --
 4 A. Right.
 5 Q. -- of '09 --
 6 A. Right.
 7 Q. -- and a nonperforming loan is not
 8 until 90 days past due --
 9 A. Well, I said past due. Maturity date
 10 it is in default so that is a correction
 11 there. If it's mature then it's -- it's in
 12 default. If it's past due a payment for 90
 13 days it would be also in default --
 14 Q. All right. So there's a --
 15 A. -- or be a nonperforming asset.
 16 Q. -- a distinction that you're drawing
 17 between the --
 18 A. Right.
 19 Q. -- maturity date --
 20 A. Right.
 21 Q. -- and past due?
 22 A. A payment -- yes, yeah.
 23 Q. Okay. Tell me again when it is --
 24 this modification agreement had already been
 25 executed by the time you got it I think you

1 said earlier.
 2 A. Yeah, I think so. What is the date?
 3 3/23/09.
 4 Q. Did you get it before May the 7th of
 5 '09?
 6 A. Before May 7, '09? I don't know the
 7 actual date I got the file. Does it say?
 8 This says, I agree to pay one final payment at
 9 maturity 5/7/09, so I would probably have got
 10 it after the fact.
 11 Q. But you don't know?
 12 A. Don't know.
 13 Q. How would we be able to tell that?
 14 Is there a letter that comes to you in the
 15 mail that says, here's a new one, do with
 16 it --
 17 A. No. Usually -- basically, I had a
 18 report that I would fill out that would give
 19 my overview of the credit when it first came
 20 in and it would say a date that said,
 21 transferred to special assets on that date.
 22 Q. I'm sorry. Say that again.
 23 A. My reports I have when I took over
 24 credits, it would actually have a transfer
 25 date. It would tell exactly when it got

1 Q. What did you have to give the OCC
 2 every quarter?
 3 A. It was a -- what we called a CAR. It
 4 was a commercial -- I can't remember what it
 5 actually stood for. It was a CAR. It was
 6 actually a report that basically told what the
 7 balance was, who the borrowers were, what the
 8 property was, just pretty much a detailed
 9 overview. That was the first thing we did and
 10 then we'd update it every quarter.
 11 Q. What did the OCC do with that
 12 information?
 13 A. They would actually keep it in their
 14 files, I guess, for audit reasons.
 15 Q. Did the OCC have any involvement with
 16 the special assets division?
 17 A. Not the operational side.
 18 Q. What side would they have
 19 involvement?
 20 A. They would audit what we did, but
 21 that was it.
 22 Q. They would just keep tabs on it?
 23 A. Right.
 24 Q. What you decided to do with the
 25 loan --

1 transferred. And I might pick it up two to
 2 three weeks after that date, but that would be
 3 when it was transferred to our group.
 4 Q. And that would be in your special
 5 assets file?
 6 A. Right.
 7 Q. Internally at the bank?
 8 A. (Nods head.)
 9 Q. Did somebody sign off on that?
 10 A. I don't believe it was signed off,
 11 but it was just a report that we would fill
 12 out.
 13 Q. Just -- just a time line?
 14 A. Yeah.
 15 Q. It's not somebody --
 16 A. Right, right, right.
 17 Q. Jeff Benjamin or Jerry Calvert signs
 18 the --
 19 A. Right, yeah.
 20 Q. -- transfer on this day?
 21 A. Right.
 22 Q. Where were those files maintained?
 23 A. In my office at the time, and then we
 24 also had a book we had to give the OCC every
 25 quarter, I believe.

1 A. Right.
 2 Q. -- was up to the bank?
 3 A. Right.
 4 Q. Did OCC not recommend certain action
 5 to be taken?
 6 A. Not at our level. Now, I'm not
 7 saying they didn't do it to any level of the
 8 bank but our level, no. Basically, we, you
 9 know, basically just managed our assets and
 10 then, you know, did it on a daily basis. We
 11 didn't really have any interaction with them
 12 other than just providing reports to them.
 13 Q. So if it was -- the OCC was telling
 14 the bank to do something you wouldn't hear
 15 that?
 16 A. Right.
 17 Q. What you would hear is from people in
 18 Spartanburg --
 19 A. Right.
 20 Q. -- here's what we want to do?
 21 A. Right.
 22 Q. And that's what they're telling you,
 23 but you don't know whether or not the OCC
 24 is --
 25 A. I --

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1 Q. -- leaning on them to do one thing or
 2 the other?
 3 A. Yeah, I had no idea.
 4 Q. Had you ever heard that the OCC was,
 5 in fact, leaning on First National to rid
 6 itself of all real estate assets?
 7 A. Never heard they were trying to rid
 8 us of all real estate assets. Like every real
 9 estate asset? No, I never heard of that.
 10 Q. Which ones were they trying to get
 11 rid of?
 12 A. The nonperforming loans.
 13 Q. Which are 90 days past due?
 14 A. Right, and greater.
 15 Q. What do -- do you call a loan that
 16 has a maturity date come and gone a
 17 nonperforming loan or is there some other
 18 term?
 19 A. Right. It would be a nonperforming
 20 loan.
 21 Q. You'd call that a nonperforming loan?
 22 A. Right.
 23 Q. Okay. Bear with me for one second.
 24 (DFT. EXH. 7, E-mail dated 12/23/08
 25 from Scott N. Warren to Freeman Barber, was

1 A. Yeah. Actually, I did an interview
 2 with him and he didn't turn anything over, you
 3 know, just information about it, conversation
 4 about it.
 5 Q. All right. Let me make sure we're on
 6 the same page.
 7 A. Now, are these e-mails or is this
 8 like --
 9 Q. These are e-mails and they were
 10 provided by Scott Warren. I believe that's
 11 right. Either Freeman Barber or Scott Warren.
 12 If you can turn to Page 5. It kind of starts
 13 from the back and --
 14 A. Okay. Yeah, yeah.
 15 Q. -- you've got the chain that goes
 16 forward.
 17 A. Got you.
 18 Q. On Friday, December the 12th Freeman
 19 Barber wrote to Scott Warren. Do you see that
 20 at the bottom?
 21 A. Yeah, um-hum.
 22 Q. Scott, I hope all is well today.
 23 Attached is the executed contract with
 24 O.L. Thompson for the next phase --
 25 (Off-the-record conference.)

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1 marked for identification.)
 2 BY MR. EDWARDS:
 3 Q. You've been handed what's marked as
 4 Defendant's Exhibit 7. Have you ever seen
 5 that before?
 6 MR. KERR: Do you have a copy?
 7 MR. EDWARDS: Yeah, I'm trying to
 8 find one for you.
 9 MR. KERR: Thanks.
 10 THE WITNESS: I don't remember seeing
 11 a copy of this.
 12 BY MR. EDWARDS:
 13 Q. Did you ever -- when you got the loan
 14 in special assets did you ever ask Scott
 15 Warren to forward to you any correspondence?
 16 A. Yeah, I asked for correspondence and
 17 just information on the deal, but I don't
 18 remember seeing this contract. I can't say
 19 one way or the other if we got it, but I don't
 20 remember seeing it.
 21 Q. But you did ask him for
 22 correspondence?
 23 A. Yeah.
 24 Q. And did he provide you with
 25 correspondence?

1 BY MR. EDWARDS:
 2 Q. I hope all is well today. Attached
 3 is the executed contract with O.L. Thompson
 4 for the next phase of the boulevard
 5 construct -- boulevard. Construction should
 6 begin any day and we should be submitting for
 7 draws the end of January. If we don't speak
 8 have a good Christmas.
 9 Did you ever see that contract?
 10 A. Not to my knowledge.
 11 Q. Was that not in the bank file?
 12 A. I'm -- I honestly don't -- I don't
 13 think I've ever seen a contract. I didn't
 14 know the OLT.
 15 Q. Well, it was forwarded to Scott
 16 Warren, right?
 17 A. Um-hum.
 18 Q. And then Scott Warren replies on
 19 Monday, December 15th and says, Freeman, I've
 20 sent the contract up to construction loan
 21 administration.
 22 A. Um-hum.
 23 Q. Who is that?
 24 A. That probably was his -- probably
 25 that Robbie Rohrer. It was probably her or I

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1 think a guy named Steve Meyer. I think they
 2 were the construction folks.
 3 Q. And I thought Robbie Rohrer was the
 4 credit lady.
 5 A. Yeah. Well, small banks wear a lot
 6 of hats.
 7 Q. Okay. For review and to match it
 8 with our budget, continuing the sentence, I
 9 would expect to have something back shortly.
 10 Do you know if anything was ever
 11 received back from the bank in response to
 12 that?
 13 A. I don't know.
 14 Q. You've never seen anything in the
 15 file?
 16 A. I've seen it in the file. I don't
 17 remember reviewing it.
 18 Q. Okay. Do you remember discussing it
 19 with anybody?
 20 A. No.
 21 Q. All right. Didn't -- Freeman Barber
 22 never mentioned this to you?
 23 A. If he did I don't recall talking
 24 about a contract. Mainly it was, you know,
 25 wanting, you know, hey, can we get a new loan,

1 as they have started the work and I need to
 2 pull them off if we don't get approval.
 3 Thanks.
 4 Nobody ever told you about a meeting
 5 that they had about funding draw requests?
 6 A. I don't remember have -- them having
 7 a specific meeting on that. I remember the --
 8 he had everybody sign the modification, but I
 9 don't remember a separate meeting to talk
 10 about a request.
 11 Q. This is December 15th --
 12 A. '08.
 13 Q. -- of '08.
 14 A. Um-hum.
 15 Q. This is five months before --
 16 A. Yeah, before I ever had the file.
 17 Q. Does this indicate to you that there
 18 was a meeting?
 19 A. I mean, I -- I know he met with them
 20 multiple times. I don't know exactly what it
 21 was pertaining to.
 22 Q. Well, clearly Freeman Barber thought
 23 they were okay to proceed after the meeting,
 24 right?
 25 A. That's what he's stating here.

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1 extend this or do this and do that kind of
 2 thing. I don't remember a contract with a
 3 particular contractor.
 4 Q. Okay.
 5 A. I think our discussion fell mainly on
 6 just the loan is mature, how can we help
 7 repayment and my focus on getting repaid.
 8 Q. All right. At any rate, a contract
 9 was executed --
 10 A. Okay.
 11 Q. -- with O.L. Thompson --
 12 A. Right.
 13 Q. -- according to this. Do you agree
 14 with that?
 15 A. Yeah, I'm -- yeah, I agree that's
 16 what it's stating here.
 17 Q. Okay. So they were -- Liberty
 18 Village went out, had O.L. Thompson agree to
 19 do something, they're going to perform work
 20 and they're going to be paid for their work.
 21 Do you see Monday, December 15th at the top of
 22 Page 5 this is a reply from Freeman Barber to
 23 Scott Warren in response to his other e-mail?
 24 I thought we were okay to proceed after our
 25 last meeting. Please let me know when you can

1 Q. Okay. Do you have any reason to
 2 dispute that, that that was his understanding?
 3 A. I mean, I think that's his
 4 understanding, but that's from what he's
 5 saying. I don't know what actually happened
 6 there.
 7 Q. Okay. Have you read Scott Warren's
 8 deposition testimony?
 9 A. Was that part of the pleadings or is
 10 that in the pleadings?
 11 Q. No.
 12 A. I don't -- I don't -- if it wasn't
 13 part of the pleadings, no.
 14 Q. So no?
 15 A. No.
 16 Q. Go to Page 3. See where it says,
 17 Monday, 11/17/08?
 18 A. Yeah.
 19 Q. Actually, it must be part of a
 20 different e-mail chain. It says, we have
 21 attached expenses -- expense plus the
 22 retainage on the lift station; do you see
 23 that?
 24 A. Um-hum.
 25 Q. Please let Skipper know if 8:15

1 Thursday is still good.
 2 A. All right. I'm on the wrong one
 3 then. On Page 3 --
 4 Q. At the bottom.
 5 A. Oh, okay. Yeah, I got you.
 6 MR. KERR: That appears to be out of
 7 order.
 8 MR. EDWARDS: It's listed -- it's --
 9 the page numbers are in order.
 10 THE WITNESS: Okay.
 11 MR. EDWARDS: 3, 4, 5.
 12 THE WITNESS: Who's Skipper?
 13 BY MR. EDWARDS:
 14 Q. That would be Aubrey J. Woody, Jr.
 15 He goes by Skipper.
 16 A. Got you.
 17 Q. Do you know whether or not Scott
 18 Warren met with Skipper Woody and what the
 19 purpose of that meeting was?
 20 A. I really don't know. I don't
 21 recall -- if he told me I don't recall the
 22 meetings he had up to that point.
 23 Q. Did you ever have to sign a
 24 confidentiality agreement that First National
 25 Bank presented?

1 think we ever got that far in this deal.
 2 Q. What were the numbers that would have
 3 been acceptable?
 4 A. Oh, it had to be approved up the
 5 chain, and that depended on probably Jeff
 6 Benjamin's, you know, decision. And really we
 7 didn't -- it was up to them to tell us what
 8 was acceptable before we would ever make a
 9 presentation to a borrower on that part.
 10 Q. But you never discussed that with
 11 them on this loan?
 12 A. I really don't remember if it -- if I
 13 might have said, hey, you know, you could
 14 always buy the note or something of that
 15 nature. I don't remember ever having a
 16 specific conversation about a real option like
 17 that.
 18 Q. What would something like this
 19 typically go for?
 20 A. You know, I -- I don't know. I
 21 didn't have a lot of dealings with those note
 22 sales. Most of those were done in bulk with
 23 multiple loans and multiple borrowers to
 24 investment groups; and, I mean, that was all
 25 the higher-ups.

1 A. I don't know. That's a good question
 2 because I think just being a -- you know,
 3 probably a bank employee, I don't think they
 4 ever had -- I don't know if I signed anything
 5 or not when we formed the special asset group.
 6 Q. You don't remember a confidentiality
 7 agreement pertaining to the offering --
 8 private offering of notes and loans and things
 9 like that to private investors?
 10 A. I don't recall signing anything.
 11 because I -- I really wasn't involved on that
 12 side. That was more higher up if we had any
 13 of those discussions.
 14 Q. Okay. Did you ever offer to sell
 15 this note, the Liberty Village note, to the
 16 Liberty Village people for any amount of
 17 money?
 18 A. I don't recall ever getting to the
 19 point of having an amount approved to offer to
 20 them. That might have been something, hey,
 21 you can always do this, but never formally --
 22 I don't remember this one ever being --
 23 because I had actually had an approval process
 24 to go through if there was an amount that was
 25 agreed upon. I don't know of any -- I don't

1 Q. At full price?
 2 A. I have no idea what the prices they
 3 would have.
 4 Q. Okay. Do you know whether or not
 5 they are at full price or if they're at a
 6 discount rate?
 7 A. Oh, I'm sure they'd be at a
 8 discounted rate, but --
 9 Q. But you just don't know how deep?
 10 A. -- I don't know what that -- right.
 11 I don't know how much they would cut.
 12 Q. Would you be surprised to hear --
 13 well, what would you -- if you had to guess,
 14 and I'm asking you to guess --
 15 A. I mean, I think --
 16 MR. KERR: Object to the form of the
 17 question.
 18 THE WITNESS: I mean, I think every
 19 bank would have a different price, and I never
 20 was involved in those so I can't speculate.
 21 BY MR. EDWARDS:
 22 Q. Okay.
 23 MR. EDWARDS: We can go off for one
 24 second.
 25 (Off-the-record conference.)

1 BY MR. EDWARDS:

2 Q. Let's turn to Page 1 of Defendant's
3 Exhibit Number 7. See the top -- well, this
4 whole thing is an e-mail from Scott Warren to
5 Freeman Barber --

6 A. Okay.

7 Q. -- December the 23rd, 2008. First
8 sentence, Freeman, this loan will need to be
9 renewed in February.

10 Do you think that might be part of
11 the reason why Freeman Barber was under the
12 impression that they were going to get a
13 renewal?

14 MR. KERR: Object to the form of the
15 question.

16 THE WITNESS: I mean, it was
17 extended.

18 BY MR. EDWARDS:

19 Q. Well, he doesn't say extended, he
20 says renewed.

21 A. Um-hum. I --

22 Q. And it goes on and says, that being
23 the case, we must look at interest carry for
24 the additional year and our current pricing
25 structure on renewals.

1 look at, you know, interest carry for
2 additional year, kind of saying, hey, we need
3 to consider this and that and our current
4 price on structure of renewals.

5 Q. So we already saw earlier they had a
6 meeting and Freeman Barber is under the
7 impression that they were okay to proceed with
8 the contract with O.L. Thompson based on that
9 meeting.

10 A. Well --

11 Q. And now we've got an e-mail a week
12 later from Scott Warren mentioning a renewal
13 to discuss in more detail.

14 A. I mean, when it comes -- the first
15 part of your sentence about the contract, it
16 does say -- we didn't read that sentence, but
17 it says, we do need an approval prior to
18 starting the roadwork.

19 Q. Um-hum. Any reason why it wouldn't
20 be approved?

21 A. At that point, I mean, it has to go
22 through underwriting to be approved, you know,
23 prior to having that done, so, I mean --

24 Q. But we already talked about earlier
25 that the reasons for denying such a request

1 Is there a separate bank policy for
2 pricing a renewal versus a modification versus
3 an extension?

4 A. I mean, I would say that there is
5 differences on -- I mean, modifications will
6 be -- you know, even a modification fee would
7 be less than a brand-new loan. You know, it
8 would be more expensive if you did a brand-new

9 note, but --

10 Q. And a renewal would be different from
11 that?

12 A. Yeah, I mean, that would be different
13 than a new note.

14 Q. And he goes on. Scott Warren says,
15 I'll call you to discuss this in more detail.

16 Do you have any reason to doubt that
17 that --

18 A. I'm sure --

19 Q. -- phone call took place?

20 A. Yeah, I would assume that he did.

21 Q. And that the discussion in detail was
22 about a renewal?

23 A. Yeah, I would say they probably
24 discussed what it would take to -- to do that,
25 because the only thing I see there is we must

1 would have to --

2 A. Those were broad based.

3 Q. Well, do you have any knowledge or
4 any reason to say that this contract with
5 O.L. Thompson was somehow outside the scope of
6 the work contemplated or defective in some
7 way?

8 A. I don't have any reason to know it

9 was or do I have any that it wasn't because I
10 didn't have -- I didn't handle that loan at
11 that point.

12 Q. That wasn't something that you were
13 worried about?

14 A. Right.

15 Q. Assuming that it was, it should have
16 been approved, right?

17 A. It -- are you saying should the bank
18 have done it? I don't know. I don't know the
19 factors. I wasn't involved with -- I mean, it
20 could have been the client.

21 Q. What do you mean?

22 A. I mean, they -- they may have found a
23 reason not to do, you know -- maybe they
24 didn't like the contractor. Maybe they didn't
25 like the way it was -- maybe the work wasn't

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1 done or -- you know, I don't know.
 2 Q. The client?
 3 A. For whatever reason -- or not
 4 approved.
 5 Q. I'm sorry. Explain that again. I
 6 didn't --
 7 A. All right. I thought you said like
 8 basically -- you said should it have been
 9 approved and I'm saying it may or may not have
 10 been approved.
 11 Q. Right. And I'm saying assume that
 12 it's a contractor that has done work before --
 13 A. Right.
 14 Q. -- work within the scope
 15 contemplated, satisfactorily completed.
 16 A. All right. What I'm saying is if the
 17 inspector went out on the work on the contract
 18 and didn't like what they saw, they could have
 19 said, no, we're not going to approve this draw
 20 request.
 21 Q. Sure. Assume that didn't happen.
 22 A. Make a lot of --
 23 Q. Do you --
 24 A. All right.
 25 Q. What I don't -- did a con -- did an

1 figure out why it could be that that wasn't
 2 done.
 3 A. I mean, I just don't know that part
 4 of that transaction.
 5 Q. Okay. I'm trying to figure out also
 6 why it is that this was not included in your
 7 review of the file and the note and the loan.
 8 A. I don't know when -- I think from
 9 my -- is that a question or --
 10 Q. Yeah. Why didn't you look at these
 11 e-mails?
 12 A. I don't know when these e-mails were
 13 made known to me. I don't know if Scott
 14 forwarded all this stuff to me. He could have
 15 not forwarded it to me or it might have took
 16 the bank -- the bank might have did something
 17 with their internal computer system and sent
 18 those to the bank after I left or it could
 19 have came in to another member of the bank and
 20 maybe it didn't make it to the file, but, you
 21 know, we would do a thorough, you know,
 22 interview with Mr. Warren. I went down to
 23 Charleston, met with him. I didn't see these
 24 e-mails. To my knowledge -- I didn't know
 25 about the OLT contract to my knowledge.

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1 inspector go out and view the work?
 2 A. See, I have no knowledge of that
 3 whole transaction --
 4 Q. If --
 5 A. -- so we're just making assumptions.
 6 Q. Well, no, we're not. If the con --
 7 if the inspector went out there would be a
 8 record of it in the file, right?
 9 A. I would expect.
 10 Q. There is no record of an inspector
 11 going out and looking at this work.
 12 A. Okay.
 13 Q. Okay. So why would they not do that?
 14 A. I have no idea.
 15 Q. Isn't that what they're supposed to
 16 do?
 17 MR. KERR: Aaron, I object. He has
 18 now said in as many ways as he can he doesn't
 19 know about the -- the draw requests, and
 20 you've come at it from 360 degrees for which I
 21 respect you, but it's been asked and answered.
 22 He doesn't know.
 23 BY MR. EDWARDS:
 24 Q. Okay. I understand you don't know
 25 about the draw request. I'm just trying to

1 Q. If you had known about it would that
 2 have made any difference in your analysis of
 3 the -- of the note?
 4 A. My main concern would not have
 5 mattered on the contract, whether it was done
 6 or not. My main con -- my main point was the
 7 loan was mature when I got it. We need to be
 8 repaid in full as is. That was my main goal.
 9 It would -- I mean, it -- it really doesn't --
 10 that wasn't my scope.
 11 Q. That -- that wasn't a relevant
 12 factor --
 13 A. Right.
 14 Q. -- for you?
 15 A. At this point the loan was already
 16 matured. You know, we're not interested in
 17 increasing anything. At that point it was,
 18 you know, here's the balance. Here's what you
 19 owe us. We need to get repaid.
 20 Q. Okay. You see the second part down
 21 there about the interest reserve?
 22 A. Yeah.
 23 Q. Total interest reserve needed to
 24 carry it for 14 more months, \$158,000?
 25 A. Um-hum.

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1 Q. Current interest reserve balance,
 2 163,000?
 3 A. Um-hum.
 4 Q. So there was enough money in the
 5 interest reserve to carry this loan just on
 6 that alone for another 14 months; is that what
 7 that means?
 8 A. What's the less needed funds, the --
 9 Q. \$158,312 --
 10 A. From what he's got, okay.
 11 Q. -- in interest reserve needed to
 12 carry it for another 14 months.
 13 A. Okay. Yeah, probably as of December
 14 '08 that probably was the case.
 15 Q. Okay. So he's writing him talking
 16 about a renewal in February. He's going to
 17 call and talk in more detail. He sets out the
 18 numbers for the interest reserve and how it
 19 can be carried for another 14 months. All
 20 this seems like a deal that was going to be
 21 renewed for 14 months it looks like, doesn't
 22 it?
 23 MR. KERR: Object to the form.
 24 THE WITNESS: I mean, I can't make
 25 that -- that call.

1 which purchased the assets of First National
 2 Bank of the South from the FDIC, and I just
 3 have a couple of questions.
 4 Earlier you stated that this loan at
 5 issue was assigned to you for handling in
 6 2008, and I'm just going to show you something
 7 quickly to see whether it refreshes your
 8 recollection.
 9 MR. KERR: For the record I'm just
 10 showing him an exhibit from Scott Warren's
 11 deposition, Exhibit Number 11.
 12 THE WITNESS: Okay.
 13 BY MR. KERR:
 14 Q. This is dated May 21st, 2009. Did I
 15 read that right?
 16 A. Correct.
 17 Q. All right. And it suggests that the
 18 loan has been turned over to you in special
 19 assets in this e-mail of May 21, 2009; is that
 20 what that says?
 21 A. Yeah, I got my dates wrong.
 22 Q. So does -- that refreshes your
 23 recollection --
 24 A. Yeah.
 25 Q. -- as to when you started handling

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1 BY MR. EDWARDS:
 2 Q. And nobody ever told you about any of
 3 this?
 4 A. I didn't get into this kind of
 5 detail.
 6 Q. Yeah. So no, nobody ever told you
 7 about any of these conversations or
 8 discussions?
 9 A. Correct. No.
 10 Q. All right. I may be finished with
 11 you.
 12 MR. EDWARDS: Rob, do you have any
 13 questions.
 14 MR. KERR: I -- just a couple.
 15 MR. EDWARDS: Do you want to go ahead
 16 and do that while I just thumb through a
 17 couple things or do you want to wait until I'm
 18 done? I don't care, either way.
 19 MR. KERR: That, you know -- why
 20 don't I just do it for the sake of time.
 21 EXAMINATION
 22 BY MR. KERR:
 23 Q. Mr. Sells, I'm Robert Kerr. I
 24 represent the -- the -- Capital Bank, formerly
 25 known as North American Financial Holdings,

1 this loan?
 2 A. Correct.
 3 Q. Okay.
 4 MR. EDWARDS: Rob, can I see that
 5 transcript, please? Thank you.
 6 BY MR. KERR:
 7 Q. Did --
 8 MR. KERR: I need to show him one
 9 thing in here.
 10 BY MR. KERR:
 11 Q. This is also a reference to another
 12 exhibit in another deposition. This is
 13 Exhibit 8 to Mr. Warren's deposition. In an
 14 e-mail dated March 24, 2009, Mr. Barber writes
 15 to Mr. Warren about a longer agreement; do you
 16 see that there?
 17 A. Yes.
 18 Q. Doesn't Mr. Barber say that he
 19 realizes there's no guarantee a longer
 20 agreement may be offered to the borrower?
 21 A. Correct.
 22 Q. All right. Now, when you spoke to
 23 Mr. Barber after you became involved in the
 24 loan, did you ever discuss an alternative to
 25 full payment that would be acceptable to the

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1 bank?
 2 A. I don't recall.
 3 Q. Do you recall discussing the
 4 possibility of a fully-amortizing renewal of
 5 the existing loan in which the borrower would
 6 pay both principal and interest over some
 7 period?
 8 A. I really don't recall. I know --
 9 Q. Do you recall Mr. Barber requesting
 10 an interest-only loan for another several
 11 years as a way to deal with maturity?
 12 A. I don't recall. I just --
 13 Q. In Exhibit 5 that counsel showed to
 14 you previously, which was the credit
 15 memorandum dated 7/17/2007, on the last page
 16 there's a -- there's a section called exit
 17 strategy. I believe you testified about
 18 liquidation of collateral as being
 19 foreclosure. Did you --
 20 A. Um-hum.
 21 Q. Was that your testimony?
 22 A. Right.
 23 Q. Is liquidation of the collateral also
 24 an exit strategy by the borrower liquidating
 25 collateral in an orderly fashion?

1 follow-ups. Can I see that transcript?
 2 THE WITNESS: This part?
 3 MR. EDWARDS: Yes.
 4 EXAMINATION
 5 BY MR. EDWARDS:
 6 Q. What gives the bank the right to
 7 decline a draw request?
 8 A. If it doesn't make -- meet their
 9 specifications or if it -- I mean, it could be
 10 work not completed. It could be -- I mean,
 11 like, for example, if -- I mean, a lot of
 12 various things could happen. Payments could
 13 be due and not there. Financial could be
 14 waiting on them and they don't have them. I
 15 mean, they can withhold a draw request for --
 16 to their specification.
 17 Q. Where does it say that in the note
 18 for the loan commitment or the modification?
 19 A. I think on the note it says something
 20 about to be contemplated, but -- where's the
 21 actual note? Conditions. The conditions for
 22 future advances are upon completion of work
 23 and inspection of mortgaged property by an
 24 approved appraiser for First National Bank of
 25 the South -- that's one part -- I will

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1 A. Yes.
 2 Q. All right. Now, with respect to the
 3 last exhibit that counsel reviewed with you,
 4 Exhibit 7, if you'll look at Page 4 of this
 5 exhibit, does Mr. Warren explain that there
 6 might have been a budget overrun with the
 7 O.L. Thompson contract here on this December
 8 15 e-mail?
 9 A. It looks like there's a shortfall or
 10 over --
 11 Q. So if the budget on a construction
 12 line of credit calls for \$150,000 for road
 13 construction and the borrower wants to spend
 14 more than the 150,000, what are -- what are
 15 the potential responses from the bank?
 16 A. They would -- the bank would want
 17 them to chip in the extra 10 out of their own
 18 funds.
 19 Q. Can the bank also simply decline to
 20 make the advance?
 21 A. They can.
 22 Q. All right.
 23 MR. KERR: That's what I have. Thank
 24 you.
 25 MR. EDWARDS: I have just a couple of

1 receive -- above the line and multiple
 2 advances it says, I will receive the amount of
 3 1 million 395 and future principal advances --
 4 and future principal advances are
 5 contemplated. And I think it might have said
 6 something on the back here.
 7 Q. So that says, upon inspection?
 8 A. Yeah. I mean, that's -- that's one
 9 reason that it could be. If this is a
 10 multiple -- on the back page, if this is a
 11 multiple advance loan you and I will expect
 12 that you will make more than one advance of
 13 principal. If this is closed end credit,
 14 repaying -- well, that wasn't what I thought
 15 it said there. Well, let's see. Where's the
 16 commitment letter/loan agreement? It may say
 17 something there. Construction
 18 disbursements -- this is on Page --
 19 (Off-the-record conference.)
 20 THE WITNESS: -- Page 2 of the
 21 commitment letter/loan agreement --
 22 MR. KERR: Exhibit 2.
 23 THE WITNESS: -- Exhibit 2,
 24 construction disbursements will be made upon
 25 the application and certification for payment,

1 AIA Forms G702 and G703, and an inspection of
 2 the mortgaged property by an authorized party
 3 from First National Bank of the South.
 4 Receipt of signed construction contracts and
 5 documented verification of all required
 6 approvals and necessary permits will be
 7 required prior to any construction
 8 disbursements.
 9 BY MR. EDWARDS:
 10 Q. Okay. So what part of that says you
 11 went overbudget and we're not going to do it?
 12 A. I mean, this says the word approvals,
 13 so if it's not approved, if it's overbudget or
 14 if there's anything that happens then I guess
 15 they could withhold the draw.
 16 Q. It doesn't say that, though, does it?
 17 A. It says, receipt of signed
 18 construction contracts and documentation (sic)
 19 verification of all required approvals.
 20 Q. What did that mean?
 21 A. Basically, the draw request had to be
 22 approved before the bank funds it, and that
 23 can be for multiple reasons.
 24 Q. What would a required approval be?
 25 A. Back to, you know, construction being

1 budget then they wouldn't approve a draw
 2 request regardless.
 3 Q. So the bank can just approve it or
 4 not approve it whenever they want?
 5 A. They got to have all the information
 6 to know where that money's going.
 7 Q. Why wouldn't they just pay the amount
 8 that was budgeted for that portion of the
 9 construction?
 10 A. Well, they would want to make sure in
 11 that budget that everything was incrementally
 12 outlined so that if we pay this draw, then
 13 we're going to have enough to finish the
 14 project. And so without having a budget -- if
 15 they didn't have a budget to go off of they
 16 wouldn't know how much of that budget they're
 17 eating up with that draw request in order to
 18 get everything done that was supposed to be
 19 done in the construction loan.
 20 Q. Well, they know that they had spent
 21 2.2 million dollars and they were asking for
 22 160, didn't they?
 23 A. Yeah, but like --
 24 MR. KERR: I object to the form of
 25 the question. They hadn't spent 2.2.

1 done, completed as to the bank's discretion.
 2 Q. But it doesn't say anything about
 3 budget. In fact, they obligated themselves to
 4 fund 2-1/2 million dollars assuming a
 5 completed contract was provided, so on and so
 6 forth, whatever it says there.
 7 A. Right. And I know it says here
 8 that --
 9 Q. Are there other required approvals
 10 that are -- exist but are not stated?
 11 A. I mean, the main thing, every draw
 12 has to be approved.
 13 Q. Well, I understand that. What is a
 14 required approval?
 15 A. Basically, there's a draw request
 16 made. It goes to the bank for approval. Once
 17 it's approved they would, you know, approve
 18 it, but there could be multiple reasons for
 19 why it's not approved.
 20 Q. Okay.
 21 A. I mean, like, for example, you could
 22 have a draw request and pointing back to
 23 the -- it says, no -- borrower does not supply
 24 the bank with a detailed use of all loan
 25 proceeds, and if he didn't have a detailed

1 THE WITNESS: They spent --
 2 BY MR. EDWARDS:
 3 Q. But there was money left on the line
 4 of credit --
 5 A. There was money left --
 6 Q. -- at that point --
 7 A. Yeah, money was left on --
 8 Q. -- that could have funded the entire
 9 project.
 10 A. Yeah, I mean, that's --
 11 Q. Yes.
 12 A. -- that's stated.
 13 Q. And Scott Warren said, well, that's
 14 more than we budgeted for that --
 15 A. Right.
 16 Q. -- right?
 17 A. Right.
 18 Q. But it's only half. It's twice the
 19 amount.
 20 A. Right.
 21 Q. So we've got a budget for 150. We've
 22 spent 70 --
 23 A. Right.
 24 Q. -- or 80, whatever it said.
 25 A. Right.

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1 Q. Why wouldn't they just fund the rest
 2 of it? We'll give you the 150 like we thought
 3 we were going to do, and if you want to spend
 4 more, go ahead and spend more.
 5 A. Yeah. And, again, that's the part
 6 that I don't know. I don't know what was said
 7 or discussed or why it wasn't approved or if
 8 it -- I don't even know those details.
 9 Q. Do you know why the bank doubled the
 10 interest rate?
 11 A. Maybe I looked at it wrong, but I
 12 thought the rate went from like 8-1/2 to
 13 6-1/2.
 14 Q. Oh, it went down?
 15 A. Let's see. Maybe I looked at it
 16 wrong. No. That was up at the top. Well, I
 17 agree to pay the interest on the outstanding
 18 principal balance from 8/15/07 at the rate of
 19 8.5 percent. Was prime that high in --
 20 (Off-the-record conference.)
 21 THE WITNESS: Oh. I wasn't sure if
 22 the prime rate was that high, but it was at a
 23 variable rate of prime plus .25, and on the
 24 modification it says 6.5.
 25 BY MR. EDWARDS:

1 A. Oh, yeah, I agree. I agree that's
 2 what it was.
 3 Q. Take a minute and read that for me,
 4 please.
 5 A. Okay. I read it.
 6 Q. All right. It seems to be
 7 referencing a phone call from Freeman
 8 Barber --
 9 A. Right.
 10 Q. -- right?
 11 And he's responding to that phone
 12 call, gives him the name and numbers of
 13 management folks up in Spartanburg, right?
 14 A. Right. That's right.
 15 Q. That's what we were talking about
 16 earlier, a requested meeting --
 17 A. Yeah.
 18 Q. -- that you don't know if it ever
 19 took place?
 20 A. Correct.
 21 Q. You don't know if it took place?
 22 A. I don't know.
 23 Q. And then the next paragraph goes on
 24 and says about special assets division --
 25 A. Right.

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1 Q. That's a floor rate of 6.5.
 2 A. Okay. Let's see. Where is the --
 3 do you see a rate on there?
 4 Q. First National Bank of South prime
 5 plus 1 with a floor of 6.5.
 6 A. I don't know what the prime -- I
 7 don't know what the prime rate of First
 8 National Bank of the South was, tell you the
 9 truth. I don't know what prime -- I mean,
 10 the -- prime might have been like -- I mean,
 11 it could have been like 3.25 just like prime,
 12 but then the floor -- it was 6.5, but the rate
 13 would have been 6.5 because if it was prime
 14 plus 1 at 4.25 it would have just been
 15 whatever the floor was at.
 16 Q. I'm showing you Exhibit Number 9 to
 17 Scott Warren's deposition. Have you ever seen
 18 this e-mail?
 19 A. I don't remember.
 20 Q. It's an e-mail from Scott Warren to
 21 Freeman Barber dated May the 5th, 2009.
 22 A. I don't recall.
 23 Q. You don't recall ever seeing it?
 24 A. Right.
 25 Q. Do you agree that that's what it is?

1 Q. -- it's likely to be heading that
 2 way --
 3 A. Um-hum.
 4 Q. -- and it's going to depend on a
 5 couple of things, guarantor's ability and the
 6 willingness to amortize. Do you know if they
 7 were able to do it, to amortize at that time?
 8 A. I don't know because that would have
 9 been on the -- on Scott Warren's side of the
 10 bank, and so they may have been talking about
 11 doing some things to keep it on that side to
 12 work out a deal, and obviously that didn't
 13 happen so it came to us.
 14 Q. If they were able and willing to do
 15 it would it have been sent to you?
 16 A. No. It would have been a term loan
 17 on that side of the bank.
 18 Q. So you think that if that was the
 19 sticking point that the bank was prepared to
 20 renew it assuming there was an amortization?
 21 A. Assume the amortization -- repeat
 22 that question.
 23 Q. Well, was -- at this time, May the
 24 5th, 2007, which is before the maturity date
 25 of the modification -- commercial debt

1 modification agreement --
 2 A. Um-hum.
 3 Q. -- is it your understanding that the
 4 bank was prepared to either renew or do a new
 5 loan or do something other than send it to
 6 special assets and foreclose on it and the
 7 only requirement would be amortization?
 8 A. I mean, that might have been
 9 discussed as a possibility, but for whatever
 10 reason -- I don't know if it was discussed on
 11 their side, but that might have been an option
 12 that they were saying we could term it out,
 13 but that didn't happen so it came to us.
 14 Q. Well, was the bank willing to do that
 15 or not, do you know?
 16 A. I would say they were not willing to
 17 turn around and amortize it so they sent it to
 18 special assets.
 19 Q. The bank wasn't?
 20 A. Right. Or the -- the -- the lender
 21 side of the bank.
 22 Q. What's the difference between the
 23 lender side of the bank and the bank?
 24 A. Basically, like everything besides
 25 special assets would be on the loan side, the

1 liens; do you see that?
 2 A. Yeah, I see that.
 3 Q. What does that mean?
 4 A. Basically --
 5 Q. And it goes on in the next paragraph,
 6 it says, I know your call is regarding --
 7 A. Right.
 8 Q. -- the outstanding invoice --
 9 A. I may --
 10 Q. -- (a potential lien).
 11 A. I guess potential lien, he's
 12 basically -- this is from -- he's probably
 13 referring -- maybe Freeman told him that maybe
 14 there was a lien from that -- that contractor
 15 is what I assume he's talking about.
 16 Q. Yeah. Potential lien?
 17 A. Yeah, potential.
 18 Q. And if they didn't avoid that lien
 19 the bank wasn't going to deal with them is the
 20 way I read that?
 21 A. If they didn't avoid the lien --
 22 Q. Yeah. Sending it to special assets,
 23 to you, send it in that direction --
 24 A. Um-hum.
 25 Q. -- the decision to move it to special

1 line side of the bank --
 2 Q. Um-hum.
 3 A. -- Scott Warren, Jeff Benjamin, those
 4 guys making new loans, dealing with the --
 5 the -- the current loans, not the
 6 nonperforming assets.
 7 Q. Right.
 8 A. Then once it hit the nonperforming
 9 asset, had a default and it got switched over
 10 to the special assets side, we're the special
 11 assets side of the bank. It's almost like
 12 they worked as two kind of independent groups
 13 or divisions. It's like we didn't work on
 14 their loans unless they transfer them to us.
 15 Q. Right.
 16 A. And then our loans, you know, didn't
 17 get transferred back to them. We -- we worked
 18 on just the NPA -- or the NPAs and also the --
 19 the loans that were in default.
 20 Q. Okay. And they didn't send it to you
 21 unless it was in default?
 22 A. Right.
 23 Q. I understand. And then it says --
 24 goes on that -- the amortization and -- it's
 25 hard for me to read upsidedown -- and to avoid

1 assets will depend on what, the guarantor's
 2 ability and willingness to amortize and to
 3 avoid liens?
 4 A. Um-hum.
 5 Q. Now, there was a draw out -- draw
 6 request out to O.L. Thompson. We talked about
 7 that.
 8 A. Right.
 9 Q. That's --
 10 A. Yeah, I mean, that's what he's
 11 referring to.
 12 Q. That's what he's referring -- that's
 13 what Scott Warren's referring to, the
 14 potential lien being the invoice out to
 15 O.L. Thompson?
 16 A. That's on the same date as the loan
 17 matured.
 18 Q. That's two day --
 19 A. Or two days prior to, yeah.
 20 Q. Two days prior?
 21 A. Yeah.
 22 Q. Do you know -- did you know that
 23 the -- they satisfied that invoice, they paid
 24 it themselves?
 25 A. No, I didn't know that.

Deposition of Mitch Sells

1 Q. Okay. They did, so they've avoided a
 2 potential lien.
 3 A. Okay.
 4 MR. KERR: Object to the form of the
 5 question. There's no question.
 6 BY MR. EDWARDS:
 7 Q. So the only thing left then according
 8 to this before it was sent to you was their
 9 ability or willingness to amortize?
 10 MR. KERR: Object to the form.
 11 THE WITNESS: I disagree with that.
 12 BY MR. EDWARDS:
 13 Q. Well, that's what Scott Warren said.
 14 A. Yeah, that's what maybe -- the reason
 15 it was sent to me was due to the maturity date
 16 being on 5/7/2009.
 17 Q. Yeah, I understand why it went to
 18 you, but Scott Warren is telling the borrowers
 19 two days before the maturity date that it's --
 20 whether or not it's sent to you is going to
 21 depend on the following things, and then one
 22 is avoiding the lien, which they did; the
 23 other is their ability and willingness to
 24 amortize, right?
 25 A. I read that.

1 SIGNATURE PAGE
 2
 3 IN RE: FIRST NATIONAL BANK OF SPARTANBURG,
 4 DIV. OF FIRST NATIONAL BANK OF THE SOUTH vs.
 5 LIBERTY VILLAGE, LLC
 6 DEPOSITION OF: MITCHELL C. SELLS
 7
 8 I, MITCHELL C. SELLS, do hereby certify
 9 that I have read the foregoing deposition and
 10 that the foregoing transcript is a true and
 11 correct record of my testimony.
 12
 13 _____
 14 Mitchell C. Sells
 15
 16 Subscribed and sworn to before me this
 17 _____ day of _____, 2011.
 18
 19 _____
 20 Notary Public
 21
 22 My commission expires: _____
 23
 24
 25

1 Q. All right. So there would be some
 2 internal bank documentation about amortization
 3 and a request and application, something to
 4 that effect, if that was something that was
 5 being undertaken?
 6 A. Yeah, if there was a request made it
 7 should be documented, but I don't have any
 8 knowledge that it ever happened.
 9 MR. EDWARDS: All right. I don't
 10 have any more questions.
 11 MR. KERR: I don't either. Thank
 12 you.
 13 (The deposition was concluded at 3:39 p.m.)
 14 (Signature reserved)
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 AMENDMENT PAGE
 2 PLEASE DO NOT WRITE WITHIN THE
 3 TRANSCRIPT ITSELF.
 4 LIST ANY CORRECTIONS BY PAGE AND LINE
 5 NUMBER ON THIS SHEET. IF ADDITIONAL PAGES ARE
 6 NECESSARY, PLEASE FURNISH SAME AND ATTACH THEM
 7 TO THIS AMENDMENT PAGE.
 8 YOU ARE ALLOWED 30 DAYS WITHIN WHICH TO
 9 COMPLETE THE SIGNATURE PAGE AND AMENDMENT
 10 PAGE. AFTER COMPLETING THESE PAGES, PLEASE
 11 RETURN THEM TO:
 12 CAIN & CRANE COURT REPORTERS, POST OFFICE BOX
 13 23833, CHARLOTTE, NC 28227.
 14
 15 IN RE: FIRST NATIONAL BANK OF SPARTANBURG,
 16 DIV. OF FIRST NATIONAL BANK OF THE SOUTH
 17 DEPOSITION OF: MITCHELL C. SELLS
 18
 19 I, MITCHELL C. SELLS, certify that I have
 20 read my deposition, which was taken on
 21 11/7/11, and request that the following
 22 changes, if any, be made:
 23
 24 Page _____ Line _____
 25 Correction: _____

 Page _____ Line _____
 Correction: _____

 Page _____ Line _____
 Correction: _____

 Page _____ Line _____
 Correction: _____

 Page _____ Line _____
 Correction: _____

 Mitchell C. Sells / / 11

1 CERTIFICATE OF TRANSCRIPT

2

3 STATE OF NORTH CAROLINA)

4 COUNTY OF CABARRUS)

5

6 I, Cindy A. Hayden, Court Reporter
7 and Notary Public, in and for the aforesaid
8 county and state, do hereby certify that the
9 foregoing pages are an accurate transcript of
10 the deposition of MITCHELL C. SELLS, which was
11 taken on behalf of the defendant by me in
12 machine shorthand and transcribed by
13 computer-aided transcription.

14 I certify that the deponent and
15 parties did not waive the signing of the
16 deposition by the deponent.

17 I further certify that I am not
18 financially interested in the outcome of this
19 action, a relative, employee, attorney or
20 counsel of any of the parties, nor am I a
21 relative or employee of such attorney or
22 counsel.

23

24 Cindy A. Hayden, RMR-CRR

25 Notary Public No. 20020910053

LIBERTY VILLAGE, LLC 565 MARINA DRIVE BOX 610 CHARLINGTON, SC 29432	First National Bank of Spartanburg Div. of First National Bank of the South P.O. Box 3500 Spartanburg, SC 29304	Loan Number <u>401268309</u> Date <u>08/15/2007</u> Maturity Date <u>02/14/2009</u> Loan Amount <u>2,550,000.00</u> Renewal Of _____
BORROWER'S NAME AND ADDRESS *Includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS *You* means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Million Five Hundred Fifty Thousand Dollars Dollars \$ 2,550,000.00

Single Advance: I will receive all of this principal sum on _____ No additional advances are contemplated under this note.

Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 08/15/2007 I will receive the amount of \$ 2,395,000.00 and future principal advances are contemplated.

Conditions: The conditions for future advances are UPON COMPLETION OF WORK AND INSPECTION OF MORTGAGED PROPERTY BY AN APPROVED APPRAISER FOR FIRST NATIONAL BANK OF THE SOUTH.

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

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

INTEREST: I agree to pay interest on the outstanding principal balance from 08/15/2007 at the rate of 8.500 % per year until FIRST CHANGE DATE

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

Index Rate: The future rate will be .25% above (the following index rate: Prime Rate as published in the Wall Street Journal)

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

Frequency and Timing: The rate on this note may change as often as every Day beginning 8/15/2007

A change in the interest rate will take effect on the same day

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

The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

The amount of each scheduled payment will change.

The amount of the final payment will change.

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

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

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

at a rate equal to _____

CHARGE: If a payment is not made within 15 days after it is due, I agree to pay a late charge of 5.000% of the payment amount and a maximum of \$250.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: PREPAID 9163.00 PROCESSING FEE & 26,375.00 (.25%) ORIGINATOR FEE

PAYMENTS: I agree to pay this note as follows:

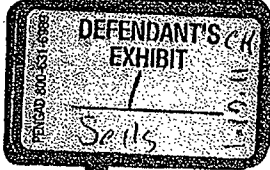
Interest: I agree to pay accrued interest in Monthly payments of accrued interest on the amount of credit outstanding beginning on 08/14/2007.

Principal: I agree to pay the principal on 02/14/2009.

Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____ A payment of \$ _____ will be due _____

unpaid balance of principal and interest will be due _____ thereafter. The final payment of the entire

ADDITIONAL TERMS:



SECURITY: This note is separately secured by (describe separate instrument by type and date): MORTGAGE DATED AUGUST 15, 2007

This section is for your internal use. Failure to file a separate security document does not mean the lender will not secure this note.

Signature for Lender

 W. Freeman Barger Jr.
 Lending Officer

PURPOSE: The purpose of this loan is REFINANCE

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

LIBERTY VILLAGE, LLC

 LENDER

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

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

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

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

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

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

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

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

LE ADVANCE LOANS: If this is a single advance loan, you and I agree that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

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

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

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

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

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

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

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

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

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

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

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for, not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.

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

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

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

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

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

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

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

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my best known address. My current address is on page 1. I agree to inform you by writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

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

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	



Dear Gentlemen,

On behalf of First National Bank of the South, I am pleased to offer you a loan commitment based upon the following terms and conditions and your acceptance thereof:

Name of Borrower: Liberty Village, LLC

Amount of Loan: \$2,550,000 multiple advance non-revolving line of credit to include \$320,000 that will be held as an interest reserve and advanced as needed

Purpose of Loan: To refinance existing debt with Regions Bank providing additional funds for road construction, the installation of a pump station, interest reserve, and cash-out.

Interest Rate: The interest rate on this loan will be The Wall Street Journal's prime rate of interest, plus 0.25%

Fees: An origination fee equal to one quarter of one percent (.25%) of the loan amount and a processing fee of \$163.00 will be due at closing.

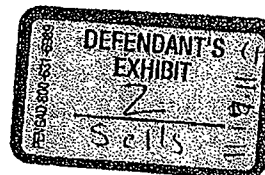
Description of Collateral: This loan will be secured by a first mortgage security interest in the real property and improvements identified by TMS# 235-00-00-049 and described as 151 acres of Brickhope Plantation: consisting of a 32 acre commercial tract, 62 acre single family tract, and a 57 acre multifamily tract.

Terms of Repayment: Payments will be due in 17 monthly payments of interest and one final payment of all remaining principal and accrued interest.

Loan Documents: First National Bank of the South will require the following loan documents on forms approved by the bank: (1) Promissory Note, (2) A first mortgage covering the security property as previously defined, (3) All other documents as may be required by First National Bank when and as requested, must be made available.

Prepayment: This loan may be prepaid at any time without penalty.

140 East Bay Street • Charleston, SC 29401
Phone (843) 805-5955 • Fax (843) 805-5009
www.firstnational-online.com



ROA000349

Limited Liability Company Documents: A Limited Liability Resolution authorizing this loan and designating the authorized signers will be required at closing. Articles of Organization and Operating Agreement of LLC will be required at closing.

Environmental Report: An environmental report must be obtained to determine the presence of any hazardous substances on or adjacent to the mortgaged property.

Appraisal: A detailed appraisal of the property serving as collateral for this loan will be required. This appraisal is to be furnished by an appraiser acceptable to First National Bank of the South. All costs of such appraisal are to be borne by the borrower.

Title Insurance: A Title Insurance binder will be provided prior to closing.

Property Taxes: All property taxes that are considered due and payable must be paid prior to closing.

Transfer of Property: The mortgage will contain a provision that on sale or transfer of the mortgaged property, without First National Bank of the South's prior written approval, the entire balance of the loan will immediately become due and payable.

Release of Collateral: \$1,600,000 will be due upon the sale of the multifamily parcel and 90% of net proceeds will be due on any additional sales. The size and values of the remaining parcels will be verified by a survey and appraisal prior to release and are subject to bank approval.

Plans and Specifications: First National Bank of the South will require one set of detailed plans and specifications on the improvements to be performed on the subject property.

Assignment of Contracts: First National Bank of the South will take an assignment of the contracts for road construction and the installation of the pump station.

Disbursements: Construction disbursements will be based upon the Application and Certificate for payment, ALA documents G702 and G703, and an inspection of the mortgaged property by an authorized party from First National Bank of the South. Receipt of signed construction contracts and documented verification of all required approvals and necessary permits will be required prior to any construction disbursements.

Guarantors: Joint and several guarantees will be required from William Freeman Barber, Jr. and Judson Stringfellow.

Deposit Account: As a condition of this loan, Borrower must maintain all normal deposit accounts with First National Bank of the South.

Financial Information: We will require you to furnish us with complete financial statements, at least on a fiscal year end basis, and tax return annually as well as a complete personal financial statement and tax return, annually, from any and all guarantors. These statements, whether personal or company, must be signed, including title, unless they are audited on an unqualified basis.

Legal Fees: All legal and recording expenses incurred in connection with this loan shall be the responsibility of the Borrower.

Commitment Letter/Loan Agreement: In addition to the terms and conditions contained in any specific loan agreement or other loan documents, the terms and conditions of this loan, as described in the foregoing commitment letter, will survive the closing of the loan and will remain effective as long as any portion of this obligation remains outstanding.

Other Documents: Borrower agrees to furnish such other instruments, documents, opinion and/or assurances as First National Bank of the South may require.

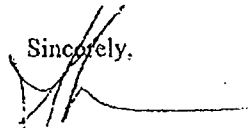
Termination of Commitment: The issuance of this commitment is based upon the accuracy of your representations, statements, loan application and all additional information, representations, exhibits and other matters submitted to First National Bank of the South for its consideration. First National Bank of the South may, at its sole discretion, declare their commitment to be cancelled if there has been any misrepresentation, misstatement, omission or material error in anything submitted to First National Bank of the South, or if prior to the initial disbursement, there shall have been any adverse change in the state of facts submitted to First National Bank of the South or the Borrower, or any guarantor has become insolvent, bankrupt or incapacitated.

Criminal Warranty: Borrower covenants by execution of the commitment letter that neither the Borrower, any Guarantors, or any other principals in Borrower or Guarantors have been convicted of any federal, state, or local crime, nor have any of such parties been the subject of any civil judgment or regulatory order or finding involving fraud, securities violations or other matters relating to financial responsibility or business integrity. None of such parties has ever been the subject of any bankruptcy, insolvency, receivership, assignment for benefit of creditors or similar proceeding. The lender is authorized to take appropriate action to verify these matters.

Expiration of Commitment: To cause this commitment to remain in effect, this loan must be closed and the completed loan package received by First National Bank of the South prior to thirty (30) days from the date hereof August 14, 2007.

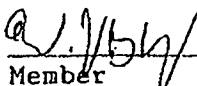
Please indicate your acceptance of the commitment by signing, dating and returning the original, keeping a copy for your records.

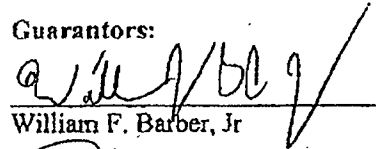
Sincerely,

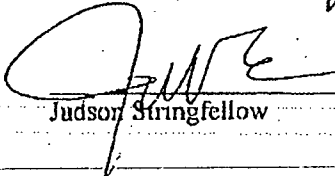
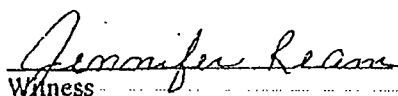

Scott N. Warren
Vice President

The terms and conditions of this commitment letter, as stated above, are hereby accepted.

Liberty Village, LLC

By:  _____
its: Member 8/15/07 _____
Date Witness

Guarantors:
 _____
William F. Barber, Jr 8/15/07 _____
Date Witness

 _____
Judson Stringfellow 8/15/07 
Date Witness

BORROWER NAME AND ADDRESS	LENDER NAME AND ADDRESS	LOAN DESCRIPTION
LIBERTY VILLAGE, LLC 669 MARINA DRIVE SUITE E10 CHARLESTON, SC 29492	First National Bank of the South P.O. Box 1508 Spartanburg, SC 29305	Number <u>0000003300</u> Amount \$ <u>2,732,435.48</u> Date <u>03/23/2009</u>

Refer to the attached Signature Addendum, incorporated herein, for additional borrowers and their signatures

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES. The date of this Debt Modification Agreement (Modification) is 03/23/2009.
 DEFINITIONS. As used in this Modification, the terms have the following meanings:
 Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligation.
 Prior Obligation. "Prior Obligation" refers to my previous agreement governing my promise to pay you money, including any loan agreement, note, or document that evidences my indebtedness, and any extensions, renewals, modifications, and substitutions.

BACKGROUND. You and I have entered into a Prior Obligation which is evidenced by PROFESSIONAL FEE & MORTGAGE
 dated 08/15/2007 in the original principal amount of 1 with a maximum possible principal amount of \$ 2,550,000.00
 payable on demand; payable on demand but if no demand is made, by the maturity date of 02/24/2009 with a maturity date of 02/24/2009

As of the date of this Modification, the amount remaining due is / current amount outstanding on the Prior Obligation is \$ 2,732,435.48 principal (Principal) plus \$ 24,748.96 accrued interest, for a total of \$ 2,757,184.44

MODIFICATION. For value received, you and I agree to modify the Prior Obligation as follows.

INTEREST RATE MODIFICATION.

INTEREST RATE.

EFFECTIVE WITH THIS MODIFICATION THE INTEREST RATE WILL BE FIRST NATIONAL BANK OF THE SOUTH PRIME PLUS ONE PERCENT WITH A FLOOR RATE OF 6.50%.

Maximum Interest Amount. Any amount assessed or collected as interest will be limited to the maximum lawful amount of interest allowed by state or federal law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid principal balance. Any remainder will be retained in escrow.

Post-Maturity/Default Interest Rate.

Compounding. This Modification provides for the compounding of interest.

PAYMENT MODIFICATION.

I AGREE TO PAY ONE FINAL PAYMENT OF ALL UNPAID PRINCIPAL AND INTEREST AT MATURITY, 05/07/2009.

DRAW PERIOD MODIFICATION.

FEES AND CHARGES MODIFICATION.

PREPAID \$250.00 PROCESSING FEE.

ADDITIONAL TERMS:

FIRST NATIONAL BANK OF THE SOUTH HAS AGREED TO EXTEND THE MATURITY 45 DAYS UNTIL 05/07/2009 AND TO DECREASE THE LINE OF CREDIT TO \$2,232,435.48. ALL OTHER TERMS, CONDITIONS AND COLLATERAL WILL REMAIN THE SAME AND IN FULL FORCE AND EFFECT.

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Prior Obligation remain in effect.
 INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Modification.

VT only NOTICE TO BORROWER: THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER/DEBTOR) AND US (LENDER/SECURED PARTY) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.

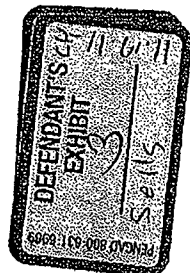
SIGNATURES. By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.

BORROWER:
 LIBERTY VILLAGE, LLC
 Ewmy Nason
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature ADDRESS: 669 Marina Drive Suite E10
 CHARLESTON, SC 29492
 Signature: [Signature] Date: 03/23/2009 (Seal)
 LENDER:
 MEMBER

Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: 03/23/2009 (Seal)

First National Bank of the South
 Ewmy Nason
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: 03/23/2009 (Seal)
 COMMERCIAL DEBT MODIFICATION AGREEMENT.
 EX-100 1998, 2001 Uniform Electronic Transactions Act. St. Charles, MO First National Bank 2/1/2004

Signature: _____ Date: _____ (Seal)
 NOT TO BE USED FOR LOANS SUBJECT TO COMMERCE CREDITING LAWS
 Page 4 of 7

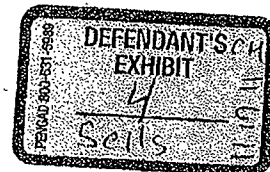


LIBERTY VILLAGE, LLC
151 ACRES BRICKHOPE PLANTATION

401269300

000001

ROA000354



MODIFICATION CHECKLIST

Borrower: Liberty Village Officer: Warren Reviewed by: JP

Loan #: 401269300 Amount: \$2,232,435 Note Date: 3/23/09 Review date: 4/15/09

PURPOSE OF

MODIFICATION: Extend maturity from 2/14/09 to 5/7/09.

- Missing ORIGINAL Modification
- Loan Approval Signature by CLO or CEO; Application signed by LO
- Correct LOB \$ 3,141,326 Director/Reg O
- Authorized signature(s) for borrower. Borrowing resolution date _____

- Note Terms Correct in BancPac POA Anthony & Joseph Bartone
- | | |
|-----------------------------------------------------------------------|------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Interest Rate/Floor/Ceiling | <input checked="" type="checkbox"/> Current Rate/Rate Index/Prime Difference |
| <input checked="" type="checkbox"/> Payment Terms (P&I), Pmt Schedule | <input checked="" type="checkbox"/> Maturity Date |
| <input checked="" type="checkbox"/> Revolving/Closed End | <input checked="" type="checkbox"/> Loan Grade/Call Code/Collateral Code |
| <input checked="" type="checkbox"/> Collateral Description/Change | <input checked="" type="checkbox"/> Guarantors Correct in Bancpac |

Flood Certification < 7 years old LAND DEV Appraisal Review

Added Exception Ticklers in Acct Folio

Addition of collateral: _____
Property Type: _____

- | | |
|---------------------------------------------------------------|----------------------------------------------------------|
| <input checked="" type="checkbox"/> Mortgage | <input checked="" type="checkbox"/> Security Agmt |
| <input checked="" type="checkbox"/> Title Work | <input checked="" type="checkbox"/> Settlement Stmt |
| <input checked="" type="checkbox"/> Appraisal | <input checked="" type="checkbox"/> Flood Determination |
| <input checked="" type="checkbox"/> Insurance (Hazard/Flood*) | <input checked="" type="checkbox"/> Consumer Disclosures |
| <input checked="" type="checkbox"/> LTV within Policy | |

*If flood insurance is required, code flood zone in Bancpac and put flood insurance expiration tickler in Accountfolio. If flood ins is required and not in file, email Kerry Shaw to send force place letter.

If Modification extends the maturity date, include it in the officer's Exception Workbook. If not, email the officer if any exceptions.

COMMERCIAL LOAN APPLICATION

Borrower(s): Liberty Village, LLC

Address: 669 Marina Drive, Suite B10
Charleston, SC 29492

Phone: (843) 860-4955

Tax ID: 34-1990932 **NAICS Code:** 531390

Loan Grade: 7

RENEWAL LOAN #401269300

Amount Requested: \$2,550,000

New Money: \$0

Other FNB Direct/Related Debt: + \$908,891

TOTAL FOR APPROVAL: \$3,458,891

Amount To be Participated: \$

To Be Held By FNB: \$3,458,891

Purpose of Credit:
Short term extension on existing loan to allow for full credit analysis

Repayment Program:
Sources of Repayment Note interest repayment sources if different
(1) Sale of the Collateral (1) Interest Reserve
(2) Guarantor Income/Assets (2)
(3) Liquidation of Collateral (3)

Credit Line Payout Requirement: 90% of any net sales proceeds

Repayment or Amortization Schedule:
45 days with interest due monthly and balance due at maturity
COLLATERAL (Unsecured if Blank): Collateral Code: 144 135
1st REM property and improvements on the 32 acre commercial tract, the 62 acre single family tract, and 57 acre multifamily tract of Brickhope Plantation that is located in Goose Creek, SC.

Market or Appraised Value: \$9,440,000 **LTV:** 27%
Price and/or cost: Owned 2+ years **LTC:** %
Date: 11/06/08 **Source of Appraisal:** Sass, Herrin & Assoc., LLC

BORROWING HISTORY

Account #	Note Date	Note Amount	Collateral/Endorser	Rate	Present Balance	LIP	Payment/Terms	Maturity	Repayment history
In Process SeaTown	8/01/07	\$3,000,000	SeaTown Homes, LLC	WSJ P+1/2	\$708,891	0	1/0 mo	Default	N/A
401310000	12/21/07	\$200,000	Southwind Land Development, LLC	WSJ P+ 1/4	\$200,000	0	1/0 mo	12/21/09	0/30
401269300	8/15/07	\$2,550,000	Liberty Village, LLC	WSJ P+1/4	\$2,232,435	317,564.52	1/0 mo	2/14/09	0/30

Total Unsecured Debt: \$ **Total Direct/Related Debt:** \$3,458,891

DEPOSIT RELATIONSHIPS:

Account #	Account Name	Date Opened	Present Balance	Average Balance	Maturity
31302	Southwind Land Development, LLC	8/15/07	\$2,952.35	\$11,606.00	
31328	Liberty Village, LLC	8/15/07	\$337.01	\$8,402.00	
			TOTAL AVERAGE:	\$20,008	

Date: March 15, 2009
Office: East Bay Street

Approval or Recommendation By:
Originating Officer's Signature

Supervisor's Signature (if required)

Approved Declined
IN-HOUSE LOAN COMMITTEE:
JC
DZ
KI
RM

Date:

INTEREST RATE: FNB Prime + 1%

Fixed Floating
Floor: 6% Ceiling: %
Fee:
Processing Fee: \$250

MATURITY/EXPIRATION DATE

Specific Loan:
Line of Credit: 45 days
Guidance Line: and collapsing the loan account
Letter of Credit: balance of \$2,232,435. At renewal to amortize and look @ funds for expansion of tracks. Also subject to satisfactory review of appraisal.

Guarantor(s) or Borrower(s) Financial Information

Name William F. Barber
 Address 3202 Jasper Blvd
Sullivans Island, SC 29482
 SS# 245-96-1715
 Phone (H) _____
 (B) _____

Name Aubrey J. Woody, Jr
 Address 11 East Lake Drive
Mt. Pleasant, SC 29464
 SS# 239-78-0057
 Phone (H) _____
 (B) _____

Name Joseph Bartone
 Address 1954 Sandy Point Lane
Mt. Pleasant, SC 29466
 TIN# 139-34-8310
 Phone _____

Cash & Cash Equivalents	\$2,661
Non-marketable Securities	\$23,352
Receivables	
S-Corps/LLCs/ Partnerships	
R/E Owned	\$3,550,000
R/E Owned Jointly	
IRAs/401Ks	\$61,232
Personal Property	\$300,000
Other	\$1,909,500
Total Assets	\$5,883,445
Net Worth	\$83,792

Fin Stmt Date 3/10/09
 Personal Income/AGI (\$231,805)
 Cash Flow _____

Cash & Cash Equivalents	\$920,000 *\$900M joint see acct
Non-marketable Securities	
Receivables	
S-Corps/LLCs/ Partnerships	\$3,805,000
R/E Owned	
R/E Owned Jointly	
IRAs/401Ks	
Personal Property	\$45,000
Other	
Total Assets	\$4,800,000
Net Worth	\$2,924,000

Fin Stmt Date 5/28/08
 Personal Income/AGI \$1,120,143
 Cash Flow \$

Cash & Cash Equivalents	\$628,129
Non-marketable Securities	\$30,000
Receivables	\$1,801,368
S-Corps/LLCs/ Partnerships	\$18,060,000
R/E Owned	\$8,800,000
R/E Owned Jointly	
IRAs/401Ks	\$407,031
Personal Property	\$200,000
Other	\$515,000
Total Assets	\$30,441,528
Net Worth	\$30,031,528

Fin Stmt Date 12/31/07
 Personal Income/AGI \$3,004,443
 Cash Flow _____

Officer Comments (see attached for Credit Analysis)
 See attached for loan officer's detailed comments

Loan Policy Exceptions

- Primary/secondary repayment sources not adequately documented
- Loan-to-value exceeds policy guidelines
- Loan-to-cost exceeds policy guidelines
- Missing / incomplete / unsigned / non current financial statement
- Loan structure is outside policy or does not properly match purpose of loan and/or life of collateral
- Debt service or debt to income ratios exceed guidelines
- Other - Explain _____

Approval subject to: _____

BOARD LOAN COMMITTEE APPROVAL:

If via telephone: Date _____

Gaines Hammond _____ Date _____
 Peter Weisman _____ Date _____
 Tyrone Gilmore _____ Date _____
 William Hudson _____ Date _____

Jerry Calvert _____ Date _____
 Benjamin Hines _____ Date _____
 Coleman Young _____ Date _____
 Dan Adams _____ Date _____

ADDITIONAL BOARD APPROVAL

_____ Date _____
 _____ Date _____

_____ Date _____
 _____ Date _____

July 3, 2006

Guarantor(s) or Borrower(s) Financial Information

Name Anthony Bartone
 28 Windsor Gate Drive
 North Hills, NY 11040

SS# 134-52-1151
 Phone (H) _____
 (B) _____

Cash & Cash Equivalents	\$2,584,500
Non-marketable Securities	
Receivables	
S-Corps/LLCs/ Partnerships	\$4,551,401
R/E Owned	\$2,900,000
R/E Owned Jointly	
IRAs/401Ks	
Personal Property	\$250,000
Other	\$700,000
Total Assets	\$10,985,901
Net Worth	\$10,547,111

Fin Stmt Date 12/31/07
 Personal Income/AGI \$1,034,529
 Cash Flow \$ _____

Name _____
 Address _____

SS# _____
 Phone (H) _____
 (B) _____

Cash & Cash Equivalents	
Non-marketable Securities	
Receivables	
S-Corps/LLCs/ Partnerships	
R/E Owned	
R/E Owned Jointly	
IRAs/401Ks	
Personal Property	
Other	
Total Assets	
Net Worth	

Fin Stmt Date _____
 Personal Income/AGI _____
 Cash Flow \$ _____

Name _____
 Address _____

SS# _____
 Phone (H) _____
 (B) _____

Cash & Cash Equivalents	
Non-marketable Securities	
Receivables	
S-Corps/LLCs/ Partnerships	
R/E Owned	
R/E Owned Jointly	
IRAs/401Ks	
Personal Property	
Other	
Total Assets	
Net Worth	

Fin Stmt Date _____
 Personal Income/AGI _____
 Cash Flow \$ _____

Officer Comments (see attached for Credit Analysis)
 See attached for loan officer's detailed comments

Loan Policy Exceptions

- Primary/secondary repayment sources not adequately documented
- Loan-to-value exceeds policy guidelines
- Loan-to-cost exceeds policy guidelines
- Missing / incomplete / unsigned / non current financial statement
- Loan structure is outside policy or does not properly match purpose of loan and/or life of collateral
- Debt service or debt to income ratios exceed guidelines
- Other - Explain _____

Approval subject to: _____

BOARD LOAN COMMITTEE APPROVAL:

If via telephone: Date _____

Gaines Hammond _____ Date _____
 Peter Weisman _____ Date _____
 Tyrone Gilmore _____ Date _____
 William Hudson _____ Date _____

Jerry Calvert _____ Date _____
 Benjamin Hines _____ Date _____
 Coleman Young _____ Date _____
 Dan Adams _____ Date _____

ADDITIONAL BOARD APPROVAL

 Date _____

 Date _____

 Date _____

 Date _____

July 3, 2006

BORROWER NAME AND ADDRESS	LENDER NAME AND ADDRESS	LOAN DESCRIPTION
LIBERTY VILLAGE, LLC 667 MARINA DRIVE SUITE B10 CHARLESTON, SC 29412	First National Bank of the South P.O. Box 3502 Spartanburg, SC 29304	Number <u>591252920</u> Amount <u>\$2,222,425.48</u> Date <u>02/23/2007</u>

Refer to the attached Signature Addendum, incorporated herein, for additional Borrowers and their signatures.

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES: The date of this Debt Modification Agreement (Modification) is 02/23/2007.
DEFINITIONS: As used in this Modification, the terms have the following meanings:

PERSONS: The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligation.
PRIOR OBLIGATION: "Prior Obligation" refers to my previous agreement governing my promise to pay you money, including any loan agreement, note, or document that evidences my indebtedness, and any extensions, renewals, modifications, and substitutions.

BACKGROUND: You and I have entered into a Prior Obligation which is evidenced by EXHIBITORY NOTE, 4 MONTHS dated 01/15/2007 in the original principal amount of 1.00 with a maximum possible principal amount of \$ 2,250,000.00 payable on demand, payable on demand but only if a demand is made, by the maturity date of 02/11/2007.

As of the date of this Modification, the amount remaining due is current amount outstanding on the Prior Obligation is \$ 2,222,425.48
 Principal (Principal plus \$ 15,748.28 accrued interest, for a total of \$ 2,247,184.45

MODIFICATION: For value received, you and I agree to modify the Prior Obligation as follows:

INTEREST RATE MODIFICATION:
 INTEREST RATE:
 EFFECTIVE WITH THIS MODIFICATION THE INTEREST RATE WILL BE FIRST NATIONAL BANK OF THE SOUTH PRIME PLUS ONE PERCENT WITH A FLOOR RATE OF 6.50%.
 Maximum Interest Amount. Any amount assessed or collected as interest will be limited to the maximum lawful amount of interest allowed by state or federal law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid principal balance. Any remainder will be refunded to me.
 Post-Maturity Default Interest Rate.

Compounding: This Modification provides for the compounding of interest.

PAYMENT MODIFICATION:
 I AGREE TO PAY ONE FINAL PAYMENT OF ALL UNPAID PRINCIPAL AND INTEREST AT MATURITY, 05/07/2009.

DRAW PERIOD MODIFICATION:

FEES AND CHARGES MODIFICATION:
 I REPAYD \$250.00 PROCESSING FEE.

ADDITIONAL TERMS:
 FIRST NATIONAL BANK OF THE SOUTH HAS AGREED TO EXTEND THE MATURITY 45 DAYS UNTIL 05/07/2009 AND TO DECREASE THE LINE OF CREDIT TO 22,222,425.48. ALL OTHER TERMS, CONDITIONS AND COLLATERAL WILL REMAIN THE SAME AND IN FULL FORCE AND EFFECT.

CONTINUATION OF TERMS: Except as specifically amended in this Modification, all terms of the Prior Obligation remain in effect.
INTERPRETATION: Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Modification.

NOTICE TO BORROWER: THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER/DEBTOR) AND US (LENDER/SECURED PARTY) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.

SIGNATURES: By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.

BORROWER:
 LIBERTY VILLAGE, LLC
 Loan Officer: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)
LENDER:

LENDER:
 First National Bank of the South
 Loan Officer: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)

First National Bank of the South
 Loan Officer: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)

Signature: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)
 Signature: [Signature] Date: 02/23/2007 (Seal)

000006

ROA000359

FIRST NATIONAL

DEBIT MEMO

Date 3/30/9

Account Number

Tran. Code

31328

31

Account Name

Liberty Village

AMOUNT

DESCRIPTION
Interest Payment do
401 269 300
and Processing Fee

Approved By
[Signature]

1474896
250 -
1499896

2222

⑆053208037⑆

LOAN PAYMENT CREDIT

FIRST NATIONAL

DATE 3/30/9

NAME Liberty Village

RECEIVING TELLER P. Calhoun

LOANS (40XXXXXXX)

LINE OF CREDIT (80XXXXX)

- 76 Payment - Consumer Loan
- 77 Payment - Commercial Loan
- 83 Interest Only Payment
- 84 Principal Only Payment
- 88 Principal Only Payment (does not advance due date)
- 79 Late Charge Payment
- 75 Payoff

- 70 Payment
- 72 Misc Credit (Principal Only)
- 46 Interest Only Payment
- 47 Late Charge Payment
- 48 Deckend Payment

7111

* 401269300 \$

14748.96

⑆053208037⑆

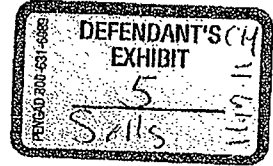
CREDIT

ACCOUNT NO. 9061510

DATE 3/30/9

ACCOUNT	LOAN PROCESSING FEES - EBAY	AMOUNT
	Processing Fee for Liberty Village, LLC	
	401 269 300	
Prepared By:	<i>[Signature]</i>	Approved:
TOTAL \$		250 -
CONTRA		

⑆053208037⑆ 9061510⑆



Credit Memo

To: Scott Warren
Commercial Lending Officer
Re: Liberty Village

From: Robbie Rohrer
Risk Management
Date: 07/17/07

Loan Request

Amount: \$2,550,000, not to exceed 65% LTV
Type: Non-revolving line of credit
Maturity: 18 months
Terms of repayment: Interest only for 17 months with one final payment of all remaining principal and accrued interest due at maturity. Note will be priced at Prime + 1/4% floating, with no floor or ceiling. An origination fee of 1/4% will be required at closing along with a \$163 processing fee.
Purpose: To provide \$1.215mm to retire debt with Regions bank, \$595m to construct a pump station, \$150m to construct a road to the pump station, \$90m for engineering and contingency costs, \$180m cash out and \$320m for interest reserves.
Collateral: Collateral consists of a first mortgage on property and improvements of 151 acres of Brickhope Plantation, located in Goose Creek, SC. The subject tracts consist of a 32 acre commercial tract, a 62 acre single family tract and a 57 acre multi family tract. The subject tracts are part of a larger 213.9 acre tract owned by Liberty Village, LLC. An appraisal completed by Sass, Herrin & Associates, LLC valued the property at \$12.10mm "as is" at June 29, 2007, which produces a 21% loan to value ratio.
Repayment source: 1) The primary source of principal repayment will be derived from the sales proceeds generated from the sale of the collateral. The primary source of interest repayment will be derived from a \$320m interest reserve established on the loan.
2) The secondary source of repayment is the income and assets of the guarantors.
3) The exit strategy is the liquidation of the collateral.
Guarantors: Joint and several guarantees of Freeman Barber and Judson Stringfellow and Liberty Village, LLC.
Conditions: 1. Establish a \$320m hold on the loan to serve as an interest reserve.
2. Borrower to provide detail plans and specs for improvements, as available.
3. Verification of loan payoff amount to Regions bank
4. Obtain updated signed contracts, which the bank will take an assignment of, for the lift station and road construction.

5. All draw requests must be submitted using AIA documentation and will be monitored and inspected by an independent third party.
6. Release prices will be \$1.6mm upon the sell of the multi-family property and 90% of net proceeds of all other sales.

Background

Freeman Barber and Judson Stringfellow are 50/50 owners of Southwind Land Development, LLC and Liberty Village, LLC, entities formed in March, 2004. Liberty Village, LLC purchased 729 acres in July, 2004 for \$5.01mm located in Goose Creek, SC northwest of Charleston. This tract was developed into a subdivision known as Brickhope Plantation. Of the original 729 acres, approximately 453 acres were highland. Much of this property has been subdivided and developed into different subsections. The developers remain in control of approximately 214 acres including the commercial, single family and multi family tracts and wetlands. The property currently has \$1.18mm in debt that will be refinanced into the new loan. The borrower has also requested \$460m to construct a pump station and \$100m to construct a road to the pump station. The remainder will be used to establish an interest reserve and cover closing costs. Liberty Village, LLC has recently entered into a contract to sell the multi-family 57 acre tract to Enclave @ Brickhope, LLC. The sales price totals \$5.25mm and is contingent on the completion of a road improvement which would allow access through the property. Southwind Land Development, LLC will be the developer of the property. It is anticipated by the loan officer that we will be offered an opportunity to finance the loan for Southwind Land Development, LLC in the near future.

Freeman Barber has been in the building business since 1993 when he formed Barber Builders, Inc. out of Charlotte, NC. Mr. Barber sold Barber Builders, Inc. in January 2006 to Judson Stringfellow and relocated to Charleston, SC to concentrate on the development and homebuilding business in Charleston. Per Mr. Barber, as a condition of the sale, he will receive 25% of Barber Builders, Inc. income for the next three years. He expects this to amount to approximately \$150m - \$175m per year. Judson Stringfellow currently resides in Charlotte, NC.

Banking Relationship

Borrowing History

<u>Acct. #</u>	<u>Amount</u>
<i>Proposed loan to Sea Town Homes</i>	\$3,000,000

Deposit History

<u>Acct. #</u>	<u>Account Name</u>	<u>Date</u>	<u>Present Bal.</u>	<u>Average Bal.</u>
None				

Description of Project

The borrower is requesting a \$2.55mm non-revolving line of credit to retire existing debt of \$1.215mm, \$595m to construct a pump station, \$150m to construct an access road to the pump, \$90m for engineering and contingency costs, \$180m cash out and \$320m for

interest reserve. The entire project includes approximately 450 acres consisting of single family, multi-family, and commercial areas. The maximum LTV will not exceed 65% of the "as is" appraised value, prior to the completion of the Henry Brown Jr. Boulevard extension which will allow road access to these tracts. The Henry Brown Jr. Boulevard will connect US Hwy 52 with Liberty Hall Road. Part of the boulevard has been constructed from both Liberty Hall Road and Highway 56. The portion in the middle remains to be built. This is the section where the subject tracts are located. The borrower provided a contract between Southwind Land Development and OL Thompson Construction Co., Inc. for the construction for the liftstation at Brickhope Greens. The contract, while unsigned, includes the cost breakdown and totals \$460m. As tracts are sold, the collateral will be released. However, at no time will LTV be less than 65% on the remaining raw land.

Debt Service:

Proposed Annual Debt Service (Int. only @ Full) \$ 216,750

Financial Statements Received

Liberty Village, LLC: 2004, 2005, & 2006 Tax Returns

William F Barber: 2004, 2005 & 2006 Tax Returns
 Personal Financial Statement dated 02/17/07
 Credit Report dated 03/16/07

Judson Stringfellow: 2004, 2005, & 2006 Federal Tax Returns
 Personal Financial Statement dated 12/31/06
 Credit Report dated 5/2/07

Borrower(s) Financial Position

Liberty Village, LLC

According to the financial information provided, the guarantor represented the following respective financial information:

	<u>12/31/04</u>	<u>12/31/05</u>	<u>12/31/06</u>
Current Assets	\$27m	\$17m	\$0m
Total Assets	\$5.52mm	\$1.94mm	\$1.93mm
Construction in Progress	\$5.49mm	\$1.92mm	\$1.93mm
Net Worth	\$519m	\$777m	(\$746m)
Debt/Worth	9.6	1.5	1.6
Revenues	\$0m	\$0m	\$0m
Net Income	(\$1.2m)	(\$484m)	(\$120m)

Guarantor(s) Financial Position

William F Barber

According to Mr. Barber's personal financial statement dated 02/17/07, he represented \$21.6mm in total assets of which \$15.1m was reported as cash, \$6.54mm was his reported ownership in several LLC's and closely held corporations, \$3.50mm in his personal residence and \$8.77mm in various owned real estate. The personal financial

statement reported liabilities of \$7.35mm, primarily mortgage related debt and 50% of the FNB Sea Town Homes loan, which resulted in a stated net worth of \$14.28mm and a BANW of \$5.177mm. Per the loan officer, Mr. Barber's liquidity has been impacted by his purchase of a second primary home on Sullivan's Island. His current primary residence is for sale and upon the sale of that house; his cash position would increase by approximately \$500m. Although Mr. Barber did not disclose any contingent debt on his PFS, 50% of the Sea Town Homes loan of \$3.00mm was included in his liabilities.

Mr. Barber submitted tax returns for years 2004, 2005, & 2006. Per the tax returns, the total income was (\$166m), \$523m, and \$1.07mm for 2004, 2005, and 2006, respectively. The 2005 & 2006 income was derived primarily from K-1 income from Sea Town Homes of \$374m and \$497m and Liberty Village of \$125m. From the total income less taxes, personal debt and an estimated living expense, the amount of discretionary cash determined to be available for commercial debt service was (\$702m), (\$153m), and \$168m for 2004, 2005, and 2006, respectively. This produced a (1.3x), .5x, and a 1.4x DSCR for Mr. Barber's personal debt. As noted in the Background section above, Mr. Barber is to receive 25% of the net income from Barber Builders, Inc. for the next three years as a condition of the sale of the business. He anticipates that this should produce income of \$150m - \$175m for 2006 - 2008.

According to the credit report dated 03/16/07, Mr. Barber maintains a 770 Beacon score.

Judson Stringfellow

According to Mr. Stringfellow's personal financial statement dated 12/31/06, he represented \$11.89mm in total assets of which \$718m was reported as cash, \$3.66mm was reported as closely held entities, \$5.84mm in his personal residence and other real estate holdings, and \$1.43mm in retirement accounts. The personal financial statement disclosed liabilities of \$395m, which consisted primarily of mortgage related debt. This resulted in a stated net worth of \$11.49mm and a BANW of \$7.49mm. No supporting schedules were provided to determine the marketability or value of the assets listed. No contingent debt was disclosed on his PFS.

Mr. Stringfellow submitted joint tax returns for 2004, 2005, and 2006. Per the tax returns, the total income was (\$8m), \$171m, and \$1.59mm, for 2004, 2005, and 2006, respectively compared to an AGI in 2006 of \$1.90mm. K-1's were not provided for 2004 and 2005 which resulted in the lower income amounts as the contributions to or distributions from his numerous LLC's and partnerships could not be substantiated. From the total income less taxes, personal debt and an estimated living expense, the amount of discretionary cash determined to be available for commercial debt service in 2006 was \$829m.

According to the credit report dated 03/16/07, Mr. Stringfellow maintains a 748 Beacon score.

Global Cash Flow

The loan will have a \$320m hold placed on it for an interest reserve, which will be adequate to cover the interest only debt for 17 months of the loan. In addition, a global cash flow was analyzed to include the borrower's operating income and the cash flow available by the guarantors. This resulted in a DSCR of 1.9x at current interest rate. It should be noted that the personal cash flows include limited contingent debt service based on the pending loan to Sea Town Homes. While the lending officer is aware that there is substantial contingent debt with both guarantors, the extent of the debt was not disclosed to the bank.

Interest Rate Sensitivity Analysis

Since the loan is priced at a floating Prime rate plus ¼%, a sensitivity analysis was performed.

Loan Amount:	\$2,550,000			
Term:	18 months			
Amortization:	n/a			
Repayment:	Interest only			
Frequency:	Monthly			
		Interest Rate:	Prime + ¼%	
	<u>Proposed</u>	<u>1% Increase</u>	<u>2% Increase</u>	<u>3% Increase</u>
	(8.50%)	(9.50%)	(10.50%)	(11.50%)
Interest Reserve	0.8x	0.7x	0.6x	0.6x
Global DSCR, excl Interest Reserve	1.9x	1.9x	1.9x	1.8x

Risk Analysis

Strengths

- The hold placed on the loan as an interest reserve should be sufficient to service the debt for 17 of the 18 month loan term.
- The global cash flow is sufficient to service the proposed debt.
- Managements experience in real estate development.
- Loan is structured to remain within bank policy and supervisory LTV guidelines at 21% LTV.
- Guarantor financial position lends additional strength to the deal.

Weaknesses

- Under new interagency guideline, this credit will increase our commercial real estate concentration, which as of 3/31/07 was at 317% for Construction, Land Development and Other Land and 606% for Other Commercial Real Estate, exceeding the 100% and 300%, respective benchmarks.
- The primary principal repayment source is speculative in nature.
- The interest reserve is not being established as a deposit account.
- The borrower has not supplied the bank with a detailed use of all loan proceeds.
- All contingent liabilities are not be disclosed for borrower/guarantors

Recommendation and Summary Comments

Mitigating Factors

- Managements experience

Exit Strategy

- Liquidation of collateral

Policy Exceptions

- None noted

Considering the previously listed strengths, weaknesses and mitigating factors, Credit Administration would assign a loan risk rating of "5" Acceptable, with Caution.

In addition, Credit Administration would like to suggest the following underwriting enhancements and make the loan officer aware of the following possible policy concerns.

Underwriting Enhancements:

1. None noted

Possible Policy Concerns:

1. None noted

Board Loan Committee approved this loan, as presented, at its regular scheduled meeting on 7/24/07.

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Feds swoop in, close First National Bank of the South

Florida holding company takes over Monday

By Trevor Anderson
trevor.anderson@shj.com

Published: Saturday, July 17, 2010 at 3:15 a.m.

Spartanburg-based First National Bank of the South on Friday was added to the nation's growing list of failed banks.

A two-year fight to stay afloat ended shortly after 6 p.m., when the Federal Deposit Insurance Corp. swooped in with more than 70 accountants and closed the bank's headquarters at 215 N. Pine St. First National will reopen Monday under the ownership of Miami-based North American Financial Holdings Inc.



Trevor Anderson/trevor.anderson@shj.com
Vehicles for law enforcement and employees of the Federal Deposit Insurance Corp. fill the parking lot outside the former First National Bank of the South on Friday.

"We're very proud to be the new owners of First National Bank of the South," said Gene Taylor, chairman and CEO of NAFH. "We're getting some outstanding employees and great customers. We want them to know it's going to be business as usual."

Founded in 2000, First National operated 13 full-service branches throughout the Upstate, Columbia, Charleston and Tega Cay.

"We were afflicted with the worst economic downturn since the Great Depression," said First National spokesman Reed Byrum. "We operated in a number of healthy markets that began to contract, and customers were unable to meet obligations for their loans. It just came to the point where we were no longer able to operate."

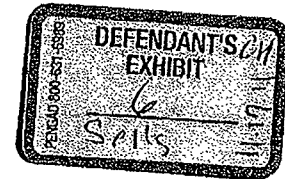
NAFH acquired the bank simultaneously along with two failed Florida banks, MetroBank of Miami and Turnberry Bank of Aventura.

The company said it attained essentially all three of the bank's assets and certain other liabilities and entered into loss-share agreements with the FDIC for about \$1 billion of the acquired assets.

Taylor said all of First National's branches will remain open under the same brand and NAFH will retain all of the company's employees. He said he will discuss the futures of the bank's executive officers on an individual basis later on.

"This bank failed, and that's not our fault," Taylor said. "Our goal is to put together a very strong regional banking chain that is better capitalized than any other bank and that people will be proud to do business with."

NAFH raised about \$900 million of equity capital when it was formed. Taylor said he formed the holding company to invest in failed and undercapitalized banks and will continue to follow that growth model.



"It's like I told (First National employees); I'm happy to be the newest associate of First National Bank of the South," he said. "I know this is tough on them, but I'm happy for them because they get to keep their jobs."

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A note posted on First National's front door Friday said the Office of the Comptroller of the Currency acted after finding that the bank had "experienced substantial dissipation of assets and earnings due to unsafe and unsound practices."

"The OCC also found that the bank incurred losses that depleted its capital and there is no reasonable prospect that the bank will become adequately capitalized without federal assistance," the note said.

FDIC spokeswoman Roberta Valdez said the agency will spend the weekend at the bank, helping to facilitate the transition before it reopens Monday.

RECESSION PROVED TO BE TOO MUCH

Over the past two years, First National has fought to survive in recessionary storms. In total, 96 banks across the country have closed so far this year.

Last Thursday, the Nasdaq delisted the bank because it failed to meet the stock exchange's minimum requirement of keeping its stock price above \$1 for 10 consecutive business days.

During the past year, the bank's capital position has eroded, in part, because of real estate loans along the South Carolina coast. The company posted losses of \$44.8 million in 2008 and \$43.7 million in 2009.

Last July, the company's shareholders voted to increase shares of common stock tenfold, to 100 million, to aid in future capital-raising efforts.

In April, the company received a three-month extension from Nexity Bank of Birmingham, Ala., to pay back the modified \$3.5 million loan it used to purchase Carolina National Bank of Columbia in 2007.

Nexity had agreed to forgive \$6.1 million of the original \$9.6 million loan and fourth-quarter interest of \$150,000. Pursuant to the agreement, First National paid Nexity \$150,000 in December for third-quarter interest from 2009.

The bank had formed a special division to remove non-performing assets from its balance sheet. Although First National reported it lost \$5.4 million during the first quarter, the bank said it recovered \$1 million from the sale of certain loans.

First National said it saw a significant decrease in 30- to 89-day delinquencies from \$31 million during the first quarter of 2009 to \$7.6 million during the same quarter this year. The bank also increased liquidity to \$154 million.

The FDIC said shareholders should contact the bank's holding company, First National Bancshares Inc. For more information, visit www.fdic.gov.

RE OLT contract.txt

From: Scott N. Warren [swarren@fnbwecandohat.com]
Sent: Tuesday, December 23, 2008 9:58 AM
To: Freeman Barber
Subject: RE: OLT contract

Freeman,

This loan will need to be renewed in February. That being the case- we must look at interest carry for the additional year & our current pricing structure on renewals. I will call you to discuss this in more detail.

Your budget reallocates a portion of the interest reserve for construction. This is considered from time to time assuming that there is a surplus over the term of the note.

My personal assumption is we need to discuss putting the \$60m deficiency into the project as I don't foresee extra funds in the interest reserve. See calculation below.

2 month remaining until maturity	\$2,550,000 @ 4.25%	\$ 18,062
12 months interest after renewal	\$2,550,000 @ 5.5%	\$140,250

Total interest reserve needed
\$158,312

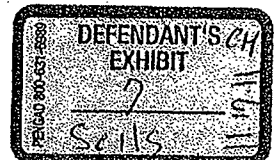
Current interest reserve balance	\$163,866
Less: needed funds	-158,312

Extra funds	\$ 5,554
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This calculation does not factor the renewal fee which will be determined at a later date. It is pretty much a given that a new appraisal will be required on an A&D loan at maturity. I am also running with the assumption that the bank will not require it to be amortized.

Best regards,

Scott Warren
First National Bank of the South



RE OLT contract.txt

(843)805-5955 ext. 1308

From: freeman@seatownhomes.com [mailto:freeman@seatownhomes.com]
Sent: Tuesday, December 16, 2008 11:09 AM
To: Scott N. Warren
Subject: Re: OLT contract

8 weeks.

Sent from my Verizon wireless BlackBerry

From: "Scott N. Warren"
Date: Tue, 16 Dec 2008 10:58:41 -0500
To: 'Freeman Barber' <freeman@seatownhomes.com>
Subject: RE: OLT contract

When is the work anticipated to be completed?

Scott Warren

First National Bank of the South

(843)805-5955 ext. 1308

From: Freeman Barber [mailto:freeman@seatownhomes.com]
Sent: Monday, December 15, 2008 8:37 PM
To: Scott N. Warren
Cc: Skipper
Subject: RE: OLT contract

Scott,

Attached is the allocation I forwarded on 11/17 as well as an accurate budget allocation that we would like to use moving forward. There were some overages and underages on the previous allocation and all but two line items were closed out (even though they were not drawn to zero amounts). The remaining balance for construction should be equal on both allocations (\$160,494,40).

The amount of interest reserve remaining is sufficient to carry us through October of 2010 (22 months) based on the amount of this months draft.

Page 2

ROA000370

13

RE OLT contract.txt

I want to make sure we are on the same page regarding your comments below. To clarify, none of the new contract has been billed yet (and therefore no lien waivers). The \$80M amount was for lesser work to be completed and we decided to take on more scope in addition to amount drawn from the loan agreement (thus improving the bank's position). As you mentioned, the partnership is prepared to infuse the equity (per B21 of the Brickhope Plant Draw 010109 spread sheet) prior to drawing any funds but I imagine the first payment request will be in excess of the equity amount so we would like to make sure the bank will fund the draw amount over 60,027.12.

I need to know as quickly as possible if we should expect a problem as we do not want them to begin the work (which they are scheduled to begin any day) if we are unable to pay them. This work is also necessary to provide sewer service for the property the bank holds as security and there is always a chance our permit could not be renewed if the work is not completed. It may be helpful to let your "higher ups" know this.

Thanks again for your help and let me know if there is anything else I can provide.

Talk to you soon.

Freeman

Mon 11/17/2008 2:37 PM

We have the attached expense plus the retainage on the lift station (\$59,310). The SS is what I show left to advance since our last draw (the interest reserve figure has not been updated).

Please, let skipper know if 8:15 Thur is still good.

Thanks

Freeman Barber
SeaTown Builders, LLC

Page 3

ROA000371

RE OLT contract.txt

Daniel Island Marina, LLC

Midfree, Inc

Liberty Village, LLC

m) 843 860 4955

f) 843 881 0700

No virus found in this outgoing message.

Checked by AVG.

Version: 7.5.549 / Virus Database: 270.9.4/1794 - Release Date: 11/17/2008 8:48 AM

From: Scott N. Warren [mailto:swarren@fnbwecandohat.com]
Sent: Monday, December 15, 2008 5:22 PM
To: Freeman Barber
Subject: RE: OLT contract

Budget was \$150M for road construction. Roughly \$70M has already been drawn for road construction. I seem to recall the \$70M was for the culvert work and allowed because it was estimated that the road to the lift station could be done at a discount & for \$80M. If part of the new \$160M contract has already completed and paid through previous draws - then we need to document it on the AIA docs and obtain lien waivers. If there truly an \$80M shortfall in the budget then we need a capital injection to cover it prior to further funding.

Given this contract amount- it may be easiest to match our budget to yours to see if anything was reallocated (ie engineering).

Best regards,

Scott Warren

First National Bank of the South

(843)805-5955 ext. 1308

From: freeman@seatownhomes.com [mailto:freeman@seatownhomes.com]
Page 4

RE OLT contract.txt

Sent: Monday, December 15, 2008 11:25 AM
To: Scott N. Warren; Skipper Woody
Subject: Re: OLT contract

I thought we were OK to proceed after our last meeting. Please let me know when you can as the have started the work and I need to pull them off if we don't get approval.

Thanks.

Sent from my Verizon wireless BlackBerry

From: "Scott N. Warren"
Date: Mon, 15 Dec 2008 11:05:23 -0500
To: Freeman Barber<Freeman@seatownhomes.com>
Subject: Re: OLT contract

Freeman,

I have sent the contract up to "construction loan administration" for review, and to match it with our budget. I would expect to have something back shortly.

We do need approval prior to starting the road work.

Thanks for sending the contract!

Happy Holidays!

Scott

From: Freeman Barber
To: Scott N. Warren
Cc: Skipper
Sent: Fri Dec 12 11:46:45 2008
Subject: OLT contract

Scott,

I hope all is well today.

Attached is the executed contract with OL Thompson for the next phase of the Blvd. Construction should begin any day and we should be submitting for draws the end of January.

If we don't speak, have a good Xmas!

Free

Page 5

ROA000373

11

RE OLT contract.txt

Freeman Barber
SeaTown Builders, LLC
Daniel Island Marina, LLC
Midfree, Inc
Liberty Village, LLC
m) 843 860 4955
f) 843 881 0700

No virus found in this outgoing message.
Checked by AVG.
Version: 7.5.552 / Virus Database: 270.9.17/1845 - Release Date: 12/12/2008 9:02 AM

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.552 / Virus Database: 270.9.18/1849 - Release Date: 12/15/2008 9:01 AM

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Checked by AVG.
Version: 7.5.552 / Virus Database: 270.9.18/1849 - Release Date: 12/15/2008 9:01 AM

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Checked by AVG.
Version: 7.5.552 / Virus Database: 270.9.18/1849 - Release Date: 12/15/2008 9:01 AM

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.552 / Virus Database: 270.10.0/1861 - Release Date: 12/22/2008 11:23 AM

EXHIBIT B

Deposition of Charles Shaw

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BERKELEY COUNTY
4 CASE NO: 2009-CP-08-3652

5 DEPOSITION OF CHARLES SHAW

6 FIRST NATIONAL BANK OF SPARTANBURG, DIVISION OF
7 FIRST NATIONAL BANK OF THE SOUTH,
8 PLAINTIFF,

9 vs.

10 LIBERTY VILLAGE, LLC,
11 DEFENDANT.

12
13 -----
14 WITNESS: CHARLES SHAW

15 DATE: JUNE 27, 2011

16 TIME: 10:30 A.M.

17 LOCATION: RICHTER LAW FIRM
18 622 Johnnie Dodds Blvd.
19 Mt. Pleasant, SC 29465
20 -----

21 REPORTED BY:
22 WANDA S. BUCKNER
23 NCRA Registered Professional Reporter
24 NCRA Certified Realtime Reporter
25 CLARK & ASSOCIATES
 P.O. Box 73129
 North Charleston, SC 29415
 (843) 762-6294

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A P P E A R A N C E S

FOR THE PLAINTIFF:

BY: ROBERT A. KERR
HAGOOD & KERR
654 Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 972-1000

FOR THE DEFENDANT:

BY: AARON EDWARDS
RICHTER LAW FIRM
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29465
(843) 849-6000

Deposition of Charles Shaw

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EXAMINATION

CHARLES SHAW

BY MR. EDWARDS

4

Certificate of Reporter

42

EXHIBITS

(There were no exhibits marked.)

Deposition of Charles Shaw

1 CHARLES SHAW,
2 being first duly sworn or affirmed, testified as
3 follows:

4 EXAMINATION

5 BY MR. EDWARDS:

6 Q Good morning.

7 A Good morning.

8 Q Can you state your full name for the
9 record?

10 A Charles Clyde Shaw, Junior.

11 Q Okay. Have you ever been deposed before?

12 A No.

13 Q This will be very quick. Be sure -- I am
14 going to ask you questions. Be sure to verbalize
15 your responses, not say uh-huh or huh-uh. Those
16 don't look very well on the written transcript. The
17 other thing, try not to talk over each other,
18 interject when I am asking a question. I will try
19 not to do that when you give an answer. It will
20 make life easier for everybody involved.

21 Thank you for rescheduling and agreeing to
22 come in this morning. I have just a few questions
23 and then you will be on your way.

24 Can you tell me, please, your date of
25 birth?

Deposition of Charles Shaw

- 1 A 9-22-1954.
- 2 Q Where were you born?
- 3 A Spartanburg, South Carolina.
- 4 Q How long have you been in Charleston?
- 5 A '98 or '99. '98.
- 6 Q You have been living here since then?
- 7 A That's correct.
- 8 Q Can you tell me your educational
- 9 background post high school?
- 10 A Spartanburg Technical College, Associate's
- 11 degree from there.
- 12 Q What was your degree?
- 13 A Well, actually mechanical engineering.
- 14 Q Okay. Any further education?
- 15 A No.
- 16 Q What has been your profession?
- 17 A ~~I have owned my own company for the past~~
- 18 25 years, president of MSI-Viking.
- 19 Q MSI?
- 20 A MSI-Viking, LLC. MSI-Viking.
- 21 Q What does that company do?
- 22 A We sell measuring equipment for quality
- 23 control purposes.
- 24 Q What does that mean?
- 25 A Basically, anything that is manufactured

Deposition of Charles Shaw

1 like automotive, aerospace, when they manufacture
2 components, it has to be checked for -- to make sure
3 it is the right size, fit and finish. For example,
4 2-by-4s; is it really a 2-inch by 4-inch board, we
5 have the equipment to tell you exactly what it is.

6 Q Okay.

7 A Down to very precise.

8 (Off-the-record.)

9 A We do that in measuring. Like we measure
10 down very precise. There is typically one-millionth
11 of an inch; that would be taking a hair on your head
12 and splitting it a thousand times.

13 Q What types of companies employ your
14 services?

15 A Anything: Automotive, aerospace, medical,
16 we can do business with pretty much everyone. Bosch
17 here in Charleston is a big account. The Timken
18 Company. Boeing, you know.

19 Q Okay. Never heard of that before.

20 A It is a very small knish market.

21 Q How long have you been the owner?

22 A Since 1978.

23 Q Has it always been that name?

24 A No. It was a couple -- it started out as
25 Viking Tool. That is when we used to sell tooling

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1 equipment. Then it became MSI-Viking later.

2 Q Do you remember approximately when?

3 A Probably 2001.

4 Q Those are the only two names?

5 A This thing gets really convoluted.

6 Q Okay.

7 A We can do it and I can explain it and you
8 can -- but will -- you have to really draw a tree.

9 Q Okay. And that is not really why you are
10 here. I am just trying to figure out what it has
11 been in the past.

12 A Again, it was Viking Gauge. There are
13 several entities within this company, and I mean, it
14 is like you have MSI-Viking as the holding company.
15 You have Viking Gauge which actually still exists.

16 You have Viking Metrology Solutions set up with MSI,
17 ~~they fall under this umbrella. They both file~~

18 tax -- separate tax federal ID numbers, everything
19 else. But that is just kind of like the marketing
20 company. But it is an LLC, MSI-Viking --

21 Q That is sort of the holding company you
22 are describing?

23 A Yes.

24 Q Within its holdings, there are several
25 other corporate entities that do --

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1 A Yes.

2 Q -- similar things?

3 A That's correct.

4 Q Okay. All right. Do you have a history
5 of litigation, you, personally?

6 A Litigation? No.

7 Q What I mean by litigation, brought a
8 lawsuit in your own name or been sued in your own
9 name?

10 A No.

11 Q Okay. What about MSI-Viking?

12 A Yes. Over the years we have.

13 Q Relating to what?

14 A Primarily, one was they said -- one with
15 an insurance where an employee had left us, and
16 since we were a small company, we were under 20
17 people at that time, and he goes out a couple of
18 weeks later riding on a dirt bike, but his insurance
19 was canceled on his premium and they tried to come
20 back on us for that. Nothing that was ever -- I
21 mean --

22 Q Okay. Do you have any banking experience?

23 A As far as working at a bank?

24 Q That's right.

25 A No.

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1 Q Professional experience in the banking
2 field?

3 A No.

4 Q Okay. What is your relationship now with
5 First National Bank of the South?

6 A First National Bank of the South? I have
7 several accounts with them.

8 Q Okay. What kind of accounts do you have?

9 A I have got, I guess, checking account, and
10 then I have some loans with First National.

11 Q And these loans are individual loans or
12 are they company loans?

13 A Some -- well, some of them are company
14 loans and some are individual loans. Most of them
15 are company -- I don't have an individual loan.

16 They are all company loans.

~~17 Q Okay. Do you own any stock?~~

18 A Yes, at the time I think I owned 27- or
19 28,000 shares.

20 Q You said at the time?

21 A You are aware that they are gone?

22 Q I am. At that time you owned 27- to
23 28,000?

24 A Yes, that's correct.

25 Q Your accounts at First National Bank of

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1 the South, are they still under that name, First
2 National Bank of the South, or is it under the
3 new --

4 A The invoices come -- that comes in, NAFH.
5 But I did just receive something from them on Friday
6 saying now I guess they are merging everything under
7 CB.

8 MR. KERR: Capital Bank.

9 A Yeah, Capital Bank. I think everybody is
10 merging all of the brands under Capital.

11 Q Okay. Any other accounts with First
12 National Bank of the South now other than -- is it a
13 personal checking account?

14 A Yeah, it is personal.

15 Q And several loans?

16 A Yeah.

17 Q Anything else?

18 A No. Like everybody else, I started
19 moving -- when they were going to get taken over by
20 the feds, I had a period of time where we did have
21 our corporate account and things like that with
22 them, but at that time we started moving.

23 Q Where are they now?

24 A Sun Trust.

25 Q What other accounts other than your

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1 corporate accounts did you move?

2 A Well, we moved the company accounts.

3 Q Okay. When did you learn that First
4 National Bank of the South was going to be taken
5 over?

6 A A Saturday morning when I read it in the
7 paper.

8 Q So nobody at the bank told you?

9 A No.

10 Q Did the bank ever -- did you ever learn
11 from anybody at the bank that there was a potential
12 for them to be taken over?

13 A I was not directly. To be honest with
14 you, sitting here saying, you know, because you can
15 look and see where the stock is trading, what you
16 read in the news, it is like Tideland's. I could sit
17 here and tell you I am going to wake up on a

18 Saturday morning and Tideland's will be gone, but I
19 don't even know anybody at Tideland's. That is just
20 common sense.

21 Q Okay. As I understand it, you served at
22 one time as a board member?

23 A Advisory board.

24 Q Tell me about the advisory board. What
25 was the advisory board?

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1 A The advisory board was a board that was
2 put together here in Charleston, different business
3 leaders that -- trying to help First National grow
4 their deposits, you know. That is what it was.

5 They asked us to be on the board to bring
6 people, you know, to bank with them. That was what
7 an advisory board pretty much does. I will say
8 there was nothing we -- when we met, it was -- I
9 think we started out maybe once every six weeks,
10 then it went to maybe once a quarter and then maybe
11 twice a year. It was pretty sporadic. Some of the
12 meetings I could make, some I couldn't.

13 For the most part, it was just really
14 like, you know, you sit down and it was kind of like
15 they showed some numbers up on the board. Kitty
16 Payne, who was CFO at the time, said here is our
17 growth here, here is this. We talked about numbers.
18 They would get up, say a few things about, ask our
19 advice on where do you think we should put a branch
20 or this.

21 Again, whatever we said and we talked
22 about, nothing ever happened. Honestly, at the end
23 of the day, it was a joke.

24 Q Okay. Have you ever served on any other
25 bank boards?

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1 A No.

2 Q How did you get involved with the advisory
3 board?

4 A I was invited by the acting president at
5 that time, Jerry Calvert. I had known him for a
6 long time.

7 Q He asked you to be a member?

8 A Yeah.

9 Q I guess you said the purpose was generally
10 to kind of round up business?

11 A That was all. Again, that is what we
12 were, ambassadors, I guess. That was it. People
13 that I knew, different things. We had, you know, I
14 would go to them and say, hey, look at First
15 National. I got them some business from, you know,
16 Charles Towne Hotels and some people I knew over
17 there, and a lot of those people did as well.

18 Q Did you hold any title within the advisory
19 board?

20 A No.

21 Q Did anybody --

22 A Yeah, there was one -- there was -- they
23 did -- had a chairman. But that was really almost
24 pretty much at the end of it. And that was Ron
25 Brinson, I think, was the chairman of that.

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1 Q What did the chairman do?

2 A Basically, just kind of told everybody
3 there was going to be a meeting. I honestly can't
4 tell you because I don't really know. I really
5 don't know.

6 Q Okay. Were you involved as a member of
7 the advisory board from its inception?

8 A Yes.

9 Q Do you remember about when that was? I
10 don't need the date or anything, but the general
11 time frame would be fine.

12 A I would say probably, I am guessing, maybe
13 '06, '07, something like that. They were here --
14 they opened the bank in Mt. Pleasant first, and then
15 they started the advisory board later. But,
16 honestly, I don't remember.

17 Q Did you or did the advisory board have any
18 knowledge of the bank's lending policies?

19 A No.

20 Q Any of the bank policies at all?

21 A We didn't know. There was no -- there was
22 never -- I can say this -- there was never a loan
23 discussed.

24 Q Okay.

25 A There was never any person, interest; they

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1 really never even talked about deposits to us other
2 than the fact that they had, you know, Tom, Chuck,
3 thank you for bringing us a new account to the bank.
4 They never even mentioned the names of anybody else.

5 Q Do you have any knowledge that -- did the
6 advisory board have any knowledge of any of the
7 bank's financial stability other than public
8 information?

9 A No. Everything that was released to us is
10 what was released -- if we saw it, we saw it at the
11 time, you know. If it was shown to us, you could
12 rest assured in the next day's paper it was filed
13 with the FCC or whatever, it was showing no profits
14 or whatever. We did -- it was really only press
15 released at night.

16 They were pretty specific about that.

~~17 Guys, whatever we are showing you today, it is~~
18 not -- we have already released it, you know.

19 Q Did everybody that served on the advisory
20 board own stock?

21 A You know, that I don't know. I think so,
22 but I am not 100 percent sure. But they wanted
23 everybody on the advisory board to own stock.

24 At a meeting, they said, okay, we would
25 really like for all of the advisory board members to

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1 own stock. That told me right there that probably
2 some of them didn't, but what happened later, I
3 don't know.

4 Q When y'all first formed up the advisory
5 board, how often did you get together?

6 A I think the first few meetings, I want to
7 say it was once every -- probably like eight weeks.
8 But that only happened for maybe two or three
9 meetings and then it pretty much went to a quarterly
10 and then it went to like, literally, I think once
11 every six months or something, especially there at
12 the end.

13 Q And were you compensated?

14 A Yes.

15 Q How?

16 A We were paid \$500 per meeting.

17 Q Okay. Do you know why the meetings became
18 less and less frequent?

19 A I really don't. They never really said.
20 Again, all this is strictly an assumption. I have
21 to assume, you know, I think when they took over the
22 Columbia bank, when that was purchased, and
23 obviously I think they were -- tried to get it up
24 and going. First National Bank was really growing.
25 I mean, there was a lot of growth back then.

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1 Q What Columbia bank are you talking about?

2 A I can't remember the name of it now. I
3 mean, that was a big purchase, that bank.

4 Q This was about the time the advisory board
5 was formed?

6 A No. It was at least a couple of years
7 after the advisory board.

8 Q What did that have to do with --

9 A Again, they set up a Columbia advisory
10 board. The advisory board, it only had so many
11 people. I think at that point they could only make
12 the rounds trying to get Columbia off. I guess
13 Charleston, they were looking at and said, okay, we
14 are pretty self-sufficient here. Now let's go to
15 Columbia and try to get that one up.

16 Q They had one in Columbia doing the same?

17 A Yeah. And then they had an advisory
18 board -- they had the main board in Spartanburg.
19 That was the guy, the main board did all of the
20 loans. They had the loan committee meetings, they
21 knew everything that was going on.

22 I can't say that anyone on the advisory
23 board would have known. Like I say, they certainly
24 didn't share it with me and I wouldn't think they
25 would share it with anybody else.

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1 Q You had loans with First National Bank of
2 the South as well, right?

3 A Yes.

4 Q At least from that end of the spectrum,
5 you had some experience with --

6 A I can tell you how they are processed,
7 that I know how it worked.

8 Q How does it work?

9 A You go to First National Bank, you meet --
10 if it was -- again, I have had my home loan with
11 them. I had personal loans with them over the
12 years.

13 But when it came to commercial loans --
14 and that is what they really -- was pretty much what
15 all of this was about -- you went first to your loan
16 officer, whoever was the person you were working
17 with at that time. Every bank has their own
18 commercial loan officers. Mine at that time was
19 David Zabriskie. I went to him and said hey, Dave,
20 I need to do this. You produce all of the numbers,
21 you have everything, financials; I mean, it was by
22 the book.

23 And at that point it was, okay, when will
24 you -- when will I know or something like that. I
25 think -- I am 99 percent confident it was a Tuesday

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1 night, because he always said we have loan committee
2 meetings on Tuesday night. And I know all of the
3 board -- the main board of directors in Spartanburg
4 met on Tuesday nights and they went over every loan
5 that was presented for that week and they approved
6 or denied the loan, based on the information that
7 they were given from the loan -- commercial loan
8 officer.

9 Q But you have never dealt directly with
10 that committee?

11 A We were never on that. That is why I
12 say --

13 Q I mean, not you. I am talking about you
14 on the lending end, your receiving a loan?

15 A No. All you would know is like that
16 Wednesday after the meeting and they would say,
17 ~~okay, the loan was approved but we need this much~~
18 more collateral or we may need this or we may need
19 that.

20 Q The conduit of that information was the
21 loan officer, in your case, Dave Zabriksie?

22 A David did most of my loans.

23 Q Okay. So you would go to him and say, I
24 need a loan. And he would say, sounds great, I will
25 take it, give me this information, there is a

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1 meeting and then I will report back to you?

2 A Yeah.

3 Q Then he would be the one to report back to
4 you?

5 A That is right. The board, I never heard
6 from the board in anything of that nature. It was
7 always the commercial loan officer.

8 Q All right. So everything that you knew or
9 needed to know about the loan process you learned
10 from the loan officer?

11 A That's correct. He kept me -- he kept me
12 in the loop of where it was in the process. And
13 again, like I say, if I came back and they didn't
14 like something, they would tell you.

15 Q As far as you know, that is the typical
16 way they handled the commercial loans?

17 A I would say so, because I have had
18 commercial loans with other banks and they all
19 pretty much work the same way.

20 Q In your experience with David Zabriskie --
21 how do you spell that, if you know?

22 A Z-A-B-R-I-S-K-I (sic), I think.

23 Q She will ask you.

24 A Okay.

25 Q We will check on it if it is incorrect.

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1 Did he ever -- did you ever have any issues with him
2 as a loan officer?

3 A Sure.

4 Q I mean, what I mean by that, did he ever
5 say he was going to do one thing and then do
6 something else?

7 A No. In all honesty, with Dave, the only
8 problem I had with Dave Zabriskie, sometimes he
9 would not get back to me in a timely fashion. I
10 would have to call him a couple of times to remind
11 him. Other than that, again --

12 Q Did that get worse as the years went on
13 and the financial issues became more?

14 A Well, actually, believe it or not, it
15 probably got better because I didn't have to deal
16 with him as much because he had had a couple -- he
17 got, by then the bank had grown and they had gotten
18 a couple of girls or help in there.

19 And I could call Amy. Amy worked, I
20 guess, for David. And I can't remember her last
21 name -- Harris at that time, she has remarried. But
22 I would call Amy and she would get it right to me.

23 And the things that I am talking about I
24 would need, the bank would never, you know -- which
25 most of them don't -- they will not -- if you have a

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1 commercial loan, they will not send you out what
2 interest you paid on it. You have to call and
3 request it every time.

4 Q What do you mean interest that you paid on
5 it?

6 A Like on your mortgage on your house, your
7 mortgagee (sic) sends you a statement showing you
8 how much interest you paid on your house.

9 Q You had to request --

10 A Well, commercial loans you do. That would
11 be one of the things, I am trying to get my taxes
12 done and I just --

13 Q Your commercial loans, did you ever have a
14 loan structured where you would make draw requests
15 to the bank and then they would approve it or not
16 approve it?

17 A No.

18 Q Okay.

19 A I never -- I have never had a construction
20 loan with them. Yeah, my house was with them, but
21 not commercial. But my house was. I did that
22 construction.

23 Q And you did have the process where you
24 make draw requests and they would approve or not
25 approve?

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1 A Yes.

2 Q Did you have, through that process -- when
3 you made a draw request, how did that process work?

4 A Well, it has been a long time, but you
5 just make the draw. Again, the builder would make
6 the draw, submit a form. And then he would submit
7 it to the bank. And they would look at it and then
8 they would send an appraiser, you know, to appraise
9 it. And the appraiser would report back to the bank
10 and say, okay, this much is completed so release the
11 draw.

12 Q Okay. Did you ever have any issues
13 getting timely draw disbursements from the bank?

14 A No, I didn't.

15 Q In that process, did you have -- when was
16 that loan, do you remember?

17 A Probably -- I think it was probably
18 started in around 2000, 2001.

19 Q So it has been some time.

20 A Yes. It was before First National was
21 ever here in this market.

22 Q Okay.

23 A Because you have to remember I knew these
24 guys from Spartanburg because I moved from
25 Spartanburg down here.

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1 Q Were any of your -- all of your current
2 loans that you hold now, were they in existence with
3 the bank in '08, '09, 2010?

4 A Yes.

5 Q During that time frame, did you have
6 any -- any issues arise with any of those loans?
7 Any of them come due during that time?

8 A Yes.

9 Q How was that resolved? Did you pay them
10 or --

11 A They refinanced the loan.

12 Q Which loans did they do -- did they
13 refinance?

14 A They refinanced the Elliott House Seaside
15 Inn -- the company, Elliott Seaside, LLC. It is
16 Second PIC, LLC. Marina Times 3, LLC. 1126 Ocean
17 Club. I think that's it.

18 Q Okay. So four loans --

19 A Yeah.

20 Q -- that were refinanced; do you remember
21 about the time frame?

22 A Most of those were in the past couple of
23 years.

24 Q Since '08 on?

25 A Yeah.

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1 Q All right.

2 A It was brutal.

3 Q Difficult to do?

4 A Yeah. Appraisals were way down on the
5 thing.

6 Q What types of loans were they?

7 A They were all commercial, condos. These
8 are all personal condos.

9 Q Okay. And they were coming due?

10 A Yes.

11 Q Tell me how that worked. Did you just
12 make a formal request or did you go to your loan
13 officer and say --

14 A At that time your loan officer would come
15 to you and say -- all commercial loans are
16 typically, however they were originally set up, I
17 have never had one where anyone would go more than

18 five years -- so at the end of the five years when
19 they were coming due, they would get in touch with
20 you and order an appraisal on the property. And
21 then when the appraisal came in, then they would ask
22 us to sit down and look at it. It was renegotiated
23 interest and how far the appraisal was upside down.

24 Q Okay. Were these upside down?

25 A 1126 was. It was considerably upside

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1 down. That is one right now, quite honestly, we are
2 trying to work through with them as well.

3 Q That has not been refinanced?

4 A No.

5 Q You are still working through that one?

6 A Still working.

7 Q Where in that process are you?

8 A We are -- hopefully it will be resolved
9 within 90 days, but I can't -- that is a work in
10 process. The rest of them have been refinanced.

11 Q Did any of these come -- the maturity date
12 come and go before the refinance took place?

13 A Yeah. I think pretty much all of them
14 did. I mean, they still -- they were just trying to
15 get the paperwork through. Again, they didn't add
16 any penalties. You are still paying your payment, I
17 mean.

18 Q Under the terms of the old --

19 A Oh, yes.

20 Q You would just continue paying until you
21 worked out whatever new refinancing agreement you
22 could come to?

23 A Yeah.

24 Q Okay. Now, about when -- the officer
25 would come to you, I guess, he would say, you know,

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1 your note is coming due here in a certain amount of
2 time?

3 A Yeah. It was typically 45 to 60 days
4 because they had to try to get appraisals, that kind
5 of thing. That is why I said sometimes it would run
6 over, you know, the time just because they couldn't
7 get the appraisal.

8 Q Did they ever have you, when they
9 matured -- he would come to you 45 or 60 days
10 beforehand and y'all start the process of doing
11 that, and then the maturity date is approaching or
12 has passed, did they ever have y'all or you sign
13 something as --

14 A No.

15 Q -- any kind of stop-gap measure?

16 A No. The only thing that was ever said is
17 ~~you would get a note in the mail saying your full~~
18 loan has matured, you need to pay this by the end of
19 the month. And you say, okay, don't worry about it,
20 we have it taken care of. And that was it.

21 Nothing was ever reported. There was no
22 additional -- I would be told at that point, just
23 continue making the payment that you are making now
24 and until we get this resolved.

25 Q Okay. That has been the process for all

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1 of these different loans?

2 A Yes. And all of those are taken care of
3 now. I think -- I won't have to do that again until
4 maybe 2014.

5 Q That was going to be my next question.
6 When you did refinance them, were they on the same
7 or similar length?

8 A The length? They did a five-year call.
9 The interest was certainly higher. I won't say it
10 was an insane amount, but it was definitely more
11 than what it was before.

12 Q Right. So the interest went up?

13 A Yeah. You know, one percent or something
14 like that.

15 Q But it was refinanced on a similar
16 five-year maturity?

17 A Yeah, everything was financed the same.

18 Q Except for --

19 A Yes.

20 Q Did any of these have an adjustment in
21 principal or no?

22 A No. Pretty much all of them had the -- I
23 have equity in, so there was enough to meet their
24 criteria or whatever.

25 Q Did that make for Elliott Seaside and

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1 Second PIC and Marina Times 3, those all had equity
2 in the property?

3 A Yeah -- well, Elliott, that was turned
4 into a condo. The Elliott House has been shut down
5 now for two years.

6 Q But when it was refinanced was there
7 equity in it?

8 A No, not really. I mean, but again, I made
9 the payments and it was kind of like that.

10 Q Okay. So that one and 1126, you are
11 still --

12 A The 1126 we are still working because that
13 was -- we had -- it was virtually a crazy appraisal
14 and they appraised the property literally at half of
15 what we owed on it. But then they reordered another
16 appraisal and that is where we are coming in now and
17 ~~it is more in line with what it should be. That is~~
18 what we are working on now.

19 Q The Second PIC and Marina Times 3, those
20 had equity in the property at the time of the
21 refinance?

22 A Yeah.

23 Q How long did that process take to
24 refinance?

25 A Couldn't have been more than 30 or 45

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1 days. Well, I would say 30 or 45 days after it
2 became matured, but realistically, probably 90 days,
3 90-day window to refinance.

4 Q During that time frame, you dealt with
5 your loan officer still?

6 A No. He was gone by that time on the
7 refinance.

8 Q So you got a new loan officer?

9 A (Witness nods.)

10 Q What I mean by that, I am saying somebody
11 contacted you and said, the note is coming due,
12 let's work this out?

13 A Right.

14 Q From that point through the actual
15 refinancing, you dealt with the same person or
16 someone new?

17 A By then I dealt with the same one because
18 Dave Zabriskie was gone.

19 Q Who is your loan officer now?

20 A Don -- Don Brown.

21 Q Okay. So what I am asking is Don Brown
22 would call --

23 A When I did the refinance.

24 Q And through the end you are only dealing
25 with Don Brown?

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1 A Yes.

2 Q Nobody else stepped in and said, I am
3 so-and-so and I am from some other part of the bank
4 and we are going to handle this with you? It was
5 always Don Brown?

6 A Yeah.

7 Q Okay.

8 A Well, yeah, on all of the loans except for
9 the 1126. That was -- that was probably Steve
10 Meyer. But again we were trying to work out things.

11 Q I see. Were any of these loans -- do you
12 know what the special assets division is?

13 A Yes.

14 Q Were any of these loans transferred to
15 that?

16 A 1126, that is where it is sitting.

17 Q They are still working with you on that?

18 A Yes.

19 Q Who are you dealing with?

20 A Steve Meyer.

21 Q Is he up in Spartanburg?

22 A Yes, he is.

23 Q Okay. Obviously, none of these, they
24 haven't declared defaults on them or written notice
25 of default?

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1 A Yeah, they have sent us a written notice
2 of default.

3 Q Okay. But nothing further?

4 A Like I say, we are right now working
5 through it. And it should be resolved.

6 Q None of them had an adjustment of
7 principal, is that right?

8 A That's correct.

9 Q Okay. So back to the advisory board --
10 sorry to go on a bit of a tangent there -- but as to
11 the advisory board, or personally, do you have any
12 knowledge of First National Bank of the South
13 lending (sic) money from other banking institutions?

14 A No. I am not sure I know what you mean.

15 Q Well, you, as a customer, have had First
16 National Bank of the South lend you money.

17 A Right.

18 Q What I am asking is what do you know about
19 First National Bank of the South obtaining a loan
20 from another bank?

21 A I don't know from -- again, I don't know
22 about loaning money. I know that there was -- they
23 did participation loans.

24 Q What is that?

25 A Like my units, Marina Times 3, they did a

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1 participation loan with a bank in Easley that was
2 Community South that is now taken over by Certus or
3 whatever, but I know I paid First National, but
4 First National just kind of services that note.

5 Q Okay.

6 A I have heard it was called bank
7 participation where a couple of banks -- I think
8 that was -- again, the only thing I know about that
9 aspect, I know that every bank has a lending limit.
10 And if you had to go over that, you know, they could
11 do bank participation.

12 Q Get another bank to come in?

13 A To participate with you on that loan. But
14 if that is what you are asking, all I know is I have
15 heard the term bank participation. As far as
16 another bank loaning the bank money, that, I don't
17 know.

18 Q Okay. Have you ever heard of Nexity Bank?

19 A Nexity, yes.

20 Q What do you know about Nexity?

21 A Only thing I know is Nexity was -- what I
22 read in the paper about, you know, I guess First
23 National had borrowed money from Nexity. I am not
24 really, to be honest with you, I don't even remember
25 why they borrowed the money. And I just remember

Deposition of Charles Shaw

1 that they -- they were defaulting on the loan. And
2 then I remember reading where I think they owed
3 9 million and they said they would take 3 million or
4 something. I thought, gee, what a deal, I wish they
5 would do that for me. But other than that, that's
6 really all I know.

7 Q Nobody at the bank told you anything about
8 that loan?

9 A No.

10 Q Okay. Do you know about when First
11 National Bank of the South failed? When I say
12 failed, I mean the FDIC stepped in?

13 A I don't remember. At least a
14 year-and-a-half, but I may be wrong.

15 Q Okay.

16 A Bad memory.

17 Q At your advisory board meetings, did that
18 possibility ever arise in the discussion?

19 A No.

20 Q Did you ever take part in any of the
21 meetings with the board up in Spartanburg about
22 buying loans from the bank?

23 A No.

24 Q Do you know anything about that?

25 A No, I have never heard that. The only

Deposition of Charles Shaw

1 thing I can tell you is once a year -- which I only
2 went to probably one of them -- they brought the
3 advisory board to Spartanburg where they would have
4 their whole big stockholders, shareholders meeting.
5 And they would invite the regional boards to come up
6 to Spartanburg to participate.

7 Q Did you ever do that?

8 A I did that one time. But again, it was
9 not -- it was more or less, it was a shareholders
10 meeting. And, you know, we got to kind of meet and
11 mingle type thing, but there was nothing -- there
12 was no official meeting.

13 Q Do you know anything about the reasons why
14 First National was taken over by the FDIC?

15 A You know, the only thing, you know,
16 really, what you read, it was undercapitalized.
17 They had nonperforming loans, you know. You get --
18 you know, you have to keep covering those.

19 Q Nothing other than what you may have read
20 in the newspaper?

21 A No.

22 Q Anything like that?

23 A Huh-uh. Again, they were very good at --
24 I won't say keeping information. I think they
25 did -- I think they are no different than you or a

Deposition of Charles Shaw

1 doctor. They kept, you know -- I think they did a
2 pretty good job at keeping, you know, things that
3 were confidential confidential.

4 Like I say, never heard, never once heard
5 them ever talk about anybody, any personal person,
6 any loan in default, any loan being made. So, I
7 think it was all very professional.

8 Q Okay. Do you know about a conference
9 call? Do you know about -- yeah, a conference call
10 at one point between some advisory board members
11 and -- I understand not all of them maybe took part
12 in the conference call, you may not have -- between
13 certain members of the advisory board and members of
14 the -- of the board in Spartanburg about raising
15 capital?

16 There was an issue that had arisen where
17 the Spartanburg board had said or indicated they
18 needed something around the nature of \$25 million?

19 A I do remember, yes. I remember they had
20 requested the conference call, talking about -- I
21 don't think I attended that.

22 Q Okay.

23 A Again, it was just kind of like in the
24 past, I used to see, like, Ron Brinson or some of
25 those guys at different places. I understand that

Deposition of Charles Shaw

1 we had -- they needed to raise capital. Again, it
2 was also in the paper.

3 Q But you didn't take part in the conference
4 call?

5 A I took part in some conference calls but
6 not that one. I took part in conference calls
7 earlier on. A lot of those conference calls were
8 just about when -- when is the best time to have a
9 meeting type thing.

10 Q So you were never presented with a list of
11 nonperforming loans the bank was trying to get rid
12 of?

13 A Well, I take that back. That wasn't a
14 conference call. We had -- I would really rather
15 not say on that one because I am not 100 percent
16 sure.

17 ~~I have gotten things, and I don't want to~~
18 be confused, but I have received e-mails from other
19 people and different friends and actually other
20 banks that had assets that they wanted to liquidate.
21 I got one on some paintings that some bank -- I
22 can't remember. There were some -- I am not
23 really -- I am afraid to say on that one and not be
24 correct 100 percent.

25 Q Okay.

Deposition of Charles Shaw

1 A I do think this. That there was a time
2 that if you -- there was a list that you could get
3 from them if you requested, but I think that came in
4 an e-mail. That's all I remember.

5 Q The bank -- do you remember ever having to
6 sign any type of confidentiality agreement with any
7 of the board members up in Spartanburg for any
8 information along those lines?

9 A You know, I am sure we did early on when
10 the board was set up.

11 Q Okay.

12 A But I don't remember.

13 Q Okay.

14 A I would think that we had to be bound by,
15 you know --

16 Q And you may have and I am not -- I am
17 asking you more specifically about around this time
18 frame, '08, '09, maybe even into 2010 where they
19 were trying to dump some assets or some liabilities.
20 And they were presented to certain people and say --
21 also present them a confidentiality agreement and
22 have them sign to not talk about it. Do you
23 remember anything like that?

24 A Vaguely, I remember some things about
25 that, but, again, I don't -- I am, again, at that

Deposition of Charles Shaw

1 time it was kind of crazy times, so I don't
2 remember.

3 Q Sure. Do you have -- in your subpoena I
4 think that there was a request for whatever
5 documents --

6 A I have no documents pertaining to this.

7 Q No e-mails or anything like that?

8 A No. Again, I should be better, but I am
9 really not. I lost a lot of money in First
10 National. I mean, I really ought to be, you know,
11 jumping up and down. But in all honesty, it is what
12 it is.

13 Q Okay. I have just a couple more.
14 These -- we talked about your commercial loans that
15 had been refinanced.

16 A Yes.

17 ~~Q And I think we narrowed it down from the~~
18 '08 until now kind of time frame. Do you have any
19 idea maybe the order of those or the general time
20 frame for the Elliott Seaside, the Second PIC --

21 A I think -- I think they did 2014, all of
22 them, so they were refinanced -- or maybe 2013,
23 2014, so within the past.

24 Q '08 or '09?

25 A '09 time frame.

Deposition of Charles Shaw

1 Q If they are five-year --

2 A Yeah, I know they were five years, so we
3 are talking probably '09. And all of those, I
4 bought all of them around the same time, probably
5 within a few months apart.

6 Q The loans would actually go for Elliott
7 Seaside, Marina --

8 A No. They were with me personally when I
9 came in and we converted them over to set up the
10 corporation.

11 Q Then the loan was converted to the
12 corporate entity?

13 A Yeah, I would assume. Well, I don't
14 know -- well --

15 Q Don't know?

16 A You know, everything else was in the LLC.

17 Q Did they have you sign a personal
18 guarantee for those loans?

19 A Oh, yeah.

20 Q All right. Who did you say your loan
21 officer now is?

22 A Well, Don Brown, and on 1126 it is Steve
23 Meyer.

24 MR. EDWARDS: I think that's all the
25 questions I have for you. Thank you, sir.

Deposition of Charles Shaw

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(The deposition adjourned at 11:20

A.M.)

Deposition of Charles Shaw

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON)

3
4 I, Wanda S. Buckner, Registered
5 Professional Reporter, Certified Realtime Reporter
6 and Notary Public for the State of South Carolina,
7 at Large, do hereby certify that the witness in the
8 foregoing deposition was by me duly sworn or
9 affirmed to testify to the truth, the whole truth,
10 and nothing but the truth in the within-entitled
11 cause; that said deposition was taken at the time
12 and location therein stated; that the testimony of
13 the witness and all objections made at the time of
14 the examination were recorded stenographically by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 examination; and that the witness was given an
20 opportunity to read and correct said deposition and
21 to subscribe to the same.

22 Should the signature of the witness
23 not be affixed to the deposition, the witness shall
24 not have availed himself/herself of the opportunity
25 to sign or the signature has been waived.

26 I further certify that I am neither
27 related to nor counsel for any party to the cause
28 pending or interested in the events thereof.

29 Witness my hand, I have hereunto affixed
30 my official seal, this 7th day of July, 2011, at
31 Charleston, Charleston County, South Carolina.

32

33

34 Wanda S. Buckner
35 NCRA Registered Professional Reporter
36 NCRA Certified Realtime Reporter
37 My Commission Expires:
38 August 20, 2013

39

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Deposition of Charles Shaw

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Deposition of Charles Shaw

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EXHIBIT C

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
 COUNTY OF BERKELEY) CASE NO. 2009-CP-08-3652

FIRST NATIONAL BANK OF)
 SPARTANBURG, DIVISION)
 OF FIRST NATIONAL BANK)
 OF THE SOUTH,)

Plaintiff,)

vs.)

LIBERTY VILLAGE, LLC,)
)
 Defendant.)

COPY

* * * * *

DEPOSITION OF: WILLIAM FREEMAN BARBER, JUNIOR

DATE TAKEN: August 12, 2010

TIME: 9:37 a.m.

PLACE: Hagood & Kerr, PA
 654 Coleman Boulevard
 Mount Pleasant, SC 29464

REPORTED BY: DENISE LAUDER
 Registered Professional
 Reporter and Notary Public

* * * * *

POST OFFICE BOX 21784
 CHARLESTON, SOUTH CAROLINA 29413-1784

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1 APPEARANCES
2
3 REPRESENTING THE PLAINTIFF:
4 ROBERT A. KERR, JR., ESQUIRE
5 Hagood & Kerr, PA
6 654 Coleman Boulevard
7 Mount Pleasant, SC 29464
8 (843) 972-1000

9 REPRESENTING THE DEFENDANT:
10
11 WILLIAM BEE RAVENEL LEWIS, ESQUIRE
12 The Richter Firm, LLC
13 622 Johnnie Dodds Boulevard
14 Mount Pleasant, SC 29464
15 (843) 849-6000

16 ALSO PRESENT: Scott Warren
17
18
19
20
21
22
23
24
25

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1 STIPULATIONS
2 It is hereby stipulated and agreed by
3 and between the parties hereto, through their
4 respective counsel, that the reading and signing of
5 the transcript is expressly waived by the Deponent.
6 WILLIAM FREEMAN BARBER, JUNIOR,
7 being first duly sworn, testified as follows:
8 DIRECT EXAMINATION
9 BY MR. KERR:
10 Q. State your name for the record.
11 A. William Freeman Barber, Junior.
12 Q. Mr. Barber, you were here today as the
13 designated representative of Liberty Village, LLC;
14 is that correct?
15 A. Yes.
16 Q. We'll get right down to business. I'm
17 required to instruct you that you have to ask me,
18 not Mr. Lewis, who I understand is here as your
19 Counsel today, for any clarifications, definitions,
20 or any questions concerning any of the questions I
21 pose or any of the documents I show you. Do you
22 understand that?
23 A. Yes.
24 Q. Okay. Where do you live?
25 A. Full address?

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4 WILLIAM FREEMAN BARBER, JUNIOR 4
5 DIRECT EXAMINATION BY MR. KERR 4
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Page 5

1 Q. Yes.
2 A. 3202 Jasper Boulevard, Sullivan's
3 Island.
4 Q. Are you married?
5 A. I am.
6 Q. To whom?
7 A. Margaret Scott Barber.
8 Q. Do you have any children?
9 A. Two boys.

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10 EXHIBITS
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10 Q. And the Jasper Boulevard is your
11 full-time residence?
12 A. It is.
13 Q. All right. How long have you lived
14 there?
15 A. About five years.
16 Q. Have you ever been arrested?
17 A. Yes.
18 Q. Tell me about any arrests that you've
19 had.
20 A. I was 15 years old. I was riding a
21 moped without a driver's license.
22 Q. Anything else?
23 A. That's it.
24 Q. Have you ever been individually a party
25 in a lawsuit; that is, a plaintiff or a defendant

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1 in a lawsuit?

2 A. As an individual - I know that some of

3 my entities have. I don't believe so, as an

4 individual. I don't recall.

5 Q. Have you ever been sued in your

6 personal name?

7 A. As a guarantor on a loan, yes.

8 Q. What loan was that?

9 A. The First National.

10 Q. Okay. An aspect of this matter that

11 we're talking about today?

12 A. Right.

13 Q. Okay. What about any entity in which

14 you have an ownership or membership interest, have

15 you ever been sued or has your entity been sued?

16 A. Yes.

17 Q. Tell me about that.

18 A. I was a homebuilder in Charlotte and

19 had some civil disputes; one involving an office

20 building that I rented between myself and a

21 landlord. I had a dispute with a homebuyer over

22 some floors that warped. And, of course, recently

23 through the economic downturn I've had some issues

24 regarding notes with other banks as well.

25 Q. Tell me about those.

Page 7

1 A. Situations -- and there's more than one

2 of them where we built properties that we weren't

3 able to sell for the value of which we owed on

4 them, short-sale situations, and quit making

5 payments and then it got to the legal side of it.

6 Q. All right. Were those foreclosure

7 cases?

8 A. No, never got to that point.

9 Q. No legal action was ever filed?

10 A. Oh, yes. Yes, it was filed, but the

11 foreclosures were not.

12 Q. No sale?

13 A. Right.

14 Q. Okay. So if something got filed, it

15 was resolved through the short-sale process where

16 the bank agreed to take less money than was owed?

17 A. Correct.

18 Q. What are the names of those entities

19 that were subject to those suits?

20 A. Seatown Homes, LLC, a/k/a Seatown

21 Builders.

22 Q. Is that S-E-A-T-O-W-N?

23 A. Yes. And Liberty Village, LLC.

24 Q. Okay. Tell me about your education.

25 Where did you go to high school?

Page 8

1 A. Charlotte Latin School.

2 Q. What year did you graduate?

3 A. 1988.

4 Q. And what about college?

5 A. University of Georgia, did one year at

6 East Carolina University as well.

7 Q. Do you have a degree?

8 A. I do.

9 Q. What is your degree in?

10 A. Bachelor of arts.

11 Q. And what was your major?

12 A. Speech communications.

13 Q. Very good. What did you do when you

14 finished college?

15 A. I went to work for a minor league

16 baseball team and a radio station.

17 Q. The Charlotte Knights?

18 A. Correct.

19 Q. And they're an affiliate of what big

20 league team?

21 A. Right now I believe it's the White Sox.

22 They've changed from the Marlins and a couple of

23 different ones a few times.

24 Q. Were you in the management side of

25 baseball?

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1 A. No, more on the sales side, more on the

2 production. They were in Cleveland at the time I

3 was involved.

4 Q. How long did you do that?

5 A. Two years.

6 Q. And then what did you do? Tell me,

7 ~~from the time you got out of college until,~~

8 ~~basically, today your employment history?~~

9 A. I worked for the Knights for two years

10 and then I went to work for John Boy and Billy in

11 Charlotte, did that for a year.

12 Q. That's the radio show?

13 A. Right. And then I started building

14 houses at that point.

15 Q. What year was that?

16 A. '95.

17 Q. Was that in your own entity or employed

18 by somebody else?

19 A. I had a partner originally, and it was

20 actually his entity, I bought into his business,

21 and then went into business for myself as sole

22 owner, entity.

23 Q. What was that entity called?

24 A. Barber Builders.

25 Q. How long did you build with Barber

1 Builders?
 2 A. Until 2004.
 3 Q. Okay. What happened then?
 4 A. Sold the company and moved to
 5 Charleston and started Seatown Homes.
 6 Q. Okay. And are you employed today by
 7 Seatown homes?
 8 A. No.
 9 Q. Are you employed by -- how do you make
 10 a living now?
 11 A. I don't.
 12 Q. All right. When was last time you were
 13 employed?
 14 A. Earlier this year, I built a custom
 15 home.
 16 Q. Okay. And tell me about the Liberty
 17 Village entity. Did you form it?
 18 A. Along with Justin Stringfellow, yes.
 19 We formed it together.
 20 Q. Who is Mr. Stringfellow?
 21 A. Mr. Stringfellow is an acquaintance
 22 from Charlotte that I was involved in several
 23 business arrangements with up there. Initially, I
 24 found this piece of property in Charleston and
 25 asked him to be my partner on it. And that's when

1 A. I'm not sure of the status of it now,
 2 but it didn't change as long as I was a member.
 3 Q. Okay. Skip to the bottom of this, you
 4 are no longer a member of the LLC?
 5 A. Correct.
 6 Q. And when did you assign or give up your
 7 membership interest?
 8 A. Last month, July.
 9 Q. What is the nature of that transaction?
 10 Was it an assignment?
 11 A. Yes.
 12 Q. To whom did you assign your membership
 13 interest?
 14 A. Joe Bartone.
 15 Q. I'm going to use a lawyer word, what
 16 was the consideration for the assignment? Did he
 17 pay you anything?
 18 A. I wish that was a yes or no answer, but
 19 I did not receive any funds at the time that I gave
 20 my assignment. There were other considerations.
 21 Q. What were those other considerations?
 22 A. He had a lien on some property that
 23 another entity of mine owned and he agreed to waive
 24 that lien.
 25 Q. Was that satisfaction of a mortgage?

1 we formed Liberty Village.
 2 Q. All right. So this property that you
 3 just mentioned is the property that is subject to
 4 this foreclosure suit?
 5 A. Correct.
 6 Q. All right. So what year did you form
 7 Liberty Village, LLC?
 8 A. 2004, '05, somewhere in there.
 9 Q. At its formation, who were the members
 10 of the LLC?
 11 A. Justin Stringfellow and myself.
 12 Q. Did you have an operating agreement?
 13 A. I believe so. It was something generic
 14 that we found online.
 15 Q. Did you have a lawyer help you form the
 16 entity?
 17 A. No.
 18 Q. Has there ever been any other entity or
 19 -- excuse me, operating agreement, other than the
 20 one that was originally formed, originally adopted?
 21 A. I don't recall, but I would say, no.
 22 Q. All right. At its inception was
 23 Liberty Village member-managed or manager-managed?
 24 A. Member managed.
 25 Q. Has that management ever changed?

1 A. Yes.
 2 Q. Okay. And what was the piece of
 3 property that he satisfied the mortgage on?
 4 A. It was some single-family lots in the
 5 same area.
 6 Q. In the same area of the property that's
 7 the subject of this suit?
 8 A. Correct.
 9 Q. Okay. So today you have no membership
 10 interest, no distributional interest in the
 11 Defendant in the lawsuit that we're discussing
 12 today?
 13 A. Correct.
 14 Q. All right. But at all relevant times
 15 from the time you borrowed money from First
 16 National Bank of the South until the filing of this
 17 lawsuit and even past then, you were a member in
 18 the LLC?
 19 A. Correct.
 20 Q. What was the -- what was the membership
 21 percentage ownership when you formed the LLC with
 22 Mr. Stringfellow?
 23 A. Stringfellow and I were both
 24 50 percent.
 25 Q. All right. Did that 50 percent

1 ownership interest change at any time?
 2 A. Yes.
 3 Q. Okay. Tell me about that.
 4 A. Stringfellow sold his interest to
 5 Liberty Village Investments, LLC which the members
 6 were Anthony Bartone, Joe Bartone, and Skipper
 7 Woody. At that point I was 50 percent and Liberty
 8 Village Investments was 50 percent.
 9 Q. Do you know what the consideration was
 10 for that sale or that assignment of Stringfellow's
 11 interest?
 12 A. Yes. They paid Stringfellow
 13 approximately \$1.6 million as well as took
 14 assumption of the loan, or responsibility as
 15 guarantors, however you say it.
 16 Q. Yeah. Did they arrange to have Mr.
 17 Stringfellow released from his guarantee of the
 18 loan?
 19 A. Yes.
 20 Q. And paid him \$1.6 million in cash?
 21 A. Right.
 22 Q. Did you have to consent to that
 23 assignment?
 24 A. I don't recall.
 25 Q. Did you consent to that assignment?

1 son, Jud, who helped me broker things, for lack of
 2 better terms. And the way I recall it was he told
 3 them there may be an opportunity there to get
 4 Stringfellow out, something along those lines.
 5 Q. All right. Does or did Liberty Village
 6 at any time while you had a membership interest in
 7 that LLC have any other business operations or
 8 interests besides the development of the property
 9 that is at issue in this lawsuit?
 10 A. No.
 11 Q. There's generally in an LLC like a
 12 partnership, a member or a partner who handles tax
 13 matters. Who was the tax matters member in the
 14 LLC?
 15 A. I handled the coordination with the
 16 accountant to prepare the tax returns if that's
 17 what you're asking.
 18 Q. Okay. Did Mr. Stringfellow have any
 19 involvement in the day-to-day operations of the
 20 development of the property?
 21 A. Yes.
 22 Q. What were his -- what was his
 23 involvement?
 24 A. We jointly made the decisions about
 25 when, where, who, what, why. We coordinated our

1 A. Well, what do you mean by, consent?
 2 Q. Well, did you want a new partner in
 3 this deal?
 4 A. I don't recall that being the case, no.
 5 Not that I opposed a new partner, but I wasn't
 6 specifically looking for one as I recall.
 7 Q. What year was that?
 8 A. 2008.
 9 Q. That was a 2008 assignment?
 10 A. Uh-huh.
 11 Q. Had you had previous business
 12 relationships with either Mr. Bartone, Mr. Bartone,
 13 or Mr. Woody?
 14 A. Transactions, yes.
 15 Q. Transactions of what nature?
 16 A. I -- I had bought property from
 17 Bartone; I was never a partner with him or anything
 18 like that. And Woody did all my real estate
 19 closings.
 20 Q. You bought the Marina?
 21 A. Right.
 22 Q. Okay. So I guess what I'm interested
 23 in, how did they become familiar with the Liberty
 24 Village, LLC project?
 25 A. That would have been through Skipper's

1 efforts on timing of when we thought we should
 2 develop, we discussed offers from clients,
 3 negotiated contracts for sale of the property.
 4 About everything that you could do in the
 5 development end of it, we shared the responsibility
 6 equally.
 7 Q. All right. Did the new members,
 8 Liberty Village Investments, LLC and its members,
 9 did they participate in the day-to-day operations
 10 of the development when they become involved in
 11 Liberty Village, LLC?
 12 A. Not as much as Stringfellow did, but
 13 they were certainly kept up to speed with
 14 everything that was going on.
 15 Q. So you communicated regularly with
 16 them. My question was: Were they involved in
 17 hiring subcontractors or contractors?
 18 A. I would say, yes, they were involved,
 19 but, ultimately, I was the front line.
 20 Q. Okay. When Liberty Village
 21 Investments, LLC bought out Mr. Stringfellow, did
 22 you have any separate agreement or was there any
 23 separate agreement with the new members of any
 24 nature?
 25 A. Yes.

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1 Q. Okay. What was that?
 2 A. There was a loan agreement in place
 3 that -- money I advanced into the entity that
 4 wasn't repaid yet.
 5 Q. Okay. I don't understand that.
 6 A. I had made a distribution -- or
 7 contribution, rather, into the entity personally,
 8 and they had assigned me a note to be repaid for my
 9 contribution.
 10 Q. So was that a note payable to you
 11 personally from Liberty Village Investments?
 12 A. No. It was payable to another one of
 13 my entities that actually advanced the funds.
 14 Q. Okay. So at the time that Stringfellow
 15 went out, you made sure that your personal
 16 contribution was somehow recognized by the new
 17 owners?
 18 A. Correct.
 19 Q. Okay. What about banking matters; when
 20 it was you and Mr. Stringfellow as the members of
 21 the LLC, who handled the banking relationships and
 22 banking transactions?
 23 A. I did.
 24 Q. All right. Did he take any part in it?
 25 A. Yes.

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1 Q. Who was your lender that you dealt with
 2 when you formed your entity?
 3 A. Regions Bank.
 4 Q. All right. And was that a relationship
 5 that you had or was that a relationship that Mr.
 6 Stringfellow had?
 7 A. It was a relationship that both of us
 8 had had for a pretty good while going into that.
 9 He actually initiated that loan request.
 10 Q. All right. What about once Mr.
 11 Stringfellow left the LLC, who was -- who was
 12 handling the banking matters and banking
 13 relationship?
 14 A. I was.
 15 Q. Did the other three -- did the members
 16 of the other LLC that was now the other member, did
 17 they take any part in any of the banking
 18 relationships or banking activities?
 19 A. I believe so, yes.
 20 Q. All right. How?
 21 A. I know that Skipper had some
 22 conversations with -- with members of the bank.
 23 Q. Are you talking about Regions Bank?
 24 A. No. No. Those guys weren't involved
 25 until after First National had replaced Regions.

Page 20

1 Regions was out of the picture by the time Liberty
 2 Village Investments came in.
 3 Q. Okay. That's a good place to jump to.
 4 Why did Liberty Village change its bank
 5 relationship?
 6 A. I don't recall the specifics. I know
 7 for me, personally, my relationship started to
 8 shift more to the Charleston area than Charlotte,
 9 and of course thinking long-term I had an interest
 10 in forming local relationships. I don't remember
 11 specifics of why we refinanced it when we did.
 12 Guessing, it would probably have been so we could
 13 obtain more funding for the construction.
 14 Q. When you were -- when you were dealing
 15 with Regions Bank, I take it you were dealing with
 16 a branch or with bankers in Charlotte?
 17 A. Correct.
 18 Q. Okay. And who were you dealing with
 19 specifically?
 20 A. Jim Ashcroft.
 21 Q. And where is he located?
 22 A. Charlotte.
 23 Q. Is he in a main office or is he in a
 24 branch?
 25 A. He's no longer with Regions. He's with

Page 21

1 First Tennessee -- or excuse me, Park Sterling.
 2 Q. Where was his office?
 3 A. South Park, Regions.
 4 Q. How much money did you borrow from
 5 Regions Bank -- not you. How much money did
 6 Liberty Village borrow from Regions Bank?
 7 A. I don't recall, I can make a guess if
 8 you like.
 9 Q. Did they -- what was the nature of any
 10 loan that they made, was it A and D?
 11 A. Yes.
 12 Q. Was that shortly after 2004 when the
 13 entity was created?
 14 A. Correct.
 15 Q. All right. So -- so they made the
 16 original acquisition loan?
 17 A. Correct.
 18 Q. What was the purchase price for the
 19 original property that you bought?
 20 A. I don't recall specifically.
 21 Q. Was it more than \$2 million?
 22 A. It was in the \$6 million range.
 23 Q. Okay. What percentage of the purchase
 24 price did Regions Bank finance?
 25 A. I don't recall.

1 Q. It was more than 50 percent?
 2 A. Yes.
 3 Q. Was it as much as 80 percent?
 4 A. Yes.
 5 Q. And that was at a time when things were
 6 going pretty well developmentwise, right?
 7 A. Correct.
 8 Q. Okay. So could they have made as much
 9 as 95 percent?
 10 A. I think that would have been pushing
 11 it. If I had to guess, I would say 90 would have
 12 -- were the terms that we were dealing with those
 13 days.
 14 Q. And the other money that went in the
 15 equity that went in would have been 50 percent you
 16 and 50 percent Mr. Stringfellow?
 17 A. Correct.
 18 Q. And explain to me -- because I don't
 19 know the history and I'm interested, explain to me
 20 from the time that you acquired the property, how
 21 you developed, what got sold off, sort of a full
 22 picture from then to now.
 23 A. Okay. I need to back up. When I first
 24 contracted the piece of property, I found it
 25 individually through a broker. I approached

1 I guess it was 2005, maybe the year after we closed
 2 it, if we closed it -- '04 if we closed it in '03.
 3 Q. And at that time, at that closing how
 4 much of the purchase price went to retire principal
 5 owed to Regions Bank?
 6 A. 100 percent.
 7 Q. Do you recall the purchase price?
 8 A. I don't.
 9 Q. Do you recall how much was left on the
 10 Regions loan?
 11 A. I don't.
 12 Q. A settlement statement would answer
 13 those questions?
 14 A. They can be provided, yes.
 15 Q. All right. Then, after that, how did
 16 you proceed with the development of the project?
 17 A. There were, I guess, four portions
 18 remaining at that point, two being single family,
 19 one multifamily, one commercial. We made efforts
 20 to sell those off individually.
 21 Q. All right. And what kind of progress
 22 and success did you have?
 23 A. We had contracts on one of the
 24 multifamily areas and the -- excuse me, one of the
 25 single-family areas and the multifamily area did

1 another partner before Stringfellow was involved.
 2 And he assigned his interest in the contract to
 3 Stringfellow. I'm not sure if that has any
 4 relevance to you or not, but I figured I would
 5 mention that.
 6 And when we purchased the piece of
 7 property, before we closed we had a contract to
 8 sell a portion to Ryland Homes. And we needed to
 9 do some improvements to it in order to close that
 10 contract. So when we borrowed the money from
 11 Regions Bank, the majority of it was toward the
 12 purchase of the raw land and then some funds were
 13 available for the improvements we needed to make
 14 for Ryland.
 15 Q. What was the full acreage that you
 16 purchased?
 17 A. 440 acres dry, 770 total.
 18 Q. All right. Did you in fact close on
 19 that contract with Ryland?
 20 A. Yes.
 21 Q. How much did they buy?
 22 A. Approximately a third.
 23 Q. Okay. And about when was that closing?
 24 A. August. I remember August because we
 25 have a renewal that comes up with them every year.

1 not close. And we had another contract on the
 2 single-family area that did not close, and then I
 3 ended up forming an entity that purchased one of
 4 the single-family tracts.
 5 Q. Approximately how many lots was in that
 6 tract?
 7 A. 290.
 8 Q. What was the purchase price?
 9 A. I could find it on a settlement
 10 statement, but I don't recall.
 11 Q. Where did -- the proceeds from that
 12 transaction, how were those proceeds used?
 13 A. To pay down the Regions balance.
 14 Q. 100 percent?
 15 A. Yes.
 16 Q. And when was that transaction closed?
 17 A. It would have been about 2006.
 18 Q. Okay. And so how did things proceed
 19 from there?
 20 A. We -- the portion that I purchased from
 21 or -- I say I, one of my entities purchased from
 22 Liberty Village was strategically located to the
 23 south, and improvements that were needed to make
 24 for those single-family lots allowed access to the
 25 other properties, at least that was the plan. So I

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1 proceeded to coordinate the development of the
 2 spine road which accessed the single-family lots
 3 and eventually was going to get to the remaining
 4 parcels.
 5 Q. Okay. And where did the spine road
 6 originate?
 7 A. At the intersection of North Rhet and
 8 Liberty Hall Road.
 9 Q. Okay. So your new entity that
 10 purchased single family was -- was developing the
 11 spine road, which would have benefit for both the
 12 new entity and the Liberty Village development --
 13 or Liberty Village, LLC entity?
 14 A. Correct.
 15 Q. All right. How did you do in the
 16 single family 290 lots?
 17 A. Very well.
 18 Q. Did you build out?
 19 A. Uh-huh.
 20 Q. Sell out?
 21 A. Well, some of them I still have, but --
 22 as a result of that agreement we spoke earlier.
 23 Q. Okay. Now mortgage-free?
 24 A. There's still -- still a bank involved,
 25 yeah.

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1 Q. But not a Bartone mortgage?
 2 A. Right.
 3 Q. Okay. And so bring me forward in time
 4 from 2006, 2007. What was going on with the
 5 balance of the development at that time?
 6 A. We were gearing it up for -- for
 7 further development and kicked around a few
 8 contracts that were going to dictate how or how we
 9 didn't develop the piece of property-- Improvements
 10 were still being made whether through engineering
 11 and design or actual stuff on the ground. Just,
 12 you know, anything that big it takes a lot to
 13 coordinate it all.
 14 Q. How were the day-to-day expenses for
 15 that -- that -- those soft costs, how were they
 16 paid?
 17 A. Soft costs?
 18 Q. Well, you know, engineering design, who
 19 was paying those costs?
 20 A. I believe we had them set up in loan
 21 draws.
 22 Q. Out of a -- out of the Regions Bank
 23 draws?
 24 A. No. No. At this point, it would have
 25 been First National.

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1 Q. All right. So let's -- let's go to
 2 that -- the break point where you go from one bank
 3 to another. At the time that you ended the
 4 relationship with Regions Bank and you started with
 5 First National Bank, what were you doing? What was
 6 happening on the property, on the ground at that
 7 point?
 8 A. I can't specifically recall where they
 9 lined up with each other.
 10 Q. Okay. Was the -- was the First
 11 National loan to finance improvements, et cetera,
 12 for a new phase of the development?
 13 A. Yes.
 14 Q. Was the Regions Bank credit, was that a
 15 revolving line of credit? What was the nature of
 16 that loan?
 17 A. I don't specifically recall that it was
 18 a revolver.
 19 Q. Okay. When you went to Regions Bank,
 20 how did you get the loan? Did you go through some
 21 application or some specific process?
 22 A. Yes. And I'll speak in general terms
 23 because I don't recall that specific loan
 24 application, but, typically, we submit financials
 25 and a pro forma or a scope of what's going to

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1 happen as far as a budget and things like that.
 2 Q. And you would meet with a commercial
 3 loan officer and answer questions about the project
 4 and what your vision was and where you saw this
 5 project going?
 6 A. Yeah. There would be conversations,
 7 not specifically a meeting, but, yes.
 8 Q. All right. When you -- let me ask you
 9 this-- How many times have you gone to any bank,
 10 whether on your own behalf or on behalf of an
 11 entity, and pitched a loan and got a loan; more
 12 than ten times?
 13 A. Yes.
 14 Q. Okay. More than 20?
 15 A. Yes.
 16 Q. Was there anything unusual about the
 17 process that you went through in order to get the
 18 loan that is the subject of this lawsuit?
 19 A. Not that I specifically recall.
 20 Q. Okay. Tell me the process that you
 21 went through to eventually get this financing from
 22 First National Bank of the South.
 23 A. I don't specifically recall the
 24 process, but I can speak in general terms if that
 25 would be helpful.

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1 Q. Yeah.

2 A. We requested a loan amount that would

3 have been enough to pay off Regions and have some

4 line items for any further improvements we had

5 planned at that point. We would submit that to the

6 loan officer and provide any other documents that

7 he would request.

8 Q. And at that point you were working with

9 Scott Warren?

10 A. Correct.

11 Q. How did you meet him?

12 A. I don't specifically recall.

13 Q. Did you ever talk to him about

14 financing for any other project?

15 A. Yes.

16 Q. Was that before the Liberty Village

17 loan?

18 A. I don't recall.

19 Q. Did he ever provide you or did the bank

20 ever make any other loans to you or any entity you

21 were involved in?

22 A. Yes.

23 Q. What loans were those?

24 A. Loan for -- loans for Seatown Homes and

25 loans for Southwind Land Development.

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1 Q. Right. Tell me about the Seatown Homes

2 loans that you had with First National Bank.

3 A. There were loans for lot purchases and

4 for new home construction.

5 Q. And have all of those been paid or

6 retired?

7 A. Retired, yes.

8 Q. All right. So generally you went and

9 explained what you were doing, provided some

10 financial information, and -- did you provide First

11 National Bank pro formas when you were first

12 talking about getting a loan with them?

13 A. I don't recall.

14 Q. All right. Do you have a folder where

15 you would keep your bank-related information?

16 A. I had files that I kept spreadsheets

17 and things like that in on computer, yeah.

18 Q. Would that have been some of the

19 information that you provided to the bank?

20 A. Yes.

21 Q. Okay. Where is that information? Is

22 that information you gave to Jay Davis?

23 A. It is.

24 Q. All right. And when you created pro

25 formas, is that something you have experience doing

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1 or did you get assistance from somebody else?

2 A. I get assistance starting out.

3 Q. Okay. Who would provide that

4 assistance?

5 A. Stringfellow.

6 Q. All right. In the loan that we're

7 talking about in this lawsuit, there were

8 particular line items or budget items. Who created

9 the budget and made the proposal of those budget

10 items to the bank? Was that you or Stringfellow?

11 A. On this specific loan, I don't recall.

12 I would assume that he and I would do it together.

13 Q. Did -- did the loan officer -- did

14 Scott Warren, seated here to my right, did he tell

15 you how the bank processed loan applications?

16 A. No.

17 Q. Did he ever discuss the approval

18 process?

19 A. I don't believe so.

20 Q. Was it your understanding that you were

21 dealing with someone at the bank, Scott Warren, who

22 had the authority to approve, or not, a loan of

23 this magnitude?

24 A. I did not have an understanding of that

25 either way.

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1 Q. Okay. Did he -- do you -- so he never

2 talked to you about that one way or the other?

3 A. I don't recall.

4 Q. Okay. Yesterday Mr. Warren was

5 deposited, and one of the exhibits in that deposition

6 was a commitment letter. Do you recall receiving a

7 commitment letter from First National Bank for this

8 loan?

9 A. Yes.

10 Q. Okay. And between the time of the

11 execution of the commitment letter and the actual

12 closing, did you have further discussions about

13 banking relationships with Scott Warren or anyone

14 else from First National Bank?

15 A. I don't specifically recall in that

16 time period. I know Scott and I were continually

17 having conversations about improving our

18 relationship.

19 Q. Okay. Who did the closing on the loan

20 that's at issue in this lawsuit?

21 A. I don't specifically recall. It would

22 have been one of two attorneys, either Lisa Wolf

23 Herbert or Skipper Woodydy.

24 Q. Did you attend a closing?

25 A. I don't specifically recall, but I

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1 would imagine I did.
 2 Q. All right. Now at the closing of this
 3 loan, there would have been a -- there would have
 4 been certain monies that were paid out of the loan.
 5 For example, there was -- there was a mortgage and
 6 an obligation to Regions Bank. That was paid off,
 7 in full, at the closing of this loan; is that
 8 right?
 9 A. Yes.
 10 Q. Okay. And I understand that there was
 11 some money at closing distributed to Liberty
 12 Village, LLC, equity, so to speak; do you recall
 13 that?
 14 A. No.
 15 Q. Okay. Do you recall what other, if
 16 anything, what else was funded at closing?
 17 A. In general terms, I could imagine
 18 closing fees, title insurance, things like that,
 19 but I don't specifically recall anything else in
 20 this individual transaction.
 21 Q. Okay. What did you understand that
 22 this loan was?
 23 A. I understood it as a loan to replace
 24 the debt we had with Regions Bank and additional
 25 funds for capital improvements.

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1 Q. Okay. So it was in the nature of a
 2 refinance?
 3 A. Correct.
 4 Q. But also in the nature of a development
 5 loan?
 6 A. Correct.
 7 ~~Q. Do you recall the term?~~
 8 ~~A. I do not.~~
 9 Q. It was -- it was a shorter term. It
 10 was 18 months, correct?
 11 I'll show you the document in a few
 12 minutes.
 13 A. Okay.
 14 Q. I'm not trying to -- not trying to get
 15 you to say something that isn't right. But tell me
 16 what your understanding of a nonrevolving line of
 17 credit is.
 18 A. My understanding of a nonrevolving line
 19 of credit would be one that is unidirectional,
 20 meaning that you draw on it until it goes up. If
 21 you were to make a principal payment then the funds
 22 would not be available again, as opposed to
 23 revolver.
 24 Q. Where you can pay down and go up?
 25 A. Correct.

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1 Q. Okay.
 2 A. So it's one way until it's paid off in
 3 full.
 4 Q. What was the -- what was the entity's
 5 plan or what was -- what was the vision of how this
 6 loan would be repaid when it matured after
 7 18 months?
 8 A. I'm not sure that that was the vision
 9 in that question, but, I mean, in general terms,
 10 the plan would have been to pay it off through
 11 sales of property. It was not uncommon at all for
 12 notes to be renewed when the term expired, at that
 13 time.
 14 Q. Ultimately, this loan would be repaid
 15 through the sale of property in the project, right?
 16 A. Correct.
 17 Q. And at the time that this loan was
 18 closed, what did -- did you have any prospects for
 19 sales?
 20 A. I don't specifically recall. This
 21 project seemed to always have life in it as far as
 22 prospects. We were always talking to somebody.
 23 Q. All right.
 24 A. At least that's the way it seemed.
 25 Q. Now when you say, at that time, this is

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1 a 2007 loan?
 2 A. Uh-huh.
 3 Q. You said at that time loans were
 4 renewed. Tell me, what about your experience with
 5 loan renewals?
 6 A. I had it happen several times in other
 7 entities and I don't specifically recall, but I
 8 believe Regions may have been renewed on this one,
 9 too. But my history with it was, I got a phone
 10 call from the banker, who said, the loan is up, we
 11 need to renew it, come in and sign a piece of
 12 paper. That was typically the way it went.
 13 Q. Okay. Now, is your experience with
 14 loan renewals different in 2009 and 2010?
 15 A. Yes.
 16 Q. Okay. And how is it different?
 17 A. They're not renewing them anymore.
 18 Q. Why is that?
 19 A. The economic downturn.
 20 Q. Which means that property is not
 21 selling, projects are not advancing; isn't that
 22 what that means?
 23 A. Well, in my situation, all my projects
 24 with the exclusion of Liberty Village were advanced
 25 as far as they were going to go, the homes were

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1 complete. So, yes, they were not advancing and
 2 they were not selling for a price that the bank
 3 would agree to or that I would agree to.
 4 Q. Right. And, in fact, what we were all
 5 seeing in this environment is a lot of short sales
 6 as a result of the deflation in value, correct?
 7 A. Right.
 8 Q. All right. Let me show you -- this is
 9 largely for the benefit of your counsel. Let me
 10 show you the original promissory note.
 11 (PLF. EXH. 1, Copy of Promissory Note,
 12 was marked for identification.)
 13 MR. KERR: And the record should
 14 reflect that what I have handed to Mr. Barber is a
 15 promissory note that bears some original
 16 signatures.
 17 BY MR. KERR:
 18 Q. I'm going to pass over to you
 19 Exhibit 1, and ask, is Exhibit 1 a true and correct
 20 copy of the original document that you're holding
 21 in your right hand?
 22 A. It appears to be, yes.
 23 Q. All right. Is the document -- the
 24 original document you're holding in your right
 25 hand, the promissory note from August 15, 2007,

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1 where First National lent Liberty Village, LLC the
 2 money that is at issue in this lawsuit?
 3 A. I believe so, yes.
 4 Q. Okay. You believe so?
 5 A. Uh-huh.
 6 Q. Why do you not know so?
 7 A. I don't know that there wasn't a loan
 8 agreement before this one specifically.
 9 Q. All right. When you say, loan
 10 agreement -- well, tell me what you mean by a loan
 11 agreement.
 12 A. (Indicating) Note whatever this is.
 13 Q. All-right, sir.
 14 A. I understood this to be a loan
 15 agreement. Maybe you can correct me on that.
 16 Q. If you look at the lower left-hand
 17 corner, there is a preprinted legend that says,
 18 South Carolina Universal Note.
 19 A. Oh, okay.
 20 Q. So does -- does the original and,
 21 therefore, the copy, does it bear your signature?
 22 A. Yes.
 23 Q. Okay. And do you recognize the
 24 signature of the lending officer signed on behalf
 25 of the bank?

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1 A. I recognize the name, but not the
 2 signature.
 3 Q. Had you ever had occasion to see Scott
 4 Warren's signature before?
 5 A. I don't recall.
 6 Q. Is there any reason or do you in any
 7 way contest that you executed on behalf of Liberty
 8 Village a promissory note in the amount of
 9 \$2,550,000?
 10 A. No.
 11 Q. Okay. Let me have the original back.
 12 Now, you executed on behalf of Liberty
 13 Village, LLC, correct?
 14 A. Correct.
 15 Q. And in doing -- in doing so, was it
 16 your intention to bind Liberty Village, LLC to the
 17 terms and conditions of this promissory note?
 18 A. Yes.
 19 Q. Did you have counsel to assist you in
 20 reviewing documents, including this promissory
 21 note?
 22 A. No.
 23 Q. Okay. Were you given the opportunity
 24 to have counsel?
 25 A. I don't recall.

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1 Q. When money was distributed, original
 2 documents were signed, and this loan came into
 3 light, is it your testimony that you were not
 4 represented by a lawyer?
 5 A. Yes.
 6 Q. Is it your testimony that Jud Wooddy,
 7 if he were the closing attorney in this
 8 transaction, represented First National Bank?
 9 A. No.
 10 Q. Who did he represent?
 11 A. From the structure of a real estate
 12 closing, I'm assuming that would be me or Liberty
 13 Village.
 14 Q. Okay. So when you went to Lisa
 15 Herbert, or Lisa Herbert Wolf, or Jud Wooddy for a
 16 closing, you believe they were looking out for you
 17 or your entity's interest; is that right?
 18 A. I don't believe that, no.
 19 (PLF. EXH. 2, Copy of Entity
 20 Authorization, was marked for
 21 identification.)
 22 BY MR. KERR:
 23 Q. Mr. Barber, let me show you Exhibit
 24 Number 2 and ask you if you recognize that
 25 document.

Page 42		Page 44	
1	A. Yes.	1	Liberty Village, LLC indicates that Mr. Woody, Mr.
2	Q. What is it?	2	Bartone, Mr. Bartone, and Mr. Barber are all
3	A. An entity authorization.	3	members. Was that your understanding of the
4	Q. All right. And do you know what the	4	structure of the entity?
5	entity authorization -- do you know what it is?	5	A. No.
6	A. Without reading it, I believe so.	6	Q. Okay. Because I understood you to
7	Q. All right. Have you signed other	7	testify that the three were in an LLC that became a
8	authorizations like this with other banks	8	member of Liberty Village, LLC?
9	previously?	9	A. Correct.
10	A. No.	10	Q. All right. So this is inaccurate?
11	Q. No. All right. Tell me what you	11	A. Yes.
12	understand this document to be.	12	Q. Okay. Is that your signature next to
13	A. I understand it to be basically one	13	your line on the preprinted line on page 1 and page
14	member of the entity giving the other member	14	2?
15	authority to sign checks, write checks, sign loan	15	A. No.
16	agreements, et cetera.	16	Q. On the line that's designated D,
17	Q. All right. And so this document	17	basically right in the middle of the page, where it
18	provides the bank with proof that the entity and	18	says, W. Freeman Barber, Junior, Member?
19	its members are going to transact business in a	19	A. Right.
20	particular way --	20	Q. To the right of that on the signature
21	A. Correct.	21	line on the first page?
22	Q. -- is that fair?	22	A. On the first page, yeah..
23	A. Uh-huh..	23	Q. Is that your signature?
24	Q. Okay. And so initially both members of	24	A. It is.
25	Liberty Village, LLC, you and Mr. Stringfellow, had	25	Q. Okay. On the second page, there is no
Page 43		Page 45	
1	authority as agents of Liberty Village, LLC to take	1	signature after your preprinted name.
2	the acts or to exercise the powers that are set	2	A. Right.
3	forth in this authorization?	3	Q. Do you know why?
4	A. Correct.	4	A. No.
5	Q. These got out of order, I'm sorry.	5	Q. Okay. Are you familiar with the
6	Now, the entity authorization was	6	signatures of Mr. Woody, Mr. Bartone, and
7	eventually amended or changed?	7	Mr. Bartone?
8	A. I don't recall.	8	A. No.
9	(PLF. EXH. 3, Copy of Entity	9	Q. Okay. All right.
10	Authorization, was marked for	10	A. I can guess why if you would like me
11	identification.)	11	to.
12	BY MR. KERR:	12	Q. He's volunteering.
13	Q. Is that correct?	13	(PLF. EXH. 4, Copy of Real Estate
14	A. I don't recall.	14	Mortgage, was marked for
15	Q. Okay. Let me show you Exhibit Number	15	identification.)
16	3 --	16	BY MR. KERR:
17	A. Okay.	17	Q. Let me show you what has been marked as
18	Q. -- ask you to look at that.	18	Exhibit 4. Do you recognize that document?
19	A. That refreshes my memory.	19	A. I do not.
20	Q. All right. So do you understand that	20	Q. Okay. Can you turn to page 7 of 8, if
21	this entity authorization essentially substitutes	21	you look in the lower right-hand corner for the
22	Bartone, Bartone, and Woody for Stringfellow?	22	page numbers? In the lower left-hand corner,
23	A. Yes.	23	there's a signature line that is a preprinted name,
24	Q. Okay. Now, one of the things I don't	24	W. Freeman Barber, Junior, Member. Do you
25	understand is that this entity authorization for	25	recognize the signature above that line?

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<p>1 A. I do.</p> <p>2 Q. Whose signature is that?</p> <p>3 A. It is mine.</p> <p>4 Q. All right. Have you executed real</p> <p>5 property mortgages in the past?</p> <p>6 A. Yes.</p> <p>7 Q. All right. Does this appear to be a</p> <p>8 real property mortgage?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Is there any reason that you</p> <p>11 contest, that in connection with the transaction</p> <p>12 with First National Bank, that you executed on</p> <p>13 behalf of Liberty Village a real estate mortgage?</p> <p>14 A. I do not contest that.</p> <p>15 Q. Now, for the benefit of your counsel,</p> <p>16 I'm showing you an original document. Does it</p> <p>17 appear to have original signatures and original</p> <p>18 file stamping and marks?</p> <p>19 A. It does, yes.</p> <p>20 Q. Okay. And on page 7 of 8, does that</p> <p>21 document bear your signature?</p> <p>22 A. It does.</p> <p>23 Q. Now comparing this original document</p> <p>24 with Plaintiff's Exhibit Number 4, do you believe</p> <p>25 Plaintiff's Exhibit Number 4 is a true and correct</p>	<p>1 to the date that was pretyped, yes.</p> <p>2 Q. Okay. And is that your signature in</p> <p>3 the lower right-hand corner?</p> <p>4 A. Yes.</p> <p>5 Q. And would this agreement -- do you</p> <p>6 understand that it altered certain terms and</p> <p>7 conditions of the original note that we discussed</p> <p>8 here a few minutes ago?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Now, I'm going to show you a</p> <p>11 document that bears original signatures. Is that</p> <p>12 your original signature in the lower right --</p> <p>13 A. It is.</p> <p>14 Q. And does this appear to be the original</p> <p>15 of Plaintiff's Exhibit 5?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Once the original note was</p> <p>18 executed and you began this relationship with First</p> <p>19 National Bank, explain how -- how your project went</p> <p>20 forward and how the bank participated in things</p> <p>21 like draws and draw requests.</p> <p>22 A. Speaking somewhat generally, contracts</p> <p>23 between the entity and subcontractors would be-</p> <p>24 provided to the bank. The work would be executed,</p> <p>25 I would be invoiced, the entity would be invoiced.</p>
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<p>1 copy of the original real estate mortgage?</p> <p>2 A. I do believe that.</p> <p>3 (Off-the-record conference.)</p> <p>4 MR. KERR: Now, just so we're complete</p> <p>5 with all this, we will mark this as number 5.</p> <p>6 (PLF. EXH. 5, Copy of Commercial Debt</p> <p>7 Modification Agreement, was marked for</p> <p>8 identification.)</p>	<p>1 I would provide the invoice to the bank, the bank</p> <p>2 would fund into an account the draw request, and</p> <p>3 then the entity would write a check out of that</p> <p>4 account to pay the subcontractor.</p> <p>5 Q. Okay. Was there an inspection process</p> <p>6 that was required?</p> <p>7 A. Yes.</p>
<p>9 BY MR. KERR:</p> <p>10 Q. I show you what's been marked as</p> <p>11 Plaintiff's Exhibit Number 5, and ask you if you</p> <p>12 recognize that document.</p> <p>13 A. I do.</p> <p>14 Q. What is it?</p> <p>15 A. It's a Commercial Debt Modification</p> <p>16 Agreement.</p> <p>17 Q. Okay. And what commercial -- and is</p> <p>18 that your signature in the lower right-hand corner?</p> <p>19 A. It is.</p> <p>20 Q. And was that the Commercial Debt</p> <p>21 Modification Agreement that was executed by Liberty</p> <p>22 Village, LLC, and its members on or about</p> <p>23 March 23rd, 2009?</p> <p>24 A. It doesn't appear to be executed by its</p> <p>25 members as you pointed out earlier, but, according</p>	<p>8 Q. Okay. And -- and you just very clearly</p> <p>9 laid out these mechanics of draws, draw requests,</p> <p>10 and funding of draws. How was that -- how was that</p> <p>11 procedure arrived at between you and the bank?</p> <p>12 A. I would contact Scott.</p> <p>13 Q. But procedurally did the bank say, this</p> <p>14 is how we're going to do it?</p> <p>15 A. I don't recall it being that specific,</p> <p>16 no.</p> <p>17 Q. In your other experience with</p> <p>18 commercial loans and construction loans, was that</p> <p>19 generally how banks operated; you would provide a</p> <p>20 draw request, they would inspect and then fund into</p> <p>21 an account, and your entity or whoever would then</p> <p>22 write a check to the contractor?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So there was nothing out of the</p> <p>25 ordinary with -- with the procedure? I'm not</p>

<p style="text-align: center;">Page 50</p> <p>1 talking about the execution, but the procedure was 2 normal in your experience? 3 A. Correct. 4 Q. Okay. Do you know who did the 5 inspection? 6 A. I do not. 7 Q. Did you ever talk or meet -- 8 A. I had some phone calls from people from 9 time to time looking for directions, so I would 10 assume they were doing the inspections. 11 Q. Okay. Did you understand that simply 12 because a draw request was submitted, that didn't 13 necessarily mean it was going to get paid? 14 A. I did not understand that. 15 Q. Was there ever any circumstances where 16 -- in other loans, in other bank relationships, 17 have you ever had draw requests that were not 18 funded? 19 A. No. 20 Q. Okay. If you submitted a draw request 21 that exceeded the scope of the project budget, 22 would you consider that to be potentially a 23 problem? 24 A. Yes. 25 Q. Okay. If you submitted a draw request</p>	<p style="text-align: center;">Page 52</p> <p>1 met, correct? 2 A. Or the other entity, one of the two, 3 correct. 4 Q. All right. Did the other entity have 5 an open line of credit at that point? 6 A. No. 7 Q. What other source of funds would there 8 have been to do what the county had requested? 9 A. I guess it would have been a 10 contribution. I can't recall if the funds were 11 available personally at that time or not. 12 Q. How much was the draw request that -- 13 that was for work that was done off of the 14 mortgaged property? 15 A. I don't recall. 16 Q. Okay. You mentioned that you thought 17 it might have been a budgeted item? 18 A. Uh-huh. 19 Q. Might have been. Where would that 20 budget be? 21 A. On a spreadsheet that, you know, I 22 either had in a file or provided to the bank. 23 Q. Okay. Is that part of the documents 24 that you turned over to Jay Davis? 25 A. Yes.</p>
<p style="text-align: center;">Page 51</p> <p>1 for work on property that was not subject to the 2 bank's mortgage, would you expect that to be paid? 3 A. Yes. 4 Q. Why? 5 A. Typically, in that circumstance, the 6 improvements would be off site, would go to the 7 benefit of the project in question, and the project 8 could not advance if the off-site improvements were 9 not done. 10 Q. Was there any -- was there an example 11 of that occurrence in this loan in your experience 12 with First National? 13 A. I don't recall if it was this loan, but 14 I did have that experience with First National, 15 yes. 16 Q. And tell me what that experience was. 17 A. The county requested that I do some 18 off-site improvements to the intersection of 19 Liberty Hall and North Rhett, and to the best of my 20 recollection, they were a budget item. And then I 21 recall that when I made the draw request, Scott 22 expressed to me that there may be a problem funding 23 it because it wasn't on site. 24 Q. If the county made a request to you, it 25 was a Liberty Village obligation that needed to be</p>	<p style="text-align: center;">Page 53</p> <p>1 Q. Okay. Tell me about potential sales 2 while -- after August of 2007. Were there 3 contracts on some of the mortgaged property that -- 4 did you get any contracts on any of the mortgaged 5 property? 6 A. Yes. 7 Q. And who submitted a contract and on 8 what property? 9 A. Contract or offer? 10 Q. Who was the contractor? Excuse me, 11 contract or offer? 12 A. Correct. 13 Q. I thought you said, contractor offer. 14 A. No. No. No. Are you asking for 15 specifically contracts? 16 Q. Did you have inquiries from interested 17 parties? 18 A. Yes. 19 Q. All right. Did any property go under 20 contract? 21 A. Yes. 22 Q. Was there earnest money submitted to 23 Liberty Village? 24 A. Yes. 25 Q. How much?</p>

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1 A. I don't recall.
 2 Q. Okay. Do you recall what the contract
 3 price was?
 4 A. Yes. Do the math -- 5.25 million.
 5 Q. What was the specific property that
 6 went --
 7 A. Multifamily.
 8 Q. -- under contract? How big of a parcel
 9 was that of the total?
 10 A. Approximately 45 acres.
 11 Q. Okay. Do you recall who the offer
 12 owner was?
 13 A. Yes. It was an entity called The
 14 Enclave.
 15 Q. Were they local?
 16 A. No.
 17 Q. Okay. Did the earnest money -- was the
 18 earnest money hard money or hard after an
 19 inspection period?
 20 A. Yes.
 21 Q. Did it ever go hard?
 22 A. Yes.
 23 Q. And what happened with that contract?
 24 It didn't close, did it?
 25 A. It did not.

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1 Q. Why did it not close; do you know?
 2 A. I do not.
 3 Q. Do you have an opinion as to why it
 4 might not have closed?
 5 A. Yes. I think financing issues for the
 6 buyer.
 7 Q. Approximately, what was the date of the
 8 contract?
 9 A. I don't recall.
 10 Q. In the period that this loan was
 11 originally termed for, that August 2007 to
 12 February 2009, would it have been closer to
 13 February 2009 when The Enclave submitted the
 14 contract or closer to 2007?
 15 A. 2007.
 16 Q. Okay. Did you return the earnest
 17 money?
 18 A. No.
 19 Q. What did you do with the earnest money?
 20 A. I don't recall.
 21 Q. Would it have been used for the general
 22 expenses of the business?
 23 A. Possibly.
 24 Q. Could it have distributed to members?
 25 A. Possibly.

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1 Q. What would I need to look at to
 2 determine where the money went?
 3 A. That's a great question. I've tried to
 4 discover that myself through another issue that
 5 I've been having and I have not been able to
 6 determine that.
 7 Q. Who has the financial books and
 8 records? Who has custody of the financial books
 9 and records of Liberty Village, LLC?
 10 A. Liberty Village Investments, LLC.
 11 Q. Does that include tax returns?
 12 A. Yes.
 13 Q. Does that include K-1's?
 14 A. Yes.
 15 Q. Does that include bank statements?
 16 A. Yes.
 17 Q. Does that include copies of loan
 18 documents?
 19 A. Yes.
 20 Q. Does that include project information?
 21 A. Yes.
 22 Q. Does that include architectural
 23 drawings?
 24 A. Yes.
 25 Q. Engineering and design?

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1 A. Yes.
 2 Q. Do you individually have any documents
 3 that pertain to Liberty Village, LLC at this point?
 4 A. I have turned over everything I have
 5 regarding the LLC to Jay Davis. It's my
 6 understanding he's given it to Liberty Village
 7 Investments. It is possible that I have copies
 8 laying around somewhere.
 9 Q. All right. Now, between August of 2007
 10 and February of 2009, did Liberty Village have any
 11 -- any checking accounts with banks other than
 12 First National Bank?
 13 A. Yes.
 14 Q. All right. Who were those checking
 15 accounts with?
 16 A. Regions Bank.
 17 Q. Okay. Any other bank?
 18 A. Not that I recall.
 19 Q. Okay. During the 18-month term of this
 20 note -- of this loan, tell me about any problems
 21 you had with draw requests not being properly -- in
 22 your opinion, properly addressed, handled, funded?
 23 A. A couple of circumstances where there
 24 were delays in getting draws that I thought were
 25 unnatural compared to my experiences. They were

1 eventually resolved. And then, of course, when the
 2 loan reached its maturity date, I believe there was
 3 a draw that was not funded.
 4 Q. And that's O. L. Thompson?
 5 A. Correct.
 6 Q. And how much was that draw that was
 7 outstanding?
 8 A. Approximately \$150,000.
 9 Q. Okay. Let me show you what's marked
 10 Exhibit 6 for identification.
 11 (PLF, EXH. 6, Copy of Contract, was
 12 marked for identification.)
 13 BY MR. KERR:
 14 Q. I ask you if you recognize that
 15 document.
 16 A. Yes.
 17 Q. All right. What is it?
 18 A. It is the contract between Liberty
 19 Village, LLC and O. L. Thompson Construction
 20 Company, Inc.
 21 Q. Now, I understand that -- and if you
 22 look at the fifth page of the document there's a --
 23 some signature blocks:
 24 A. Right.
 25 Q. Is that your signature?

1 Q. Is that how you normally contacted or
 2 provided information or requested information from
 3 the bank?
 4 A. With Scott, yes. Or with the bank,
 5 yes.
 6 Q. Okay. So procedurally, your contractor
 7 would give you the invoice, and you would scan it
 8 and e-mail it to the bank and say, please handle?
 9 A. Usually I would get it by e-mail too,
 10 in which case I would just forward it, right.
 11 Q. Okay. Do you recall when O. L.
 12 Thompson invoiced on the contract that we just
 13 looked at as Exhibit 6?
 14 A. I do not.
 15 Q. What was the date of this contract?
 16 A. This contract was dated 1st day of
 17 December 2008.
 18 Q. When was this contract executed by the
 19 contractor?
 20 A. I don't believe it says. I don't know.
 21 Q. So this contract was ratified
 22 approximately two and a half months before the term
 23 of the promissory note, of the nonrevolving line of
 24 credit, correct?
 25 A. I would assume so.

1 A. It is.
 2 Q. And I understand that Liberty Village,
 3 LLC may have had a number of contracts with O. L.
 4 Thompson, at least two?
 5 A. Possibly, yes.
 6 Q. Is this the contract where that
 7 \$150,000 draw request -- or under which that
 8 \$150,000 request was made?
 9 A. I believe so.
 10 Q. And what was the work that was supposed
 11 to be done?
 12 A. The contract will probably spell it out
 13 specifically, but to my recollection there was a
 14 road that was being built, a lift station. Sewer
 15 pump station, same thing.
 16 Q. Okay. Now, and tell me -- tell me a
 17 little more about this unfunded draw request. When
 18 did you -- when did you submit the draw request?
 19 A. I don't recall.
 20 Q. Okay. What could I look at that would
 21 show the draw request submission? Something in the
 22 bank's records?
 23 A. E-mail.
 24 Q. E-mail?
 25 A. Uh-huh.

1 Q. Yeah. Well, I understand that your
 2 position is that this -- this draw was not funded
 3 and that that was some violation or breach of
 4 contract or other wrongdoing by the bank; is that
 5 your position?
 6 A. Yes.
 7 Q. Okay. Do you believe that the invoice
 8 for this work arrived after the date of the
 9 contract?
 10 A. Yes.
 11 Q. Would O. L. Thompson have begun work on
 12 this contract before December 1, 2008?
 13 A. Very possibly.
 14 Q. Okay. And did you have the kind of
 15 relationship where they would do some work for you,
 16 even though all the details weren't buttoned up?
 17 A. Yes.
 18 Q. Did you have the kind of relationship
 19 with them where they might delay sending invoices
 20 despite the contract saying they're going to send
 21 an invoice after -- curb and rock is the first one,
 22 after curb and rock is installed?
 23 A. I would say I had that kind of
 24 relationship with them, but I generally recall
 25 they invoiced me monthly.

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1 Q. All right. Did you have the kind of
 2 relationship where if you got a monthly invoice
 3 you'd call them and say, hey, I don't want to
 4 submit this until it's a little bigger, is that
 5 okay?
 6 A. Yes.
 7 Q. Did that happen here?
 8 A. I don't recall.
 9 Q. Who did you deal with? Did you deal
 10 with Mr. Trent Kirk at O. L. Thompson?
 11 A. Yes.
 12 Q. Okay. Was O. L. Thompson eventually
 13 paid?
 14 A. Yes.
 15 Q. And what were they paid?
 16 A. They were paid the amount of this
 17 contract minus the retainage.
 18 Q. Okay. Did they complete all of the
 19 scope of the work under the contract?
 20 A. No.
 21 Q. Okay. Why was that?
 22 A. We didn't have the money to pay the
 23 retainage, so we asked them not to finish.
 24 Q. And how did you fund payment -- how did
 25 Liberty Village fund the payment to O. L. Thompson?

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1 A. Through contributions from the
 2 individual members.
 3 Q. Okay. Were there four shares or two
 4 shares?
 5 A. Two.
 6 Q. And so your share was about \$75,000?
 7 A. Yes.

8 Q. All right. When was it paid?
 9 A. I don't specifically recall; I don't
 10 know. I could find out for you.
 11 Q. This contract and this date of December
 12 1, 2008 is at or near --
 13 (A recess transpired.)
 14 BY MR. KERR:
 15 Q. Okay. Let's pick up where we left off.
 16 December 2008 time frame, around the time that this
 17 O. L. Thompson contract is executed, there had been
 18 a change in membership at that point, correct?
 19 A. Correct.
 20 Q. And at that point there's a meeting of
 21 Liberty Village representatives and the bank; is
 22 that right?
 23 A. Yes.
 24 Q. Tell me what you recall about why that
 25 meeting was called.

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1 A. I had expressed concerns to the members
 2 -- the other members of Liberty Village, the delays
 3 in the draws. I had to put my finger on them,
 4 something just didn't feel right in the
 5 relationship that we were having compared to the
 6 other relationships I had. And I believe Joe -- it
 7 might have been myself, came up with the idea of,
 8 let's sit down with Scott and discuss the
 9 possibility of us getting this draw before we start
 10 this work; or before we get too far into the work,
 11 the work may have started at that point.
 12 Q. All right. So this draw refers to the
 13 151 or so contract amount with O. L. Thompson?
 14 A. Right. 161, yeah.
 15 Q. Okay. So, in fact, you were asking for
 16 an advance as opposed to a draw?
 17 A. No.
 18 Q. Okay. Explain that then.
 19 A. We wanted to make sure that the draw
 20 was available when the work was completed.
 21 Q. Okay. And what was the -- what was the
 22 timing? How much time was this work going to take
 23 under the O. L. Thompson, contract?
 24 A. It could have taken 45 to 60 days or it
 25 could have taken nine months if the weather was bad

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1 or something like that, but that's unlikely.
 2 Q. Okay. So there was a possibility that
 3 the work could have been finished after the loan
 4 reached its term?
 5 A. There is that possibility, yes.
 6 Q. Okay. So at that meeting, what did
 7 you discuss?

8 A. We asked questions to Scott, if the
 9 draw would be made -- if we should have concerns
 10 over whether the draw would be made at the time the
 11 work was completed.
 12 Q. Okay. And what was his response?
 13 A. He led us to believe there would be no
 14 issues funding the draw.
 15 Q. How did he lead you to believe that?
 16 A. He -- I don't remember his quotes, but
 17 that's what I took from the conversation: You're
 18 okay, start the work, it will be funded when it's
 19 finished.
 20 Q. What other discussions -- what other
 21 discussion points were there for that meeting?
 22 A. Other than polite conversation, I don't
 23 recall any others.
 24 Q. At that meeting was any renewal
 25 extension modification of the original loan

1 discussed?
 2 A. I don't believe so.
 3 Q. Okay. When did you start discussions
 4 about a renewal or extension or modification of the
 5 original loan?
 6 A. I don't recall. If I had to guess, I
 7 would say it was after March I guess is when it did
 8 expire.
 9 Q. The loan termed out February 14th?
 10 A. Okay. I would assume it was after
 11 that.
 12 Q. If the -- if the loan had a termination
 13 date of February 14th, was it not your experience
 14 to address renewal, extension, modification, prior
 15 to the expiration of the original loan?
 16 A. No, it wasn't.
 17 Q. Okay. And your experience was during
 18 what period of time?
 19 A. 1995 to 2009.
 20 Q. Okay. So in that 14-year period, it
 21 was not your experience to get your financial
 22 information -- get your loan request in, well in
 23 advance of the maturity of the loan?
 24 A. No.
 25 Q. Did it after?

1 extension or modification of this loan, did you
 2 make a specific request for a specific set of terms
 3 and conditions for addressing the maturity of this
 4 loan?
 5 A. It's hard for me to say I made a
 6 request, but, yes, there was some -- I guess some
 7 negotiations. So if by my negotiating was making a
 8 request, yeah, I agree with that statement.
 9 Q. What did you ask for?
 10 A. I don't specifically recall.
 11 Q. Looking back, what do you think you
 12 would have needed under the circumstances?
 13 A. An extension on the interest that was
 14 available to draw was my concern, my individual
 15 concern. I think the partners may have had
 16 different concerns.
 17 Q. I'm not sure I'm clear on that. Were
 18 you interested in an extension where there would be
 19 interest-only paid on the outstanding principal?
 20 A. Yes.
 21 Q. Okay. What did the bank want?
 22 A. Principal.
 23 Q. Did they want the entire principal?
 24 A. I believe so, yes.
 25 Q. Did they ask for or talk about an

1 A. No.
 2 Q. Close to the maturity date?
 3 A. Usually the maturity dates were brought
 4 to my attention by the loan officer as opposed to
 5 me tracking them.
 6 Q. Did you put on your calendar the
 7 maturity date of this loan?
 8 A. No.
 9 Q. Do you know if anybody in the LLC did?
 10 A. No.
 11 Q. Okay. Did you -- do you believe that
 12 all of -- members timely provided financial
 13 information to the bank in connection with the
 14 request for renewal extension or modification?
 15 A. I do recall Scott made some requests to
 16 me about some delays in getting some financials
 17 from some of the members. It was not me.
 18 Q. You were timely?
 19 A. I was timely, yes.
 20 Q. Others did not provide financial
 21 information; is that correct?
 22 A. I don't -- I wouldn't state it that
 23 way. I think it was provided, but I do recall that
 24 Scott had to request it more than once.
 25 Q. Okay. In connection with a renewal

1 amortizing loan?
 2 A. Yes.
 3 Q. Okay. Do you recall what kind of terms
 4 those would have been?
 5 A. No.
 6 Q. What was your response to, any payment
 7 of principal?
 8 A. I could not agree to at that time.
 9 Q. Okay. And why was that?
 10 A. Because I was broke.
 11 Q. Okay. What about Liberty Village, LLC?
 12 A. The entity did not have any capital at
 13 that point.
 14 Q. Did the entity have any sales on the
 15 horizon?
 16 A. Potentially.
 17 Q. All right. What potential sales were
 18 on the horizon?
 19 A. We had offers from purchasers that were
 20 not ever executed because of -- well, I'll leave it
 21 at that.
 22 Q. Were they written offers on some of the
 23 property that was subject to this mortgage?
 24 A. Letters of intent, yes.
 25 Q. Do you recall who they were from?

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1 A. I recall one specifically being from
 2 Harbor Homes.
 3 Q. What was the scope of what they were
 4 intending to buy?
 5 A. The single-family area that was
 6 remaining.
 7 Q. Do you recall what the -- what -- the
 8 purchase price they put in their letter of intent?
 9 A. I don't specifically recall. I could
 10 make a guess.
 11 Q. Did you actively list that
 12 single-family parcel?
 13 A. Yes.
 14 Q. What was the list price?
 15 A. I don't specifically recall.
 16 Q. Would the list price have been more
 17 than the amount of -- the principal amount of the
 18 First National Bank loan?
 19 A. If you give me a calculator, I can tell
 20 you. Is that okay?
 21 Q. Sure.
 22 A. All right. Take a minute to gear it up
 23 here.
 24 Q. Okay.
 25 A. Rob, I'm going to guesstimate what the

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1 listing price was to come up with an answer to this
 2 question.
 3 Q. And that's fine. And we're not going
 4 to hold you to it. I'm just interested in who was
 5 interested and about how much they might have been
 6 willing to pay.
 7 A. Okay. I'm guessing the gross offer was
 8 somewhere just south of \$2 million.
 9 Q. All right. So had -- had their
 10 expressive interest turned into a contract and a
 11 closing, there would have been a good bit of money
 12 to use to retire some of the principal balance of
 13 any bank loan?
 14 A. Yes. There would have been
 15 improvements that needed to be made in order for
 16 the contract to close, but, yeah, there would have
 17 been some money to apply to principal.
 18 Q. I see. What happened to Harbor's
 19 interest?
 20 A. I believe it still remains.
 21 Q. Okay. They never submitted a written
 22 contract?
 23 A. Letters of intent are standard for the
 24 -- for the industry until a handshake's made, it's
 25 okay, and then you get a contract.

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1 Q. What prohibited Liberty Village from
 2 going to the next step with Harbor?
 3 A. The membership couldn't agree on the
 4 sales price.
 5 Q. Who thought it was too low?
 6 A. Liberty Village Investments, I.L.C.
 7 Q. Okay. Did you think it was a
 8 reasonable price and a sale that you ought to
 9 pursue?
 10 A. Yes.
 11 Q. So going back to discussions about
 12 renewal, extension, modification of the original
 13 loan, who was -- who was speaking for Liberty
 14 Village, I.L.C. in negotiations with the bank at that
 15 point?
 16 A. I was the primary point of contact.
 17 Q. Were you speaking with Scott Warren?
 18 A. Yes.
 19 Q. What did you understand Scott's
 20 authority to be in connection with an extension,
 21 modification, renewal, or amendment of the original
 22 loan?
 23 A. I understood he was the point of
 24 contact, but ultimately somebody else's decision;
 25 more or less the same position I was in.

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1 Q. Okay. So under the circumstances then
 2 and there, prevailing in February and March of
 3 2009, if you were a lender, would you have extended
 4 this loan on an interest only basis?
 5 A. If I was a lender, yes.
 6 Q. But you chuckle.
 7 A. Yeah, I do. I would have been the, I
 8 guess, the yellow brick road of lenders, but you
 9 asked me, so I had to answer.
 10 Q. Did you look for any other takeout
 11 financing to get rid of First National Bank?
 12 A. Yes.
 13 Q. Who did you speak to?
 14 A. Every bank east of the Mississippi.
 15 Q. What kind of response did they give
 16 you?
 17 A. If I take it to my team, I'll get
 18 laughed out of my job.
 19 Q. Why was that?
 20 A. I understood it that the regulators had
 21 basically told the banks not to get into any more
 22 of the raw land deals.
 23 Q. Okay. So your experience, if I can
 24 characterize it as this, your experience was that
 25 the lending on raw land, that the financing of raw

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1 land had essentially gone away?
 2 A. Yes.
 3 Q. So you were at a point where your loan
 4 was -- had matured and you had nothing to provide
 5 any lender with the exception of a mortgage on raw
 6 land. Do you feel like you were bankable at that
 7 point?
 8 A. Yeah, I do.
 9 Q. Okay. But that wasn't your experience
 10 by calling on every lender east of the Mississippi?
 11 A. Right.
 12 Q. So why were you bankable?
 13 A. I felt like we had tremendous value in
 14 the piece of property and it was a good asset.
 15 Q. Okay. So assuming banks are going to
 16 lend on the value of the asset, as opposed to the
 17 ability of the borrower to repay, perhaps you were
 18 bankable, but at that point there was no financing
 19 for raw land?
 20 A. Correct.
 21 Q. Okay. When did -- or how did Liberty
 22 Village Investments, how did they obtain, I guess,
 23 basically veto power; simply because it took
 24 100 percent of the membership to make a decision?
 25 A. Yes.

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1 extending the note.
 2 Q. Okay. That's what Scott told you?
 3 A. Yes.
 4 Q. The Commercial Debt Modification
 5 Agreement, the date of March 23, is it your
 6 understanding that it was signed later --
 7 A. Yes.
 8 Q. -- than the 23rd?
 9 A. Yes.
 10 Q. And so this was more than a month after
 11 the maturity of the -- of the first loan?
 12 A. Yes.
 13 Q. Okay. And what did you understand --
 14 what did you understand the terms and conditions
 15 were? There's a suggestion that the interest rate
 16 doubled. Tell me how the interest rate doubled.
 17 A. I wouldn't say double is a fair word.
 18 I don't recall it being lower than half of what
 19 they were proposing on this, but it may have been.
 20 Q. Okay. What about the terms and
 21 conditions of this Commercial Debt Modification
 22 Agreement, did you negotiate these or were you told
 23 this is all that you get?
 24 A. I don't recall. I did negotiate, but
 25 not specifically on this agreement.

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1 Q. Where did that -- was that in your
 2 operating agreement or was it just your
 3 understanding?
 4 A. My understanding.
 5 Q. Okay. And you believe that Harbor
 6 Homes would still be interested today in the
 7 single-family parcel?
 8 A. I can't answer that question.
 9 Q. All right. That's fair. Now,
 10 eventually -- the Exhibit that's called the
 11 Commercial Debt Modification Agreement, eventually
 12 the bank sends this to you?
 13 A. Uh-huh.
 14 Q. All right. Tell me the circumstances
 15 surrounding this document and how it came that this
 16 was the document that was going to be executed and
 17 these were the terms and conditions going forward.
 18 A. This document was presented to me, and
 19 Scott presented it along the lines of, this needs
 20 to be done quickly. We were having conversations
 21 about, I guess, extending the note, and I recall
 22 there was a conversation basically that said, we
 23 have to have this in place now, otherwise the note
 24 is going -- it's going to look real bad in the eyes
 25 of the bank and make it less favorable as far as

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1 Q. Okay. And what is your understanding
 2 of how this agreement relates to the promissory
 3 note, the original note?
 4 A. I don't know.
 5 Q. The Commercial Debt Modification
 6 Agreement states right at the bottom third, the top
 7 of the bottom third of the page where it says,
 8 continuation of terms. It says, except as
 9 specifically amended in this modification, all
 10 terms of the prior obligation remain in effect.
 11 Did I read that correctly?
 12 A. Yes.
 13 Q. Okay. So do you understand that except
 14 as changed by this modification, the terms and
 15 conditions of the original loan still controlled?
 16 MR. LEWIS: Object to the form.
 17 THE WITNESS: Should I answer?
 18 MR. KERR: Yeah, sorry. You can go
 19 ahead and answer it.
 20 THE WITNESS: Yeah. As you read it to
 21 me, yes.
 22 BY MR. KERR
 23 Q. So you understood that some of the
 24 original loan changed, like the date, like the
 25 amount, like when it was payable?

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1 A. I understand that now.
 2 Q. Yeah. Okay.
 3 A. Yes.
 4 Q. And at that time, did anybody who
 5 signed the Commercial Debt Modification Agreement,
 6 did they express any concern to you?
 7 A. Yes.
 8 Q. All right. What expressions of concern
 9 did you receive?
 10 A. I believe I'm the first one that
 11 brought it up, but they concurred with me that we
 12 weren't happy with the terms on what this said.
 13 Q. Did you circulate this for signature?
 14 A. Yes.
 15 Q. And everybody signed?
 16 A. Yes.
 17 Q. And I see that somebody signed as
 18 Attorney in Fact. Do you see on the agreement --
 19 A. Yes.
 20 Q. Do you know whose signature that is?
 21 A. I do not know.
 22 Q. Does it look like Jud Woodydy?
 23 A. It does.
 24 Q. Okay.
 25 A. It's Woodydy.

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1 Q. And Jud Woodydy is a lawyer, Skipper
 2 Woodydy is a lawyer. So several lawyers had their
 3 eyes on this document?
 4 A. Right.
 5 Q. Okay. Did you continue to try and
 6 negotiate, after this date in March 2009, some sort
 7 of renewal or extension?
 8 A. Yes.
 9 Q. And tell me about those negotiations.
 10 A. I recall Scott turning the account over
 11 to Mitch Sells, and I contacted him and had a
 12 conversation with him about extending the original
 13 terms of the note.
 14 Q. All right. And what was his response?
 15 A. He said that he would look into it and
 16 -- I recall it being favorable, his immediate
 17 response, and then said he would get back to me.
 18 Q. All right.
 19 A. Called me back a couple of days later
 20 and said, you sign this, that's what we're sticking
 21 with.
 22 Q. Okay. What happened from there?
 23 A. I wrote the infamous e-mail to the guys
 24 at the bank and that was it.
 25 Q. Okay. What was -- well, let me show

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1 you a copy of the infamous e-mail.
 2 A. Yeah.
 3 (P.L.F. EXH. 7, Copy of e-mail, was
 4 marked for identification.)
 5 BY MR. KERR:
 6 Q. Mr. Barber, here's Exhibit 7. Do you
 7 recognize this exhibit?
 8 A. Yes.
 9 Q. All right. And is this an e-mail that
 10 you sent to three people in senior management at
 11 First National: Mr. Calvert, Mr. Zabriskie, and
 12 Mr. Benjamin?
 13 A. Yes.
 14 Q. And does this appear to be an accurate
 15 copy of that e-mail?
 16 A. Yes.
 17 Q. All right. Using this May 6th, 2009
 18 date on this e-mail as a point of reference, about
 19 when would you have had the conversation with
 20 Mr. Sells where he told you that the Commercial
 21 Debt Modification Agreement was your agreement?
 22 A. I would guess it would have been within
 23 a day or two.
 24 Q. All right. So how many conversations
 25 did you have with any bank representative between

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1 the date of the commercial debt modification
 2 agreement and this period, 1st of May 2009?
 3 A. I don't recall.
 4 Q. Did you continue to talk to Mr. Warren,
 5 or someone else?
 6 A. Mitch Sells was my official contact at
 7 the bank; however, he and I did not get along very
 8 well so I cut off communications with him. And I
 9 did bounce things off of Scott from time to time.
 10 Q. Who wrote this e-mail?
 11 A. I did.
 12 Q. Did anyone else contribute?
 13 A. No.
 14 Q. Did anyone else review it for accuracy?
 15 A. No.
 16 Q. You didn't provide a draft to anyone
 17 prior to writing it?
 18 A. I don't believe so.
 19 Q. Was it your idea to write this e-mail?
 20 A. Yes.
 21 Q. Did anybody urge you to write it?
 22 A. No.
 23 Q. Do you believe that it accurately
 24 depicts the circumstances of the relationship
 25 between Liberty Village, LLC and First National

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1 Bank?

2 A. I haven't read it recently, but I did

3 feel that way at the time.

4 Q. Okay. In this -- in this e-mail you

5 say that you've requested several meetings with

6 senior management. When did you make those

7 requests?

8 A. I don't recall.

9 Q. Now, when I said May 6th was sort of a,

10 you know, a point of reference, and the late March

11 Commercial Debt Modification Agreement is also kind

12 of a point of reference, there's about a month in

13 there. Did you ask before that Commercial Debt

14 Modification Agreement for a meeting with senior

15 management?

16 A. I don't recall.

17 Q. Do you think your request -- do you

18 think you made such a request between the date of

19 the Commercial Debt Modification Agreement and the

20 e-mail --

21 A. Yes.

22 Q. -- that's Exhibit 7?

23 A. Yes.

24 Q. Okay. All right. And would that

25 request have been made to Mitch Sells?

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1 A. I believe through Scott I may have made

2 the same request to Mitch.

3 Q. Here you talk about having some serious

4 potential purchasers in the e-mail. Is that a

5 reference to Harbor Homes?

6 A. Yes. That one sticks out specifically,

7 but there were others, too.

8 Q. Okay. And at this point your

9 experience had been that people had expressed

10 interest, but had trouble finding financing, for

11 example, The Enclave?

12 A. Yes.

13 Q. Was there anything in your discussions

14 with these seriously interested parties that made

15 you believe that they were cash buyers?

16 A. Yes.

17 Q. Okay. And what was that?

18 A. I specifically asked.

19 Q. And who were they?

20 A. National builders, regional builders,

21 Centex Homes, Eastwood Homes, Harbor.

22 Q. So why didn't those discussions

23 advance?

24 A. I got to the point where I knew that

25 the partnership would not agree to a price, so I

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1 didn't want to mislead anybody and just said,

2 unless you're going to come with a seriously good

3 number, let's not talk, in general terms.

4 Q. So is it fair to say that you had a

5 product for sale, you had people who were

6 interested in buying that product, and you had

7 people who didn't need financing to buy your

8 product, but the seller was too dysfunctional to

9 sell?

10 MR. LEWIS: Object to form.

11 THE WITNESS: I wouldn't answer that

12 question that way. I wouldn't say that's the

13 reason why.

14 BY MR. KERR:

15 Q. Did you have a product that someone was

16 interested in purchasing?

17 A. Yes.

18 Q. Did they have cash to close?

19 A. I would assume so.

20 Q. You were under that impression?

21 A. Correct.

22 Q. They were offering amounts that would

23 have certainly addressed your financial concerns

24 with First National Bank?

25 A. I don't know if that's the case or not.

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1 And I think it had a lot to do with where we were,

2 too. At that point there was going to have to be

3 some negotiations done with the bank. Once again,

4 because if we accepted an offer, improvements were

5 going to have to be made and we certainly didn't

6 have the -- I didn't have the ability to fund them

7 out of pocket. I don't know if my partners did or

8 not, so there would have to have been further

9 communications with the bank. And based on the

10 experience we'd had at this point, we weren't real

11 excited about those conversations.

12 Q. You understood the bank wanted

13 principal as some sort of amendment or some sort of

14 renewal, correct?

15 A. Sure.

16 Q. And if you had a contract that provided

17 for a significant principal paydown upon closing,

18 do you not believe that the bank would have been

19 interested in talking to you about that?

20 A. I really don't. You know, once again

21 in general terms, I had so many crazy things going

22 on in the banking world, not only with First

23 National but with several other banks, that I have

24 no way of forming an opinion about how they would

25 react to an offer that involved similar cash

1 outlay.
 2 Q. Did you have an opportunity to take
 3 these expressions of interest out to some of the
 4 other lenders that you talked to?
 5 A. I didn't ever do that, but, yes, I had
 6 that opportunity.
 7 Q. Okay. You didn't do it?
 8 A. No.
 9 Q. Okay. There's a -- there's a comment
 10 in here about some paperwork falling through the
 11 cracks. It's at the end of the first page --
 12 A. Uh-huh.
 13 Q. -- top of the second page. Tell me
 14 what -- tell me the circumstances surrounding that.
 15 A. My recollection of that was that all of
 16 us needed to be rushed because something had
 17 happened on the bank's end and, of course, I didn't
 18 know the specifics of it, but it needed to be
 19 expedited because it didn't get the attention that
 20 it needed at the time it needed it.
 21 Q. What needed attention?
 22 A. Paperwork. You know, I would answer it
 23 better if I could, but I don't know.
 24 Q. Do you think that has anything to do
 25 with the February 14th, 2009 maturity note -- a

1 it happened?
 2 A. One of two ways, that being one of
 3 them, yes.
 4 Q. So money didn't come into your account
 5 and you wrote a check faithfully on the 1st or 5th
 6 of the month?
 7 A. On some occasions it did. I don't
 8 recall whether that was the case with this one or
 9 not.
 10 Q. All right. So the loan paid for its
 11 own interest accrual. The loan paid for the
 12 origination fee or any fee that was due and payable
 13 at closing in August of 2007; is that right?
 14 A. I believe so, yes.
 15 Q. Did you come out of -- or did Liberty
 16 Village have to pay anything out of pocket to the
 17 bank other than approximately \$15,000 of accrued
 18 interest at the time of the Commercial Debt
 19 Modification Agreement?
 20 A. I don't recall.
 21 Q. Under the terms and conditions of the
 22 note, can you conceive of why you would have paid
 23 anything?
 24 A. General terms, sometimes there was some
 25 fees or something like that that weren't covered.

1 maturity date of the loan?
 2 A. Yes.
 3 Q. Okay. In this communication to the
 4 bank there's a very strong representation of the
 5 quality of the borrower and the -- and particularly
 6 that the borrower never missed an interest payment.
 7 As I understand it, the loan created an interest
 8 reserve. And I think the number yesterday in
 9 Mr. Warren's deposition was somewhere around
 10 \$320,000. Did you ever write a check between
 11 August of 2007 and December of 2008, did you ever
 12 write a check to the bank for interest?
 13 A. I don't recall.
 14 Q. Wasn't this loan set up so that the
 15 loan amount actually included the interest that
 16 would be payable on the then -- on the monthly
 17 outstanding balance?
 18 A. Yes.
 19 Q. So it wasn't like Liberty Village had
 20 to pass the hat once a month to make an interest
 21 payment?
 22 A. No.
 23 Q. And, mechanically, the interest payment
 24 was often made with the bank making an adjusting
 25 entry on its own books. Is that how you understood

1 I don't recall whether that was the situation with
 2 this one or not.
 3 Q. Ongoing fees during the term of the
 4 loan?
 5 A. No. One-time transactional fees, et
 6 cetera.
 7 Q. Like a wire transfer fee or --
 8 A. Or title insurance, something along
 9 those lines.
 10 Q. Okay. The title insurance would have
 11 been written by a title insurance agent who is
 12 usually a closing attorney at a transaction?
 13 A. Right.
 14 Q. Okay. Wouldn't that have been
 15 collected at closing?
 16 A. Yes.
 17 Q. And wasn't that money collected out of
 18 funds advanced by the bank?
 19 A. I don't recall.
 20 Q. Okay. All right. In your e-mail you
 21 suggest that -- that somebody bound the bank to do
 22 some sort of renewal or modification or extension;
 23 is that correct?
 24 A. I don't recall that, but if it's in the
 25 e-mail -- I would like to reread it.

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1 Q. Sure. I'm talking about on the second
 2 page. Hold on a second and I'll point it out to
 3 you.
 4 A. If you could rephrase the question, I
 5 may be able to answer.
 6 Q. Let me find the exact words. In the
 7 last paragraph on the second page --
 8 A. Uh-huh.
 9 Q. -- of Exhibit 7. It reads, quote, I
 10 can assure you that no bank employee that was
 11 directly involved in these conversations will
 12 dispute what was said and what was verbally
 13 committed and the conditions surrounding the
 14 signing of the 45-day extension document.
 15 Okay. What do you mean when you say,
 16 something was verbally committed?
 17 A. We had conversations with the bank that
 18 led us to believe that the agreement that we signed
 19 was temporary and that it would be fixed in a
 20 manner that we could live with.
 21 Q. Okay. What were the terms and
 22 conditions of the fix that you anticipated would
 23 replace the Commercial Debt Modification Agreement?
 24 A. I don't specifically recall, but I know
 25 that I was attempting to renew the note in the

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1 original form that it was in.
 2 Q. Eighteen months?
 3 A. Time periods, big mistake on my part,
 4 didn't concern me.
 5 Q. So there was no -- there was no time or
 6 term considered or discussed?
 7 A. I don't believe so.
 8 Q. What about the amount, what amount
 9 would the loan have been in?
 10 A. \$255,000.
 11 Q. Say it again.
 12 A. Excuse me, \$2,550,000.
 13 Q. So the nonrevolving letter of credit
 14 would have revolved back up to the original debt
 15 ceiling?
 16 A. I didn't see it as revolving because it
 17 wasn't paid down.
 18 Q. When the commercial debt modification
 19 agreement was executed, the then-outstanding
 20 principal amount was \$2,232,435.48. I'm reading
 21 that off the Commercial Debt Modification
 22 Agreement.
 23 A. Right.
 24 Q. So your understanding of a loan or a
 25 renewal that would replace this Commercial Debt

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1 Modification Agreement is that it would revert to
 2 the original line of credit amount of 2,550,000?
 3 A. My understanding -- yes, my
 4 understanding is that document would be thrown out
 5 the window.
 6 Q. Right. What would it be replaced with?
 7 That's what I'm talking about.
 8 A. I didn't see it as being replaced. I
 9 saw it as being removed.
 10 Q. And simply going back to the terms and
 11 conditions of the original loan?
 12 A. Yes.
 13 Q. All right. But without reference to a
 14 time limit or a term?
 15 A. Well, I'm sure it would have been
 16 referenced, but it wasn't something I cared to
 17 address at that point. It wasn't my primary
 18 concern.
 19 Q. Okay. And, therefore, you would have
 20 had approximately 250 or \$300,000 of additional
 21 money you could draw for work?
 22 A. Yes.
 23 Q. Okay. And what about interest, would
 24 there be a new interest reserve funded?
 25 A. Not new. The existing one would be

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1 continued.
 2 Q. And do you know what the balance on the
 3 existing interest reserve was at that point?
 4 A. I don't recall.
 5 Q. And of course that interest reserve
 6 disappears with the Commercial Debt Modification
 7 Agreement, doesn't it?
 8 A. Yes.
 9 Q. But it would be reinstated?
 10 A. Yes.
 11 Q. Okay. And what about other aspects of
 12 the loan, would new guarantees be executed?
 13 A. I don't recall having a conversation
 14 about that.
 15 Q. Okay.
 16 A. Of course I would have been willing to.
 17 Q. What about fees and other charges, were
 18 they discussed for a new loan closing?
 19 A. I don't believe or recall.
 20 Q. Okay. How about an interest rate, was
 21 an interest rate discussed or negotiated?
 22 A. Yes.
 23 Q. What was that?
 24 A. I don't specifically recall. First
 25 National Bank prime plus 6 1/2 percent, according

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1 to the modification agreement.
 2 Q. And what about -- the original loan
 3 included a budget and kind of a scope of work
 4 defined in it that the money would be used for
 5 certain purposes. Was that additional scope of
 6 work discussed and defined for any renewal?
 7 A. I don't recall, but I know that there
 8 was a budget amount in there that we were seeking
 9 to get reinstated or drawn out as it was originally
 10 intended.
 11 Q. But that was on the -- from the
 12 original scope of work from a year and a half
 13 previous?
 14 A. I don't recall if it was that far in
 15 advance, but a budget that was given at whatever
 16 point in time.
 17 Q. A budget that was given in connection
 18 with the original loan?
 19 A. Correct.
 20 Q. That would have tied into this
 21 extension or renewal that you were asking for?
 22 A. Right.
 23 Q. And you thought you had something?
 24 A. As far as?
 25 Q. As far as an ongoing credit

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1 relationship with First National Bank that would
 2 avoid foreclosure and those things?
 3 A. Yes.
 4 Q. Okay. You didn't believe that there
 5 was a -- that there was anything other than an
 6 ongoing relationship until you talked to Mr. Sells?
 7 A. I would say that's fair, yes.
 8 Q. Okay.
 9 A. I believed a lot of things at that
 10 point.
 11 Q. You understood and you have
 12 acknowledged both here and in writing other places,
 13 that any assurances that anyone might have made to
 14 you were not binding because there had to be formal
 15 approval of loan modification?
 16 MR. LEWIS: Object to the form.
 17 THE WITNESS: I don't know if I
 18 understood that or not. I kind of took the members
 19 -- or the employees', I guess, words for what they
 20 were saying whether it be Mitch or Scott or anybody
 21 else.
 22 (PLF. EXH. 8, Copy of e-mail, was
 23 marked for identification.)
 24 BY MR. KERR:
 25 Q. Okay. Let me show you what has been

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1 marked as Exhibit 8. I saw this yesterday in a
 2 different form, but as usual, you start from the
 3 back page and read forward on these e-mail strings.
 4 Do you recognize this e-mail string?
 5 A. No.
 6 Q. Okay. Earlier the note modification --
 7 I mean, the Commercial Debt Modification Agreement
 8 we discussed, you received it via e-mail, correct?
 9 A. Right.
 10 Q. Okay. So the bottom of the second page
 11 there's something that purports to be an e-mail
 12 from Scott Warren to you with an attachment, which
 13 is a 45-day extension. And it says, this is a
 14 short-term fix.
 15 Do you recall getting this e-mail?
 16 A. No.
 17 Q. Have you discussed this e-mail with --
 18 have you ever heard of this e-mail?
 19 A. I'm sure I have, but I don't recall it.
 20 Q. Okay. As you move up the page, what
 21 appears to be a response, and I'll point you to the
 22 bottom of the first page --
 23 A. Uh-huh.
 24 Q. -- where the banner seems to be an
 25 e-mail from you, freeman@seatownhomes.com. Was

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1 that your e-mail address?
 2 A. Yes.
 3 Q. So there's an e-mail coming from that
 4 address back to Scott Warren approximately two
 5 hours and four minutes after the e-mail that
 6 references the 45-day extension. Okay. Do you
 7 recall writing any e-mail to Scott Warren at that
 8 time and at that date in connection with this
 9 topic?
 10 A. No.
 11 Q. Okay. At the top of the page you write
 12 Scott and you say, quote, I understand it's only a
 13 short-term extension, but we also understand there
 14 is no guarantee a longer agreement may be offered
 15 to us, and we need to act responsibly.
 16 Did I read that correctly?
 17 A. Yes.
 18 Q. Do you believe that you wrote that?
 19 A. Yes.
 20 Q. Okay. So at that time in March, aren't
 21 you acknowledging that it is someone else's
 22 decision besides Scott Warren as to whether or not
 23 there's going to be a new agreement?
 24 A. Yes.
 25 MR. KERR: Okay. Let's take a couple

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1 of minutes so I can get myself organized and blow
 2 through this last part.
 3 (A recess transpired.)
 4 BY MR. KERR:
 5 Q. All right. Let's get through this.
 6 Thanks for your patience.
 7 Mr. Barber, I want to walk you through
 8 a couple of aspects of the Complaint just so I
 9 understand the claims a little better. At the time
 10 of the -- rather the Answer and the Counter-Claims.
 11 Earlier this year, January of 2010, you were still
 12 a member of the Liberty Village, LLC, correct?
 13 A. Yes.
 14 Q. Okay. And when Liberty Village's
 15 counsel filed and served their Answer and then
 16 their Amended Answer and Amended Counter-Claims in
 17 this lawsuit, did you have an opportunity to review
 18 the Counter-Claims?
 19 A. I don't recall.
 20 Q. Okay. Do you recall looking at
 21 pleadings provided to you by Liberty Village's
 22 counsel showing the caption and trying to lay out
 23 the claims?
 24 A. I recognize that document if that's
 25 what you're asking.

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1 Q. All right. And what I'm holding up is
 2 my unfiled copy of the Amended Answer and
 3 Counter-Claim Liberty Village, LLC. Is it your
 4 understanding that the basis of the claims for
 5 damages results from the failure to pay a draw
 6 request?
 7 A. No, that's not my specific
 8 understanding.
 9 Q. What is that specific understanding?
 10 A. Failure to fund the interest that was
 11 available. Honestly, I don't know specifically.
 12 I'm speculating.
 13 Q. Were you consulted on the formulation
 14 of the claims asserted against the banks?
 15 A. No.
 16 Q. Okay. Do you know who -- who worked
 17 with counsel in formulating the claims?
 18 A. I can assume Skipper and --
 19 Q. Someone other than you?
 20 A. Someone other than me, yes.
 21 Q. All right. Do you believe that there's
 22 any -- do you believe that there's any bad
 23 intention on the part of the bank here in how they
 24 dealt with this loan?
 25 MR. LEWIS: Object to the form.

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1 THE WITNESS: Yes, I do feel that way.
 2 BY MR. KERR:
 3 Q. What do you think their -- what is
 4 their bad intention?
 5 A. You're strictly asked me what my
 6 feelings are?
 7 Q. Yeah, I'm not asking for -- I'm asking
 8 for an opinion.
 9 A. Yeah.
 10 Q. What's your opinion of it?
 11 A. I have two opinions. One, that there
 12 was tremendous loan-to-value on the property. I
 13 don't see how the bank could have benefitted from
 14 that, but it may have been possible. But my
 15 stronger opinion of it was that the bank was
 16 failing and didn't give a crap. Didn't care about
 17 services -- servicing us or working with us.
 18 Q. Do you -- do you believe that it's --
 19 that there was a fraudulent representation made
 20 about agreeing to pay a draw request?
 21 MR. LEWIS: Object to the form.
 22 THE WITNESS: I wouldn't describe it as
 23 fraudulent because there was a trail, but I do
 24 believe we were misled.
 25 BY MR. KERR:

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1 Q. And, specifically, we're talking about
 2 the \$161,000 O. L. Thompson contract and the work
 3 that they did?
 4 A. No, talking about the renewal and how
 5 that was handled.
 6 Q. Okay. I was just talking about a draw
 7 request.
 8 A. Right.
 9 Q. In the pleadings, it is alleged that
 10 there was a misrepresentation about paying that
 11 draw request.
 12 A. Yeah. I think there was a
 13 misrepresentation there, for me personally, which I
 14 volunteered to you, it was a secondary issue.
 15 Q. And that's because the primary issue
 16 was the extension or further modification of the
 17 original loan?
 18 A. Right.
 19 Q. Okay. What are Liberty Village, LLC's
 20 damages then as a result of what Liberty Village
 21 asserts is bad conduct and actionable conduct by
 22 this bank?
 23 A. I'm not sure that I can answer that for
 24 the other members. I can answer it for me
 25 personally.

1 MR. LEWIS: Can I just remind him that
2 you're here as a 30(b)(6) witness as opposed as a
3 personal person. I apologize, I just want to make
4 a reminder that you're here as a 30(b)(6) on behalf
5 of Liberty Village.

6 THE WITNESS: Okay. I can't answer
7 that question.

8 BY MR. KERR:

9 Q. You don't know what the damages are?
10 A. No.

11 Q. Okay. Do you think that -- do you
12 think that First National Bank should be repaid
13 anything?

14 A. Yes.

15 Q. How much do you think they should be
16 repaid?

17 A. I believe they should, morally, be
18 repaid everything they advanced principalwise.

19 Q. What about other costs, fees, that are
20 protected by the terms of the loan documents?

21 A. I believe they should be repaid.

22 Q. Okay. And what do you think Liberty
23 Village should receive then?

24 A. I don't know.

25 Q. From Liberty Village's standpoint, had

1 A. Sure.

2 Q. So when I asked you, have you ever been
3 a party in a lawsuit individually, and you didn't
4 mention that, that's just because it slipped your
5 mind?

6 A. Correct.

7 Q. Okay. Is that lawsuit resolved?

8 A. Yes.

9 Q. Is that lawsuit resolved in part by
10 your assigning or transferring your membership
11 interest in Liberty Village, LLC?

12 A. Yes.

13 Q. And it was transferred either to Mr.
14 Bartone or an entity he's involved in?

15 A. I believe it was him individually.

16 Q. Okay. Do you know what the current
17 governance relationship is among the members of
18 Liberty Village, LLC?

19 A. I do not know.

20 Q. Do you know if they have entered into
21 an operating agreement?

22 A. I do not know.

23 Q. Do you know if they are manager-managed
24 or member-managed?

25 A. No.

1 the loan been extended until March of 2010, under
2 the original terms and conditions, would Liberty
3 Village have been able to repay the loan at
4 maturity?

5 A. I can't answer that question; I don't
6 know.

7 Q. Based on your knowledge of the current
8 market for sale of raw land, do you believe that
9 sales would have generated sufficient revenue for
10 the entity to pay the loan in full?

11 MR. LEWIS: Object to form.

12 THE WITNESS: Possibly.

13 BY MR. KERR:

14 Q. Okay. Do you believe that if you were
15 still a member that you could have worked out the
16 details and actually sold some property?

17 A. I don't know. I would like to think
18 so, but I don't know.

19 Q. I had occasion to look at the public
20 record and it appears that a lawsuit was filed
21 naming you as a defendant, going back to the first
22 couple of questions I posed here this morning. And
23 it appears there was a lawsuit filed by Mr. Bartone
24 and Mr. Woody against you individually. Are you
25 familiar with that lawsuit?

1 Q. Okay. When was the last time you had
2 any participation in the affairs of the LLC?

3 A. July of 2010.

4 MR. KERR: I don't have anything
5 further.

6 CROSS-EXAMINATION

7 BY MR. LEWIS:

8 Q. I have one quick question. Freeman,
9 you were asked about this e-mail that's dated I
10 guess the 24th?

11 A. Right.

12 Q. And the statement that says, I
13 understand it is only a short-term extension but we
14 also understand there is no guarantee a longer
15 agreement may be offered. Do you recall that?

16 A. Yes.

17 Q. The statement about, we also understand
18 there is no guarantee a longer agreement may be
19 offered, is that a result of the way things are
20 going right then or was that always your
21 understanding?

22 A. No, that was a result of what happened
23 recently.

24 Q. Did you believe as a result of your
25 meeting in October that there was a guarantee that

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a longer agreement would be offered?

A. I don't recall discussing that at that meeting.

Q. Okay. But at some point between that meeting and the time of the renewal period starting, was it your belief that it was guaranteed that you would get a renewal?

A. Yes.

MR. LEWIS: That's all I have.

MR. KERR: Thank you very much.

(The deposition was concluded at 12:05 p.m.)

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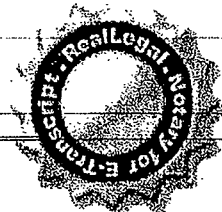
CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of August, 2010 at Charleston, Charleston County, South Carolina.

Denise Lauder



Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

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CAROLINA REPORTING

LIBERTY VILLAGE, LLC
669 MARINA DRIVE SUITE B10
CHARLESTON, SC 29492

First National Bank of Spartanburg
Div. of First National Bank of the South
P.O. Box 3508
Spartanburg, SC 29304

34-1990932
Loan Number 401269300
Date 08/15/2007
Maturity Date 02/14/2009
Loan Amount \$ 2,550,000.00
Renewal Of _____

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two Million Five Hundred Fifty Thousand Dollars Dollars \$ 2,550,000.00

Single Advance: I will receive all of this principal sum on _____. No additional advances are contemplated under this note.
 Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On 08/15/2007 I will receive the amount of \$ \$1,395,000.00 and future principal advances are contemplated.

Conditions: The conditions for future advances are UPON COMPLETION OF WORK AND INSPECTION OF MORTGAGED PROPERTY BY AN APPROVED APPRAISER FOR FIRST NATIONAL BANK OF THE SOUTH.

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

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

INTEREST: I agree to pay interest on the outstanding principal balance from 08/15/2007 at the rate of 8.500 % per year until FIRST CHANGE DATE

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

Index Rate: The future rate will be .25% above the following index rate: Prime Rate as published in the Wall Street Journal

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

Frequency and Timing: The rate on this note may change as often as every Day beginning 8/15/2007
A change in the interest rate will take effect on the same day

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

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

The amount of each scheduled payment will change. The amount of the final payment will change.

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

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
 on the same fixed or variable rate basis in effect before maturity (as indicated above).
 at a rate equal to _____

LATE CHARGE: If a payment is not made within 15 days after it is due, I agree to pay a late charge of 5.000% of the payment amount and a maximum of \$250.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: PREPAID \$163.00 PROCESSING FEE & \$6,375.00 (.25%) ORIGINATION FEE

PAYMENTS: I agree to pay this note as follows:

Interest: I agree to pay accrued interest in Monthly payments of accrued interest on the amount of credit outstanding beginning on 09/14/2007.

Principal: I agree to pay the principal on 02/14/2009.

Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____. A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____

ADDITIONAL TERMS:



SECURITY: This note is separately secured by (describe separate document by type and date):
MORTGAGE DATED AUGUST 15, 2007

PURPOSE: The purpose of this loan is REFINANCE

ROA000477

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

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

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

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

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

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

ACCRAUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

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

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

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

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

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

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

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

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

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

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

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

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

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.

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

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

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

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

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

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

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

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

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

DATE OF	PRINCIPAL	BORROWER'S	PRINCIPAL	PRINCIPAL	PRINCIPAL	PRINCIPAL
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ENTITY AUTHORIZATION

ENTITY CERTIFICATIONS. I, W. FREEMAN BARBER JR

(Authorization Signer's name), Certify that: I am a/the MEMBER

(Authorization Signer's title) designated to act on behalf of LIBERTY VILLAGE, LLC

(Authorizing Entity). Authorizing Entity is a LIMITED LIABILITY COMPANY

type of entity, like a "non-profit" corporation and its Taxpayer Identification Number 34-1990932

I am authorized and directed to execute an original or a copy of this Authorization to Financial Institution, and anyone else requiring a copy. Authorizing Entity is duly organized, validly existing and in good standing under the laws of SC and I am duly qualified, validly existing and in good standing in all jurisdictions where Authorizing Entity operates or owns or leases property. Authorizing Entity has the power and authority to provide this Authorization, to confer the powers granted in this Authorization and to carry on Authorizing Entity's business and activities as now conducted. The designated Agents have the power and authority to exercise the actions specified in this Authorization and Authorizing Entity properly adopted these authorizations and appointed the Agents and me to act on its behalf. Authorizing Entity will notify Financial Institution before reorganizing, merging, consolidating, recapitalizing, dissolving or otherwise materially changing ownership, management or organizational form. Authorizing Entity will be fully liable for failing to notify Financial Institution of these material changes.

Authorizing Entity conducts business and other activities under the additional trade name or fictitious name of _____ and Authorizing Entity has the legal power and authority to use this trade name or fictitious name. Authorizing Entity will not use any trade name or fictitious name without Financial Institution's prior written consent and will preserve Authorizing Entity's existing name, trade names, fictitious names and franchises.

GENERAL AUTHORIZATIONS. I certify Authorizing Entity authorizes and agrees that: First National Bank of Spartanburg (Financial Institution) is designated to provide Authorizing Entity the financial accommodations indicated in this Authorization, subject to the Financial Institution's rules and regulations from time to time. All prior transactions obligating Authorizing Entity to Financial Institution by or on behalf of Authorizing Entity are ratified by execution of this Authorization. Any Agent, while acting on behalf of Authorizing Entity, is authorized, subject to any expressed restrictions, to make all other arrangements with Financial Institution which are necessary for the effective exercise of the powers indicated within this Authorization. The signatures of the Agents are conclusive evidence of their authority to act on behalf of Authorizing Entity. Unless otherwise agreed to in writing, this Authorization replaces any earlier related Authorization and will remain effective until Financial Institution receives and records an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of this Authorization must be accompanied by documentation, satisfactory to Financial Institution, establishing the authority for the change. Authorizing Entity agrees not to combine proceeds from collateral securing any debts owed to Financial Institution with unrelated funds.

SPECIFIC AUTHORIZATIONS. The following persons (Agents) are authorized to act on behalf of Authorizing Entity in fulfilling the purposes of this Authorization:

Individual's Name, Title, & if applicable, Representative Entity's Name and Relationship to Authorizing Entity

Signature or Facsimile Signature

(a) MEMBER

JUDSON STRINGFELLOW
(b) MEMBER

(c) _____

(d) _____

(e) _____

(f) _____

Authorizing Entity has adopted any facsimile signatures indicated above. Financial Institution may rely on those facsimile signatures that resemble the specimens within this Authorization or the specimens that Authorizing Entity periodically files with Financial Institution, regardless of by whom or by what means the signatures were affixed.

Authorizing Entity authorizes and directs the designated Agents to act, as indicated, on Authorizing Entity's behalf to: (indicate a, b, c, d, e and/or f to exercise each specific power):

a, b Open or close any share or deposit accounts in Authorizing Entity's name, including, without limitation, accounts such as share draft, checking, savings, certificates of deposit or term share accounts, escrow, demand deposit, reserve, and overdraft line-of-credit accounts. Number of signatures required 01

a, b Enter into and execute any preauthorized electronic transfer agreements for automatic withdrawals, deposits or transfers initiated through an electronic ATM or point-of-sale terminal, telephone, computer or magnetic tape using an access device like an ATM or debit card, a code or other similar means. Number of signatures required 01

a, b Enter into and execute commercial wire transfer agreements that authorize transfers by telephone or other communication systems through the network chosen by Financial Institution. Number of signatures required 01

a, b Endorse for cash, deposit, negotiation, collection or discount by Financial Institution any and all deposit checks, drafts, certificates of deposit and other instruments and orders for the payment of money owned or held by Trust. Number of signatures required 01

a, b Sign checks or orders for the payment of money, withdraw or transfer funds on deposit with you. Number of signatures required 01

a, b Enter into and execute a written right depository agreement, a lock-box agreement or a safe deposit box lease agreement. Number of signatures required 01

a, b Borrow money or obtain other credit or financial accommodation from Financial Institution on behalf of and in the name of Authorizing Entity on the terms agreed to with Financial Institution. The designated Agents may execute and endorse

AUTHORIZATIONS FOR ENTITIES

NOT FOR CONSUMER PURPOSES

PLAINTIFF'S EXHIBIT
2 Barber
8/18/10

ENTITY AUTHORIZATION

ENTITY CERTIFICATIONS. I, W FREEMAN BARBER JR (Authorization Signer's name), certify that: I am a/the MEMBER

(Authorization Signer's title) designated to act on behalf of LIBERTY VILLAGE, LLC

(Authorizing Entity). Authorizing Entity is a LIMITED LIABILITY COMPANY

(Type of entity, like a "non-profit" corporation) and its Taxpayer Identification Number 34-1990932. I am authorized and directed to execute an

original or a copy of this Authorization to Financial Institution, and anyone else requiring a copy. Authorizing Entity is duly organized, validly existing and in good standing under the laws of SC and is duly qualified, validly existing and in good standing in all jurisdictions where Authorizing Entity operates or owns or leases property. Authorizing Entity has the power and authority to provide this Authorization, to confer the powers granted in this Authorization and to carry on Authorizing Entity's business and activities as now conducted. The designated Agents have the power and authority to exercise the actions specified in this Authorization and Authorizing Entity properly adopted these authorizations and appointed the Agents and me to act on its behalf. Authorizing Entity will notify Financial Institution before reorganizing, merging, consolidating, recapitalizing, dissolving or otherwise materially changing ownership, management or organizational form. Authorizing Entity will be fully liable for failing to notify Financial Institution of these material changes.

Authorizing Entity conducts business and other activities under the additional trade name or fictitious name of _____ and Authorizing Entity has the legal power and authority to use this trade name or fictitious name. Authorizing Entity will not use any trade name or fictitious name without Financial Institution's prior written consent and will preserve Authorizing Entity's existing name, trade names, fictitious names and franchises.

GENERAL AUTHORIZATIONS. I certify Authorizing Entity authorizes and agrees that: First National Bank of Spartanburg (Financial Institution) is designated to provide Authorizing Entity the financial accommodations indicated in this Authorization, subject to the Financial Institution's rules and regulations from time to time. All prior transactions obligating Authorizing Entity to Financial Institution by or on behalf of Authorizing Entity are ratified by execution of this Authorization. Any Agent, while acting on behalf of Authorizing Entity, is authorized, subject to any expressed restrictions, to make all other arrangements with Financial Institution which are necessary for the effective exercise of the powers indicated within this Authorization. The signatures of the Agents are conclusive evidence of their authority to act on behalf of Authorizing Entity. Unless otherwise agreed to in writing, this Authorization replaces any earlier related Authorization and will remain effective until Financial Institution receives and records an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of this Authorization must be accompanied by documentation, satisfactory to Financial Institution, establishing the authority for the change. Authorizing Entity agrees not to combine proceeds from collateral securing any debts owed to Financial Institution with unrelated funds.

SPECIFIC AUTHORIZATIONS. The following persons (Agents) are authorized to act on behalf of Authorizing Entity in fulfilling the purposes of this Authorization:

Individual's Name, Title, & If applicable, Representative Entity's Name and Relationship to Authorizing Entity	Signature or Facsimile Signature
(a) <u>MEMBER</u> <u>W FREEMAN BARBER JR</u>	
(b) <u>MEMBER</u> <u>JUDSON STRINGFELLOW</u>	
(c) _____	_____
(e) _____	_____
(f) _____	_____

Authorizing Entity has adopted any facsimile signatures indicated above. Financial Institution may rely on those facsimile signatures that resemble the specimens within this Authorization or the specimens that Authorizing Entity periodically files with Financial Institution, regardless of by whom or by what means the signatures were affixed.

Authorizing Entity authorizes and directs the designated Agents to act, as indicated, on Authorizing Entity's behalf to:
(Indicate a, b, c, d, e and/or f to exercise each specific power):

- a, b Open or close any share or deposit accounts in Authorizing Entity's name, including, without limitation, accounts such as share draft, checking, savings, certificates of deposit or term share accounts, escrow, demand deposit, reserve, and overdraft line-of-credit accounts. Number of signatures required 01
- a, b Enter into and execute any preauthorized electronic transfer agreements for automatic withdrawals, deposits or transfers initiated through an electronic ATM or point-of-sale terminal, telephone, computer or magnetic tape using an access device like an ATM or debit card, a code or other similar means. Number of signatures required 01
- a, b Enter into and execute commercial wire transfer agreements that authorize transfers by telephone or other communication systems through the network chosen by Financial Institution. Number of signatures required 01
- a, b Endorse for cash, deposit, negotiation, collection or discount by Financial Institution any and all deposit checks, drafts, certificates of deposit and other instruments and orders for the payment of money owned or held by Trust. Number of signatures required 01
- a, b Sign checks or orders for the payment of money, withdraw or transfer funds on deposit with you. Number of signatures required 01
- a, b Enter into and execute a written night depository agreement, a lock-box agreement or a safe deposit box lease agreement. Number of signatures required 01
- a, b Borrow money or obtain other credit or financial accommodation from Financial Institution on behalf of and in the name of Authorizing Entity on the terms agreed to with Financial Institution. The designated Agents may execute and endorse

AUTHORIZATIONS FOR ENTITIES

NOT FOR CONSUMER PURPOSES

promissory notes, acceptances or other evidences of indebtedness. If checked, the maximum outstanding credit limit for all available credit and financial accommodation to Authorizing Entity from Financial Institution must not exceed \$ _____ . Number of signatures required 01 .

a, b Grant a security interest, lien or other encumbrance to Financial Institution in any or all real or personal property that Authorizing Entity now owns or may acquire in the future for the payment or performance of:

Specific Debts. The debts, liabilities and obligations, and their renewals, extensions, refinancing and modifications, evidenced by (describe): _____

All Debts. All debts, liabilities and obligations of every type and description owed now or in the future by Authorizing Entity to Financial Institution.

Number of signatures required 01 .

a, b Receive and acknowledge receipt for funds, whether payable to the order of Authorizing Entity or an Agent, without additional certification as to the use of the proceeds. Number of signatures required 01 .

a, b Guaranty the payment and performance of debts, liabilities and obligations owed to Financial Institution or its successors and assigns by LIBERTY VILLAGE, LLC (Borrower):

Specific Debts. The debts, liabilities and obligations, and their renewals, extensions, refinancing and modifications, evidenced by (describe): _____

All Debts. All debts, liabilities and obligations, and their renewals, extensions, refinancing and modifications, that Borrower owes now or in the future to Financial Institution, to the extent allowed by law.

Number of signatures required 01 .

a, b The designated Agents may also grant a security interest, lien or other encumbrance to Financial Institution in any or all real or personal property that Authorizing Entity now owns or may acquire in the future for the payment or performance of this guaranty. Number of signatures required 01 .

a, b Periodically amend, restructure, renew, extend, modify, substitute or terminate any agreements or arrangements with Financial Institution that relate to this Authorization. Number of signatures required 01 .

a, b Execute other agreements that Financial Institution may require, and perform or cause to be performed any further action necessary to carry out the purposes of this Authorization. Number of signatures required 01 .

Other (specify) _____

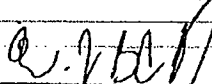
Number of signatures required _____ .

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

SIGNATURES. By signing, I certify and agree to the terms contained in this Authorization on behalf of Authorizing Entity on 08/15/2007 . I also acknowledge receipt of a copy of this Authorization.

Pennsylvania. The designation of an Agent does not create a power of attorney; therefore, Agents are not subject to the provisions of 20 Pa.C.S.A. Section 5601 et seq. (Chapter 56; Decedents, Estates and Fiduciaries Code) unless the agency was created by a separate power of attorney. Any provision that assigns Financial Institution rights to act on behalf of any person or entity is not subject to the provisions of 20 Pa.C.S.A. Section 5601 et seq. (Chapter 56; Decedents, Estates and Fiduciaries Code).

AUTHORIZATION'S SIGNERS:

By: 
Name **W. FREEMAN BARBER JR**
MEMBER

By: _____
Attest: Name

FOR FINANCIAL INSTITUTION USE ONLY

Acct/Loan # _____ Authorization and agreement completed and effective _____
By _____ for the Financial Institution.

ENTITY AUTHORIZATION

ENTITY CERTIFICATIONS. I, AUBREY J WOODY JR

(Authorization Signer's name), certify that: I am a/the MEMBER

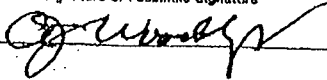
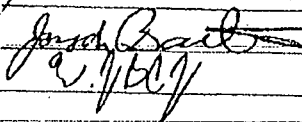
(Authorizing Entity). Authorizing Entity is a LIBERTY VILLAGE, LLC
(Authorizing Entity) is a LIMITED LIABILITY COMPANY

type of entity, like a "non-profit" corporation and its Taxpayer Identification Number 34-1990932. I am authorized and directed to execute an original or a copy of this Authorization to Financial Institution, and anyone else requiring a copy. Authorizing Entity is duly organized, validly existing and in good standing under the laws of SC and is duly qualified, validly existing and in good standing in all jurisdictions where Authorizing Entity operates or owns or leases property. Authorizing Entity has the power and authority to provide this Authorization, to confer the powers granted in this Authorization and to carry on Authorizing Entity's business and activities as now conducted. The designated Agents have the power and authority to exercise the actions specified in this Authorization and Authorizing Entity properly adopted these authorizations and appointed the Agents and me to act on its behalf. Authorizing Entity will notify Financial Institution before reorganizing, merging, consolidating, recapitalizing, dissolving or otherwise materially changing ownership, management or organizational form. Authorizing Entity will be fully liable for failing to notify Financial Institution of these material changes.

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GENERAL AUTHORIZATIONS. I certify Authorizing Entity authorizes and agrees that: FIRST NATIONAL BANK OF THE SOUTH (Financial Institution) is designated to provide Authorizing Entity the financial accommodations indicated in this Authorization, subject to the Financial Institution's rules and regulations from time to time. All prior transactions obligating Authorizing Entity to Financial Institution by or on behalf of Authorizing Entity are ratified by execution of this Authorization. Any Agent, while acting on behalf of Authorizing Entity, is authorized, subject to any expressed restrictions, to make all other arrangements with Financial Institution which are necessary for the effective exercise of the powers indicated within this Authorization. The signatures of the Agents are conclusive evidence of their authority to act on behalf of Authorizing Entity. Unless otherwise agreed in writing, this Authorization replaces any earlier related Authorization and will remain effective until Financial Institution receives and records an express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of this Authorization must be accompanied by documentation, satisfactory to Financial Institution, establishing the authority for the change. Authorizing Entity agrees not to combine proceeds from collateral securing any debts owed to Financial Institution with unrelated funds.

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Individual's Name, Title, & if applicable, Representative Entity's Name and Relationship to Authorizing Entity	Signature or Facsimile Signature
(a) <u>AUBREY J WOODY JR</u> <u>MEMBER</u>	
(b) <u>ANTHONY J BARTONE</u> <u>MEMBER</u>	
(c) <u>JOSEPH BARTONE</u> <u>MEMBER</u>	
(d) <u>W FREEMAN BARBER JR</u> <u>MEMBER</u>	
(e) _____	
(f) _____	

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Authorizing Entity authorizes and directs the designated Agents to act, as indicated, on Authorizing Entity's behalf to: (Indicate a, b, c, d, e and/or f to exercise each specific power):

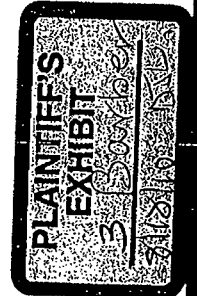
- a, b, c, d Open or close any share or deposit accounts in Authorizing Entity's name, including, without limitation, accounts such as share draft, checking, savings, certificates of deposit or term share accounts, escrow, demand deposit, reserve, and overdraft line-of-credit accounts. Number of signatures required 04
- a, b, c, d Enter into and execute any preauthorized electronic transfer agreements for automatic withdrawals, deposits or transfers initiated through an electronic ATM or point-of-sale terminal, telephone, computer or magnetic tape using any access device like an ATM or debit card, a code or other similar means. Number of signatures required 04
- a, b, c, d Enter into and execute commercial wire transfer agreements that authorize transfers by telephone or other communication systems through the network chosen by Financial Institution. Number of signatures required 04
- a, b, c, d Enforce for cash, deposit, negotiation, collection or discount by Financial Institution any and all deposit checks, drafts, certificates of deposit and other instruments and orders for the payment of money owned or held by Trust. Number of signatures required 04
- a, b, c, d Sign checks or orders for the payment of money, withdraw or transfer funds on deposit with you. Number of signatures required 04
- a, b, c, d Enter into and execute a written night depository agreement, a lockbox agreement or a safe deposit box lease agreement. Number of signatures required 04
- a, b, c, d Borrow money or obtain other credit or financial accommodation from Financial Institution on behalf of and in the name of Authorizing Entity on the terms agreed to with Financial Institution. The designated Agents may execute and enforce

AUTHORIZATIONS FOR ENTITIES

Exhibit © 2000 Dunham Systems, Inc., St. Cloud, MN Form AUTH-ENTITY 4/30/2003

NOT FOR CONSUMER PURPOSES

(page 1 of 2)



ENTITY AUTHORIZATION

ENTITY CERTIFICATIONS. I, AUBREY J WOODY JR

(Authorization Signer's name), certify that: I am a/the MEMBER

(Authorization Signer's title) designated to act on behalf of LIBERTY VILLAGR, LLC

(Authorizing Entity). Authorizing Entity is a LIMITED LIABILITY COMPANY

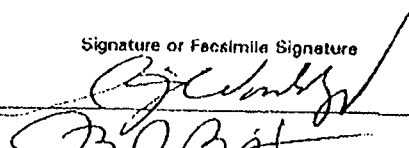
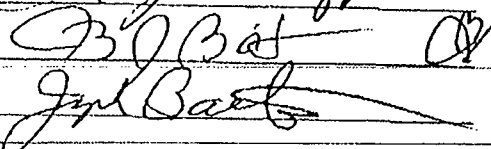
(type of entity, like a "non-profit" corporation) and its Taxpayer Identification Number 34-1990932

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GENERAL AUTHORIZATIONS. I certify Authorizing Entity authorizes and agrees that: First National Bank of the South (Financial Institution) is designated to provide Authorizing Entity the financial accommodations indicated in this Authorization, subject to the Financial Institution's rules and regulations from time to time. All prior transactions obligating Authorizing Entity to Financial Institution by or on behalf of Authorizing Entity are ratified by execution of this Authorization. Any Agent, while acting on behalf of Authorizing Entity, is authorized, subject to any express restrictions, to make all other arrangements with Financial Institution which are necessary for the effective exercise of the powers indicated within this Authorization. The signatures of the Agents are conclusive evidence of their authority to act on behalf of Authorizing Entity. Unless otherwise agreed to in writing, this Authorization replaces any earlier related Authorization and will remain effective until Financial Institution receives and records a express written notice of its revocation, modification or replacement. Any revocation, modification or replacement of this Authorization must be accompanied by documentation, satisfactory to Financial Institution, establishing the authority for the change. Authorizing Entity agrees not to combine proceeds from collateral securing any debts owed to Financial Institution with unrelated funds.

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(b) <u>ANTHONY J BARTONE</u> <u>MEMBER</u>	
(c) <u>JOSEPH BARTONE</u> <u>MEMBER</u>	
(d) <u>W FREEMAN BARBER JR</u> <u>MEMBER</u>	
(e) _____	
(f) _____	

Authorizing Entity has adopted any facsimile signatures indicated above. Financial Institution may rely on those facsimile signatures that resemble the specimens within this Authorization or the specimens that Authorizing Entity periodically files with Financial Institution, regardless of by whom or by what means the signatures were affixed.

Authorizing Entity authorizes and directs the designated Agents to act, as indicated, on Authorizing Entity's behalf to:
(Indicate a, b, c, d, e and/or f to exercise each specific power):

- a, b, c, d Open or close any share or deposit accounts in Authorizing Entity's name, including, without limitation, accounts such as share draft, checking, savings, certificates of deposit or term share accounts, escrow, demand deposit, reserve, an overdraft line-of-credit accounts. Number of signatures required 04
- a, b, c, d Enter into and execute any preauthorized electronic transfer agreements for automatic withdrawals, deposits or transfer initiated through an electronic ATM or point-of-sale terminal, telephone, computer or magnetic tape using an access device like an ATM or debit card, a code or other similar means. Number of signatures required 04
- a, b, c, d Enter into and execute commercial wire transfer agreements that authorize transfers by telephone or other communication systems through the network chosen by Financial Institution. Number of signatures required 04
- a, b, c, d Endorse for cash, deposit, negotiation, collection or discount by Financial Institution any and all deposit checks, drafts, certificates of deposit and other instruments and orders for the payment of money owned or held by Trust. Number of signatures required 04

This document was prepared by (name, address, phone):

First National Bank of Spartanburg
Div. of First National Bank of the South
P.O. Box 3508
Spartanburg, SC 29304

Doc #: 00026922

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 08/15/2007 and the parties and their addresses are as follows:

MORTGAGOR: LIBERTY VILLAGE, LLC
669 MARINA DRIVE SUITE B10
CHARLESTON, SC 29492

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

LENDER: First National Bank of Spartanburg
Div. of First National Bank of the South
P.O. Box 3508
Spartanburg, SC 29304

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT "A"

WOODWAY LAW FIRM
597 Old Mountain Road Suite 202
Goose Creek, South Carolina 29445

7RGC282CB



The property is located in BERKLEY at 151 ACRES
(County)

IDENTIFIED AS CHARLESTON South Carolina 29492
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term "Property" also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

Handwritten initials

Handwritten letter 'A'

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 2,550,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):

One note of even date in the principal amount of 2,550,000.00 with final payment due 02/14/2009

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

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

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

abw

10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

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

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

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

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

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

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

[Handwritten signature]

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guarantied, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. ~~This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement.~~ If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

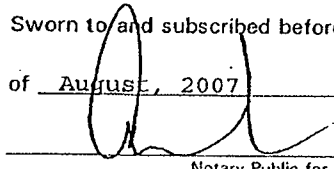
PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Berkeley } ss.

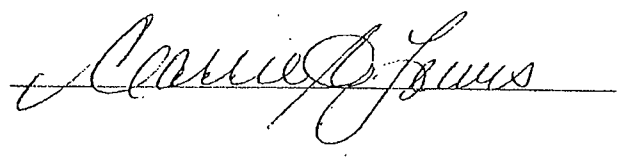
Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 15th day

of August, 2007



Notary Public for South Carolina



My commission expires: 8/19/2014

EXHIBIT A - LEGAL DESCRIPTION

ALL that piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, known and designated as Tract E2-B containing 213.896 acres as shown on that certain plat entitled, "CONVEYANCE PLAT SHOWING THE SUBDIVISION OF TRACT E2, OF BRICKHOPE PLANTATION (FORMERLY KNOWN AS LIBERTY HALL), A 729.344 ACRE TRACT OF LAND, INTO TRACTS E2-A (227.999 AC.), E2-B (213.896 AC.), AND E2-C (287.448 AC.), PROPERTY OF LIBERTY VILLAGE, LLC, LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated August 12, 2004 by Richard A. Aldridge, P.L.S. 20854 of Trico Engineering Consultants, LLC and recorded in the RMC Office for Berkeley County in Plat Book Q, Page 251-E. Said parcel having such size, shape, dimensions, buttings and boundings as shown on the aforesaid plat.

And being the same property conveyed to the mortgagors herein by Deed from W. A. Moncrief, Jr., and The Estate of Elizabeth Bright Moncrief dated 07/22/04 and recorded 07/26/04 in Book 4134, Page 00045 in the RMC Office for Berkeley County.

07RGC282CB

2/20/04



Instrument Number: 2007- 00026922

Recorded On: August 17, 2007

As
Mortgage

Parties: LIBERTY VILLAGE LLC

To

FIRST NATIONAL BANK OF SPARTANBURG

Billable Pages: 5

Recorded By: WOODY LAW FIRM

Num Of Pages: 10

Comment: LIBERTY VILLAGE LLC

**** Examined and Charged as Follows: ****

Mortgage 15.00
Recording Charge: 15.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

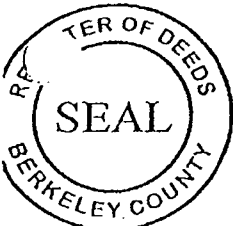
I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2007- 00026922
Receipt Number: 136909
Recorded Date/Time: August 17, 2007 04:21:24P
Book-Vol/Pg: Bk-R VI-6794 Pg-238
Cashier / Station: O Howell / Cash Station 6

Record and Return To:

WOODY LAW FIRM
8310 RIVERS AVENUE
CHARLESTON SC 29418



Cynthia B. Forte

ROA000494 Cynthia B Forte - Register of Deeds

BORROWER NAME AND ADDRESS	LENDER NAME AND ADDRESS	LOAN DESCRIPTION
LIBERTY VILLAGE, LLC 669 MARINA DRIVE SUITE B10 CHARLESTON, SC 29492	First National Bank of the South P.O. Box 3508 Spartanburg, SC 29304	Number <u>401269309</u> Amount <u>\$2,232,435.48</u> Date <u>08/15/2007</u>

Refer to the attached Signature Addendum, incorporated herein, for additional Borrowers and their signatures.

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES. The date of this Debt Modification Agreement (Modification) is 03/23/2009
DEFINITIONS. As used in this Modification, the terms have the following meanings:
Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Modification, individually and together with their heirs, executors, administrators, successors, and assigns. "You" and "your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligation.
Prior Obligation. "Prior Obligation" refers to my previous agreement governing my promise to pay you money, including any loan agreement, note, or document that evidences my indebtedness, and any extensions, renewals, modifications, and substitutions.

BACKGROUND. You and I have entered into a Prior Obligation which is evidenced by PROMISSORY NOTE & MORTGAGE dated 08/15/2007 in the original principal amount of / with a maximum possible principal amount of \$ 2,550,000.00 / payable on demand. / payable on demand but if no demand is made, by the maturity date of 02/14/2009 / with a maturity date of 02/14/2009.

As of the date of this Modification, the amount remaining due is / current amount outstanding on the Prior Obligation is \$ 2,232,435.48 principal (Principal) plus \$ 14,748.96 accrued interest, for a total of \$ 2,247,184.44.

MODIFICATION. For value received, you and I agree to modify the Prior Obligation as follows.

INTEREST RATE MODIFICATION.

INTEREST RATE.

EFFECTIVE WITH THIS MODIFICATION THE INTEREST RATE WILL BE FIRST NATIONAL BANK OF THE SOUTH PRIME PLUS ONE PERCENT WITH A FLOOR RATE OF 6.50%.

Maximum Interest Amount. Any amount assessed or collected as interest will be limited to the maximum lawful amount of interest allowed by state or federal law. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid principal balance. Any remainder will be refunded to me.

Post-Maturity/Default Interest Rate.

Compounding. This Modification provides for the compounding of interest.

PAYMENT MODIFICATION.

I AGREE TO PAY ONE FINAL PAYMENT OF ALL UNPAID PRINCIPAL AND INTEREST AT MATURITY, 05/07/2009.

DRAW PERIOD MODIFICATION.

FEES AND CHARGES MODIFICATION.
PREPAID \$250.00 PROCESSING FEE.



ADDITIONAL TERMS.

FIRST NATIONAL BANK OF THE SOUTH HAS AGREED TO EXTEND THE MATURITY 45 DAYS UNTIL 05/07/2009 AND TO DECREASE THE LINE OF CREDIT TO \$2,232,435.48. ALL OTHER TERMS, CONDITIONS AND COLLATERAL WILL REMAIN THE SAME AND IN FULL FORCE AND EFFECT.

CONTINUATION OF TERMS. Except as specifically amended in this Modification, all terms of the Prior Obligation remain in effect.

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

VT only **NOTICE TO BORROWER:** THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT. TO PROTECT YOU (BORROWER/DEBTOR) AND US (LENDER/SECURED PARTY) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENT EXISTS BETWEEN THEM.

SIGNATURES. By signing under seal, Borrower agrees to the terms contained in this Note. Borrower also acknowledges receipt of a copy of this Note.

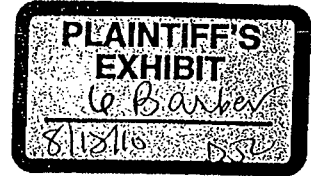
BORROWER:
LIBERTY VILLAGE, LLC

Entity Name: _____
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: 03/23/2009 (Seal)

Entity Name: Joseph Bartore
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: 03/23/2009 (Seal)

LENDER:
First National Bank of the South
 Entity Name: _____
 Signature: [Signature] Date: 03/23/2009 (Seal)
 Signature: [Signature] Date: _____ (Seal)

ROAD000495 _____ Date: _____ (Seal)
 NOT TO BE USED FOR LOANS SUBJECT TO CONSUMER LENDING LAWS
 (Page 1 of 1)



AIA Document A107

**Abbreviated Form of Agreement
Between owner and Contractor**

*For CONSTRUCTION PROJECTS OF LIMITED SCOPE where
The Basis of Payment is a STIPULATED SUM*

1987 EDITION

**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION**

*This document includes General Conditions and should not be used with other general conditions.
It has been approved and endorsed by the Associated General Contractors of America*

AGREEMENT

Made as of the 1st day of December in the year of Two Thousand And Eight

BETWEEN the Owner Liberty Village, LLC
669 Marina Drive
Suite B 10
Charleston, SC 29492

And the Contractor O.L. Thompson Construction Co., Inc.
3691 Paramount Drive
North Charleston, SC 29405

The Project is: Henry Brown Jr. Blvd. (Sta. 44+00 to 58+00)
(Name and address)

The Architect is: Seamon, Whiteside and Associates
(Name and address)

Handwritten signature or initials in cursive, possibly reading "Le Barber" or similar.

The Owner and Contractor agree as set forth below.

ARTICLE 1
THE WORK OF THIS CONTRACT

1.1 The contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Scope of work defined in the bid proposal. See attachment 'A'.

ARTICLE 2
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The date of commencement is the date from which the Contract Time of Paragraph 2.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the agreement or, if applicable, state that the date will be fixed in a notice to proceed)

2.2 The Contractor shall achieve Substantial Completion of the entire Work not later than *(Insert the Calendar date or number of calendar days after the date of commencement; also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

When curb and rock has been installed.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

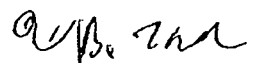
ARTICLE 3
CONTRACT SUM

3.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract Sum of One Hundred Sixty-One Thousand and Two Hundred Eleven Dollars and 52/100 (\$ 161,211.52), subject to additions and deductions as provided in the Contract Documents.

3.2 The contract Sum is based upon the following alternates, if any, which are described in the Contract Documents

(S:forms/office forms/The American Institute of Architects)

ROA000497



And are hereby accepted by the Owner. (State the numbers or other identification of accepted alternatives. If decisions on Other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other Alternates showing the amount for each and the date until which that amount is valid.)

3.2 Unit prices, if any, are as follows:

N/A

ARTICLE 4 PROGRESS PAYMENTS

4.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period Covered by each Application for Payment shall be one calendar month ending on the last day of the Month, or as follows:

Invoices are due on or before the 25th of each month. Payments are expected on or before the 25th of the following month. 10% retainage withheld each period and reduced to 5% at substantial completion. Final 5% released along final payment

4.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the Rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place Where the Project is located. (Insert rate of interest agreed upon, if any.)

Prime + 2%

ARTICLE 5 FINAL PAYMENT

5.1 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the owner to the Contractor when the Work has been completed, the contract fully performed, and a final Certificate for Payment has been issued by the Architect.

aw/Ben TEL

ARTICLE 6
ENUMERATION OF CONTRACT DOCUMENTS

6.1 The Contract Documents are listed in Article 7 and, except for Modifications issued after execution of This Agreement, are enumerated as follows:

6.1.1 The Agreement is this executed Abbreviated form of Agreement between Owner and Contractor, AIA Document A107, 1987 Edition

6.1.2 The Supplementary and other Conditions of the contract are those contained in the Project Manuel dated _____, and are as follows:

DOCUMENT	TITLE	PAGES
N/A		

6.1.3 The Specifications are those contained in the Project Manuel dated as in Subparagraph 6.1.2, and are as follows: *(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

SECTION	TITLE	PAGES
N/A		

6.1.4 The Drawings are as follows, and are dated _____ unless a different date is shown below: *(Either list the drawings here or refer to an exhibit attached to this Agreement.)*

NUMBER	TITLE	DATE
	Sheets 1-25 and 8-14 with Revision #6 dated 10/18/07	
	Sheet 7 with Revision #1 dated 4/20/07	

6.1.5 The Addenda, if any, are as follows:

NUMBER	DATE	PAGES
N/A		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless bidding requirements are also enumerated in this Article 6.

W. T. 72nd

6.1.6 Other documents, if any, forming part of the Contract Documents are as follows:
(List any additional documents, which are intended to form part of the Contract Documents.)

Insurance is to be maintained throughout the project. See attachment 'B'

ARTICLE 21
OTHER CONDITIONS OR PROVISIONS

This Agreement entered into as of the day and year first written above.

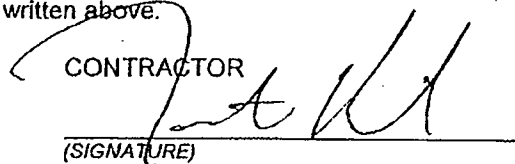
OWNER



(SIGNATURE)

W. F. Baber, Jr. Member
(Printed name and Title)

CONTRACTOR



(SIGNATURE)

TRENT KIRK / U.P.
(Printed name and title)

ATTACHMENT "A"

ROA000501

Henry Brown Jr. Blvd., to Sta 58+00

Revision B- 10/29/2008

Pay Item No.	Pay Item Description	Quantity	UM	Unit Price	Total
Subtotal					
101	Construction Entrance	1.00	EA	3,000.00	3,000.00
***	Road Prep/Cleanup Allowance	1.00	AL	6,000.00	6,000.00
108	Fine Grade Roads	3,890.00	SY	1.50	5,835.00
109	Fine Grade Green Areas	10,200.00	SY	0.60	6,120.00
110	Hydroseed Shoulders	10,200.00	SY	0.40	4,080.00
111	Survey	1.00	LS	6,500.00	6,500.00
114	36" RCP O-Ring	182.00	LF	89.60	16,307.20
115	Rip Rap Areas	1.00	LS	2,940.00	2,940.00
117	Stone CheckDams	5.00	EA	370.00	1,850.00
118	10" FLBC	3,890.00	SY	15.95	62,045.50
119	2.5" Asphalt Paving	3,734.00	SY	12.73	47,533.82
Phase 1 (Sta 44+00 to 58+00)		Subtotal:		161,211.52	

Proposal Clarification

1. This proposal assumes mucking and filling of the subgrade 24".
2. Proposal assumes stockpiling of excess spoils onsite.
3. DNI soil testing.
4. Survey and layout for our work is included in this proposal.
5. DNI any of the Liftstation #3 or the associated Sewer and Forcemain.
6. Pricing for Temporary Turnarounds for Phases 1 and 2 can be removed if road is constructed all at once.
7. This proposal includes stone base pricing for 2008.
8. Asphalt Pricing is based on the Liquid Asphalt Index as published by the SCDOT for October 17th, 2008. Any increase or decrease of greater than 5% in the monthly index at the time of paving will result in a price adjustment per DOT standards.
9. Deleted the Silt Fence. Any silt fence can be added or repaired at \$3.50.

Revision B:

1. Deleted Storm Drainage (RCP, Junction Boxes, Rip Rap) Previously Installed.
2. Deleted Temp Turnaround.
3. Revised Asphalt and FLBC pricing.
4. Revised 36" RCP pricing w/ out Prefab Beveled End Sections.
5. Deleted Waterline from this Proposal.

ATTACHMENT "B"

ROA000503

Client#: 234395

170LTHO

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 12/03/08
PRODUCER J&T Boyle-Vaughan 710 Gervais St. P. O. Box 8628 Columbia, SC 29202	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED O L Thompson Const. Co., Inc. P O Box 63535 Charleston, SC 29419-3535	INSURERS AFFORDING COVERAGE INSURER A: Travelers Indemnity Company INSURER B: Travelers Property Casualty Co of Am INSURER C: CAGC Insurance Company INSURER D: INSURER E:	NAIC # 25658 25674 XXNAIC

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CO6100A484IND07	07/01/08	07/01/09	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	8106100A484	07/01/08	07/01/09	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	CUP6100A484	07/01/08	07/01/09	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC200000158882007A	07/01/08	07/01/09	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000
A	OTHER Equipment leased/rented scheduled	QT660274D388A	07/01/08	07/01/09	\$350,000 limit \$2,500 deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Re: Job #0727

CERTIFICATE HOLDER Liberty Village, LLC 669 Marina Drive, Suite B 10 Charleston, SC 29492	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Carl R. Dompigny Jr.</i>
---------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the Issuing Insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Mitch Sells

From: Freeman Barber [freeman@seatownhomes.com]
Sent: Wednesday, May 06, 2009 4:25 PM
To: Jerry L. Calvert; David H. Zabriskie; Jeff Benjamin
Cc: Mitch Sells; Skipper Woodydy
Subject: Liberty Village, LLC



First National Bank of the South
Mr. Jerry Calvert
Mr. Dave Zabriskie
Mr. Jeff Benjamin

Via email

Re: Brickhope Plantation
Account Number: 401269300

Dear Gentlemen

I am writing to you on behalf on the members of Liberty Village, LLC (LV) to make sure you are fully informed of the timeline and circumstances regarding the loan First National Bank of the South (FNB) has provided for the LV land development project in Goose Creek, SC. We would certainly prefer to have a conversation in person however, through your representatives, my partners and I have requested several meetings with you over the past few weeks but all have gone without response. Yesterday I was told in so many words by Mr. Mitch Sells that you would not be willing to discuss this matter with us in person as the bank did not have time to talk to everyone that had a problem. I hate to point out something as obvious as we are your customers on a multi million dollar loan and I am truly amazed by this response.

The following list of events has occurred between LV and FNB.

--In August of 2007, LV was provided by FNB, a line in the amount of \$2,550,000.00 secured by 151 acres of unimproved, multi use land (Brickhope Plantation) in Goose Creek, SC. The term of the loan was 18 months. Approximately \$1.2 was advanced to pay off an existing loan, \$320,000 was put in place for interest reserve on the loan, and the remainder was to be used for road and sewer improvements to the site. An agreed upon fee was paid for the entire amount of the loan.

--At several points during the loan period, LV made inquiries about obtaining additional financing to complete a spine road that would ultimately increase value and provide access to the individual parcels with Brickhope so they may be sold as a form of repayment to FNB. Understandably given market conditions, LV was informed that each inquiry was not the scope of current business of FNB. LV had (and still has) serious potential buyers for the additional parcels that would have paid off portions of the loan; however the terms of contracts presented cannot not be ratified by LV without the ability to build the spine road.

--In the 4th quarter of 2008, draws requested by LV became increasingly difficult and untimely to obtain from FNB. This, along with the fact that the loan term was approaching created concerns by LV and a meeting was requested between the members of LV and Scott Warren prior to beginning the final phase of construction needed to complete the improvements provided for in the loan, most importantly to verify that draws would be made available and in a timely fashion. Mr. Warren assured LV that there would not be any further problems and LV informed Warren of its intent to begin the last phase of improvements. After being assured draws would be provided, a contract was signed with OL Thompson, Inc (OLT) and construction was commenced late 4th quarter of 2008. Had LV been informed there may be ANY difficulty in obtaining these draws, the contract would not have been signed between LV and OLT and work would not have commenced.

--In March of 2009, LV was informed the loan was in the process of being renewed or extended. LV was informed

that some paper work had slipped through the cracks on the bank's end and that a temporary (45 day) extension needed to be signed by LV immediately to avoid going into default or even foreclosure. LV expressed concerns over the language in the extension document as it called for reducing the loan amount to its current balance (approx. \$2.25MM) as of that date but LV was assured this was a necessary and temporary issue, and once financials were provided by all members of LV, the original loan terms would remain in effect. LV was informed if it did not sign the agreement by the end of that week, the loan would be in default and would be highly scrutinized and most likely not be renewed.

--The 18th interest draft of the 18 month loan was not funded. LV was informed the loan was no longer active and draws could not be processed even though the payment should have been processed prior to the expiration of the loan term.

--At the time the extension was processed, the interest rate was nearly doubled by FNB. LV was informed the remaining balance held in interest reserve (+/- \$100,000.00) would not be provided as called for in the original loan documents, and therefore dissolved. LV had assumed the interest carry would be funded moving forward (as it was told) and had to begin preparations to fund monthly carrying costs. Not only would LV have to provide additional capital to keep the project current, but it would also have to provide twice of what was called for the original loan agreement.

--In April of 2009, LV was informed the loan would be turned over to special assets due to the fact that had become "stale". This was contradictory to the fact that construction was currently active on the project and further loan requests had been made to help make the property more saleable. Once again, LV has had several inquiries for purchase of the individual parcels and additional loan requests were discussed, however despite these facts FNB determines the property status remain a stagnant asset. The property had an appraised value of over \$9,000,000.00 unimproved at the point of the proposed (25% LTV) extension.

--On May 5, 2009, LV was informed by Mr. Sells construction draw funding would not be provided due to the fact that the loan had been frozen when the extension document (that LV was told was temporary) had been acknowledged by LV, and therefore no consideration would be given to paying the draw request despite FNB telling LV otherwise at the time of signing the extension. LV informed FNB it did not have the capital available to pay OLT and a mechanics lien would most likely be filed in the near future. Mr. Sells responded by stating that if a lien was filed, foreclosure proceedings would begin by FNB to take the property and the lien would be wiped out.

To put it bluntly, I am astounded by the actions of FNB to put a customer and a subcontractor in this position in this market, and I think it puts a whole spin on "we can do that". I know that the lending environment is on unprecedented ground at this point but it appears to us that FNB is making every effort possible to force this loan into default and foreclosure. I want to make it clear that we have never been late on a payment for this loan (even though there were a few bank errors regarding payments that were corrected) and some of our partnership has the ability to keep the loan current under reasonable terms for the next several years.

To clarify, the bank has refused to pay a draw (that was previously agreed to) then threatens foreclosure because we don't have those funds available to pay the subcontractor. This is outrageous. Mr. Sells has also mentioned restructuring the loan to an amortization schedule thus further increasing the monthly expense. It appears FNB is also making every effort to drain the reserves of the LV members by increasing costs. It seems the bank would want to work with its customers during tough times but we can only assume the bank is making efforts to foreclose due to the large amount of equity in the property.

I have been told by Mr. Sells that the position of the bank is very unlikely to change. He also said that this has turned into "our word versus yours" and he believes the signed document will over ride any conversations. I can assure you that no bank employee that was directly involved in these conversations will dispute what was said and what was verbally committed, and the conditions surrounding the signing of the 45 day extension document. I feel it would be very prudent for you to reconsider your position on the past due subcontractor draw and like to ask you to look at making reasonable short term arrangements for LV to carry the loan until we are able to pay it off through sales or find another lending source. Some of the members of our group are long time peers of the development community and family friends of members your local board and other customers. Please don't misunderstand my intentions in this message, but considering it appears the key members of the bank are not willing to discuss this matter with us, I can assure you there will be plenty of conversations with others about the actions you have taken against us. It is our intention to make every effort to reach a fair and peaceful resolution

however if the bank is unwilling to make efforts as well, and continues to force us into detrimental situations, we will have no choice but to fight to hold the bank to its commitments.

We look forward to hearing from you on this situation, hopefully to set a time when it would be convenient for us to come discuss this unfortunate situation in person.

Yours truly,

Freeman Barber
Liberty Village, LLC

No virus found in this outgoing message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.12.11/2089 - Release Date: 4/30/2009 5:53 PM

No virus found in this outgoing message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.12.11/2089 - Release Date: 4/30/2009 5:53 PM

No virus found in this outgoing message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.12.11/2089 - Release Date: 4/30/2009 5:53 PM

Scott N. Warren

From: Freeman Barber [freeman@seatownhomes.com]

Sent: Wednesday, March 25, 2009 12:28 PM

To: Scott N. Warren

Subject: RE: extension

\$21,552 was invoiced about 45 days ago. I asked them to hold off until we got a little bigger invoice and they have not been pushing yet.

I expect to be billed for 100% of the contract by the end of the month. We have paid about \$15k out of pocket so far.

From: Scott N. Warren [mailto:swarren@fnbwecandothat.com]

Sent: Wednesday, March 25, 2009 12:23 PM

To: Freeman Barber

Subject: RE: extension

What is currently owed?

Scott Warren
First National Bank of the South
(843)805-5955 ext. 1308



From: Freeman Barber [mailto:freeman@seatownhomes.com]

Sent: Wednesday, March 25, 2009 12:19 PM

To: Scott N. Warren

Subject: RE: extension

Attached is the OLT contract. We have some other small bills for engineering and permitting etc but this is the one we are going to get in trouble on.

Thanks and I'll keep an ear out for you.

From: Scott N. Warren [mailto:swarren@fnbwecandothat.com]

Sent: Wednesday, March 25, 2009 12:05 PM

To: Freeman Barber

Subject: RE: extension

I'll give you a call this afternoon to discuss everything in more detail... Please make every effort to have the extension & payment back by Friday.

Can you send me the ratified construction contract & copies of invoices related to the new contract (invoices already paid & need to be paid)?

Scott Warren
First National Bank of the South
(843)805-5955 ext. 1308

From: Freeman Barber [mailto:freeman@seatownhomes.com]

Sent: Tuesday, March 24, 2009 5:14 PM

To: Scott N. Warren

Subject: RE: extension

Scott,

I talked with my partners briefly about this and took some time to absorb it myself. I understand it is only a short term extension but we also understand there is no guarantee a longer agreement may be offered to us and we need to act responsibly.

From our standpoint the bank is severely complicating our cash flow problems by no longer advancing interest draws (that could have carried us another two years) and also doubling that expense. On top of that we are risking our relationship with our contractor after we called a meeting with you to verify the funds would be available prior to beginning the work. I want to be clear that I would not have started that work if we had not been re-assured the draws would be made available. Joe and I have personal relationships with these guys and it will become very uncomfortable for us to report we cannot pay them. I am sure they will be quick to file a lien in this climate.

Joe and Anthony are out of town but if getting you his financials changes any of this we would like to make that effort prior to executing this document. I know "regulators" are guiding you but these terms will most likely push another loan into default and force problems on another subcontractor.

We are making every effort to move the loan. I am open to any suggestions or advice on how to do so. We would like to hope that the bank will be more reasonable in helping us until we can do so.

Although it is not our preference we are also moving quickly to discount the property so that we may sell it to pay off the loan. I reported to two brokers today that we would be willing to accept much lower offers than previously. This is disappointing as the market seems to be more active in the last few weeks.

I appreciate everything you have done, and how hard you have worked for me to date and I realize it probably hasn't been the easiest relationship for you. Now more than ever, I need to ask that you try to do that one more time for me. If there is any of the 3 changes that can remain as they were (or some combination), it would help tremendously.

Thanks as always,

Freeman

From: Scott N. Warren [mailto:swarren@fnbwecandothat.com]
Sent: Tue 3/24/2009 3:10 PM
To: Freeman Barber
Subject: FW: extension

Freeman,

Attached is the 45 day extension... This serves as a short-term fix (as we are waiting on Anthony's PFS).

We will need the signed document back by Friday with a check in the amount of \$14,998.96 to cover the interest and processing fee.

Thank you,

Scott Warren
First National Bank of the South
(843)805-5955 ext. 1308

-----Original Message-----

ROA000510

1/14/2010

EXHIBIT D



SASS, HERRIN AND ASSOCIATES, INC.
REAL ESTATE APPRAISERS AND CONSULTANTS
21 GAMECOCK AVENUE, SUITE C
CHARLESTON, SOUTH CAROLINA 29407

HERBERT R. SASS, III, MAI, SRA
BURK Y. HERRIN, JR, SRA

CHARLES C. BARNHILL, JR
JOHN W. ENTER
ANDREW B. WILKINS
JENNIFER C. PERRY

J. FOLLIN SMITH
LAUREN E. NEWTON
JOSH A. LEITNER
B. REAGAN JACKSON, JR.

July 5, 2007

Ms. Robbie Rohrer
First National Bank of the South
215 N Pine Street
Spartanburg, South Carolina 29302

Re: A Summary Report of a 32 Acre Commercial Tract,
A 62 Acre Single Family Tract and a 57 Acre
Multi-Family Tract at Brickhope Plantation,
Goose Creek area of Berkeley County, South Carolina

Dear Mr. Warren:

In compliance with your request, Andrew B. Wilkins inspected the above referenced property on June 29, 2007. The purpose of this inspection was to aid us in the preparation of the attached summary appraisal report.

The subject tracts are part of a larger 213.9 acre tract owned by Liberty Village LLC. Liberty Village LLC purchased a 729.34 acre tract in 2004, and has developed portions of the property into a neighborhood known as Brickhope Plantation. We have been asked to provide an appraisal on the individual parcels based on the current zoning, approvals and entitlements. One tract is a 32 acre parcel that has commercial zoning. The second parcel is known as Single Family Area #2 and is approximately 62 acres with approvals for 270 single family building lots. The third parcel is an approximate 57 acre tract that is approved for 525 multi-family residences. This multi-family tract has a pending contract of sale with Enclave @ Brickhope, LLC. The contract is for \$10,000 per allowable unit (525 per Developer's Agreement). The total purchase price is \$5,250,000. A copy of this contract is included in the Addendum section of the report.

Our instructions were to appraise each tract in "as is" condition before Henry Brown Jr. Boulevard was extended. Henry Brown Jr. Boulevard will connect US Highway 52 with Liberty Hall Road. Part of the boulevard has been constructed from both Liberty Hall Road and Highway 56. The portion in the middle remains to be built. That is where the subject three tracts are located.

POST OFFICE BOX 32397 • CHARLESTON, SC 29417 • TELEPHONE 843-766-7500 • FACSIMILE 843-571-6170
EMAIL ADDRESS SassHerrin@SassHerrin.com • WEB SITE ADDRESS www.SassHerrin.com

000307
ROA000512

Ms. Robbie Rohrer
April 26, 2007
Page 2

Based on our analysis of all the factors influencing the subject property, it is our opinion that the fee simple market value of the 32 acre commercial tract before extension of the road and utilities, as of June 29, 2007, was:

THREE MILLION SIXTY THOUSAND DOLLARS \$3,060,000

Based on our analysis of all the factors influencing the subject property, it is our opinion that the fee simple market value of the 32 acre commercial tract, as of June 29, 2007, was:

THREE MILLION THREE HUNDRED SIXTY THOUSAND DOLLARS \$3,360,000

Also, based on our analysis of all the factors influencing the subject property, it is our opinion that the fee simple market value of the 62 acre single family tract approved for 270 single family residences before extension of the road and utilities, as of June 29, 2007, was:

FOUR MILLION FOUR HUNDRED FORTY THOUSAND DOLLARS \$4,440,000

Based on our analysis of all the factors influencing the subject property, it is our opinion that the fee simple market value of the 62 acre single family tract approved for 270 single family residences, as of June 29, 2007, was:

FOUR MILLION EIGHT HUNDRED SIXTY THOUSAND DOLLARS \$4,860,000

Also, based on our analysis of all the factors influencing the subject property, it is our opinion that the fee simple market value of the 57 acre multi-family tract before the extension of the road and utilities, as of June 29, 2007, was:

FOUR MILLION SIX HUNDRED THOUSAND DOLLARS \$4,600,000

Based on our analysis of all the factors influencing the subject property, it is our opinion that the fee simple market value of the 57 acre multi-family tract, as of June 29, 2007, was:

FIVE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS \$5,250,000

These value estimates were made after a thorough study of all data felt to be pertinent to this appraisal. In conjunction with this appraisal, physical inspections were made of the subject properties and the comparable sales cited in this appraisal report. Detailed descriptions of the subject properties, comparable sales and other information appears later in this report. No consideration was given to furniture, fixtures, or equipment other than that permanently affixed to the real estate such as appliances and mechanical systems.

Ms. Robbie Rohrer
April 26, 2007
Page 3

We have not been provided with a soil study for the subject tracts. We assume that the soils are capable of supporting construction similar to that in the neighborhood without unusual soil preparation or piling. We are also unaware of the presence of any hazardous material, groundwater contamination, or toxic materials that may be on or in the tracts.

We also have not been provided with a wetlands survey for the subject tracts. We have no means of determining if any wetlands are present on the subject tracts. This appraisal assumes the tracts are free and clear of wetlands. Should a subsequent survey show wetlands in place, our tract valuation will need to be adjusted.


This appraisal was prepared for First National Bank of the South. This appraisal cannot be relied upon by any third party without the written permission of the client. Based on my analysis of the subject market, as well as discussions with market participants, it is my opinion that the subject property could be successfully sold in one year or less, if properly marketed.

It is our intention that this appraisal meets or exceeds the requirements of Title XI of the Financial Institution Reform Recovery Enforcement Act (FIRREA) or 1989, Public Law 101-73, 103-STAT as amended on July 1, 1994.

We certify that this appraisal was made in conformity with the requirements of the Code of Professional Ethics of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation.

We further certify to the best of my knowledge and belief, that the statements and opinions contained herein are full, true and correct and that this appraisal is subject to the attached Certificate of Appraisal and Statement of Limiting Conditions. We further certify that we have no interest in the subject property and that neither the employment to make this appraisal, nor the compensation is contingent upon the value estimate of the property. This appraisal assignment was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or an amount that would result in approval of a loan.

Respectfully submitted,
Sass, Herrin and Associates, Inc.


Herbert R. Sass, III, MAI, SRA
South Carolina Certified General Real Estate Appraiser CG 554

Andrew B. Wilkins
South Carolina AA Number 4333

HRS/ABW:abw
07-219w

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SASS, HERRIN & ASSOCIATES, INC.

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SUMMARY OF IMPORTANT DATA AND CONCLUSIONS

PROPERTY LOCATION : Brickhope Plantation, Goose Creek, SC

OWNER : Liberty Village, LLC

IMPROVEMENTS : None Considered

SITE SIZES : 32 Acre Commercial Tract
62 Acre Single Family Tract
57 Acre Multi-family Tract

TAX MAP NUMBER : 235-00-00-049

FLOOD ZONE : Zone X
FEMA Map #45015C0595D
Map Date October 16, 2004

CENSUS TRACT : 208.03

ZONING : PD, Planned Development

HIGHEST & BEST USE

Commercial Tract	:	Commercial Use
Single Family Tract	:	Residential Use
Multi-Family Tract	:	Residential Use

ESTIMATED FEE SIMPLE MARKET VALUE OF THE THREE LAND TRACTS AS OF JUNE 29, 2007		Before Completion of H. Brown Blvd	After Completion of H. Brown Blvd
Commercial Tract	:	\$3,060,000	\$3,360,000
Single Family Tract	:	\$4,440,000	\$4,860,000
Multi-Family Tract	:	\$4,600,000	\$5,250,000

DATE OF APPRAISAL : June 29, 2007

DATE OF INSPECTION : June 29, 2007

INSPECTED BY : Andrew B. Wilkins

APPRAISERS : Herbert R. Sass, III, MAI, SRA
Andrew B. Wilkins

SASS, HERRIN & ASSOCIATES, INC.

SCOPE OF THE APPRAISAL

The subject property consists of three tracts within a larger 213.9 acre tract. The tracts have three different zonings. The first tract is 32 acres and is zoned commercial. The second tract is 62 acres and is zoned single family residential with a maximum of 270 residential building sites. The third tract is 57 acres and is zoned multi-family with a maximum of 525 residences. The purpose of this appraisal is to estimate the market value of the subject properties in the as is condition and after completion of Henry Brown Boulevard. A narrative appraisal report of the subject property has been prepared. Information about the subject property has been collected and analyzed in this report.

The scope of the appraisal requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation and the Guide Notes to the Standards of Professional Appraisal Practice adopted by the Appraisal Institute. The standards contain binding requirements and specific guidelines that deal with the procedures to be followed in developing an appraisal, analysis, or opinion. The Uniform Standards set the requirements to communicate the appraisers' analyses, opinions, and conclusions in a manner that will be meaningful and not misleading in the marketplace.

There are three approaches to value. They are the Cost, Sales Comparison, and Income Capitalization Approaches. Since land value is the only aspect of this appraisal only the sales comparison approach is applicable

We have estimated the value of the tracts by using the Sales Comparison Approach. Land value in this case is the only components of total property value. Land value is directly related to Highest and Best Use. Land value can be estimated by applying one or more of six different methods. According to the 10th Edition of The Appraisal of Real Estate, they are:

1. ***Sales Comparison Approach*** - Sales of similar vacant parcels are analyzed, compared, and adjusted to provide a value, indication for the site.
2. ***Allocation*** - Sales of improved properties are analyzed and the prices paid are allocated between the land and the improvements. Allocation can be used in two ways: to establish a typical ratio of land value to total value, which may be applicable to the property being appraised, or to isolate the value contribution of either the land or the building from the sale for use in comparison analysis.
3. ***Extraction*** - Land value is estimated by subtracting the estimated value of the improvements from the known sale price of the property. This procedure is frequently used when the value of the improvements is relatively low or easily estimated.
4. ***Subdivision Development*** - The total value of undeveloped land is estimated as if the land were subdivided, developed, and sold. Development costs, incentive costs, and carrying charges are subtracted from the estimated proceeds of sale, and the net income projection is discounted over the estimated period required for market absorption of the developed sites.

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5. *Land Residual Technique* - The land is assumed to be improved to its highest and best use. All expenses of operation and the return attributable to the other agents of production are deducted, and the net income imputed to the land is capitalized to derive an estimate of land value. An alternative land residual technique is applied by valuing the land and improvements and deducting the cost of the improvements and any entrepreneurial profit. The remainder is the residual land value.
6. *Ground Rent Capitalization* - This procedure is used when land rents and capitalization rates are readily available such as in well-developed areas. Net ground rent, the net amount paid for the right to use and occupy the land, is estimated and divided by a land capitalization rate. Either actual or estimated rents can be capitalized using rates that can be supported in the market. This procedure may be seen as an extension of direct sales comparison, but where applicable, it provides a specific unit of comparison.

Considering the tracts as vacant, the Sales Comparison Approach is the best method to utilize to appraise the tracts. A number of sales and offerings were investigated which have taken place over the past few years in the subject neighborhoods. Some are included in this appraisal report as comparable sales. This sales data was collected from our files, agents, other appraisers, developers and public records. We have completed an estimate of value for the subject tracts by the Sales Comparison Approach utilizing sales of similar vacant tracts located in the area.

Market data collected includes economic conditions and trends, along with comparable property sales. This data was also used to consider the highest and best use of the subject property and to estimate the market value. The market data has been collected, confirmed, and analyzed. Comparable sales were chosen for their similar highest and best uses as outlined in this report. The sales were analyzed and compared to the subject properties based on their similarities and differences.

The appraisers lack the knowledge and experience with respect to the detection and measurement of hazardous substances, unstable soils, or freshwater wetlands. Therefore, this assignment does not cover the presence or absence of such substances as discussed in the Limiting Conditions section of this report. However, any visual or obviously known problems affecting the property will be reported and their impact on the value will be discussed.

Individuals and offices contacted in order to complete this appraisal include the following:

- City of Goose Creek;
- City of Goose Creek Planning Office;
- Berkeley, Charleston, and Dorchester Council of Government;
- Berkeley County Treasurer's Office;
- Berkeley County RMC Office;
- Mr. Freeman Barber;
- Various Real Estate Agents and Property Managers

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IDENTIFICATION OF THE SUBJECT PROPERTY

The subject of this appraisal consists of three tracts within a larger 213.9 acre tract. The larger tract is located in the Brickhope Plantation Subdivision. Brickhope Plantation is located north of the intersection of Liberty Hall Road and North Rhett Extension, in the City of Goose Creek, Berkeley County, South Carolina. The larger tract that contains the subject properties is identified on Berkeley County Tax Map 235-00-00 as Parcel 049. Reduced and enlarged copies of the subjects tax map with the large property identified are included on the following page.

DATE OF THE APPRAISAL

June 29, 2007

DATE OF THE INSPECTION

June 29, 2007

PROPERTY RIGHTS APPRAISED

The property rights appraised are those of fee simple ownership. Fee simple is the greatest possible estate in real property, but subject to the limitations of eminent domain, escheat, police power, and taxation. The property has no known easements or encroachments affecting value.

SASS, HERRIN & ASSOCIATES, INC.

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COMPLETE APPRAISAL – SUMMARY REPORT

**LIBERTY VILLAGE LLC
154.00+/- ACRES
GOOSE CREEK, SOUTH CAROLINA**

**As of
SEPTEMBER 1, 2010**

**PREPARED FOR
NAFH NATIONAL BANK d/b/a FIRST NATIONAL BANK OF THE SOUTH
215 NORTH PINE STREET
SPARTANBURG, SOUTH CAROLINA 29304**

**PREPARED BY
EDWARD D. IZARD
HARTNETT REALTY COMPANY, INC.
134 MEETING STREET, SUITE 120
CHARLESTON, SOUTH CAROLINA 29401
©2010 HARTNETT REALTY COMPANY, INC.
A SOUTH CAROLINA CORPORATION.**

HARTNETT REALTY COMPANY

September 24, 2010

NAFH National Bank d/b/a First National Bank of the South
Attn: Marylou Rogers
215 North Pine Street
Spartanburg, South Carolina 29304

Re: Liberty Village LLC
154.00+/- Acres, Goose Creek, Wando, SC

Dear Ms. Rogers:

Pursuant to your request, I have made an appraisal of the above captioned property for the purpose of estimating the market value of the *fee simple estate*, subject to the Limiting Conditions and General Assumptions that are a part of this report. The subject property is an assemblage of nine vacant acreage tracts of land located at the terminus of Henry Brown Boulevard in the City of Goose Creek in Berkeley County, S.C. These tracts are a portion of the Brickhope Plantation master planned development and are approved for a maximum of 270 single family residences and 525 multi-family residences, with an additional 34.10 acres approved for commercial development. I personally inspected the subject property on September 1, 2010.

The purpose of the appraisal was to develop an opinion of the market value of the *fee simple estate* of the subject property, subject to the Limiting Conditions and General Assumptions. The appraisal is to be used for loan underwriting and / or asset classification by the client.

As a result of my appraisal and analysis, an opinion has been formed that the as is market value of the fee simple estate of the subject property, subject to the Limiting Conditions and General Assumptions, as of September 1, 2010, was:

FOUR MILLION FOUR HUNDRED NINETY THOUSAND DOLLARS (4,490,000)

Marylou Rogers
September 24, 2010
Page Two.

I have prepared appraisals on similar properties in this market and have the experience and knowledge to competently complete an appraisal of this type.

This is a Summary Appraisal Report of a Complete Appraisal that is intended to comply with the reporting requirements set forth under Standard Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report.

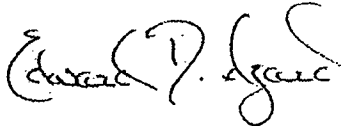
Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file for this assignment. The information contained in this report is specific to the needs of your client and for the intended use stated in the report. The appraiser is not responsible for unauthorized use of this report.

Neither this assignment nor my compensation for making this report was based on a requested minimum valuation, a specific valuation, or the approval of a loan.

The appraisal has also been made in conformity with the Code of Ethics of the Appraisal Section of the National Association of Realtors and the Appraisal Institute.

Thank you for allowing me to be of service to you in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward D. Izard". The signature is fluid and cursive, with a large initial "E" and "I".

Edward D. Izard
SC Certified General Real Estate Appraiser #CG 3185

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Case No. 2009-CP-08-3652

First National Bank of
Spartanburg, Div. of First
National Bank of the South,

Respondent,

v.

Liberty Village, LLC,

Appellant.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 10, 2014



Aaron E. Edwards
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000

Attorney for Appellant

Other Counsel of Record:
Robert A. Kerr
Lesley A. Firestone
Moore & Van Allen, P.L.L.C.
78 Wentworth Street
Charleston, SC 29401

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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Respondent,

v.

Liberty Village, LLC,

Appellant.

Certificate of Compliance

The undersigned hereby certifies that the Record on Appeal complies with Supreme Court Order dated August 13, 2007 regarding personal identifiers and sensitive information.

April 10, 2014



Aaron E. Edwards
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000

Attorney for Appellant

Other Counsel of Record:
Robert A. Kerr
Lesley A. Firestone
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78 Wentworth Street
Charleston, SC 29401

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
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First National Bank of
Spartanburg, Div. of First
National Bank of the South,

Respondent,

v.

Liberty Village, LLC,

Appellant.

Proof of Service

I certify that I have served the Appellant's Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2014, addressed to the Respondent's attorneys of record; Robert A. Kerr and Lesley A. Firestone at Moore & Van Allen, PLLC, 78 Wentworth Street, Charleston, SC 29401.

April 10, 2014



Aaron E. Edwards
The Richter Firm, LLC
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 849-6000

Attorney for Appellant

Other Counsel of Record:

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Lesley A. Firestone
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Charleston, SC 29401

Attorney for Respondent