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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2013-002281

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfig,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the

Appellants.

Amended

RECORD ON APPEAL

Keating L. Simons, III
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
843-762-9132
Attorney for Appellants

Charles S. Altman Meredith L. Coker
575 King Street, Suite A
Charleston, SC 29403
843-853-9907
Attorneys for Respondent

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 COMMUNITY FIRSTBANK,)
)
 Plaintiff,)
)
 vs.)
)
 ATLANTIC PRIVATE EQUITY)
 GROUP, LLC, TERRY L.)
 ROHLFING, JERRY T.)
 CALDWELL and BLUFFTON)
 VILLAGE TOWN CENTER)
 PROPERTY OWNERS')
 ASSOCIATION, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2011-CP-07-1933

13 APR 17 AM 9:51
 JENNIFER ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

ORDER SUBSTITUTING PLAINTIFF

This matter comes before me upon the motion of the attorneys of the firm of Altman & Coker, LLC, Attorneys for the Plaintiff, who are seeking an order to substitute the Plaintiff.

IT APPEARING TO THE COURT that Plaintiff Community FirstBank was merged into CresCom Bank on July 29, 2011, as evidenced by the articles of merger filed with the South Carolina Secretary of State and the Register of Deeds Office for Beaufort County.

IT APPEARING TO THE COURT that CresCom Bank, successor by merger with Community FirstBank, has transferred and assigned all of its rights, title and interests in and to the Note, Mortgage and other loan documents which are the subject of this action to Deep Keel, LLC.

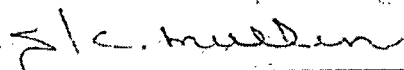
Now, on motion of the attorneys of the firm of Altman & Coker, LLC, Attorneys for the Plaintiff, and after careful consideration of the record of this case:

IT IS ORDERED that Deep Keel, LLC, a South Carolina limited liability company, is hereby substituted for Community FirstBank as the Plaintiff in this action; and

IT IS FURTHER ORDERED that the caption and each of the pleadings now or hereafter filed in this action are hereby amended so as to reflect this substitution; and

IT IS FURTHER ORDERED that such substitution shall have the same effect as if Deep Keel, LLC, a South Carolina limited liability company had been named as the original Plaintiff in this action and as if this action had been commenced in the name of Deep Keel, LLC, a South Carolina limited liability company.

IT IS SO ORDERED.



Presiding Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina
Dated: 4-15, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

COMMUNITY FIRSTBANK,)
)
Plaintiff,)

CIVIL ACTION NO.: 2011-CP-07-1933

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL and BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
)
Defendants.)

13 APR 17 AM 9:51
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ORDER FOR REFERENCE

IT APPEARS from the pleadings that Community FirstBank, as Plaintiff, filed the Summons and Complaint on April 25, 2011, in the current action.

IT FURTHER APPEARS from the Order of Default filed herein on September 8, 2011, that Defendant Bluffton Village Town Center Property Owners' Association, Inc. is in default.

IT FURTHER APPEARS that Defendants Atlantic Private Equity Group, LLC, Terry L. Rohfling, and Jerry T. Caldwell have filed an answer with the Court and, pursuant to the conditions stated herein, said Defendants do not oppose the case being referred to the Master in Equity for resolution of the foreclosure action.

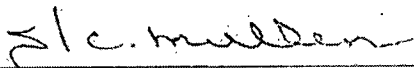
IT FURTHER APPEARS that the above-captioned case includes a foreclosure action involving issues which may be properly referred by order of a circuit judge or the clerk of court pursuant to Rule

53 of the South Carolina Rules of Civil Procedure ("SCRCP"); and thus, accordingly,

ORDERED that for purposes of adjudicating the foreclosure action, this case is referred to Marvin H. Dukes, III, as Master-in-Equity for Beaufort County, who, pursuant to Rule 53(c), SCRCP, shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to making findings of fact and conclusions of law; directing entry of final judgment on the foreclosure action in this case under Rule 53(b), SCRCP; hearing any issues, including motions, after sale or judgment; issuing any and all Orders and Supplemental Orders, Writs of Assistance and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.*, of the South Carolina Code. Pursuant to Rule 53(e), SCRCP, any appeal from the final judgment entered by the Master in Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day; and

AND IT IS FURTHER ORDERED that, upon a resolution or disposition of the foreclosure action, this case is to be returned to the Circuit Court for final hearing and disposition as to any issues triable by jury as against Defendants Terry L. Rohfling, and Jerry T. Caldwell; and

IT IS SO ORDERED.


Presiding Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina
Dated: 4-15, 2013

[Signatures of consenting parties on following page]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
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 DEEP KEEL, LLC,)
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 Plaintiff,)
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 v.)
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 ATLANTIC PRIVATE EQUITY)
 GROUP, LLC, TERRY L.)
 ROHLFING, JERRY T.)
 CALDWELL, AND BLUFFTON)
 VILLAGE TOWN CENTER)
 PROPERTY OWNERS')
 ASSOCIATION, INC.,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NUMBER: 2011-CP-07-1933

13 JUL 29 PM 4:21
 BEAUFORT COUNTY
 CLERK OF COURT

MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE
(Deficiency Demanded)

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCF"), the above-entitled matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the case. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by Scott Bynum, sole member of Plaintiff Deep Keel, LLC; Charles S. Altman, attorney for Plaintiff; and Keating L. Simons III, attorney for Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfing, and Jerry T. Caldwell. As allowed under SC Code §14-11-110 and since there were no objections, testimony was submitted, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed in the Clerk of Court's Office for Beaufort County on April 25, 2011.
2. The Civil Action Coversheet, Summons and Notice, and Complaint were filed in the Clerk of Court's Office for Beaufort County on April 25, 2011.
3. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Bluffton Village Town Center Property Owners' Association, Inc. by and through its managing agent, Courtney P. Hagins, via personal service on May 18, 2011 as

shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

4. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Atlantic Private Equity Group, LLC, by and through its attorney, Cary S. Griffin, via personal service on May 18, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

5. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Terry L. Rohlfling via personal service on May 18, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

6. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Jerry T. Caldwell via personal service on May 25, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on June 10, 2011.

7. The filing of the Answer of Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfling, and Jerry T. Caldwell and related Certificate of Service in the Clerk of Court's Office for Beaufort County on June 17, 2011.

8. The filing of the Amended Affidavit of Service for Defendant Atlantic Private Equity Group, LLC, in the Clerk of Court's Office for Beaufort County on June 28, 2011. The amended pleading was filed to correct a scrivener's error.

9. The filing of the Motion Coversheet, Affidavit of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., Affidavit of Non-Military Service as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., Motion for Order of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., and for Reference, and the Order of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., and for Reference in the Clerk of Court's Office for Beaufort County on September 16, 2011.

10. The filing of the Motion Coversheet, Motion for Summary Judgment, to Strike Jury Demand, and for Reference, and related Certificate of Service in the Clerk of Court's Office for Beaufort County on April 18, 2012.

11. The filing of the Motion Coversheet, Motion for Reference, and Consent Order for Reference in the Clerk of Court's Office for Beaufort County on April 17, 2013. The reference was for the sole purpose of determining the foreclosure issues. The issues in the case related to the claims against the Defendants Rohlfling and Caldwell are to be decided by the Circuit Court after the completion of the foreclosure action.

12. The filing of the Motion Coversheet, Notice of Motion and Motion for the Substitution of Party Under Rule 25(c), Order Substituting Plaintiff, and related Certificate of Service in the Clerk of Court's Office for Beaufort County on April 17, 2013. The Order substituted party Deep Keel, LLC as party plaintiff in the place of CresCom Bank, successor by merger to Community FirstBank.

13. The filing of the Notice of Foreclosure Hearing and related Certificate of Service in the Clerk of Court's Office for Beaufort County on June 21, 2013.

14. The filing of the Certification of Compliance with Administrative Order 2011-05-02-01 in the Clerk of Court's Office for Beaufort County on July 10, 2013.

15. On or about March 27, 2008, for value received, Defendant Atlantic Private Equity Group, LLC ("APEG"), executed and delivered to Plaintiff Community FirstBank, now known as CresCom Bank ("Bank"), a certain written promissory note (the "Note") to establish a revolving line of credit, in the sum of \$2,000,000.00, together with the interest thereon at a variable rate, with the initial rate being 6.50% and the principal due on March 25, 2009. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full.

16. On the same date, to better secure payment of the said Note and debt, including all extensions, modifications or substitutions, in accordance with the terms and conditions thereof, Defendant APEG, executed and delivered to Bank, its successors and assigns, a mortgage (the "Mortgage"), granting a security interest in real properties in Beaufort County, which are the same as those described in the Complaint. The Mortgage was recorded on March 28, 2008 in the Register of Deeds Office for Beaufort County, South Carolina in Mortgage Book 2701 at Page 632.

17. The above-referenced Mortgage constitutes a first mortgage on the described property.

18. On or about March 27, 2008, Defendants Terry L. Rohlffing ("Rohlffing") and Jerry T. Caldwell ("Caldwell") executed and delivered to Bank personal Guaranties to individually guaranty the Note and debt of Defendant APEG. The said unsecured Guaranties make Defendants Rohlffing and Caldwell liable for a limited principal amount of \$350,000.00.

19. On or about March 27, 2008, Defendant APEG executed and delivered to Bank an Assignment of Leases, Rents and Profits ("Assignment of Leases"). The Assignment of Leases was recorded on March 28, 2008 in the Register of Deeds Office for Beaufort County, South Carolina in Book 2701 at Page 641.

20. On or about March 27, 2008, Defendant APEG executed and delivered to Bank a Commercial Security Agreement for the Assignment of Leases for the two subject parcels of property.

21. On or about April 23, 2009, for value received, APEG executed and delivered to Bank a Loan Modification Agreement ("Modification 1"), which modification of the Note provided the initial interest rate would decrease to 5.50%, the variable rate to remain the same at 0.50% over Bank's prime rate, and the default interest rate to increase to 5.00%, plus the aforementioned rate, per annum. The maturity date changed to April 16, 2010.

22. On or about May 24, 2010, for value received, APEG executed and delivered to Bank a Loan Modification Agreement ("Modification 2"), which modification of the Note provided the initial interest rate would increase to 6.00%, the variable rate to remain the same at 0.50% over Bank's prime rate, and the default interest rate to remain 5.00%, plus the aforementioned rate, per annum. The maturity date changed to June 9, 2015.

23. On or about August 30, 2012, a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") was executed and delivered by APEG to Bank for the property being known as Lot 117, Hampton Lake, Beaufort County, South Carolina. The Partial Release was recorded on September 24, 2012 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3176 at Page 2243. The release resulted from the sale of the property and APEG was credited with the net proceeds from the sale in the amount of \$540,375.61.

24. On or about September 28, 2012, Bank executed and delivered to Plaintiff Deep Keel, LLC ("Deep Keel"), an Assignment of Debt and Lien ("Assignment") of the remaining piece of property secured by the Mortgage, Note, and additional loan documents. The Assignment was recorded on October 9, 2012 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3181 at Page 257.

25. Payment is due on the Note as modified, Mortgage, and Guaranties and has not been made. Bank made demand to APEG, Caldwell and Rohlfing as the then holder of the Note and modifications and payment was not made. As payment was not made when due or pursuant to the demand for payment the new holder of the Note and modifications has elected to accelerate payment of the entire indebtedness and has placed the Note as modified, Mortgage, and Guaranties in the hands of its Attorney of Record for collection.

26. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title searches, preparing the pleadings, extensive conversations with opposing counsel regarding settlement, negotiating the resolution of a portion of the debt, and preparing for and attending the foreclosure hearing; the professional standing of Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for Plaintiff, I find that the sum of \$11,462.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed as of the July 9, 2013, under the terms of the Note and Mortgages along with costs incurred in the amount of \$1,219.41. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time. As it is anticipated additional attorneys' fees and costs will be incurred subsequent to July 9, 2013, this Court reserves the right to award additional fees and costs incurred subsequent to July 9, 2013 upon application to the Court by Plaintiff.

27. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

(a)	Principal due	\$1,532,238.05
(b)	Interest from June 4, 2012 to July 10, 2013	\$ 187,723.30
(c)	Fire, Flood, Hazard Insurance	\$ 7,766.00
(d)	Less Collected Rent from July 2012 through July 2013	\$ (73,775.00)
(e)	Costs	
(i)	Title Search and Abstract	\$476.50
(ii)	Filing Fee - Commence Suit	150.00

(iii)	Process Server Fees	356.00	
(iv)	Filing Fee - Motion for Summary Judgment	25.00	
(v)	Filing Fee - Motion for Default and Reference	25.00	
(vi)	Filing Fee - Motion to Substitute Plaintiff	25.00	
(vii)	Filing Fee - Motion for Reference	25.00	
(viii)	Master in Equity Reference Fee	100.00	
(ix)	Postage - Certified Mailings/UPS Deliveries	36.91	
	TOTAL COSTS		\$ 1,219.41
	TOTAL		<u>\$ 1,655,026.52</u>

Per Diem Interest is \$468.1395

Interest for the period from the date shown in (b) above through the date of this judgment, at the per diem rate of \$468.1395 is to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein and interest after the date of Judgment pursuant to the terms of the Note and Mortgage.

28. Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint expressly demanded the right to a deficiency Judgment against Defendants APEG, Caldwell, and Rohlfing. Since the deficiency is demanded, the bidding will remain open for a period of thirty (30) days, pursuant to Rule 71(b), SCRCP. *Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.*

CONCLUSIONS OF LAW:

I, therefore, conclude as follows:

Defendants APEG is indebted to the Plaintiff on the Note as modified and Mortgage. Plaintiff is entitled to relief and the property securing the obligation should be sold based on the following.

Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That there is due to Plaintiff on its Note as modified and Mortgage the sum of \$1,655,026.52, representing the Total Debt due to the Plaintiff as set out in Paragraph 27 *supra*, together with interest thereon at the rate provided plus attorneys' fees as set forth in Paragraph 26, *supra*.

2. That the amount due in the preceding paragraph as set forth in Paragraph 27 *supra* and later accrued interest and costs and attorneys' fees as set out in Paragraph 26, *supra* shall constitute the total judgment debt due to Plaintiff.

3. Defendant APEG is liable for the aforesaid Mortgage debt and shall, prior to the date and time of the sale of the subject property, pay to Plaintiff, or Plaintiff's attorney, the

amount of Plaintiff's debt, together with the costs and disbursements of this action. The determination of the amount, if any, owed by the Defendants, Rohlfing and Caldwell, is to be determined by the as provided in the Order of Reference.

4. That on default of payment prior to the date and time of the sale, the mortgaged premises located in Beaufort County, hereinafter described, shall be sold by the undersigned Master in Equity at public auction, at the Beaufort County Courthouse, in the County of Beaufort, South Carolina, on some convenient sales day hereafter, on the following terms:

A. FOR CASH: The undersigned Master in Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to Plaintiff's debt.

B. The said sales shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

C. Purchaser is to pay for the deed and the cost of recording the deed.

5. That if Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid to Plaintiff's indebtedness.

6. That a deficiency Judgment being demanded against Defendants, APEG, Caldwell, and Rohlfing, and the sale will remain open for thirty (30) days pursuant to Section 15-39-720. S.C. Code of Laws, South Carolina, 1976, as amended. *Plaintiff reserves its right to waive the deficiency at any time prior to the sale.*

7. That the claims of the other parties to this action are junior and subordinate to the mortgage lien of the Plaintiff.

8. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof and that he will execute to the purchaser, or purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master in Equity may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the undersigned Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To payment of any amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

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

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCF.

10. That it is further ORDERED, ADJUDGED AND DECREED that Defendants APEG, Caldwell, and Rohlfing and all persons whomsoever claiming under them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. That it is further ORDERED, ADJUDGED AND DECREED that in accordance with S.C. Code Ann. § 30-9-31, the deed of conveyance made pursuant to this judgment and said sale shall contain the names of the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Register of Deeds Office for Beaufort County, South Carolina, is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. That the undersigned Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCF.

13. That after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master in Equity shall direct the Register of Deeds Office for Beaufort County to release of record the mortgage lien being foreclosed, which mortgage lien is described in Paragraph 16 of the Findings of Fact herein above.

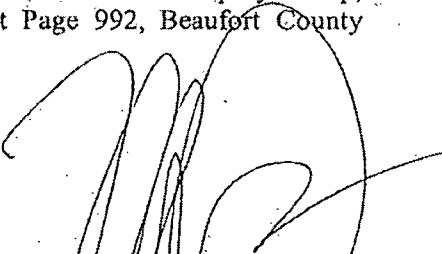
14. That the following is a description of the premises herein ordered to be sold:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

TMS #: R600 039 000 0911 0000

AND IT IS SO ORDERED.



Marvin H. Dukes III
Master in Equity for Beaufort County

Beaufort, South Carolina
Dated: July 18, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

DEEP KEEL, LLC,)
)
Plaintiff,)

CIVIL ACTION NUMBER: 2011-CP-07-1933

v.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL, AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
)
Defendants.)

13 SEP -5 PM 3:24
JENNIFER ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AMENDED MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE
(Deficiency Demanded)

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the case. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by Scott Bynum, sole member of Plaintiff Deep Keel, LLC; Charles S. Altman, attorney for Plaintiff; and Keating L. Simons III, attorney for Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfing, and Jerry T. Caldwell. As allowed under SC Code §14-11-110 and since there were no objections, testimony was submitted, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed in the Clerk of Court's Office for Beaufort County on April 25, 2011.
2. The Civil Action Coversheet, Summons and Notice, and Complaint were filed in the Clerk of Court's Office for Beaufort County on April 25, 2011.
3. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Bluffton Village Town Center Property Owners' Association, Inc. by and through its managing agent, Courtney P. Hagins, via personal service on May 18, 2011 as

shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

4. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Atlantic Private Equity Group, LLC, by and through its attorney, Cary S. Griffin, via personal service on May 18, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

5. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Terry L. Rohlfing via personal service on May 18, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on May 25, 2011.

6. Service of the Civil Action Coversheet, Summons and Notice, and Complaint was affected upon Defendant Jerry T. Caldwell via personal service on May 25, 2011 as shown by the Affidavit of Service filed in the Clerk of Court's Office for Beaufort County on June 10, 2011.

7. The filing of the Answer of Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfing, and Jerry T. Caldwell and related Certificate of Service in the Clerk of Court's Office for Beaufort County on June 17, 2011.

8. The filing of the Amended Affidavit of Service for Defendant Atlantic Private Equity Group, LLC, in the Clerk of Court's Office for Beaufort County on June 28, 2011. The amended pleading was filed to correct a scrivener's error.

9. The filing of the Motion Coversheet, Affidavit of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., Affidavit of Non-Military Service as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., Motion for Order of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., and for Reference, and the Order of Default as to Defendant Bluffton Village Town Center Property Owners' Association, Inc., and for Reference in the Clerk of Court's Office for Beaufort County on September 16, 2011.

10. The filing of the Motion Coversheet, Motion for Summary Judgment, to Strike Jury Demand, and for Reference, and related Certificate of Service in the Clerk of Court's Office for Beaufort County on April 18, 2012.

11. The filing of the Motion Coversheet, Motion for Reference, and Consent Order for Reference in the Clerk of Court's Office for Beaufort County on April 17, 2013. The reference was for the sole purpose of determining the foreclosure issues. The issues in the case related to the claims against the Defendants Rohlfing and Caldwell are to be decided by the Circuit Court after the completion of the foreclosure action.

12. The filing of the Motion Coversheet, Notice of Motion and Motion for the Substitution of Party Under Rule 25(c), Order Substituting Plaintiff, and related Certificate of Service in the Clerk of Court's Office for Beaufort County on April 17, 2013. The Order substituted party Deep Keel, LLC as party plaintiff in the place of CresCom Bank, successor by merger to Community FirstBank.

13. The filing of the Notice of Foreclosure Hearing and related Certificate of Service in the Clerk of Court's Office for Beaufort County on June 21, 2013.
- 14: The filing of the Certification of Compliance with Administrative Order 2011-05-02-01 in the Clerk of Court's Office for Beaufort County on July 10, 2013.
15. On or about March 27, 2008, for value received, Defendant Atlantic Private Equity Group, LLC ("APEG"), executed and delivered to Plaintiff Community FirstBank, now known as CresCom Bank ("Bank"), a certain written promissory note (the "Note") to establish a revolving line of credit, in the sum of \$2,000,000.00, together with the interest thereon at a variable rate, with the initial rate being 6.50% and the principal due on March 25, 2009. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full.
16. On the same date, to better secure payment of the said Note and debt, including all extensions, modifications or substitutions, in accordance with the terms and conditions thereof, Defendant APEG, executed and delivered to Bank, its successors and assigns, a mortgage (the "Mortgage"), granting a security interest in real properties in Beaufort County, which are the same as those described in the Complaint. The Mortgage was recorded on March 28, 2008 in the Register of Deeds Office for Beaufort County, South Carolina in Mortgage Book 2701 at Page 632.
17. The above-referenced Mortgage constitutes a first mortgage on the described property.
18. On or about March 27, 2008, Defendants Terry L. Rohlfing ("Rohlfing") and Jerry T. Caldwell ("Caldwell") executed and delivered to Bank personal Guaranties to individually guaranty the Note and debt of Defendant APEG. The said unsecured Guaranties make Defendants Rohlfing and Caldwell liable for a limited principal amount of \$350,000.00.
19. On or about March 27, 2008, Defendant APEG executed and delivered to Bank an Assignment of Leases, Rents and Profits ("Assignment of Leases"). The Assignment of Leases was recorded on March 28, 2008 in the Register of Deeds Office for Beaufort County, South Carolina in Book 2701 at Page 641.
20. On or about March 27, 2008, Defendant APEG executed and delivered to Bank a Commercial Security Agreement for the Assignment of Leases for the two subject parcels of property.
21. On or about April 23, 2009, for value received, APEG executed and delivered to Bank a Loan Modification Agreement ("Modification 1"), which modification of the Note provided the initial interest rate would decrease to 5.50%, the variable rate to remain the same at 0.50% over Bank's prime rate, and the default interest rate to increase to 5.00%, plus the aforementioned rate, per annum. The maturity date changed to April 16, 2010.
22. On or about May 24, 2010, for value received, APEG executed and delivered to Bank a Loan Modification Agreement ("Modification 2"), which modification of the Note provided the initial interest rate would increase to 6.00%, the variable rate to remain the same at 0.50% over Bank's prime rate, and the default interest rate to remain 5.00%, plus the aforementioned rate, per annum. The maturity date changed to June 9, 2015.

23. On or about August 30, 2012, a Partial Release of Mortgage and Assignment of Leases, Rents and Profits ("Partial Release") was executed and delivered by APEG to Bank for the property being known as Lot 117, Hampton Lake, Beaufort County, South Carolina. The Partial Release was recorded on September 24, 2012 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3176 at Page 2243. The release resulted from the sale of the property and APEG was credited with the net proceeds from the sale in the amount of \$540,375.61.

24. On or about September 28, 2012, Bank executed and delivered to Plaintiff Deep Keel, LLC ("Deep Keel"), an Assignment of Debt and Lien ("Assignment") of the remaining piece of property secured by the Mortgage, Note, and additional loan documents. The Assignment was recorded on October 9, 2012 in the Register of Deeds Office for Beaufort County, South Carolina in Book 3181 at Page 257.

25. Payment is due on the Note as modified, Mortgage, and Guaranties and has not been made. Bank made demand to APEG, Caldwell and Rohlfing as the then holder of the Note and modifications and payment was not made. As payment was not made when due or pursuant to the demand for payment the new holder of the Note and modifications has elected to accelerate payment of the entire indebtedness and has placed the Note as modified, Mortgage, and Guaranties in the hands of its Attorney of Record for collection.

26. The testimony of Scott Bynum as the sole member of Plaintiff, Deep Keel, LLC, which resulted in the findings of fact set forth in paragraphs 15, 16, 17, 18, 19, 20, 21, 22, and 25 (except which refers to Plaintiff's election to accelerate payment of the entire indebtedness and to place the obligation in the retention of counsel) was admitted over the objection of counsel for Defendants, Atlantic Private Equity, LLC, Terry L. Rohlfing and Jerry Caldwell. Counsel for those Defendants argued that Mr. Bynum's testimony was hearsay. The testimony was admitted into evidence as Mr. Bynum testified he was the sole member of Plaintiff and maintained the records received from CresCom Bank as successor by merger to Community FirstBank at the time the loan was assigned to Plaintiff and the records he maintained thereafter. Mr. Bynum was entitled to testify regarding the information contained in the records he received from the Bank pursuant to SC Code §19-5-510 and Rule 803(6) SCRPC and pursuant to the ruling regarding of the South Carolina Court of Appeals in the case of *Twelfth RMA Partners, L.P. v Nat'l Safe Corp.* 335 S.C. 635, 518 S.E. 2d 44 (Ct. App. 1999). In the *Twelfth RMA Partners* case, the Plaintiff was, as here, the assignee of the original creditor. The witness for the Plaintiff was in a similar position to Mr. Bynum and the objection was the same by defendant's attorney. The Court of Appeals held, "Here, [plaintiff's] testimony merely conveyed information from a person "with knowledge" at the time the records were created, a situation expressly allowed under Rule 803(6)." Mr. Bynum's testimony was, therefore, appropriately accepted. It should also, be noted, there was no testimony to contradict any of the testimony of Mr. Bynum.

27. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title searches, preparing the pleadings, extensive conversations with opposing counsel regarding settlement, negotiating the resolution of a portion of the debt, and preparing for and attending the foreclosure hearing; the professional standing of Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for Plaintiff; I find that the sum of \$11,462.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed as of the July 9, 2013,

under the terms of the Note and Mortgages along with costs incurred in the amount of \$1,219.41. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time. As it is anticipated additional attorneys' fees and costs will be incurred subsequent to July 9, 2013, this Court reserves the right to award additional fees and costs incurred subsequent to July 9, 2013 upon application to the Court by Plaintiff.

28. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

(a)	Principal due		\$1,532,238.05
(b)	Interest from June 4, 2012 to July 10, 2013		\$ 187,723.30
(c)	Fire, Flood, Hazard Insurance		\$ 7,766.00
(d)	Less Collected Rent from July 2012 through July 2013		\$ (73,775.00)
(e)	Costs		
	(i) Title Search and Abstract	\$476.50	
	(ii) Filing Fee - Commence Suit	150.00	
	(iii) Process Server Fees	356.00	
	(iv) Filing Fee - Motion for Summary Judgment	25.00	
	(v) Filing Fee - Motion for Default and Reference	25.00	
	(vi) Filing Fee - Motion to Substitute Plaintiff	25.00	
	(vii) Filing Fee - Motion for Reference	25.00	
	(viii) Master in Equity Reference Fee	100.00	
	(ix) Postage - Certified Mailings/UPS Deliveries	36.91	
	TOTAL COSTS		\$ 1,219.41
TOTAL			<u>\$ 1,655,026.52</u>

Per Diem Interest is \$468.1395

Interest for the period from the date shown in (b) above through the date of this judgment, at the per diem rate of \$468.1395 is to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein and interest after the date of Judgment pursuant to the terms of the Note and Mortgage.

29. Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint expressly demanded the right to a deficiency Judgment against Defendants APEG, Caldwell, and Rohlfling. Since the deficiency is demanded, the bidding will remain open for a period of thirty (30) days, pursuant to Rule 71(b), SCRCF. *Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.*

CONCLUSIONS OF LAW:

I, therefore, conclude as follows:

Defendants APEG is indebted to the Plaintiff on the Note as modified and Mortgage. Plaintiff is entitled to relief and the property securing the obligation should be sold based on the following.

Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That there is due to Plaintiff on its Note as modified and Mortgage the sum of \$1,655,026.52, representing the Total Debt due to the Plaintiff as set out in Paragraph 27 *supra*, together with interest thereon at the rate provided plus attorneys' fees as set forth in Paragraph 26, *supra*.

2. That the amount due in the preceding paragraph as set forth in Paragraph 27 *supra* and later accrued interest and costs and attorneys' fees as set out in Paragraph 26, *supra* shall constitute the total judgment debt due to Plaintiff.

3. Defendant APEG is liable for the aforesaid Mortgage debt and shall, prior to the date and time of the sale of the subject property, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt, together with the costs and disbursements of this action. The determination of the amount, if any, owed by the Defendants, Rohlfing and Caldwell, is to be determined by the as provided in the Order of Reference.

4. That on default of payment prior to the date and time of the sale, the mortgaged premises located in Beaufort County, hereinafter described, shall be sold by the undersigned Master in Equity at public auction, at the Beaufort County Courthouse, in the County of Beaufort, South Carolina, on some convenient sales day hereafter, on the following terms:

A. FOR CASH: The undersigned Master in Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to Plaintiff's debt.

B. The said sales shall be subject to taxes and assessments; existing easements and easements and restrictions of record.

C. Purchaser is to pay for the deed and the cost of recording the deed.

5. That if Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid to Plaintiff's indebtedness.

6. That a deficiency Judgment being demanded against Defendants, APEG, Caldwell, and Rohlfing, and the sale will remain open for thirty (30) days pursuant to Section 15-39-720. S.C. Code of Laws, South Carolina, 1976, as amended. *Plaintiff reserves its right to waive the deficiency at any time prior to the sale.*

7. That the claims of the other parties to this action are junior and subordinate to the mortgage lien of the Plaintiff.

8. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof and that he will execute to the purchaser, or purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master in Equity may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the undersigned Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To payment of any amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

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

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCP.

10. That it is further ORDERED, ADJUDGED AND DECREED that Defendants APEG, Caldwell, and Rohlfing and all persons whomsoever claiming under them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. That it is further ORDERED, ADJUDGED AND DECREED that in accordance with S.C. Code Ann. § 30-9-31, the deed of conveyance made pursuant to this judgment and said sale shall contain the names of the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Register of Deeds Office for Beaufort County, South Carolina, is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. That the undersigned Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance, disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

13. That after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master in Equity shall direct the Register of Deeds Office for Beaufort County to release of record the mortgage lien being foreclosed, which mortgage lien is described in Paragraph 16 of the Findings of Fact herein above.

14. That the following is a description of the premises herein ordered to be sold:

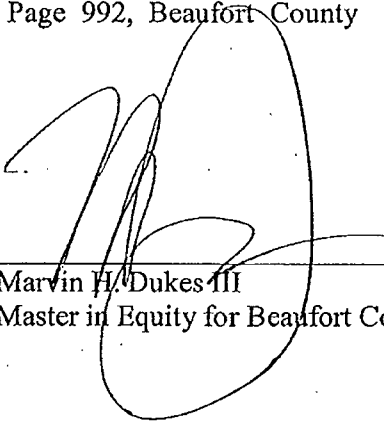
ALL that certain piece, and parcel of real property, containing 0.1 I acres, more or less, said property being a portion of Phase ID of Bluffton Village

Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

TMS #: R600 039 000 0911 0000

AND IT IS SO ORDERED.



Marvin H. Dukes III
Master in Equity for Beaufort County

Beaufort, South Carolina
Dated: August 17, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 COMMUNITY FIRST BANK,)
)
 Plaintiff,)
)
 vs.)
)
 ATLANTIC PRIVATE EQUITY)
 GROUP, LLC, TERRY L.)
 ROHLFING, JERRY T.)
 CALDWELL and BLUFFTON)
 VILLAGE TOWN CENTER)
 PROPERTY OWNERS')
 ASSOCIATION, INC.,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2011-CP-~~26~~⁰⁷ 1933

2011 APR 25 PM 2:42
 JERRI ANN ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

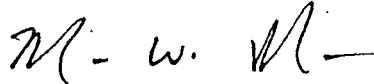
SUMMONS AND NOTICE

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscribers at their office, 575 King Street, Suite A Charleston, South Carolina, 29403 or Post Office Box 265, Charleston, South Carolina, 29402, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) SCRPC as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Beaufort County, which Order shall, pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action. If there are counterclaims requiring a jury trial, any party may file a demand under Rule 38, SCRPC and the case will be returned to the Circuit Court.

ALTMAN & COKER, LLC



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843-853-9838 Facsimile

Attorney for the Plaintiff

April 21, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

COMMUNITY FIRSTBANK,)
)
Plaintiff,)

CIVIL ACTION NO.: 2011-CP-~~26~~ ⁰⁷ 1933

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL and BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
)
Defendants.)

2011 APR 25 PM 2:42
JEREMY M. ROSEHEAD
CLERK OF COURT
BEAUFORT COUNTY, S.C.

COMPLAINT
(Mortgage Foreclosure - Deficiency Demanded)

Plaintiff, Community FirstBank (hereinafter "Plaintiff" or "Bank"), by and through undersigned counsel, complaining of the Defendants Atlantic Private Equity, LLC, Terry L. Rohlfing, and Jerry T. Caldwell, alleges the following:

PARTIES AND JURISDICTION

1. Plaintiff is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Beaufort County.
2. Plaintiff is the owner and holder of the Note and Mortgage covering real property, which is the subject of the foreclosure action herein, located in the County of Beaufort, State of South Carolina.

3. Defendant Atlantic Private Equity, LLC is a limited liability organized and existing under the law of the State of South Carolina with its principal place of business in Beaufort County.

4. Upon information and belief, Defendants Terry L. Rohlfing and Jerry T. Caldwell are citizens and residents of Beaufort County and are not in the military service of the United States of America pursuant to the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as Amended.

5. Defendant Bluffton Village Town Center Property Owners' Association, Inc. is a corporation organized and existing under the laws of the State of South Carolina and may claim an interest in the property that is the subject of the above-captioned foreclosure action by virtue of any liens or assessments recorded or unrecorded that are due or that may become due in the future.

6. The loan that is the subject of this action is not secured by the Defendant's principal residence, as contemplated under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP) or the United States Treasury Directive 09-01.

7. The loan that is the subject of this action is not owned or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") or held by a servicer who has signed an agreement to participate in the HMP.

8. Upon information and belief, the loan that is the subject of this action is not subject to the stay imposed by the May 22, 2009 Administrative Order of the South Carolina Supreme Court.

9. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30 (1976, as amended).

10. Jurisdiction is proper pursuant to the Constitution of the State of South Carolina and the South Carolina Code of Laws.

**AS AND FOR A FIRST CAUSE OF ACTION AS TO SEACAM, LLC
(Mortgage Foreclosure - Deficiency Demanded)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

11. On or about January 8, 2008, for value received, Defendant Atlantic Private Equity Group, LLC, by and through its managing member New Colony Holdings Corporation, by and through its President Terry L. Rohlfing, executed and delivered to Community FirstBank Note #0145003387 (the "Note") in the sum of \$2,000,000.00, together with the interest thereon at a variable rate, with the initial rate being 6.50% and the principal due on March 27, 2008. The Note provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 3.00% per annum until paid in full.

12. To better secure the payment of the said Note and debt, including all extensions, renewals, modifications or substitutions, in accordance with the terms and conditions thereof, Atlantic Private Equity Group, LLC, by and through its managing member New Colony Holdings Corporation, by and through its President Terry L. Rohlfing, executed and delivered on March 27, 2008 to the Bank, its successors and assigns, a mortgage (the "Mortgage"), covering the following described property:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

AND

ALL that certain piece, parcel or lot, of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase I Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Yormg, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

The property intended to be mortgaged herein is the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2559 at Page 376, Beaufort County Records.

13. Thereafter, the Mortgage was recorded in the Register of Deeds Office for Beaufort County in Book 2701 at Page 632 on March 28, 2008.

14. The above-referenced instrument constitutes a first mortgage on the described property.

15. Pursuant to the terms of the Mortgage, any sums paid by the Plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including a reasonable attorney's fee, is secured by the Mortgage.

16. Additionally, in order to better secure its obligation to Plaintiff, on March 27, 2008, Defendant Atlantic Private Equity Group, LLC, by and through its managing member New Colony Holdings Corporation, by and through its President Terry L. Rohlfing executed an Assignment of Leases and Rents whereby it assigned all Leases, rents, issues and profits to Plaintiff. The

Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Beaufort County on March 28, 2008 in Book 2701 at page 641.

17. According to the terms of said Mortgage, from and after any default thereunder, and should legal proceedings be instituted pursuant to said Mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses for attending such proceedings, and the execution of his/her trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said Seacam Mortgage.

18. On or about April 23, 2009, Plaintiff and Defendant Atlantic Private Equity Group, LLC, entered into a Loan Modification Agreement (the "1st Modification"), which was a Modification of the Note referenced in Paragraph 11, wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to Plaintiff in the sum of \$1,550,000.00. The 1st Modification changed the interest rate to a variable rate of Community FirstBank prime plus .50%, with the principal due on April 16, 2010. The 1st Modification provided that in the event of default under any of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full.

19. On or about May 24, 2010, Plaintiff and Defendant Atlantic Private Equity Group, LLC, entered into a Loan Modification Agreement (the "2nd Modification"), which was a Modification of the Note referenced in Paragraph 11, wherein Atlantic Private Equity Group, LLC acknowledged it was indebted to Plaintiff in the sum of \$2,000,000.00. The 1st Modification changed the interest rate to a variable rate of Community FirstBank prime plus 1.50%, with the principal due on June 9, 2015. The 2nd Modification provided that in the event of default under any

of the loan documents, interest would begin accruing on the principal balance at the rate stated above plus 5.00% per annum until paid in full.

20. Pursuant to the terms of the Note if Atlantic Private Equity Group, LLC did not pay the full amount of any monthly payment on the date it was due, it would be in default.

21. Atlantic Private Equity Group, LLC has failed to make monthly payments for the full amount on the dates due, and therefore is in default.

22. Pursuant to the terms of the Note, upon default the Bank may demand immediate payment of all the full amount of principal that has not been paid and all the interest owed on the account.

23. The Bank has made a demand to Atlantic Private Equity Group, LLC for immediate payment of all amounts due and owing and it has not made payment.

24. Pursuant to the terms of the Note, Atlantic Private Equity Group, LLC agreed that upon default it would pay all costs of collection, including reasonable attorneys' fees.

25. There is due on said Note and Mortgage as of April 15, 2011, the principal sum of \$1,980,734.28, together with interest at the rate of 11.00% per annum from December 9, 2010, late charges and also for the costs and disbursements of this action, including attorney's fees.

26. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976, as Amended), the mortgage lien which is the subject of this action, is not a "consumer loan" for the purposes of the South Carolina Consumer Protection Code. All notices required under applicable law have been given.

27. Plaintiff specifically demands a deficiency judgment against Atlantic Private Equity Group, LLC, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action

remaining after sale of the mortgaged premises. *Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sales herein.*

**AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Guaranty)**

Plaintiff reasserts and realleges the previous allegations of this Complaint as fully and completely as if set forth herein verbatim.

28. On or about March 27, 2008, Defendants Terry L Rohlring and Jerry T, Caldwell each executed and delivered to the Bank a Guaranty (hereinafter collectively referred to as the "Guaranty") whereby each guaranteed, jointly and severally, the payment and performance of each and every debt, liability and obligation of every type and description which Atlantic Private Equity Group, LLC owed Plaintiff up to a principal amount of \$350,000.00.

29. Plaintiff has demanded Defendants Defendants Terry L Rohlring and Jerry T, Caldwell fulfill their duties pursuant to the Guaranty and cure the defaults of Atlantic Private Equity Group, LLC.

30. Defendants Terry L Rohlring and Jerry T, Caldwell have failed and/or refused to honor their obligations under the above-referenced Guaranty and as a result is in breach of the above-referenced Guaranty.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

1. Appoint a Receiver to collect the rents and manage the property titled in the name of Atlantic Private Equity Group, LLC, in which the Plaintiff holds a first mortgage and an assignment of rents and leases, and to apply the proceeds collected from those rents to pay the reasonable

operating costs of the subject property and to apply the balance to monies due and owing on the first mortgage of the Plaintiff herein.

2. The amount due on the obligation of Atlantic Private Equity Group, LLC and the Guarantors held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action; and

3. Plaintiff have immediate judgment against Defendants Atlantic Private Equity Group, LLC, Terry L Rohlfing and Jerry T, Caldwell , jointly and severally, in the amount found to be due; and

4. Plaintiff's Mortgage be declared a first lien on the subject property superior to all other liens or encumbrances other than unpaid real property taxes; and

5. Granting an Order of Foreclosure on the Mortgage, foreclosing and extinguishing all liens and encumbrances subordinate to that of Plaintiff, requiring the sale of the property subject to the Mortgage, barring the equity of redemption of Defendant Atlantic Private Equity Group, LLC or of anyone else claiming by, through or under Defendant Atlantic Private Equity Group, LLC , or claiming a lien or encumbrance against the property subject to the Mortgage subordinate to that of Plaintiff; and

6. Ordering a foreclosure sale of the property subject to the Mortgage, and a transfer of the property that is subject to the Mortgage after such sale to the purchaser by proper deed, free and clear of any and all liens or encumbrances.

7. The proceeds of the sales be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

8. An Order be entered directing and empowering the Sheriff of Beaufort County, to place the successful purchasers at said foreclosure sales in possession of the property hereinabove described should the same become necessary.

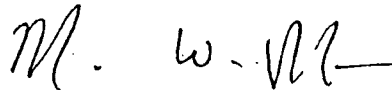
9. An Order be entered for the ejectment of the Defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the subject properties by placing said personal property on the public street or highway or by any other means.

10. An Order be entered granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

11. An Order be entered for reimbursement of all costs for inspecting and securing the properties incurred by the Plaintiff as a result of the delinquency.

12. For such other and further relief as the Court may deem just and proper.

ALTMAN & COKER, LLC



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Attorneys for the Plaintiff

April 21, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
COMMUNITY FIRST BANK,)

Plaintiff,)

vs.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS)
FOR THE FOURTEENTH JUDICIAL CIRCUIT)
CASE NO.: 2011-CP-07-1933)

DEFENDANTS ATLANTIC PRIVATE)
EQUITY GROUP, LLC, TERRY L.)
ROHLFING AND JERRY T. CALDWELL'S)
ANSWER TO PLAINTIFF'S COMPLAINT)

(JURY TRIAL DEMANDED)

Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfling, and Jerry T. Caldwell, answering the Complaint of the Plaintiff herein, would respectfully allege and show as follows:

1. Each and every allegation of Plaintiff's Complaint which is not hereinafter specifically admitted is denied and strict proof demanded thereof.
2. They admit, upon information and belief, the allegations of Paragraph 1.
3. They admit so much of Paragraph 2 as alleges the described real property is located in Beaufort County. As to the remainder, they lack knowledge or information sufficient to truthfully admit or deny, therefore they deny the same and demand strict proof thereof.
4. They admit the allegations of Paragraph 3.
5. They admit the allegations of Paragraph 4 except that Defendant Caldwell currently resides in Ohio.
6. They admit the allegations of Paragraphs 5 and 6, upon information and belief.
7. They lack knowledge or information sufficient to truthfully admit or deny the

allegations of Paragraph 7, therefore they deny the same and demand strict proof thereof.

8. The allegations of Paragraphs 8, 9, and 10 constitute conclusions of law to which they make no response. To the extent these paragraphs include any allegations of fact, the same are denied.

AS TO THE FIRST CAUSE OF ACTION

9. Answering the allegations of Paragraphs 11 and 12, they admit only that Plaintiff made a loan to Defendant Atlantic Private Equity Group, LLC that was secured by a mortgage on real property owned by it. They crave reference to the original loan documents and deny any allegations of these paragraphs inconsistent therewith.

10. They lack knowledge or information sufficient to truthfully admit or deny the allegations of Paragraph 13; therefore they deny the same and demand strict proof thereof.

11. The allegations of Paragraph 14 constitute conclusions of law to which they make no response. To the extent these paragraphs include any allegations of fact, the same are denied.

12. Answering the allegations of Paragraphs 15, 16, 17, 18, 19, and 20, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

13. Answering the allegations of Paragraph 21, they admit only that not all monthly payments have been timely made. The remaining allegations of this paragraph constitute legal conclusions to which they make no response but refer to the defenses asserted herein.

14. Answering the allegations of Paragraph 22, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

15. They admit the allegations of Paragraph 23.

16. Answering the allegations of Paragraph 24, they crave reference to the original loan documents and deny any allegations inconsistent therewith.

17. They lack knowledge or information sufficient to truthfully admit or deny the

allegations of Paragraph 25, therefore they deny the same and demand strict proof thereof.

18. The allegations of Paragraph 26 constitute conclusions of law to which they make no response. To the extent this paragraph includes any allegations of fact, the same are denied.

19. The allegations of Paragraph 27 require no response.

AS TO THE SECOND CAUSE OF ACTION

20. Answering the allegations of Paragraph 28, they admit only that various forms were executed in connection with the subject loan, crave reference to the original loan documents and deny any allegations of this paragraph inconsistent therewith.

21. Answering the allegations of Paragraphs 29 and 30, they admit only Plaintiff's demand and Defendants' non-payment. The remaining allegations of these paragraphs constitute legal conclusions to which they make no response but refer to the defenses asserted herein.

FOR A SECOND DEFENSE

22. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to join indispensable parties and/or all real parties in interest.

FOR A THIRD DEFENSE

23. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff is not the true holder and owner of the subject notes and mortgages.

FOR A FOURTH DEFENSE

24. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to meet conditions precedent to maintaining this action.

FOR A FIFTH DEFENSE

25. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff has failed to mitigate damages and any recovery should be barred or reduced thereby.

FOR A SIXTH DEFENSE

26. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff's claims are barred by waiver and/or estoppel.

FOR A SEVENTH DEFENSE

27. Further answering the complaint and as and for an affirmative defense thereto Defendants repeat all prior allegations and further allege upon information and belief that Plaintiff's claims are barred by the doctrine of unclean hands.

WHEREFORE, Defendants pray for a jury trial on all issues so triable and that the Complaint be dismissed, with costs.



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**ATTORNEYS FOR DEFENDANTS
ATLANTIC PRIVATE EQUITY GROUP,
LLC, TERRY L. ROHLFING, JERRY T.
CALDWELL**

Charleston, SC
June 15, 2011

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DEEP KEEL, LLC,,

Plaintiff,

vs.

CIVIL ACTION NUMBER
2011-CP-07-1933

ATLANTIC PRIVATE EQUITY
GROUP, LLC, TERRY L.
ROHLFING, JERRY T. CALDWELL,
AND BLUFFTON VILLAGE TOWN
CENTER PROPERTY OWNERS'
ASSOCIATION, INC.,

Defendants.

-----/

The Foreclosure hearing, in the
above-entitled cause, taken before the Honorable
Judge Marvin H. Dukes, III, Master-in-Equity,
taken by Ceil Weser, Certified Court Reporter
and Notary Public, at the Beaufort County
Courthouse, 102 Ribaut Road, Beaufort, South
Carolina on the 10th day of July, 2013,
commencing at or about the hour of 11:25 a.m.

1
2 APPEARANCES OF COUNSEL:

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13 CALDWELL:

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17 Charleston, South Carolina 29412
18 843-762-9132

19
20 I N D E X

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D O C U M E N T A R Y E V I D E N C E

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THE JUDGE: Good morning everyone.
We are here in Case No. 11-CP-07-1933
previously captioned as Community First
Bank versus Atlantic Private Equity
Group.

I understand now the Plaintiff is
different?

MR. ALTMAN: The Plaintiff is now
Deep Keel, LLC, Deep K-e-e-l.

THE JUDGE: This matter comes to
me pursuant to Order of Reference
heretofore filed April 17, 2013. This
is a foreclosure and guarantee action.
The foreclosure is on two separate
parcels of property. I understand that
one of the parcels of property, that
being the Hampton Lake lot 117 is no
longer an issue having been sold in a
nonjudicial sale prior to this action,
leaving for today's purposes only the
foreclosure on phase I or 1 D of
Bluffton Village Town Center, more
fully described in the lis pendens in
the Complaint.

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This is a deficiency action.

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There is also a Claim for Guarantee

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that would be heard in a separate

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action.

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The Plaintiff is ready to proceed.

7

The Defendant is represented and is

8

ready to proceed as well. I understand

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that we have a few motions to take up

10

prior to beginning any testimony. I am

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happy to hear from either one of you.

12

MR. ALTMAN: Your Honor, again, we

13

had sent notice to Mr. Simons. I am

14

going to look at the date. This was on

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June 19 that the hearing would be

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today. We noticed, and gave him notice

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pursuant to section 14-11-110 of the

18

South Carolina Code that the testimony

19

would be submitted in writing and asked

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for 72 hours notice if he was going to

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object to that. The only response we

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had was an E-mail, I believe actually

23

yesterday morning saying that he would

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appear.

25

Your Honor, part of our reasoning

1
2 for this is if you look at the Answer
3 that was filed by the Defendants, and
4 when I talk of the Defendants I am
5 talking about Atlantic Private Equity,
6 Mr. Rohlfin and Mr. Caldwell,
7 specifically paragraph 9 of the exhibit
8 on page 2. He specifically says they
9 admit only the Plaintiff made a loan to
10 Defendant Atlantic Private Equity
11 Group, LLC that was secured by a
12 mortgage on real property owned by it.
13 They crave reference to, which the loan
14 documents deny any allegations and
15 these paragraphs are consistent
16 therewith. That to me is not a true
17 contest of this. It is saying that we
18 admit we borrowed the money. We admit
19 we gave the mortgage. The documents
20 speak for themselves, and we do have
21 the original documents with us. I
22 believe we have made those available to
23 Mr. Simons to inspect prior to, and we
24 have not been taken up on that offer.

25 We have Mr. Bynum who is the sole

1
2 member of the now Plaintiff Deep Keel,
3 LLC testifying. And if Mr. Simons
4 informed us that he was going to
5 contest anything here today we
6 certainly would have had someone from
7 the bank here to testify. He is just
8 now indicating he is contesting the
9 documents. We saw no need for that and
10 don't see any need because we believe
11 at least in paragraph 9 of his Answer
12 he has admitted the documents exist.

13 THE JUDGE: Do you have the
14 original documents here today?

15 MR. ALTMAN: I do. I do.

16 THE JUDGE: All right.

17 Anything from the defense?

18 MR. SIMONS: All I would say about
19 that, your Honor, is that counsel is }
20 aware it is on a contested docket. You
21 know it under contested docket. I am
22 under no obligation to tell Counsel on
23 what basis I am going to defend the
24 case or oppose the case. We did
25 discuss it last week. I told him I

1
2 would let him know this week, and I did
3 let him know that I intended to be
4 here. Obviously I didn't come down
5 here simply to stipulate to his case.

6 I believe that he is required to
7 prove the case. The case is made by
8 the Pleadings. We do not deny that a
9 loan was made. Whether they can prove
10 the terms of the loan, whether they can
11 prove how much is owed on the loan, if
12 any; whether they can prove that they
13 validly own the loan and so forth, I
14 think I am going to put them to their
15 burden of proof, and I am entitled to
16 do that.

17 THE JUDGE: All right.

18 Well, I will let him try.

19 So call your first witness,
20 please.

21 MR. ALTMAN: I call Mr. Scott
22 Bynum.

23 Sir, I am taking that to mean you
24 will not allow us to present this
25 value? Written testimony?

1
2 THE JUDGE: Well, I tell you what,
3 I will let you proffer the written
4 testimony. I may even let you put it
5 in, and I will consider it after the
6 fact. But this witness and the
7 original documents you have, I don't
8 know what they are going to say, but
9 anyway you know we certainly have many
10 successors in interest to loans that
11 appear; and I have no idea what this
12 witness can say about this loan.

13 MR. ALTMAN: I understand.

14 THE JUDGE: And maybe this does or
15 doesn't either. I haven't read your
16 prepared testimony, so I don't know
17 what else there is.

18 MR. ALTMAN: I will proffer that
19 to you now.

20 MR. SIMONS: I have not seen it
21 either, and just for the record I
22 object to the proffer.

23 THE JUDGE: Okay.

24 And let me restate that. I don't
25 know if I will call that a proffer yet,

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but let us just see what this witness
can see and you will have an
opportunity to cross-examine him.

SCOTT BYNUM,
having been produced and first duly
sworn as a
witness, testified as follows:

THE JUDGE: Please answer any
questions your attorney has.

DIRECT EXAMINATION

BY MR. ALTMAN:

Q State your full name, please.

A Scott Saunders Bynum.

Q Mr. Bynum, where do you live?

A Brooklyn, New York.

Q And did you come to purchase a loan
from Crescom Bank, formerly known as Community
First Bank?

A Yes.

Q In the process of buying the loan is it
the loan that was made to Atlantic Private
Equity?

A Yes.

Q In your purchase of your loan and since

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then have you had full opportunity to review all of the loan documents and all of the documents related to the loan, including the amounts that were owed?

A Yes.

Q Have you reviewed all of the bank records with regard to those?

A Yes..

Q Is Deep Keel, LLC now the owner of that loan?

A Yes.

MR. SIMONS: Objection.

THE JUDGE: What is the objection?

MR. SIMONS: It states a conclusion.

THE JUDGE: I will allow him to answer.

Go ahead.

I think he already answered actually.

BY MR. ALTMAN:

Q Let me start by --

MR. ALTMAN: Your Honor, let me ask how you want to do this? Do you

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want us to offer the original documents? Do you want those kept in the court records?

THE JUDGE: What is his relationship to Deep Keel, LLC?

BY MR. ALTMAN:

Q Scott, what is your relationship to Deep Keel, LLC?

A I am the sole owner and sole member.

Q Sole member of the LLC?

A Correct.

Q You are fully charged with the operation of the company?

A Correct.

Q Is anybody else involved in the company?

A No.

Q I will hand you a document and ask you if you can identify this document.

MR. ALTMAN: All of these documents are attached to the prepared transcript.

MR. SIMONS: Can you tell me what it is so I can find it, please?

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MR. ALTMAN: Looking at the note.

THE WITNESS: This is the term sheet for the loan made to Atlantic Private Equity.

BY MR. ALTMAN:

Q How much was borrowed?

MR. SIMONS: Slow down, please, so I can look at the document and note any objections for the record, please.

This is Exhibit 1 to your prepared testimony?

MR. ALTMAN: Yes, it is.

THE WITNESS: The principal is \$2 million.

MR. SIMONS: I object, your Honor. This is rank hearsay from this witness. This is a document that is a photocopy of a document he says he obtained presumably from the bank. He doesn't have any personal knowledge of this.

THE JUDGE: First of all, I thought you had the original document?

MR. ALTMAN: This is the original document. I was going to ask the

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question is it the original signature
on the document.

THE JUDGE: Okay.

Did you have an opportunity to
look at the original?

MR. SIMONS: No, I have not seen
that.

THE JUDGE: Just let Mr. Simons
look at it real quick.

MR. ALTMAN: I will let you look
at all of it real quick. These are the
original and the assignment.

MR. SIMONS: Thank you, Mr.
Altman.

To sort of cut to the chase, your
Honor, my position on these
documents --

Yeah, that one he can talk about.

THE JUDGE: What is your position?
I'm sorry.

MR. SIMONS: With respect to the
bank documents I can only surmise he is
going to testify that he received those
from the bank as part of the

1
2 transaction by which he purchased this
3 alleged loan.

4 He is not in a position to say
5 that these are bank records. He is not
6 in a position to say what the bank does
7 in terms of its business records
8 policy, and most importantly and most
9 significantly he is not in a position
10 to say that the Defendant signed those
11 documents.

12 He can say the bank gave me these
13 pieces of paper, and I don't know who
14 created them, why they were created,
15 when they were created, or whose
16 signature this is. I can testify --
17 this would be him -- that there is blue
18 ink on this paper, and that is all he
19 can testify to.

20 THE JUDGE: Now I have just had a
21 brief opportunity to look at the
22 Pleadings, but is there somewhere in
23 the Pleadings where the Defendants have
24 denied that they executed these
25 documents?

1
2 MR. SIMONS: We never admitted the
3 execution of those documents. We were
4 served, and I don't remember whether it
5 was before or after the substitution of
6 Deep Keel, but we were served with
7 Requests For Admissions. We did not
8 admit them at that time either.

9 We have never admitted the
10 execution of those documents. And I
11 know that because that is the way I
12 handle these cases. I never admit it
13 and I require the Plaintiff,
14 particularly in a successor situation
15 to come in and prove it. And there
16 isn't any evidence in the record of
17 Mr. Rohlfing having signed those
18 documents as having authority to do so
19 on behalf of New Colony Holdings,
20 whoever that is, and so forth.

21 MR. ALTMAN: Your Honor, I would
22 point out, number 1, that again in
23 paragraph 9 of their Answer admits that
24 they borrowed money as alleged in the
25 Complaint. As to the amounts which are

1
2 is set forth in the Complaint, I note
3 that Neither Mr. Rohlfing or Mr.
4 Caldwell are here today to contest that
5 they signed these documents and
6 executed these documents and borrowed
7 the money and guaranteed a portion of
8 the debt.

9 Mr. Bynum is here, he is the
10 owner. And I will have a question for
11 him to support more in a moment of what
12 he has to say on the status of these
13 documents.

14 But we have got original documents
15 they are signed by Mr. Simons' clients
16 who admit they borrowed the money.
17 Admit they borrowed \$2 million. And
18 now they are sitting here saying well,
19 we don't admit what we already admitted
20 to.

21 Now, which one of those is
22 correct? And if they want to contest
23 whether or not they owe the money, one
24 or both of them should be sitting here
25 today to contest that. They have

1
2 chosen not to show up because they know
3 that if they were to contest it, say
4 no, we didn't borrow the money, we
5 didn't sign the documents, they would
6 have a problem because they would be
7 under oath; and I think that could be
8 taken into consideration.

9 THE JUDGE: What was the objection
10 again? I lost track of what the
11 objection was?

12 MR. SIMONS: That this witness was
13 given these documents by the bank. He
14 doesn't know who created them or who
15 signed them. He can't possibly know
16 that of his own knowledge. He might
17 know what he has been told, but that
18 would be hearsay.

19 THE JUDGE: Why don't we do this?
20 Let me see if the Plaintiff can lay a
21 foundation as to whether or not those
22 documents are part of the ordinary
23 business records of this LLC, how he
24 got them, what the story is and we will
25 go from there.

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MR. ALTMAN: Let me start with this, your Honor.

BY MR. ALTMAN:

Q Scott, I am going to hand you a document and ask you if you recognize this document?

MR. SIMONS: Is that the Assignment?

MR. ALTMAN: That is the Assignment.

THE WITNESS: Yes.

BY MR. ALTMAN:

Q What is that document?

A It is the Assignment of the Loan.

Q And who was this signed by? Who is the assignor? This is the assignee.

Who was it assigned by? Not to?

A Crescom Bank.

Q They are the successor to Community First Bank?

A Community First Bank, correct.

Q Who was it assigned to?

A It was assigned to Deep Keel, LLC.

Q Is this document -- has it been

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recorded in the records of Beaufort County?

A Yes.

Q Can you look at that and tell us where the book and page number and where it was recorded and when it was recorded?

A Book 03181, page 02570260.

Q And what date was it recorded?

A October 9, 2012.

MR. ALTMAN: Your Honor, we would offer that.

THE JUDGE: All right.

Now, you had previously had the original note. Certainly you can -- is that an original document as well?

MR. ALTMAN: That is the original document.

THE JUDGE: Any objection to substituting copies for the original's on the record?

MR. SIMONS: No, there is not.

And just to be clear, in my opinion the witness is competent to say that he paid the bank consideration for that document, the Assignment. I have

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no objection to that document or the competency of the witness to testify that he purchased an alleged loan.

THE JUDGE: All right. No, I understand.

MR. SIMONS: And no objection to substituting a copy.

MR. ALTMAN: Again, copies of everything are attached to the transcript.

THE JUDGE: Let us go ahead and mark the copies. So we have a note and we have an assignment. We have a mortgage. There is no reason to put the original's in. Let us make sure Defense Counsel has had an opportunity to see your original's, but other than that if everybody is happy with --

MR. ALTMAN: What we have is we have a Note, we have a Mortgage. We have two Guarantees. We have an Assignment of Leases, Rents and Profits, and Commercial Security Agreement, which is to secure the

1
2 Assignment and then two Loan
3 Modification agreements.

4 THE JUDGE: All right.

5 MR. ALTMAN: Again, all of those
6 are attached, including the document
7 assigning the loan to Deep Keel are
8 attached to the transcript which we
9 proffered.

10 THE JUDGE: What else is in the
11 transcript?

12 MR. ALTMAN: There is also an
13 Affidavit of Debt and an Affidavit of
14 Debt.

15 THE JUDGE: You haven't seen this
16 yet?

17 MR. SIMONS: I have been handed
18 it. I have not had an opportunity to
19 read it yet.

20 THE JUDGE: I guess I am trying to
21 come up with an organized way to mark
22 these exhibits. They don't have
23 exhibit stickers on them for purposes
24 of the record, but Exhibit 1 is a copy
25 of the Note.

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Exhibit 2 is the Mortgage. It has its own Exhibit A.

Exhibit 3 is the Guarantee, which of course is not really at issue today.

Is that correct?

MR. ALTMAN: Correct.

THE JUDGE: Exhibit 4, an additional Guarantee.

5 is the Assignment of Leases, Rents, and Profits. Is that really at issue today?

MR. ALTMAN: It is not really the issue, your Honor, but it shows the entire transaction and the basis for the fact that our client was collecting the rents and the basis for that.

THE JUDGE: Okay.

A Security Agreement.

Again, is there in anything that the Security Agreement has to do with in addition to the Mortgage?

MR. ALTMAN: Nothing -- well, it holds the addition of the Assignment of Leases, Rents and Profits.

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THE JUDGE: Okay, which it sounds like it isn't really at issue.

There is a Loan Modification Agreement, which probably has some bearing. That is 7.

8, a further Loan Modification Agreement.

9, a Partial Release, I assume having to do with the short sale.

MR. ALTMAN: Correct.
10 is the Assignment.

THE JUDGE: 10 is the Assignment.

All right. So I guess what I wouldn't mind doing just to keep this straight is -- and it appears the balance of the proposed transcript of testimony includes testimony from the witness who is already under oath and from yourself?

MR. ALTMAN: It is from myself based upon the Affidavit, that document Authorization to Testify.

THE JUDGE: Okay.

I mean there is an Affidavit of

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Indebtedness from Mr. Bynum here.

MR. ALTMAN: Correct.

THE JUDGE: Coming up with the total, okay, which would certainly if he wants to testify to it, so be it.

So why don't we -- if you wouldn't mind disassembling this, because I hate to do it and make a mess of it -- and why don't we mark the Note, the Mortgage, the Assignment's of the Note, and whatever pertinent documents that you have original's here that we are substituting the copies. I don't think we need the Guarantees.

If you feel the Assignment of Rents is necessary, we can do that.

The Security Agreement, the same situation.

And then we will mark those with these exhibit stickers.

MR. ALTMAN: That is the Note.

THE JUDGE: Off the record.

(Whereupon, an off-the-record discussion was held.)

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(Whereupon, Plaintiff's Exhibits
Numbers 1-7 were marked for
identification.)

THE JUDGE: We have now marked for
purposes of the record the following:
Plaintiff's Exhibit 1, which is --
these are for identification by the
way -- the Note.

Number 2 is the Mortgage.

Number 3 is the Assignment of
Leases, Rents, and Profits.

Number 4 is a Loan Modification
Agreement dated April 23, 2009.

Number 5 is a Loan Modification
Agreement, dated May 24, 2010.

A Partial Release of Mortgage and
Assignment of Leases, Rents, and
Profits, dated August 30, 2012 is
Number 6.

And an Assignment of Debt and Lien
filed October 9, 2012 is 7.

So I will hand these back to the
witness.

And I am happy to hear from you.

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2 BY MR. ALTMAN:

3 Q Mr. Bynum, subsequent to your -- the
4 Assignment of the loan from the bank to Deep
5 Keel, have you maintained the records regarding
6 the loan in the ordinary course of business of
7 Deep Keel?

8 A Yes.

9 Q Did you have an opportunity to further
10 review documents prior to your purchase of the
11 loan from the bank?

12 A Yes.

13 MR. SIMONS: Objection.

14 Specify which documents, please.

15 The first question was about Deep
16 Keel's business records.

17 THE JUDGE: Uh-huh.

18 MR. SIMONS: This question is
19 segueing into alleged business records
20 of the bank. So I just want it to be
21 clear as to what he is asking the
22 witness as to his review.

23 THE JUDGE: Perhaps the witness
24 could review those documents marked for
25 identification sitting in front of him

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and --

BY MR. ALTMAN:

Q Scott, would you please look at the documents sitting in front of you and tell us whether or not you fully reviewed all of those documents prior to Deep Keel's purchase of the loan from the bank?

A Yes.

THE JUDGE: And those are Plaintiff's 1 through 7, I believe.

MR. ALTMAN: Correct. He has reviewed Plaintiff's 1-7, which were identified by document.

MR. SIMONS: Actually 1-6.

7 was the Assignment. He didn't review that prior to the Assignment.

THE JUDGE: Oh, I am sorry. I guess I was referring to the stack in front of him. But that is correct, thank you.

BY MR. ALTMAN:

Q In your review of the documents that you have reviewed now, 1-6 that have been marked for identification, did you notice anything out

1
2 of the ordinary with regard to any of those
3 documents?

4 A No.

5 Q I am going to ask you to look at a
6 document which has been marked as Exhibit 1 and
7 ask you if you can please identify that
8 document.

9 A This is the Loan Agreement between
10 Atlantic Private Equity and Community First
11 Bank.

12 MR. SIMONS: Objection, lack of
13 foundation.

14 THE JUDGE: I will allow it.

15 Go ahead.

16 BY MR. ALTMAN:

17 Q And I have previously shown you -- you
18 are looking at copies of the documents at this
19 point. And I have previously shown you a
20 document that purports to be yours, the original
21 document.

22 Did you look at the original documents?

23 A Yes.

24 Q All of those had original signatures on
25 them?

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2 A Yes.

3 Q How could you tell they were original
4 signatures?

5 A The different color of the ink and the
6 signatures.

7 Q Did that apply to all of the documents
8 you reviewed?

9 A Yes.

10 Q I ask you again to look at what has
11 been marked as Exhibit 1.

12 How much was the amount of the loan
13 indicated in that document? The Note?

14 A \$2 million.

15 Q Can you tell me what the maturity date
16 of the loan was?

17 A March 25, 2009.

18 Q What was the loan? Is there an
19 indication on this document what the loan was
20 secured by?

21 MR. SIMONS: Your Honor, I am
22 uncomfortable with the witness being
23 permitted without objection to testify
24 as to the contents of a document which
25 has not been admitted into evidence,

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and which I have objected to the admission into evidence.

THE JUDGE: Why don't we do this?

And your objection is probably the documents speak for themselves, among other things?

MR. SIMONS: They do.

If you are going to let the document in, then he doesn't need to read from the document. If you are not going to let the document in, then he shouldn't be reading from the document.

THE JUDGE: Why don't we do this? Why don't we go through and see if each can be identified and whether or not they are a part of the records of the company and then we can see about admitting them and then we sort of deal with the documents that speak for themselves.

MR. SIMONS: Sir, may I inquire, your Honor, when you say records of the company, which company?

THE JUDGE: I don't know. That is

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what I am waiting to hear so --

BY MR. ALTMAN:

Q Scott, you have looked at six documents that have been marked for identification purpose at this point, and I am going to move Number 7, which is the Assignment from the bank to Deep Keel.

Can you identify these documents as being the records regarding the loan which you purchased from Crescom Bank --

A Yes.

Q -- your loan.

MR. ALTMAN: I move the admission of what has been identified as Exhibit 1, which would be the Note and Loan Agreement.

MR. SIMONS: Objection.

THE JUDGE: What is the objection?

MR. SIMONS: May I cross-examine him briefly and just make my point, so you either agree or disagree; and we don't have to beat this horse all day.

THE JUDGE: All right, go ahead.

CROSS EXAMINATION

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2 BY MR. SIMONS:

3 Q Mr. Bynum, with respect to the Exhibits
4 that have been marked as 1 through 6. You
5 testified that you saw those documents prior to
6 purchasing the Note from the Bank?

7 A Yes.

8 Q When and where?

9 A It was September 2012.

10 Q And where?

11 A I was in Brooklyn, New York.

12 Q And how did you see the documents?

13 A I viewed pdf's as well as hard copies.

14 Q And when and where did you view hard
15 copies?

16 A In Brooklyn, New York.

17 Q And by hard copies, you are referring
18 to the original's that were on the table here a
19 while ago?

20 A Copies.

21 Q So when did you first see the actual
22 alleged original loan documents, copies of which
23 have been marked as 1 through 6?

24 A I was sent the original's after
25 execution of the Assignment.

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Q So when you were asked whether you examined the original's before the Assignment, you gave an incorrect answer?

A Correct, I examined copies.

Q And you never laid your hands on the original documents until after you parted with money --

A Correct.

Q -- For the Assignment?

A Yes.

Q How much did you pay for the Assignment?

MR. ALTMAN: Objection.

THE JUDGE: What is the objection?

MR. ALTMAN: It is irrelevant.

MR. SIMONS: It is cross-examination.

THE JUDGE: I don't know what the relevance is, though. I feel sure it was significantly less than the face value of the loan which we all know, but what is the relevance, other than just interest? What do these things go for? Yeah, that is sustained.

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MR. SIMONS: All right. Let me get back on track I couldn't resist asking, Judge. I am under oath.

MR. ALTMAN: And I couldn't resist objecting.

MR. SIMONS: I do understand.

BY MR. SIMONS:

Q Now, are you an employee of -- well, let us put it this way, were you ever an employee of Community First Bank?

A No.

Q Were you ever an employee of Crescom Bank?

A No.

Q And Crescom Bank is the Bank to whom you paid money for the Assignment?

A Yes.

Q All right.

Do you know Terry Rohlfing?

A No.

Q Do you know Jerry Caldwell?

A No.

Q Have you seen any other example of Terry Rohlfing's signature?

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A No, not outside of these agreements.

Q So you have no personal knowledge whether the signature that you have seen on the original documents or on the pdf's or whatever you viewed, you have no knowledge as to whether that is in fact Terry Rohlfig's signature?

A No.

Q That is correct that you haven't?

A That is correct.

Q Okay, thank you.

And you likewise have no knowledge of how those documents came to be prepared?

A No.

Q And you have no knowledge of how those documents came to be maintained on behalf of either bank?

A Correct.

Q All you know is that you paid money and they gave you some documents purportedly bearing a signature purportedly binding some lender, correct?

A Correct.

Q And you don't know Jerry Caldwell?

A Correct.

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2 Q You don't know his signature?

3 A Correct.

4 Q And so you have no knowledge of whether
5 the signature -- I presume that there was a
6 Guarantee?

7 MR. SIMONS: The Guarantees are
8 not in 1 through 6, are they?

9 MR. ALTMAN: They are not.

10 MR. SIMONS: Okay, then forget
11 about Jerry Caldwell.

12 BY MR. SIMONS:

13 Q Now, since you paid money to the bank
14 in exchange for Exhibit 7, you were delivered
15 what purported to be the original's of Exhibits
16 1 through 6?

17 A Correct.

18 Q And you have maintained those in the
19 possession of Deep Keel, LLC ever since?

20 A Correct.

21 Q Those are not records of regularly
22 conducted business activity of Deep Keel, are
23 they?

24 A I am not sure I follow.

25 Q Well, for example, Deep Keel has a

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checkbook?

A Yes.

Q Deep Keel has accounting records?

A Yes.

Q And you regularly maintain the checkbook for Deep Keel?

A Yes.

Q And you regularly maintain the accounting records for Deep Keel?

A Yes.

Q So those are regularly maintained business records of Deep Keel, correct?

A Yes.

Q In that sense Exhibits 1 through 6 don't record activity of Deep Keel, do they?

MR. ALTMAN: Objection, your Honor.

THE JUDGE: I will let him answer it but --

MR. SIMONS: I think the point is made.

THE JUDGE: Anything else of this witness?

BY MR. SIMONS:

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2 Q To sort of summarize then, whether this
3 loan was made to Atlantic Private Equity and
4 what the terms were as far as you are concerned
5 is all second or third hand information, is that
6 fair?

7 A That is fair.

8 THE JUDGE: I can't remember where
9 we were.

10 You wanted to sort of what?

11 MR. SIMONS: Well, he has offered
12 Exhibit 1.

13 MR. ALTMAN: I offered Exhibit 1.

14 THE JUDGE: Okay, is that what it
15 was about? And again subject to the
16 objection I will allow it.

17 REDIRECT EXAMINATION

18 BY MR. ALTMAN:

19 Q Scott, can you tell me what the loan
20 number is from the bank for this loan?

21 A 0145003387.

22 MR. SIMONS: Objection, again it
23 is hearsay. He is just testifying from
24 the document.

25 THE JUDGE: Well, it is just

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identifying information, so I will
overrule.

MR. ALTMAN: Your Honor, I believe
you have allowed Exhibit 1 over the
objection of Mr. Simons?

THE JUDGE: That is correct, thank
you.

BY MR. ALTMAN:

Q I will show you what has been marked
for identification as Plaintiff's Exhibit 2.

I will ask you to please identify that?

A This is the Mortgage document.

MR. SIMONS: May I interject? My
position on all the documents is going
to be the same, and I assume your
ruling will be consistent with respect
to all of the Exhibits 1 through 6; and
again I don't want to belabor the
point.

THE JUDGE: Why don't I just note
for the record your continuing
objection to the documents that are 1
through 6. I don't know what your
thoughts are on 7, but maybe it is all

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part and parcel; but 1 through 6.

MR. SIMONS: 7 I already stated I thought the witness was competent to testify that he paid money in exchange for 7.

THE JUDGE: Okay.

MR. SIMONS: I don't think he is competent to offer 1 through 6, but if you are going to rule against me on 1, you are going to do so on 2 and 3 and 4 and so forth.

THE JUDGE: Let me then make sure the record is clear of your continuing objection to 1, 2, 3, 4, 5 and 6?

MR. SIMONS: Yes. It is hearsay, lack of foundation. They are not his business records and for all of the reasons previously addressed.

THE JUDGE: Okay.

MR. ALTMAN: We offer Exhibit 2, being the Mortgage, which I assume will be subject to the objection.

THE JUDGE: Again, subject to objection allowed.

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BY MR. ALTMAN:

Q I show you an exhibit marked as Plaintiff's Exhibit 3 for identification and ask if you can please identify that.

A This is the Assignment of the leases.

MR. ALTMAN: Again, we would offer that into evidence subject to the same objection.

THE JUDGE: Subject to objection allowed.

MR. SIMONS: You can do it as a group, Charlie, if you want.

MR. ALTMAN: That is perfectly fine.

BY MR. ALTMAN:

Q I will show you what has been marked as Plaintiff's Exhibits 4, 5 and 6 for identification, being two Loan Modifications and a Partial Release from the Mortgage and ask you if you can identify those?

A These are the two Loan Modification Agreements and the Partial Release related to the first property.

Q Being lot 117 Hampton Lake?

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A Correct.

MR. ALTMAN: And just we would ask that Number 7 be entered as an exhibit, which is the Assignment.

MR. SIMONS: Without objection.

THE JUDGE: All right, 7. So we have 1 through 7 with 1 through 6 being subject to an objection, which was overruled, and 7 without objection.

BY MR. ALTMAN:

Q According to Exhibit 5, which is the second Loan Modification, what was the maturity date of the loan?

A June 9, 2015.

Q Have all of the payments been made on the loan in accordance with the terms of the loan and the modification?

A No.

Q I am going to ask you according to your records what is the current principal balance due on the loan?

MR. SIMONS: Objection.

BY MR. ALTMAN:

Q The principal balance now?

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THE JUDGE: What is the objection?

MR. SIMONS: All he knows is what he was told was the principal balance at the time he acquired the Note. All of these other numbers are based on that number. He might know what he posted the loan for in Deep Keel and he might know what his interest calculations are on that number; and he might know how much he spent for postage and he might know how much he has collected on rents, but he doesn't know of his own knowledge what was owed on this loan at the time he bought it.

THE JUDGE: Well, I will allow him to continue and certainly in cross-examination you can make whatever points you want to on that issue.

BY MR. ALTMAN:

Q Scott, did you have the opportunity to review all the documents related to the amounts due and the payments that were made on the loan at the time you purchased it?

A Yes.

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2 Q Has there been a calculation made
3 regarding to what the balances are today?

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MR. SIMONS: Objection.

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THE JUDGE: I will allow it. Go

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ahead.

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THE WITNESS: You would like me to

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read the numbers?

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BY MR. ALTMAN:

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Q I am going to get to that.

11

A Okay.

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Q You had an opportunity to review all

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the calculations regarding what is owed?

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A Yes.

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Q Are you aware that at a time prior to

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your purchase of a loan demand was made on the

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tenants of the property to pay the rents to the

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Bank and now to you?

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A Yes.

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Q Have those rents in fact been paid to

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you and to the Bank based on the records that

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you have seen?

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A Yes.

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Q That you have maintained?

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A Yes.

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Q Are you aware that there was security for the loan, being lot 117 Hampton Lakes, that was sold prior to the time that you purchased the loan?

A Yes.

Q There was credit given for the amount received from that sale?

A Yes.

Q According to your records what is the principal balance, not the interest or costs, but the principal balances due and owing at the present time?

MR. SIMONS: Objection. The question was your records, Deep Keel's records. That number is still based upon his review of bank records and I will object.

THE JUDGE: I understand. Subject to your objection -- You can go ahead and answer.

THE WITNESS: The principal due is \$1,532,238.05.

BY MR. ALTMAN:

Q And that took into account the credits

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2 that were due and given as a result of the sale
3 of lot 117 Hampton Lakes, is that correct?

4 A Yes.

5 MR. SIMONS: Objection.

6 THE JUDGE: I will allow it.

7 Go ahead.

8 THE WITNESS: Yes.

9 BY MR. ALTMAN:

10 Q Was the sale of that property on June
11 4, 2012?

12 A Yes.

13 Q What is the interest rate that is now
14 due on -- that is accruing on this loan?

15 A 11 percent.

16 Q Does that include default interest?

17 A Yes.

18 Q What is the default rate?

19 A 5 percent.

20 Q And the original rate was how much?

21 A 6 percent.

22 Q For the dates between June 4, 2012 and
23 today, how much interest has accrued?

24 A \$187,723.30.

25 Q What is the per diem interest rate?

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A \$468.13, and a fraction above that.

Q Have there been any insurance costs or insurance policies paid for the building by you? How much was the cost of that?

A Yes, \$7,766.

Q Have you collected any rents since the sale of lot 117?

A Yes.

Q And how much in rents have you collected?

A \$73,775.

Q Have there been any costs incurred by you with regard to this action? Not including attorneys' fees?

A Yes.

Q Please detail those.

A The title search and abstract, \$476.50.
The filing fee of \$150.

A process server fee of \$356.

A filing fee for the motion of summary judgment, \$25.

A filing fee for the motion of default and reference, \$25.

A filing fee, motion to substitute

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Plaintiff \$25.

The filing fee motion for reference,
\$25.

Master in Equity Reference fee of \$100.

And lastly, the postage for certified
mailing's and U.P.S. deliveries, \$36.91.

Q And what was the total cost involved?

A \$1,219.41.

Q Other than attorney's fees, what is the
balance that is due on the loan as of today?

MR. SIMONS: Objection.

THE JUDGE: I will allow it.

Go ahead.

THE WITNESS: \$1,655,026.52.

BY MR. ALTMAN:

Q Back up a moment a little bit.

Do the Note and Mortgage provide for
the obligor to pay and be responsible for any
attorneys' fees incurred by Plaintiff to protect
its interest?

A Yes.

Q Have you had to retain an attorney
here? Was an attorney retained prior to your
obtaining that value now to pursue this

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foreclosure action?

A Yes.

Q And you have been paying fees?

A Yes.

MR. ALTMAN: Of course we would have an Affidavit of Attorneys' Fees to present later depending on your --

THE JUDGE: Have you had an opportunity to look at the proposed Affidavit of Attorneys' Fees?

MR. ALTMAN: He has not.

MR. SIMONS: I have looked at it briefly.

It is attached to the materials I was provided today, wasn't it?

MR. ALTMAN: Yes.

THE JUDGE: I saw it in there.

MR. SIMONS: I have got a few questions about that.

THE JUDGE: Okay, we might have a different witness for that.

But go ahead.

MR. ALTMAN: I have nothing further at this point.

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Answer any questions Mr. Simons

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may ask you.

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Let me if I may back up.

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BY MR. ALTMAN:

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Q Do you wish to foreclose the Mortgage
you have on the property at Bluffton Town

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Center?

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A Yes.

9

Q Have you made demand on Atlantic

10

Private Equity to pay the loan?

11

A Yes.

12

Q Have they paid the loan?

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A No.

14

Q It is in default at the present time?

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A Yes.

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MR. ALTMAN: Answer any questions

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Mr. Simons might have.

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CROSS EXAMINATION

19

BY MR. SIMONS:

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Q Has Deep Keel made any demand on
Atlantic Private Equity? Or are you referencing
the fact that the Bank may have made such a
demand prior to your acquisition of this loan?

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A I am referencing the Assignment of the

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loan to Deep Keel LLC.

Q And has Deep Keel LLC ever made any demand on Atlantic Private Equity?

A Pursuant to this foreclosure?

Q You haven't sent him a letter?

A No.

Q And you haven't sent Rohlfing a letter?

A No.

Q Or Caldwell?

A No.

Q All you did was become the Plaintiff in this case?

A Correct.

Q Now, at the time you acquired the loan -- I have been looking at the Assignment -- this Assignment doesn't tell us how much was owed on the loan at the time you bought it, correct?

A Correct.

Q Correct?

A Correct.

Q And when Mr. Altman was asking you questions about your review of records to determine the amount owed you were reviewing

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bank records, correct?

A Correct.

Q And presumably you reviewed those records in Brooklyn?

A Correct.

Q Again photocopies of alleged bank records?

A Correct.

Q And you have no knowledge of what was actually owed on this loan at the time you purchased it?

A Correct.

Q And you know what you were told by the Bank?

A With reviewing original loan agreements or reviewing copies of original loan agreements.

Q Of loan agreements or accounting records to show what payments were made, when they were made, how much interest accrued and so forth?

A Both.

Q What did you see?

A Both.

Q And we don't have any of these records

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here today, do we?

A I am not sure I can answer that question. I did not bring them.

Q Well, the only record we have as to what was owed on the loan today is based on a principal balance, alleged principal at the time you acquired the loan, fair?

A Fair.

Q So your affidavit in line A, principal due is based entirely upon a number given to you by the Bank?

A Yes.

Q That you have no knowledge of and no way to verify?

A Correct.

MR. ALTMAN: Objection.

THE JUDGE: What is the objection?

MR. ALTMAN: He was asked the question so we can verify he has looked at the bank records. He has verified based on the bank records.

THE JUDGE: Well, overruled on the objection. I mean I will just let him answer. He has already answered.

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BY MR. SIMONS:

Q Now, with respect to the expenses that you described, this fire flood hazard insurance of \$7,766, was that paid by Deep Keel?

A Yes.

Q As opposed to the Bank?

A Correct.

Q Now, the title search and abstract of \$476.50, was that paid by Deep Keel or the Bank?

A Deep Keel.

Q And the next item on your list, filing fee to commence suit, \$150, who was that paid by?

A I believe it will be paid by Deep Keel.

Q What do you mean?

A I believe I will be billed for that.

Q By whom?

A By my attorney.

Q Well, the Bank commenced the suit, did they not?

A Correct.

Q And so the filing fee was paid on behalf of the Bank at the time it commenced a suit, correct?

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A That would make sense.

Q Now, you have been billed by Mr. Altman?

A Correct.

Q Have you been billed by Mr. Altman or his firm for any services he performed prior to your purchase of the loan?

A No.

Q And so your belief is that Mr. Altman and his firm were paid for his fees and expenses prior to your purchase by the Bank?

MR. ALTMAN: Objection, based on the fact that you have implied something as to what Mr. Bynum believes, and you have not asked him -- you asked him if he believes something.

MR. SIMONS: Okay.

MR. ALTMAN: As far as our costs with --

MR. SIMONS: I will rephrase the question.

MR. ALTMAN: Please do.

BY MR. SIMONS:

Q You have paid Mr. Altman and his firm

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2 for their fees and expenses incurred in
3 representation of you on this loan, correct?

4 A Correct.

5 Q From that have you concluded that Mr.
6 Altman and his firm do not work for free?

7 A Correct.

8 Q And you do know, do you not, from
9 review of the lawsuit file that Mr. Altman and
10 his firm represented the Bank before they
11 represented you?

12 A Correct.

13 Q And therefore your belief is that to
14 the extent that they did work before you came
15 onto the scene that they were paid by the Bank?

16 MR. ALTMAN: Objection. The same
17 objection. You are implying that he
18 believes. You don't know what
19 he believes. You can ask him.

20 THE JUDGE: Well, I think it is a
21 fair question, though.

22 MR. ALTMAN: I think it is the way
23 he has phrased it.

24 THE JUDGE: Maybe you can try to
25 rephrase it. I mean I think I get

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2 where he is coming from. When the loan
3 was bought and then he continued on a
4 collection action, did the purchase of
5 that loan include everything that was
6 associated with the collection of that
7 loan up until the time of purchase,
8 including the attorneys' fees and costs
9 and filing fees and everything else. I
10 don't know if we are talking about a
11 huge percentage of the total here --

12 MR. SIMONS: We are not.

13 THE JUDGE: -- but I get your
14 point and maybe that is a more
15 appropriate question, I assume at some
16 point with regard to your Affidavit.

17 MR. ALTMAN: Sure.

18 THE JUDGE: You will be willing to
19 be under oath and we can sort of figure
20 that out or figure it out off the
21 record, because I think I understand
22 where you are coming from on that.

23 MR. SIMONS: Well, and I am not
24 going to be arguing about 150 bucks.

25 But the attorney's fee affidavit

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2 is seeking \$15,000, and I suspect that
3 a substantial portion of that was
4 incurred prior to Mr. Bynum's coming on
5 board. And with that in mind I will
6 ask Mr. Bynum to look at Exhibit 10.

7 THE JUDGE: Do we have a 10?

8 BY MR. SIMONS:

9 Q I'm sorry, Exhibit 7. 10 was the
10 number in the -- have you got that, Mr. Bynum?

11 A Yes.. The Assignment?

12 Q Yes. I know -- I assume you are not a
13 lawyer?

14 A I am not, if you couldn't tell already.

15 Q If you look at the bottom paragraph --

16 MR. SIMONS: Do you have a copy,
17 Judge?

18 THE JUDGE: I do not.

19 MR. SIMONS: I can hand you one
20 right here.

21 THE JUDGE: Looking at the bottom
22 paragraph?

23 BY MR. SIMONS:

24 Q The bottom paragraph on the first page,
25 what I am going to discuss with you Mr. Bynum is

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exactly what you bought by this Assignment, and it looks like the Bank transferred to you on this document the debt and the lien, do you see that?

A Yes.

Q And the debt is defined up in paragraph 1 as certain indebtedness, and I guess you have to go to the -- well, I haven't seen the Assignment of the Note. But at any rate you bought -- at least your understanding of what you bought was a Note and a Mortgage and the Assignment of Leases and Profits?

A Correct.

Q And you did not take an Assignment of any of the Bank's existing choses in action against any of these alleged obligors, is that fair?

A That is fair.

THE JUDGE: Are you done with that?

MR. SIMONS: I am not sure. I haven't seen -- unless I have missed it -- a document that assigns the Note.

BY MR. SIMONS:

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Q Is that in Exhibit 1 through 6?

A I don't know. I don't believe so.

THE JUDGE: Where is the original Note? Is it still over there somewhere.

MR. ALTMAN: (Handing).

Your Honor, for the record, we take the position that this Assignment includes the following documents which would be the Note, the Mortgage, the Assignment of Leases and the Modifications and the Guarantees.

MR. SIMONS: Your Honor, I don't believe I have anything further of Mr. Bynum.

THE JUDGE: All right. I don't have any questions, any further questions.

MR. ALTMAN: I do.

REDIRECT EXAMINATION

BY MR. ALTMAN:

Q Scott, you were asked a question by Mr. Simons if you were assigned any choses in action, do you know what the term "choses in

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action" means?

A No.

Q But you answered the question without knowing the answer to it which you were asked?

A Yes.

Q Was it your understanding that you were purchasing all evidences of the loan, the Note, the Mortgages, the Guarantees, the Assignment of Leases, everything relating to this loan?

A Yes.

MR. SIMONS: Objection.

THE JUDGE: Leading?

MR. SIMONS: Yes.

And his understanding is not relevant.

THE JUDGE: I will let him answer.

THE WITNESS: Yes.

BY MR. ALTMAN:

Q With regard to the testimony regarding the amount that is due and owing by Atlantic Private Equity, does the principal amount or the interest include any attorneys' fees or costs that were incurred in the collection of this action?

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A No.

MR. ALTMAN: I have nothing further of the witness.

RE CROSS EXAMINATION

BY MR. SIMONS:

Q How much have you paid Mr. Altman's firm?

A I am awaiting a bill.

Q You have never paid him anything?

A I am trying to recall if I paid.

I don't recall if I paid something at the closing.

Q So maybe you were wrong when you said they didn't work for free -- withdraw the question obviously.

THE JUDGE: Mr. Altman, did you want to either testify or see if Mr. Simons can look at your Affidavit and see if we can figure that issue out on --

MR. ALTMAN: Your Honor, I would offer my Affidavit of Attorneys' Fees, a copy of which was attached to the transcript.

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2 And if I can find in this file
3 folder, your Honor, we have -- I have
4 copies of our bills to date on the
5 entire action, we have redacted those
6 that we would present to Mr. Simons
7 solely because they would contain
8 certain attorney-client privileged
9 documents. We do have copies that we
10 can present to you for in camera review
11 if you wish to have those. I would be
12 happy to answer any questions of Mr.
13 Simons.

14 The Affidavit of Attorneys' Fees
15 is notarized. We feel we are looking
16 at a fairly significant loan and had to
17 do significant work to get to this
18 point and to complete this matter. We
19 believe the \$15,000 asked for is more
20 than reasonable. And I believe this
21 amount of the cost factor, I don't
22 remember exactly what that is.

23 THE JUDGE: It was normal stuff, I
24 saw the cost thing.

25 I guess my question is as well is,

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2 is there a way to break down the
3 calculation of fees from the date of
4 acquisition by this Plaintiff of the
5 loan?

6 MR. ALTMAN: Your Honor, I could
7 do that. I could not do that sitting
8 here right now. One of the things I
9 did when I got into the practice I am
10 in now I said I don't want to be part
11 of the administrative process and
12 figure out all of this. I post my time
13 and our office manager who actually has
14 been out for a couple of months on
15 maternity leave and my partner handle
16 that, but we can provide those
17 documents.

18 THE JUDGE: Sometimes there is a
19 running total in the right-hand column
20 and you can pick the last date that the
21 previous Plaintiff owed and then
22 subtract that back out from the total,
23 that might --

24 MR. ALTMAN: I don't know that I
25 have ability to pull that out today,

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but I can certainly get that to you
either today or tomorrow.

THE JUDGE: Mr. Simons, is there
any reason to put Mr. Altman under
oath? Or you tell me.

MR. SIMONS: I would like to ask a
couple of questions.

CHARLES ALTMAN,
having been produced and first duly
sworn as a
witness, testified as follows:

DIRECT EXAMINATION

BY MR. SIMONS:

Q I would have foregone an oath, but we
will take him at his word whether he is under
oath or not. I have done a rough calculation of
the hourly rate based on what you state in the
Affidavit.

Can you tell me what the hourly rate
actually paid by the Bank was?

A They paid what we billed and the hourly
rate has changed over the term of this, but they
paid me my hourly rate.

Q I am sure they do.

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Can you give us a range of what that hourly rate has been over the period of time this lawsuit has progressed?

A I don't know if I can. We ranged probably somewhere between 300 and \$395. 300 and 395.

Q So not less than 300 at any time during the --

A That is from me. There have been others who worked on the case who we have charged at lesser hours: Paralegals, 75; my partner Meredith Coker, 200. We have an associate or had an associate who did some work on the file, I believe we were charging --

Q Fair enough. That is all I need to know on that.

Is Mr. Bynum correct that he has not been billed by your firm yet?

A Again, that is one of those things I don't know about that. I have some issues with some people when I get back to the office.

Q If that were true -- what I am trying to understand, Charlie, is simply if you can tell us how much -- and the judge was getting to

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it as well -- how much of the -- whether it is \$15,000 or whether it is the 45 hours spent on the file, how much of that was done for the Bank versus how much for Mr. Bynum?

A I do not have an answer for that question right now, but I will have that either this afternoon or tomorrow.

Q Okay, that is all I can ask for.

Thank you.

MR. SIMONS: Thank you.

THE JUDGE: Anything else from the Plaintiff?

MR. ALTMAN: Nothing.

THE JUDGE: Anything from the Defense?

MR. SIMONS: No, sir. Not other than what you have heard already, thank you.

THE JUDGE: First, to the extent we haven't already done it, I understand that we are bifurcating these issues, as such that we have dealt solely with the foreclosure of the remaining piece of property today.

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Leaving the guarantee actions for another day, possibly a jury trial.

Is that where those are?

MR. SIMONS: Yes, sir. And I would only make one comment that is of some concern to me. To the extent that the court, if it were to do so, were to make a finding of fact that X dollars was owed and that they have succeeded in proving the debt, that would be the law of the case in a Guarantee action, unless I appeal it.

THE JUDGE: Uh-huh.

MR. SIMONS: And I don't see any way to simply say well, let us go ahead and sell the property and worry about the Guarantee action later. I have done that in some cases in this courtroom, but in the posture of this case I can't do that because your unappealed finding that the debt was owed --

THE JUDGE: I agree with you.

MR. SIMONS: So --

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2 THE JUDGE: So then the question
3 becomes -- and I don't know what the
4 Plaintiff's thought on this is, but
5 with regard to the mortgage and the
6 debt in reserving perhaps specifically
7 in the order the amounts to be
8 determined for the guarantee action;
9 any thoughts from the Plaintiff on
10 drafting an Order that basically kept
11 that issue for later?

12 MR. ALTMAN: Your Honor, as I
13 understand the statutes; and I don't
14 have them in front of me, I think one
15 of the requirements is that you
16 determine the amount of the debt before
17 we can have the foreclosure, before we
18 have a sale; so I don't know how we can
19 possibly do that.

20 THE JUDGE: Well, by consent you
21 can do practically anything, I suppose.
22 But yeah, I mean it is unusual. And I
23 know the cases we are talking about, we
24 have done all sort of things that have
25 tried to work with both parties.

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2 My thought is that this Plaintiff
3 has come in with the original Note that
4 his company is in possession of. There
5 appears to be an Assignment. There
6 appears to be a brokering Mortgage. He
7 has testified as most assignee's do as
8 to the numbers that they are in
9 possession of. And the attorneys' fee
10 issue, I will hold the record open
11 because I do believe there is some
12 merit in saying that when you purchased
13 it, it should have been with all fees
14 paid and that that amount and anything
15 after the fact may be appropriate,
16 maybe. But I would like to see those.
17 I am not sure what the title research
18 fee would have been after the fact.
19 That should have been in the Bank's
20 portion of the case. So should the
21 filing fee, so should the service fees.
22 A whole lot of that should have been
23 front loaded, not back loaded.

24 MR. ALTMAN: Right, I think
25 Mr. Bynum didn't quite understand that.

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THE JUDGE: No, I don't blame him.
He was asked what were all the fees.
Well, here they are.

But as far as the award would be,
I don't think it would be appropriate
to include those, any of those fees or
costs that were incurred prior to the
purchase of the loan and the Mortgage.

As far as the balance of it I
would certainly listen to the
Defendant, but respectfully disagree
with some of the positions taken. What
I am going to do, though, is hold it
all open pending that issue with the
attorneys' fees. Let the two of you
all take a look at it and see if you
can come to some consensus as -- not as
to the case in chief, but as to the
amounts and costs after the
acquisition. And then I would ask you,
please, just to draft an Order in rough
draft or final draft, but in Word
format that I could change around.

MR. ALTMAN: Certainly.

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2 THE JUDGE: And I would encourage
3 of course everyone to continue to work
4 toward an agreed upon resolution as
5 opposed to months if not years of
6 continued litigation that may or may
7 not be for nothing. So I will let you
8 all work on that before I execute
9 anything.

10 Also, please remember to send a
11 Form 4.

12 MR. ALTMAN: If you agree to sign
13 today, I have the Form 4.

14 THE JUDGE: Okay, based on what we
15 got I would prefer for you to do
16 something a little less standard.

17 So anything else from either side?

18 MR. SIMONS: No, sir.

19 I am curious what you mean, a Form
20 4 I thought was just an Order that says
21 motion granted or something like that?

22 THE JUDGE: It has to go with all
23 Orders, even prepared 100 page Orders.

24 MR. SIMONS: That is right, I saw
25 the change in the rule.

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MR. ALTMAN: Everything.

THE JUDGE: And they just changed it again to add a page of nothing but lines on it that is supposed to be page 3. Did you see that?

MR. SIMONS: No, I didn't see it.

THE JUDGE: So yes, we have to do that.

But anyway, just draft and you will have an opportunity to look at it and see what we can do.

MR. ALTMAN: Certainly.

THE JUDGE: All right. That will conclude the record, save and except for the parts that we specified would be open.

(Whereupon, the foreclosure hearing was concluded at 12:39 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Ceil Weser, CSR and Notary

Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Ceil Weser, CCR
Notary Public
Beaufort, South Carolina

Exhibit 1

ATLANTIC PRIVATE EQUITY GROUP, LLC 1000 WILLIAM HILTON PKW, STE F13 HILTON HEAD, SC 29936	Community FirstBank 884 Orleans Rd Charleston, SC 29407	Loan Number: 0145003387 Date: 03/27/2008 Maturity Date: 03/25/2009 Loan Amount: \$ 2,000,000.00 Renewal Of:
BORROWER'S NAME AND ADDRESS I acknowledge 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 and 00/100 Dollars \$ 2,000,000.00

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 03/27/2008 I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

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 03/25/2009.
 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 03/27/2008 at the rate of 6.50% per year until FIRST CHANGE DATE _____

Variable Rate: This rate may then change as stated below.
 Index Rate: The future rate will be 0.500 OVER the following index rate: COMMUNITY FIRSTBANK PRIME RATE _____

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 Daily. A change in the interest rate will take effect on the same day.
 Limitation: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less 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 365/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full as stated below:
 on the same fixed or variable rate basis in effect before maturity (as indicated above).
 at a rate equal to _____

LATE CHARGE: If a payment is not made within 10 DAYS days after it is due, I agree to pay a late charge of 5.00% OF THE LATE PAYMENT

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: ORIGINATION FEE \$5,000.00; APPRAISAL FEE \$500.00; FLOOD CERT FEE \$20.00; COURIER FEE \$25.00

PAYMENTS: I agree to pay this note as follows:
 Interest: I agree to pay accrued interest beginning 04/25/2008 and on the same day Monthly thereafter

Principal: I agree to pay the principal 03/25/2009

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:
 DEFAULT RATE OF INTEREST: IN THE EVENT OF DEFAULT UNDER ANY OF THE LOAN DOCUMENTS, INTEREST SHALL BEGIN ACCRUING AT THE RATE STATED ABOVE PLUS THREE PERCENT (3.00%) PER ANNUM.

SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE/ASSIGNMENT LRS/PUDCC-1/SECURITY AGREEMENT/GUARANTOR AGREEMENTS


(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is ESTABLISH RLOC

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.
 ATLANTIC PRIVATE EQUITY GROUP, LLC
 By: New Colony Holdings Corporation, Manager

Signature for Lender

 DAVID L. MORROW

By: 
 TERRY L. ROHLFING President

DEFINITIONS: As used on page 1, "IX" 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 agree to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of South Carolina 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 intend to charge you more than the maximum 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 classes of loans to me or other borrowers.

ACCURAL 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 non-deposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due 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 sole 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 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 preclosure 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
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
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	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	

Handwritten signature and initials

Exhibit 2

9.15.08
McNair
3447

MLF/PP

BEAUFORT COUNTY SC - ROD
BK 02701 PGS 0632-0640
FILE NUM 2008018591
03/28/2008 10:46:44 AM
REC'D BY J COORE RCPT# 536945
RECORDING FEES 15.00

06

This document was prepared by (name, address, phone): MCNAIR LAW FIRM
238 SHELTER COVE LANE STE 400
HILTON HEAD ISLAND, SC 29928

State of South Carolina Space Above This Line For Recording Date

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 03/27/2008 and the parties and their addresses are as follows:

MORTGAGOR: ATLANTIC PRIVATE EQUITY GROUP, LLC
1000 WILLIAM HILTON PARKWAY STE F13
HILTON HEAD ISLAND, SC 29938

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: Community FirstBank
894 Orleans Rd
Charleston, SC 29407

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:
REFER TO EXHIBIT A, WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in BEAUFORT (County) at SEE ATTACHED EXHIBIT
BLUFFTON (City) South Carolina 29910 (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR RMA, FHM, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

EXSERA® 101894, 2001 Bancera Systems, Inc., St. Cloud, MN Form AGC6-RESI-SC 1/21/2003

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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 \$ 2,000,000.00. 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, Mortgagor 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);

INCLUDING BUT NOT LIMITED TO NOTE AND LOAN NUMBER 145003387 MATURING 03/25/09.

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.

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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 of 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

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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 Mortgage 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

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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.

Aditya (page 5 of 8)
Aditya

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 guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

Accepted (page 6 of 8)
by [Signature]

- Personal Property.** Mortgagor grants to lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated 1/8/08

Entity Name: _____

Entity Name: Atlantic Private Equity Group, LLC

By: New Colony Holdings Corporation, Manager

(Signature) (Date) (Seal)

By: Terry L. Rohlif (Signature) (Date) (Seal) 3/27/08

Terry L. Rohlif, President

Signed, Sealed and delivered in the presence of:

(Witness)

(Witness)

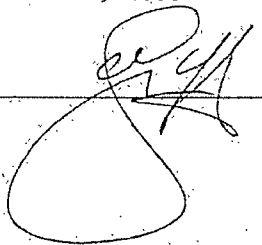
Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments

PROBATE: STATE OF SC COUNTY OF Beaufort) 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 27th day March, 2008

of _____
Spencer W. Buchanan
Notary Public for South Carolina



My commission expires: 4/5/11

EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

The property intended to be mortgaged herein is the same property conveyed to the within Mortgagor by Deed recorded in Book 2559 at Page 376, Beaufort County Records.

This Mortgage was prepared in the Law Offices of McNair Law Firm, P.A., Post Office Drawer 3, Hilton Head Island, South Carolina 29938, by Cary S. Griffin.

Exhibit 3

The term of this Assignment shall be until that certain Note in the original principal amount of not to exceed **TWO MILLION DOLLARS AND NO/100 (\$2,000,000.00)** and all other indebtedness secured by the Mortgage, all of even date herewith, made, executed and delivered by Assignor to the Assignee, covering the above described property, shall have been fully paid and satisfied, and at the end of such term, this Assignment is to be canceled and released, and the satisfaction of said Mortgage shall constitute a release hereof.

It is expressly covenanted and agreed by the undersigned Assignor, that at the time of the execution and delivery of this Assignment there has been no anticipation or prepayment of any rents.

It is further covenanted and agreed that Assignor, and its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of any of the leases pertaining to the property described on Exhibit A attached hereto in any particular whatsoever without first obtaining the consent in writing of the Assignee to such alteration modification or amendment.

Nothing herein contained shall be construed as making the Assignee, or its successors and assigns, Mortgagee in possession, nor shall it or its successors, and assigns, be liable for laches for failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that said Assignee is to account only for such sums as are actually collected.

IT IS UNDERSTOOD AND AGREED that neither the existence of this Assignment nor the exercise of its privilege to collect said rents, issues, profits, revenues, royalties, rights and benefits hereunder shall be construed as a waiver by the Assignee, or its successors and assigns, of the right to enforce payment of the debt hereinabove mentioned, in strict accordance with the terms and provisions of the Note and Mortgage and all other Loan Documents for which this Assignment is given as additional security and by any means provided in said Mortgage, and the rights hereby given are in addition to and cumulative of all rights given by said Mortgage.

The covenants and obligations herein undertaken by the Assignor shall be binding upon its successors and assigns, and the rights and benefits herein conferred upon the Assignee shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under Seal as of the day and year first hereinabove written.

WITNESSES:

Ernie W Buchman
[Signature]

ATLANTIC PRIVATE EQUITY GROUP,
LLC

By: New Colony Holdings Corporation, Manager

By: Terry L. Rohlifing
Terry L. Rohlifing, President

By: _____

As to Assignor

STATE OF SOUTH CAROLINA)

COUNTY OF ~~CHARLESTON~~
BEAUFORT

)
)

PROBATE
)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s) he saw the within named ATLANTIC PRIVATE EQUITY GROUP, LLC by Terry L. Rohlifing, President of New Colony Holdings Corporation, Manager authorized signers, sign, seal, and as its act and deed, deliver the within written Assignment of Leases, Rents and Profits, and that (s) he with the other above-subscribed witness witnessed the execution thereof.

WITNESS

[Signature]

SWORN TO before me this
27th Day of March, 2008.

Ernie W Buchman
Notary Public of South Carolina
My Commission Expires: 6/5/11

EXHIBIT "A"

Parcel 1:

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

Parcel 2:

ALL that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

SCHEDULE A

Any and all goods, chattels, furniture, fixtures, equipment, inventory and tangible or intangible personal property of any kind, nature or description (including without limitation, any and all accounts, contract rights, franchises, licenses, permits, now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, other title retention document or otherwise) which is, are or shall be located upon and used in the Debtor's project and Improvements, or other operations or enterprises of Debtor carried out upon the real property more particularly described in Exhibit A attached hereto, together with any and all replacements or substitutions thereof or therefore as well as the proceeds thereof or therefrom regardless of form.

Exhibit 4



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- TIME: The principal amount of the Note is payable in full on ... with interest thereon payable beginning ...
INSTALLMENT: In consecutive payments of ... including interest ... plus interest, beginning ... All principal and interest if not sooner paid shall be due and payable on ...
LINE OF CREDIT: The principal amount outstanding under this ... Revolving ... Non-Revolving Line of Credit is due on April 16, 2010, with interest thereon payable Monthly beginning May 16, 2009. The line of credit shall not exceed \$2,000,000.00.

OTHER

- MONETARY: Renewal/Modification fee in the amount of \$1,000.00 due at signing. Current interest in the amount of \$5,930.89 due at signing. ... in the amount of ... due at signing.

- RATE: Interest accrual on the unpaid balance will be calculated at ... a fixed rate of ... % per annum. ... a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 5.50%. The new interest rate ceiling will be N/A%.

LATE CHARGES: If Payment is 10 days or more late. Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

DEFAULT RATE OF INTEREST: In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is One Million Five Hundred Fifty Thousand Dollars AND 00/100 (\$1,550,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 23rd day of April, 2009.

Witness signature line

Witness

Atlantic Private Equity Group LLC
By New Colony Holdings Corporation - Member

BY: Terry L. Rohlfing, President

BY: _____

Witness signature line

Witness

COMMUNITY FIRSTBANK

BY: David Morrow, Chief Policy Officer

Exhibit 5



LOAN MODIFICATION AGREEMENT

WHEREAS, COMMUNITY FIRSTBANK loaned Two Million Dollars and no/100 (\$2,000,000.00) to ATLANTIC PRIVATE EQUITY GROUP LLC, evidenced by its Loan No. 145003387 and the original note executed and delivered dated March 27, 2008, including but not limited to any modifications, substitutions and/or renewals, which note hereby referred to as a part of this instrument, and

WHEREAS, the undersigned parties agree to modify the original note as follows (change only applies if block is checked):

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- TIME: The principal amount of the Note is payable in full on ... with interest thereon payable beginning
INSTALLMENT: In 59 consecutive Monthly payments of \$14,468.86 including interest plus interest beginning July 09, 2010. All principal and interest if not sooner paid shall be due and payable on June 09, 2015.
LINE OF CREDIT: The principal amount outstanding under this Revolving Non-Revolving Line of Credit is due on with interest thereon payable beginning. The line of credit shall not exceed.
OTHER:
MONETARY: Renewal/Modification fee in the amount of \$1,000.00 due at signing. Current interest in the amount of \$8,246.72 due at signing.
RATE: Interest accrual on the unpaid balance will be calculated at a fixed rate of % per annum. a variable rate of Community FirstBank Prime plus .50%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that the prime rate changes. The new interest rate floor will be 6.00%. The new interest rate ceiling will be N/A%.

LATE CHARGES: If Payment is 10 days or more late, Borrower will be charged 5.00% of the unpaid portion of the the payment amount or \$25.00, whichever is greater.

DEFAULT RATE OF INTEREST: In the event of default under any of the loan documents, interest shall begin accruing at the current note rate plus five percent (5%) per annum.

EXCEPT as specifically modified herein, the provisions of all loan documents on Loan Number 145003387 shall remain the same.

THEREFORE, it is hereby agreed that the unpaid balance of said indebtedness upon the date of this Agreement is Two Million Dollars AND 00/100 (\$2,000,000.00).

THE terms of all Loan Documents on Loan Number 145003387 as herein modified are binding on the Parties, their heirs, successors, and assigns. It is specifically agreed and understood by the Parties hereto that this Modification is not intended to be and is not a novation and that any attempt to so construe the Modification as such would be contrary to the express intent of the Parties.

SIGNED, SEALED AND DELIVERED this 24th day of May, 2010.

Witness signature line for Robert L. Tennyson

Atlantic Private Equity Group LLC By New Colony Holdings Corporation - Member

BY: Terry L Rohlfing, President

Witness signature line

BY: signature line

Witness signature line for Robert Tennyson

COMMUNITY FIRSTBANK BY: Robert Tennyson, Vice President

Exhibit 6

BEAUFORT COUNTY SC - ROD
BK 03176 PGS 2243-2244
FILE NUM 2012055876
09/24/2012 12:16:19 PM
REC'D BY P BAXLEY RCPT# 689277
RECORDING FEES 7.00

2/7 PB
Bird
14205

S. Bird @,
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

**PARTIAL RELEASE
OF MORTGAGE and ASSIGNMENT OF LEASES, RENTS & PROFITS**

KNOW ALL MEN that CresCom Bank, successor by merger to Community First Bank, owner of the Mortgage and Assignment of Leases, Rents and Profits hereinafter referred to, for and in consideration of good and valuable consideration, receipt of which is hereby acknowledged, does forever discharge and release that certain tract of land described as follows, to wit:

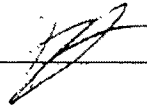
All that certain piece, parcel or lot of land lying and being in Hampton Lake, Beaufort County, South Carolina, being shown and described as Lot 117; said property having dimensions, metes and bounds as shown on the Plat entitled "A Plat of Hampton Lake Phase 1 Lots, Beaufort County, South Carolina", said plat being dated October 31, 2005, last revised March 24, 2006, said plat prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, and recorded in the Beaufort County Records in Plat Book 112 at Page 106. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

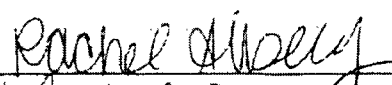
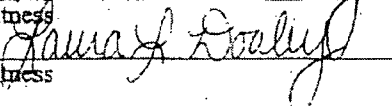
from all claims and liens under that certain Mortgage dated 3/27/08, from Atlantic Private Equity Group, LLC, as Mortgagor, to CresCom Bank, successor by merger to Community First Bank, as Mortgagee, and recorded in the Office of the Clerk of Court for Beaufort County in Mortgage Book 2701 at Page 632 and Assignment of Leases, Rents and Profits recorded in Book 2701 at Page 641, Beaufort County Records.

IN ALL OTHER RESPECTS, the aforesaid Mortgage shall remain in full force and effect.

IN WITNESS WHEREOF, CresCom Bank, successor by merger to Community First Bank has caused these presents to be executed this 30 day of August, 2012.

CresCom Bank, successor by merger to Community First Bank

By: 

2 Rachel 
Witness
3 
Witness

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that JAMIN M. HUJIK, as the duly authorized officer of CresCom Bank, successor by merger to Community First Bank by and on behalf of the Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30 day of August, 2012.

H Rachel Hisey
Notary Public for SOUTH CAROLINA

My commission expires: 01-18-2021

Exhibit 7

This document confirms the assignment that was made as of September 28, 2012. This documents is dated September 28, 2012.

CresCom Bank, successor by merger to
Community FirstBank

Witness:

Rachel A. Oberly
Laura J. Koehler

By: [Signature]
Jamin M. Hujik
Its: Executive Vice President

STATE OF SOUTH CAROLINA §
 §
COUNTY OF CHARLESTON §

This instrument was acknowledged before me on this 4 day of October, 2012, by Jamin M. Hujik, well known to be the Executive Vice President of CresCom Bank, successor by merger to Community FirstBank, and who executed the foregoing instrument, and he acknowledge to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

Rachel A. Oberly
Notary Public State of South Carolina
Print Name Rachel A. Oberly
My Commission Expires: 01-18-2021

Exhibit A

ALL that certain piece, and parcel of real property, containing 0.11 acres, more or less, said property being a portion of Phase ID of Bluffton Village Town Center, in the Town of Bluffton, County of Beaufort, South Carolina, being more specifically shown and designated as Lot 20 on a plat entitled "A Boundary Survey of Lot 20, Palmetto Way, Bluffton Village, Phase ID," said plat being prepared by Ward Edwards, Inc., certified by Donald R. Cook, Jr., S.C.P.L.S. No. 19010, dated September 2, 2004, and recorded September 16, 2004, in the Beaufort County Records in Plat Book 101 at Page 107.

This being the same property conveyed to Atlantic Private Equity Group, LLC by Deed recorded in Book 2031 at Page 992, Beaufort County Records.

Page 4 of 4

Book3181/Page260

STATE OF SOUTH CAROLINA)
13 JUN 21 PM 1:15)
COUNTY OF BEAUFORT)

JEROME F. BUCKHEAU)
DEEP KIBEL, LLC, COUNTY, S.C.)
CLERK OF COURT)
Plaintiff,)

v.)

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL, AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2011-CP-07-1933

NOTICE OF FORECLOSURE HEARING

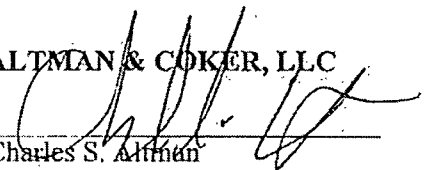
TO THE ABOVE NAMED PARTIES:

A foreclosure hearing has been scheduled in the above-captioned matter for July 10, 2013, at 11:00 a.m. at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina, in Courtroom 212, before the Honorable Marvin H. Dukes, III., the Master in Equity for Beaufort County.

Pursuant to S.C. Code § 14-11-110, Plaintiff intends to submit written testimony on its behalf and will make appropriate application to the Master in Equity for Beaufort County. Please accept this Notice of Foreclosure Hearing as notice of such application. Any objection to written testimony must be made to Plaintiff's attorney at least seventy-two (72) hours prior to the scheduled hearing.

You are requested to notify Plaintiff's attorney at least seventy-two (72) hours prior to the scheduling hearing, if you intend to appear.

ALTMAN & COKER, LLC


Charles S. Altman
caltman@altmancoker.com

Meredith L. Coker
575 King Street, Suite A
Charleston, South Carolina 29403
Tel: (843) 853-9907
Fax: (843) 853-9838
Attorney for Plaintiff

June 19th, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
DEEP KEEL, LLC,)
Plaintiff,)
vs.)
ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-1933

**DEFENDANTS ATLANTIC PRIVATE
EQUITY GROUP, LLC, TERRY L.
ROHLFING AND JERRY T. CALDWELL'S
MOTION TO RECONSIDER MASTER'S
REPORT AND JUDGMENT OF
FORECLOSURE AND SALE**

2013 AUG 13 PM 12:45
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfing and Jerry T. Caldwell, pursuant to Rules 59 and 60, SCRCP, move for an order reconsidering, altering and/or amending the Master's Report and Judgment of Foreclosure and Sale, entered on July 29, 2013, written notice of which was received by the undersigned on August 5, 2013, in the following respects on the grounds stated:

In its order the Court recites its having received testimony submitted under SC Code §14-11-110 and indicated "there were no objections." This is incorrect inasmuch as Defendants repeatedly objected to testimony and exhibits offered on behalf of Plaintiff on various grounds.

The referenced statute provides:

The master shall, upon the application of either party to any cause or proceedings in which equitable relief is demanded pending and at issue in his county, take in writing the testimony of any witness who may be produced before him by any party to the cause, ten days' notice of such application having been given to the opposite party. Such witness shall be subject to the same examination, cross-examination and reply and the same exceptions as to the

admissibility of testimony may be taken as are allowed by law upon examination before the court except that in case any testimony be objected to the master shall receive the same subject to the exceptions, reporting the exceptions and his ruling thereon.


As the Court will recall, Defendants objected to the written submission offered by Plaintiff and in light thereof, the Court took testimony from Scott Bynum, the sole member of the limited liability company plaintiff.

In summary, Defendants objected to Mr. Bynum's testimony concerning the alleged execution and delivery of various documents, including the note, mortgage, and guarantees sued upon, as well as other loan documents referenced in the order. Mr. Bynum lacked personal knowledge of the execution or delivery of these documents by Defendants and was otherwise incompetent to lay a sufficient foundation for the introduction of the alleged loan documents into evidence. Similarly, Mr. Bynum's testimony concerning sums allegedly due under the loan was based entirely on his review of documents prepared and maintained by another party, the lender from whom he acquired the loan documents by assignment. This testimony was hearsay and should have been excluded. As Defendants established at the hearing, none of the documents or records about which Mr. Bynum was permitted to testify or which Plaintiff was permitted to introduce into evidence, constituted records of regularly conducted activity of Plaintiff. The only facts of which the witness had personal knowledge included his purchase of and subsequent receipt of the loan documents from the assignor bank. The Court erred, it is respectfully submitted, in accepting proof of the alleged debt through this witness.

Rule 71(a) provides that "[i]n all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due." Witnesses offered by plaintiffs in foreclosure cases "shall be subject to the same examination, cross-examination and reply and the same exceptions as to the admissibility of testimony may be taken as are allowed by law upon examination before the court." §14-11-110,

S.C. Code Anno. Accordingly, Defendants are entitled to require that Plaintiff prove, by competent, admissible evidence, the allegations set forth in the Complaint. Plaintiff did not meet its burden in this regard. Moreover, once Defendants objected to Plaintiff's purported proofs, the Court was required to "receive the same subject to the exceptions, reporting the exceptions and his ruling thereon." The Court's order here omits any reference to Defendants' evidentiary objections and exceptions or to any rulings made in regard thereto.

Defendants respectfully submit that the following Findings of Fact enumerated in the order, and any Conclusions of Law based thereon, should be altered, amended, and vacated as without evidentiary support: 15, 16, 17, 18, 19, 20, 21, 22, 25 (except so much as refers to Plaintiff's election to accelerate and the retention of counsel, as to which Mr. Bynum was competent to testify), and 27.



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Attorney for Defendants
Atlantic Private Equity Group, LLC, Terry L.
Rohlfing and Jerry T. Caldwell

August 12, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 DEEP KEEL, LLC,)
)
 Plaintiff,)
)
 v.)
)
 ATLANTIC PRIVATE EQUITY)
 GROUP, LLC, TERRY L.)
 ROHLFING, JERRY T.)
 CALDWELL, AND BLUFFTON)
 VILLAGE TOWN CENTER)
 PROPERTY OWNERS')
 ASSOCIATION, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2011-CP-07-193

13 AUG 22 PM 1:32
 JUDITH ANN MOSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'
 MOTION TO RECONSIDER MASTER'S REPORT AND JUDGMENT
 OF FORECLOSURE AND SALE**

The Plaintiff, Deep Keel, LLC, submits this Memorandum in opposition to the assertions raised by the Defendants in their August 12, 2013, Motion to Reconsider Master's Report and Judgment of Foreclosure and Sale ("Motion"). Pursuant to South Carolina law, the factual testimony of Scott Bynum concerning the alleged execution and delivery of various loan documents was proper and admissible. Further, the Defendants did not provide any testimony that challenged or contested Mr. Bynum's testimony.

- I. The testimony of Scott Bynum was proper and admissible pursuant to the business records exception to the hearsay rule.

The testimony of Mr. Bynum was proper and admissible under the business records exception to the hearsay rule. The business records exception is found in both the South Carolina Code at §

19-5-510 and Rule 803(6) of the South Carolina Rules of Evidence. Both versions of the exception require that testimony be given by a "custodian or other qualified witness," and Rule 803(6) specifically provides any "subjective opinions and judgments found in business records are not admissible." Mr. Bynum was a qualified witness because the testimony he provided directly related to documents contained in the loan file maintained by Deep Keel, LLC, and Mr. Bynum's testimony as a person "with knowledge" of the documents in the loan file was expressly allowed by Rule 803(6). Further, all of Mr. Bynum's testimony was factual and did not involve subjective opinions. Therefore, pursuant to the business records exception, Mr. Bynum's testimony regarding the loan records was proper as an exception to the hearsay rule.

In a case involving facts similar to this action, the South Carolina Court of Appeals allowed testimony of an assignee of a note pursuant to the business records exception in Twelfth RMA Partners, L.P. v. Nat'l Safe Corp., 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999) (attached hereto as Exhibit A). In that case, the plaintiff/assignee was the holder of a loan obtained through an assignment and sued the defendants for the balance on the note. Id. at 638, 518 S.E.2d at 45. During trial, the master allowed testimony by the plaintiff/assignee regarding the assigned loan records over objection by the defendants that the testimony was hearsay. Id., 518 S.E.2d at 46. On appeal, the Court of Appeals held that the master did not err in allowing the testimony of the plaintiff/assignee based on the business records exception to the hearsay rule. Id. at 642, 518 S.E.2d at 48. The court explained:

The [defendants] argue, however, that [plaintiff] was not the custodian "at or near the time" the records were made. Here, [plaintiff's] testimony merely conveyed information from a person "with knowledge" at the time the records were created, a situation expressly allowed under Rule 803(6).

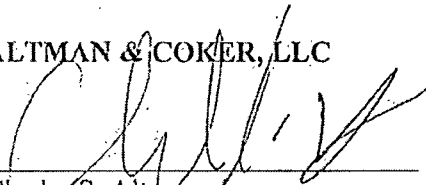
Id.

The same reasoning as Twelfth RMA Partners, L.P. applies to the present action. Deep Keel, LLC, purchased the subject loan and through an assignment was the holder of the note. Mr. Bynum merely testified to information in the loan file that was recorded by a person "with knowledge" at the time the loan records were created. Therefore, following Twelfth RMA Partners, L.P., Mr. Bynum's testimony was properly allowed by the Master under the business records exception.

CONCLUSION

For the reasons described herein, Deep Keel, LLC, respectfully moves this Court for an order denying Defendants' Motion.

ALTMAN & COKER, LLC



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Attorney for Plaintiff

August 19, 2013

335 S.C. 635

Court of Appeals of South Carolina.

TWELFTH RMA PARTNERS, L.P.; Respondent,
v.
NATIONAL SAFE CORPORATION, Barbara B.
Smith and Roy W. Smith, Appellants.

No. 2991. | Submitted April 13, 1999. | Decided May
10, 1999.

Holder of promissory note and guarantee acquired through assignment by the Resolution Trust Corporation (RTC) sued guarantors for balance due on note. The Circuit Court, Lexington County, George W. Jefferson, Master-in-Equity, entered judgment for holder, and guarantors appealed. The Court of Appeals, Goolsby, J., held that: (1) right to sue under six-year statute of limitations found in the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) is available to assignees of RTC; (2) laches did not bar holder from suing under six-year statute of limitations under FIRREA; (3) guarantors were not prejudiced by amendment of complaint to change name of holder; and (4) testimony of witness for holder was admissible under business records exception to hearsay rule.

Affirmed.

West Headnotes (11)

- [1] **Appeal and Error**
⇨ Trial by Referee
Appeal and Error
⇨ Sufficiency of Evidence in Support

In action at law referred to master-in-equity, the appellate court will correct any errors of law, but it must affirm the master's factual findings unless no evidence exists that reasonably supports those findings.

1 Cases that cite this headnote

- [2] **Banks and Banking**

⇨ Actions

Right to sue under six-year statute of limitations found in the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) is not personal to the Resolution Trust Corporation (RTC), but is available to all assignees or transferees of the RTC. Federal Deposit Insurance Act, § 2[11](d)(14)(A), 12 U.S.C.A. § 1821(d)(14)(A).

1 Cases that cite this headnote

- [3] **Assignments**
⇨ Nature and Extent of Rights of Assignee in General

An assignee stands in the shoes of its assignor.

9 Cases that cite this headnote

- [4] **Assignments**
⇨ Nature and Extent of Rights of Assignee in General

When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor.

7 Cases that cite this headnote

- [5] **Banks and Banking**
⇨ Actions

Laches did not bar holder of promissory note and guarantee acquired through assignment by the Resolution Trust Corporation (RTC) from suing guarantors for balance due on note under six-year statute of limitations under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), where action was commenced within six-year limitation period. Federal Deposit Insurance Act, §

2[11](d)(14)(A), 12 U.S.C.A. § 1821(d)(14)(A).

1 Cases that cite this headnote

3 Cases that cite this headnote

[6]

Equity

↔Prejudice from Delay in General

Laches is an equitable doctrine consisting of the elements of a delay that is unreasonable and that causes prejudice.

2 Cases that cite this headnote

[10]

Appeal and Error

↔Objections to Evidence and Witnesses

Whether trial court erred in admitting unsworn testimony of witness for holder of promissory note and guarantee was not preserved for review, in action brought by holder against guarantors for balance due on note, absent objection to testimony on that ground by guarantors at trial.

[7]

Equity

↔Delay Short of Statutory Period

Laches within the period of the statute of limitations is no defense at law.

2 Cases that cite this headnote

[11]

Evidence

↔Form and Sufficiency in General

That witness for holder of promissory note and guarantee was not the custodian of holder's records at or near the time the records were made did not preclude admission of her testimony under the business records exception to hearsay rule, in holder's action against guarantors to recover balance due on note, where witness' testimony conveyed information from a person with knowledge at the time the records were created. Code 1976, § 19-5-510; Rules of Evid., Rule 803(c).

[8]

Bills and Notes

↔Amended and Supplemental Pleadings

Guarantors of promissory note were not prejudiced by amendment of complaint to change name of holder of promissory note and guarantee, in holder's action to recover balance due under note, where amendment added no new claims against guarantors. Rules Civ.Proc., Rule 15.

Attorneys and Law Firms

**45. *637 S. Jahue Moore, of Kirkland, Wilson, Moore, Taylor & O'Day, of West Columbia, for appellants.

F. Xavier Starkes and William T. Toal, both of Johnson, Toal & Battiste, of Columbia, for respondent.

[9]

Pleading

↔Discretion of Court

Pleading

↔Affidavits and Other Proofs

A motion to amend complaint is within the sound discretion of the trial judge, and the opposing party has the burden of establishing prejudice. Rules Civ.Proc., Rule 15.

Opinion

GOOLSBY, Judge:

This is a collection case that was referred to the

master-in-equity for final order with direct appeal to the supreme court. The master found that Roy Smith and Barbara Smith defaulted on a note held by Twelfth RMA Partners, L.P. The master awarded Twelfth \$1,002,421.86 in damages, including attorney fees. The Smiths appeal the decision. We affirm.¹

*638 FACTS

National Safe Corporation borrowed \$300,000.00 and \$200,000.00 from Pioneer Savings Bank (Pioneer). Pioneer combined these two notes and formed a renewal line of credit for \$500,000.00. Mr. Smith signed the note as president of National Safe Corporation. Mr. and Mrs. Smith each signed an unconditional Guarantee of Payment and Performance that guaranteed payment of the note. Shortly thereafter, the United States government closed Pioneer as a result of the savings and loan crisis and appointed the Resolution Trust Corporation (RTC) as receiver. RTC then assigned the note and guarantee to Twelfth on November 15, 1994. National Safe Company filed for bankruptcy in December, 1996.

R.M.A. Partners, L.P., sued the Smiths for the balance on the notes in June, 1995. R.M.A. Partners filed a motion for summary judgment, but the master denied it because of uncertainty as to the identity of the proper plaintiff. The master heard the case on August 13, 1997. On the day of trial, R.M.A. **46 Partners made a motion to substitute Twelfth R.M.A. Partners, L.P., (Twelfth) as the appropriate plaintiff. The master granted this motion over the Smiths' objection.

During the trial, the master allowed the testimony of Judy Every, a portfolio manager with Twelfth, over the Smiths' objection that her testimony was hearsay. The master found that the Smiths had defaulted on the loan, that Twelfth was the holder of the note, and that the Smiths owed \$484,010.27 in principal, \$10,798.00 in late charges, \$504,113.59 in interest, and \$3,500.00 in attorney fees. The Smiths appeal.

ISSUES ON APPEAL

(1) Is the lawsuit barred by South Carolina's three-year statute of limitations, or does the federal six-year statute of limitations apply?

(2) Is the lawsuit barred by the equitable

doctrine of laches?

(3) Did the substitution of Twelfth as plaintiff on the day of trial unduly prejudice the Smiths?

(4) Did the master err in allowing the testimony of Judy Ray Every?

*639 STANDARD OF REVIEW

¹¹ This case is an action at law that was referred to the master-in-equity with direct appeal to the supreme court. The appellate court will correct any errors of law, but it must affirm the master's factual findings unless no evidence exists that reasonably supports those findings. *Jefferies v. Phillips*, 316 S.C. 523, 451 S.E.2d 21 (Ct.App.1994).

DISCUSSION

(1) Statute of Limitations

¹² The Smiths argue the master incorrectly applied the six-year statute of limitations found in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 1821(d)(14), instead of applying the South Carolina three-year statute of limitations. S.C.Code Ann. § 15-3-530 (Supp.1997). We disagree.

The relevant language in the FIRREA is found in 12 U.S.C. § 1821(d)(14)(A):

(1) Statute of limitations for actions brought by conservator or receiver:

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation [i.e., the FDIC] as conservator or receiver shall be-

(i) in the case of any contract claim, the longer of-

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under state law.

The statute mentions "the Corporation," which has been defined in the statute as the FDIC. FIRREA gives the RTC the same rights and powers as the FDIC. 12 U.S.C.A. § 1441a(b)(4)(A). The statute, however, is silent as to its applicability to the assignees of the RTC. The Smiths argue that this silence means the court must apply the three-year statute of limitations. Twelfth argues that the law of assignments, or alternatively, the UCC, should determine which statute applies.

¹³ ¹⁴ In South Carolina, it is well established that an "assignee ... stands in the shoes of its assignor ..." *Singletary*, *640 v. *Aetna Cas. & Sur. Co.*, 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct.App.1994). When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor. Under the UCC in South Carolina, a "[t]ransfer of an instrument vests in the transferee such rights as the transferor has therein." S.C.Code Ann. § 36-3-201 (1976).

The Smiths argue that the right in question, the RTC's right to sue under the six year statute of limitations, would not transfer to Twelfth. They cite *Wamco, III, Ltd. v. First Piedmont Mortg. Corp.*, 856 F.Supp. 1076 (E.D.Va.1994) for the proposition that the statute confers a personal benefit, or right, onto the RTC that would not transfer to an assignee.

**47 *Wamco*, however, is against the weight of authorities, as the case itself points out. Also, the Virginia Supreme Court refused to follow the *Wamco* decision and held that the right to sue under the six-year statute of limitations is not a personal benefit or right. The court further stated "the receiver's right to sue within the statute of limitations period is inherent in its possession of the instruments at issue and would thus be among the 'rights, remedies and benefits which are incidental to the thing assigned,' and not merely a right 'personal to the assignor and for [its] benefit only.'" *Union Recovery Ltd. Partnership v. Horton*, 252 Va. 418, 477 S.E.2d 521, 524 (1996).

The majority of state and federal courts have interpreted the federal statute to grant to the assignee a six-year statute of limitations. See, e.g., *FDIC v. Bledsoe*, 989 F.2d 805 (5th Cir.1993); *N.S.Q. Associates v. Beychok*, 659 So.2d 729 (La.1995); *Tivoli Ventures, Inc. v. Bumann*, 870 P.2d 1244 (Colo.1994) (en banc); *Investment Co. of the Southwest v. Reese*, 117 N.M. 655, 875 P.2d 1086 (1994); *Jackson v. Thweatt*, 883 S.W.2d 171 (Tex.1994).

We agree that the right to sue under the six-year statute of

limitations is not personal to the RTC, but is available to all assignees or transferees of the RTC. The claim brought by Twelfth, therefore, is not barred by the statute of limitations.

(2) Laches

¹⁵ ¹⁶ ¹⁷ The Smiths next argue that laches should bar Twelfth from using the extended federal statute of limitations. *641 We disagree. Laches is an equitable doctrine consisting of the elements of (1) a delay (2) that is unreasonable and (3) that causes prejudice. *Terry v. Lee*, 314 S.C. 420, 445 S.E.2d 435 (1994). Laches within the period of the statute of limitations is no defense at law. *Crotwell v. Whitney*, 229 S.C. 213, 92 S.E.2d 473 (1956) (citations omitted). We conclude the Smiths have not shown the requisite unreasonable delay since the action was within the statute of limitations period.

(3) Substitution of Plaintiff

¹⁸ The Smiths next argue that the substitution of Twelfth RMA Partners, L.P., for RMA Partners, L.P., unduly prejudiced them. We disagree.

¹⁹ Rule 15, SCRCP, provides that the complaint may only be amended by leave of the court and "leave to amend shall be freely given when justice requires and does not prejudice any other party." A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

The Smiths rely on *Valentine v. Davis*, 319 S.C. 169, 460 S.E.2d 218 (Ct.App.1995) for the proposition that a plaintiff may not add a new plaintiff to a case to assert a claim against the defendant. In this case, however, no new claims are being added. The court is only changing the name of the plaintiff. The subject of the claim, the underlying note on which the Smiths defaulted, is still the same.

The Smiths also argue that the case was not brought in the name of the real party in interest and should be dismissed under Rule 17, SCRCP. The Smiths have not shown any prejudice. The trial court substituted the real party in interest, as Rule 17, SCRCP, expressly allows.

(4) Ms. Every's Testimony

^[10] Finally, the Smiths argue that the master should not have allowed the testimony of Judy Every. We disagree.

First, they base this argument on the fact that she did not take an oath prior to giving the testimony. The record shows that no oath was given prior to Every's testimony. The record also shows, however, that the Smiths did not object. *642 "The admission of unsworn testimony in a case is a mere irregularity which violates no constitutional provision, and does not affect the jurisdiction of the tribunal, and if unsworn testimony is received into evidence without objection, it may be considered the same as any other evidence in the case." 98 C.J.S. *Witnesses* § 320, at 22 (1957).

**48 ^[11] The Smiths also argue that the master erred in allowing the testimony because it was hearsay. We disagree.

The master allowed the testimony under the business records exception to the hearsay rule. The business records exception is found in both the South Carolina Code at § 19-5-510 (1985) and Rule 803(6) of the South

Carolina Rules of Evidence. Both exceptions require that the evidence be given by a "custodian or other qualified witness." Ms. Every testified that the records about which she testified were part of her file that she maintained in Twelfth's regular course of business.

The Smiths argue, however, that she was not the custodian "at or near the time" the records were made. Here, Ms. Every's testimony merely conveyed information from a person "with knowledge" at the time the records were created, a situation expressly allowed under Rule 803(6).

AFFIRMED.

HOWELL, C.J., and CONNOR, J., concur.

Parallel Citations

518 S.E.2d 44

Footnotes

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 07 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2013-002281

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfing,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

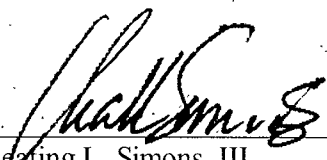
Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfing, and Jerry T. Caldwell are the

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies in accordance with Rule 210(g), SCACR, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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ATTORNEYS FOR APPELLANTS

April 21, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

Case No. 2013-002281

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfing,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfing, and Jerry T. Caldwell are the

Appellants.

PROOF OF SERVICE

I, Debra Y. Coffey, a paralegal with the Law Offices of Simons & Dean, do hereby certify that I have served counsel in this action with a copy of the foregoing Record on Appeal to the Respondent upon the below named by mailing a copy of same via U.S. Mail, postage prepaid, and properly addressed as follows:

RECEIVED
JUL 07 2014
SC Court of Appeals

Meredith Coker, Esquire
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403
Attorneys for Respondent

This 3rd day of July, 2014.

LAW OFFICES OF SIMONS & DEAN

BY:



Debra Y. Coffey, Paralegal