

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

22284

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

J. C. Nicholson, Jr., Circuit Court Judge

DEC 14 2015

SC Court of Appeals

Appellate Case No.: 2015-001149

PNC Bank, N.A., successor to RBC Bank (USA),

Respondent,

v.

Liberty Cottages, LLC; GW Dorchester, LLC;
USS Clarksville, LLC; Liberty Cottages Land, LLC;
Royal Beach Properties, LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G. Rice-Marko;
Evan R. Marko and John E. Marko, Jr.,

Appellants.

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138. In consideration of the above referenced Royal Note, the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Royal Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit K.

139. As further consideration for the Royal Note, Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. agreed to pay all costs of collection, including reasonable attorney's fees.

140. Plaintiff has declared the entire balance of the Royal Note and Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. have refused to pay, and therefore is in default under the terms of the Continuing Guaranty Agreement.

141. There is due and unpaid on the Royal Note and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of Three Million One Hundred Seventy Thousand Twenty and 00/100 (\$3,170,020.00) Dollars, plus interest in the amount of Four Hundred Seventy-Five Thousand Twenty-Eight and 25/100 (\$475,028.25) Dollars and late fees in the amount of Two Thousand Nine Hundred Sixty-Three and 91/100 (\$2,963.91) Dollars. Demand has been made upon Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. to pay said amounts but

said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Three Million Six Hundred Forty-Eight Thousand Twelve and 16/100 (\$3,648,012.16) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Royal Note.

142. Plaintiff hereby expressly seeks a judgment against the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr., pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Royal Note and Continuing Guaranty Agreement in the amount of Three Million Six Hundred Forty-Eight Thousand Twelve and 16/100 (\$3,648,012.16) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action.

143. The judgment entered against Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A FIFTEENTH CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower – Brothers Note #1)

144. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

145. On or about August 7, 2001, the Defendant The Brothers of NC, LLC for value received, executed and delivered to Centura Bank a promissory note in the principal sum of One Million, One Hundred Thousand and no/100 (\$1,100,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by

reference thereto (the "Brothers Note #1"). A copy of said Note is attached hereto as Exhibit NN and incorporated herein by reference.

146. Brothers Note #1 is secured by that certain Mortgage and Security Agreement, executed by The Brothers of NC, LLC, recorded on August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Horry County.

147. On August 3, 2004, The Brothers of NC, LLC filed Articles of Merger with the South Carolina Secretary of State in which The Brothers of NC, LLC merged with The Brothers of SC, LLC. The Articles of Merger were filed with the ROD Office for Horry County on September 18, 2007 in Book 3277 at Page 724. A copy of said Articles of Merger are attached hereto as Exhibit OO and incorporated herein by reference.

148. The Brothers Note #1 was thereafter modified from time to time by the parties pursuant to certain note amendment agreements, with the last note amendment agreement dated July 15, 2011 in the amount of One Million Eighty-Seven Thousand Four Hundred Ninety-Five and 68/100 (\$1,087,495.68) Dollars ("Brothers Amended Note #1"). Brothers Amended Note #1 added the following mortgages as security for Brothers Note #1:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- b) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the Clerk of Court for Florence County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.

- d) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.

A true and correct copy of the Brothers Amended Note #1 is attached hereto as Exhibit PP and incorporated herein by reference. The Brothers Note #1 and Brothers Amended Note #1 are collectively referred to as the "Brothers Note #1."

149. Subsequently, The Brothers of SC, LLC sold the real property covered by the Mortgage and Security Agreement, executed by The Brothers of NC, LLC, recorded on August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Horry County, as evidenced by the deed recorded August 12, 2011 in Book 3535 at Page 621 in the Office of the ROD for Horry County. The consideration paid for the purchase of that property to The Brothers of SC, LLC was applied to the balance of Brothers Note #1 and that real property will not be foreclosed.

150. The Defendant has defaulted in the payment of the Brothers Note #1 given to Plaintiff by failing to pay Plaintiff, on demand, the remaining principal and interest due under said document after application of the sale proceeds, and all interest due thereon. Said Defendant is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

151. There is remaining due and unpaid on Brothers Note #1 as of April 8, 2013, the principal sum of Two Hundred Fifty-Nine Thousand Nine Hundred Five and 43/100 (\$259,905.43) Dollars, plus interest in the amount of Twenty Thousand Nine Hundred Fourteen and 16/100 (\$20,914.16) Dollars and late fees in the amount of Two Thousand Three Hundred Nine and 90/100 (\$2,309.90) Dollars.

Demand has been made upon the Defendant The Brothers of SC, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #1.

152. Plaintiff hereby expressly seeks a judgment against the Defendant The Brothers of SC, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Note in the amount of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #1.

153. The Plaintiff also hereby expressly seeks the foreclosure and sale of Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR A SIXTEENTH CAUSE OF ACTION
(Judgment on Guaranty – Continuing Guaranty Agreement)

154. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

155. In consideration of the above referenced Brothers Note #1, the Defendant, John Edward Marko, Jr., executed an Unconditional Guaranty Agreement dated December 28, 2001 whereby he individually, jointly and severally, absolutely and unconditionally guaranteed the payment of Brothers Note #1 to Plaintiff and all extensions and renewals thereof. A true and correct copy of Unconditional Guaranty Agreement is attached hereto as Exhibit QQ and is incorporated herein by reference.

156. In consideration of the above referenced Brothers Note #1, the Defendants, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of Brothers Note #1 to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Continuing Guaranty Agreement is previously attached hereto as Exhibit K.

157. As further consideration for Brothers Note #1, Defendants, John E. Marko, Jr. and Evan R. Marko, agreed to pay all costs of collection, including reasonable attorney's fees.

158. Plaintiff has declared the entire balance of Brothers Note #1 and the Continuing Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants have refused to pay, and therefore are in default under the terms of the Continuing Guaranty Agreement.

159. There is due and unpaid on Brothers Note #1 and Continuing Guaranty Agreement, as of April 8, 2013, the principal sum of Two Hundred Fifty-Nine Thousand Nine Hundred Five and 43/100 (\$259,905.43) Dollars, plus interest in the amount of Twenty Thousand Nine Hundred Fourteen and 16/100 (\$20,914.16)

Dollars and late fees in the amount of Two Thousand Three Hundred Nine and 90/100 (\$2,309.90) Dollars. Demand has been made upon Defendants John E. Marko, Jr. and Evan R. Marko to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to Brothers Note #1.

160. Plaintiff hereby expressly seeks a judgment against the Defendants John E. Marko, Jr. and Evan R. Marko pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under Brothers Note #1 and the Continuing Guaranty Agreement in the amount of Two Hundred Eighty-Three Thousand One Hundred Twenty-Nine and 49/100 (\$283,129.49) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against the Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A SEVENTEENTH CAUSE OF ACTION
(Foreclosure of Property and Judgment as to the Borrower – Dorchester Note)

161. Each and every allegation in the above-numbered paragraphs is repeated and incorporated herein as if stated verbatim.

162. On or about November 18, 2005, Evelyn D. Rice for value received, executed and delivered to RBC Centura Bank a commercial promissory note

in the principal sum of Two Million, Three Hundred Fifty Thousand and no/100 (\$2,350,000.00) Dollars, with interest thereon, the terms of which note are more fully explained by reference thereto (the "Dorchester Note"). A copy of said Dorchester Note is attached hereto as Exhibit RR and incorporated herein by reference.

163. The Dorchester Note is secured by that certain Mortgage, Assignment of Rents and Security Agreement, executed by Evelyn D. Rice, dated November 18, 2005, and recorded in the Office of the RMC for Dorchester County on November 23, 2005, in Mortgage Book 5046 at Page 49 and Assignment of Leases, Rents and Profits dated July 15, 2011, and recorded in the Office of the ROD for Dorchester County on July 29, 2011 in Book 7961 at Page 1.

164. On or about August 30, 2006, the Evelyn D. Rice executed an Assignment and Assumption Agreement, recorded in the RMC Office for Charleston County on January 26, 2007 in Book 5822 at Page 233, in which GW Dorchester, LLC assumed the Dorchester Note and all subsequent modifications. The terms of the Assignment and Assumption Agreement are more fully explained by reference thereto. A copy of said Assignment and Assumption Agreement is attached hereto as Exhibit SS and incorporated herein by reference.

165. The Dorchester Note was thereafter amended by the parties pursuant to that Amended and Restated Promissory Note dated July 15, 2011 in the amount of Two Million Three Hundred Twenty-Seven Thousand Five Hundred and 00/100 (\$2,327,500.00) Dollars ("Dorchester Amended Note"). Dorchester Amended Note added the following mortgages as security for the Dorchester Note:

- a) Mortgage, Assignment of Rents and Security Agreement, executed by ROA, LLC, recorded November 14, 2007 in Book A644 at Page 387 in the Office of the RMC for Charleston County.
- b) Mortgage, executed by Deborah Rice-Marko, recorded May 23, 2000 in Book A348 at Page 632 in the Office of the RMC for Charleston County.
- c) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the RMC for Florence County.
- d) Mortgage, Assignment of Rents and Security Agreement, executed by GW Dorchester, LLC, recorded November 23, 2005 in Book 5046 at Page 49 in the Office of the ROD for Dorchester County.
- e) Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded August 9, 2001 in Book 2778 at Page 676 in the Office of the ROD for Florence County.

A true and correct copy of the Dorchester Amended Note is attached hereto as Exhibit TT and incorporated herein by reference. The Dorchester Note and Dorchester Amended Note are collectively referred to as the "Dorchester Note."

166. The Mortgage, Assignment of Rents and Security Agreement, executed by The Brothers of SC, LLC, recorded October 12, 2007 in Book B139 at Page 715 in the Office of the ROD for Florence County, is to be foreclosed herein as set forth in the First Cause of Action. The other mortgages securing the Dorchester Note are the subject of related foreclosure actions filed contemporaneously herewith in Charleston and Dorchester Counties.

167. The Defendant GW Dorchester, LLC has defaulted in the payment of the Dorchester Note given to Plaintiff by failing to pay Plaintiff, on demand, the principal and interest due under said documents, and all interest due thereon. Said

Dorchester Note is therefore in default and Plaintiff has declared the entire balance of principal and interest to be immediately due and payable.

168. There is due and unpaid on the Dorchester Note as of April 8, 2013, the principal sum of Two Million One Hundred Eighty-Five Thousand Five Hundred Forty and 00/100 (\$2,185,540.00) Dollars, plus interest in the amount of Two Hundred Ninety-One Thousand Six Hundred Seventy-Eight and 86/100 (\$291,678.86) Dollars and late fees in the amount of Two Thousand Eight and 76/100 (\$2,008.76) Dollars. Demand has been made upon the Defendant GW Dorchester, LLC to pay said amounts but said Defendant has refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Dorchester Note.

169. Plaintiff hereby expressly seeks a judgment against the Defendant GW Dorchester, LLC pursuant to S.C. Code Ann. § 29-3-650 for the full amount due under the Dorchester Note in the amount of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Dorchester Note.

170. The Plaintiff also hereby expressly seeks the foreclosure and sale of the Real Property pursuant to S.C. Code Ann. § 29-3-650. The judgment entered against the parties shall be credited by the amount of the high bid entered at any

subsequent foreclosure sale of Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment against said Defendant after crediting the bid.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Judgment on Guaranty - Continuing Guaranty Agreement)

171. Each and every allegation in the above-numbered paragraphs is repeated herein as if stated verbatim.

172. In consideration of the above referenced Dorchester Note, the Defendant, Deborah Rice-Marko, executed an Unconditional Guaranty Agreement dated July 27, 2009, whereby she individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Dorchester Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Unconditional Guaranty Agreement is attached hereto as Exhibit UU and is incorporated herein by reference.

173. In consideration of the above referenced Dorchester Note, the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. executed a Continuing Guaranty Agreement dated July 15, 2011, whereby each individually, jointly and severally, absolutely and unconditionally guaranteed the payment of the Dorchester Note to Plaintiff and all extensions and renewals thereof. A true and correct copy of the Unconditional Guaranty Agreement is previously attached hereto as Exhibit K.

174. As further consideration for the Dorchester Note, Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. agreed to pay all costs of collection, including reasonable attorney's fees.

175. Plaintiff has declared the entire balance of the Dorchester Note and Unconditional Guaranty Agreement due and payable and hereby demands payment of the same, but Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. have refused to pay, and therefore are in default under the terms of the Unconditional Guaranty Agreement.

176. There is due and unpaid on the Dorchester Note and Unconditional Guaranty Agreement, as of April 8, 2013, the principal sum of Two Million One Hundred Eighty-Five Thousand Five Hundred Forty and 00/100 (\$2,185,540.00) Dollars, plus interest in the amount of Two Hundred Ninety-One Thousand Six Hundred Seventy-Eight and 86/100 (\$291,678.86) Dollars and late fees in the amount of Two Thousand Eight and 76/100 (\$2,008.76) Dollars. Demand has been made upon Defendants Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr. to pay said amounts but said Defendants have refused to pay the same, or any part thereof, and said refusal is continuing, all to Plaintiff's injury and damage in the sum of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action, plus all other amounts due pursuant to the Dorchester Note.

177. Plaintiff hereby expressly seeks a judgment against the Defendants, Deborah Rice-Marko, Evan R. Marko and John E. Marko, Jr., pursuant to

S.C. Code Ann. § 29-3-650 for the full amount due under the Dorchester Note and Unconditional Guaranty Agreement in the amount of Two Million Four Hundred Seventy-Nine Thousand Two Hundred Twenty-Seven and 62/100 (\$2,479,227.62) Dollars, plus interest thereon, plus reasonable attorney's fees and the costs and expenses of this action. The judgment entered against Defendants shall be credited by the amount of the high bid entered at any subsequent foreclosure sale of the Real Property, as provided in the statute. Plaintiff reserves the right to any deficiency judgment as to Defendants after crediting the bid.

FOR A NINETEENTH CAUSE OF ACTION
(Receiver)

178. Each of the allegations in the above numbered paragraphs are repeated and incorporated herein as if stated verbatim.

179. By virtue of the default, Plaintiff seeks the appointment of a receiver to protect and preserve the Real Property and to do all acts necessary or required in connection with the administration and management of the Real Property, including but not limited to the processing and administering of proceeds as to the Real Property.

WHEREFORE, the Plaintiff prays as follows:

1. A Receiver be appointed for the Real Property.
2. That the amount due Plaintiff on the above-referred to the DRM Line of Credit Note, Dorchester Note, Clarksville Note, Cottages Note, ROA Note #1, ROA Note #2, Royal Note, Brothers Note #1, Brothers Note #2, Dorchester Mortgage, and

Continuing Guaranty Agreement to be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

3. That Plaintiff recover judgment against the Defendants in the amount found to be due, together with attorney's fees and the costs of this action.

4. That the Court ascertain which lien or liens, if any, are prior to that of Plaintiff.

5. That Plaintiff's Brothers Mortgage be declared to be a valid lien against the above referred to Real Property with the appropriate priority, and that the Plaintiff have judgment of foreclosure against the Defendants subject to the liens of any mortgages found to be prior to the Mortgage held by Plaintiff, for the amount found to be due, together with attorney's fees and costs of this action.

6. That Plaintiff's Brothers Mortgage upon the above referred to Real Property be foreclosed, subject to the lien of any mortgages found to be superior to that of Plaintiff, the equity of redemption barred, and the Real Property be sold under the direction of this Court.

7. That the proceeds of the sale be applied as follows:

a. to the costs, disbursements, and expenses of this action, including a reasonable attorney's fee for the plaintiff's attorney;

b. to the amount due Plaintiff; and

c. the surplus, if any, be held subject to the further order of this

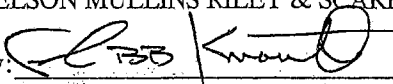
Court.

8. That the Plaintiff be granted judgment against the Defendants for the full amount due under the DRM Line of Credit Note, Dorchester Note, Clarksville Note,

Cottages Note, ROA Note #1, ROA Note #2, Royal Note, Brothers Note #1, Brothers Note #2, Dorchester Mortgage, and Continuing Guaranty Agreement at the hearing on the matter, with subsequent credit to be entered against said judgment after the foreclosure sale of the Real Property pursuant to S.C. Code Ann. § 29-3-350.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Frank B. B. Knowlton

E-Mail: frank.knowlton@nelsonmullins.com

SC Bar No. 003588

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

April 30, 2013

STATE OF PENNSYLVANIA)
)
COUNTY OF NORTHAMPTON)

VERIFICATION

RE: Florence County Real Property

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says: That she/he is the authorized representative for PNC Bank, N.A., successor to RBC Bank (USA), and as such is authorized to verify the foregoing Complaint and the matters and things therein stated are accurate based on his review of the books and records maintained by the Plaintiff in the ordinary course of business, except those matter and things therein stated on information and belief, and those she/he believes to be true.

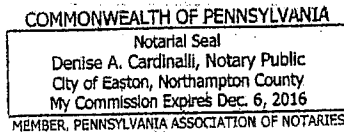
PNC Bank, N.A., successor to RBC Bank
(USA)

By: [Signature]
Print Name: STEPHEN WILSON JR
Its: Senior Vice President

SWORN to and subscribed before me

this 15th day of APRIL, 2013

Denise A. Cardinali (L.S.)
Notary Public for Pennsylvania
My Commission Expires: 12/06/2016



~#4838-9720-8595 v.1 - 17104/01517~

FILED
2013 MAY -2 PM 1:20
CONNIE REEL-SHEARIN
Clerk of Court
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Received 10/12/2007 11:34:16 AM

Book B 139 Page 0715

Mortgage

CONNIE REEL-SHEARIN
FLORENCE COUNTY CLERK OF COURT
CITY-COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

RECEIVED FROM: WARREN AND SINKLER 2112

DATE: 101207

RECEIPT NO: 277917-000000

DESCRIPTION

# OF INST.	AMOUNT	FEES	#PAGES	STATE	** FEE ** COUNTY	TOTAL
Mortgage	.00	28.00	23	BOOK: B139 FROM PAGE: 715 THRU PAGE: 737		28.00

THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====

TOTAL RECEIPT: 28.00 .00 .00 28.00

TOTAL	CHECK	CASH	CHANGE
28.00	46.00	.00	.00

CR1 CLERKPAY 15 Melanie Barr 113416



FILED

2007 OCT 12 AM 11:30

CONNIE KEEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Space Above Line for Processing Data

Return To:

Prepared By:
Mark S. Sharpe
Post Office Box 1254
Charleston, South Carolina 29402

State of South Carolina

County of Florence

RBC Centura

Mortgage, Assignment of Rents and
Security Agreement
(Future Advance; Non-Consumer)

This record, in addition to covering other property is filed as a fixture filing and covers goods that are or are to become fixtures. The real property to which the foregoing is related is described hereinbelow. The "Secured Party" is the Bank identified below and the "Debtor" is the Mortgagor identified below. The record owner is the Mortgagor. This document serves as a fixture filing under the South Carolina Uniform Commercial Code (S.C. Code §36-9-502).

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Mortgage"), entered into as of the effective date as stated in the Mortgage Supplement & Information Schedule ("Information Schedule") attached to this Mortgage, by THE BROTHERS OF SC, LLC, a South Carolina limited liability company, successor by merger to The Brothers of NC, LLC (whether one or more, "Mortgagor") with a mailing address of 32 South Battery, Charleston, South Carolina 29401, to RBC CENTURA BANK, a North Carolina banking corporation ("Bank"), with a mailing address of Post Office Box 1220, Rocky Mount, North Carolina 27802-1220, which address is the place to which all notices and communications should be sent to Bank regarding this Mortgage.

A. Mortgagor desires to secure (1) the payment of the Obligations (as defined in the Information Schedule), with interest thereon, and all extensions, renewals, modifications, amendments, substitutions and replacements thereof and therefor, in whole or in part, (2) the payment of all other sums, with interest thereon, advanced in accordance with the Obligations or herewith to protect the security of this Mortgage, or advanced to protect the rights of Bank hereunder or under the Obligations, (3) the performance of the covenants and agreements contained herein and (4) the performance of the covenants and agreements contained in the Obligations and those in all documents

RALEIGH/355096 v.3 04/14/05

B139-0715

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evidencing, securing or relating to the Obligations, by a conveyance of Mortgagor's interest in the lands and improvements and a grant of the security interests hereinafter described.

B. The maximum principal amount of the Obligations, including present and future advances and obligations, that may be secured by this Mortgage at any one time is an amount up to Ten Million and No/100 Dollars (\$10,000,000.00). The current principal amount of the Obligations outstanding which are secured by this Mortgage as of the date hereof (including any amounts which have been advanced prior to the date hereof) is Four Million Seven Hundred Seventy-Three Thousand and No/100 Dollars (\$4,773,000.00).

C. The period within which any and all future advances and obligations may be incurred under the Obligations is set forth in the Obligations, but in no event shall such period exceed fifteen (15) years from the effective date of this Mortgage. No written instrument or notation shall be required to evidence or secure any future advances and obligations hereunder.

D. Subject to the terms of the Obligations, the maximum amount available under the Obligations may be borrowed and repaid or reduced by partial payment and from time to time reborrowed and repaid (i.e., decrease or increase from time to time), provided the unpaid balance of the principal outstanding under the Obligations shall never exceed the maximum principal amount, including present and future advances and obligations, stated above. Nothing contained herein shall obligate Bank to make any advances to or extend credit to or for the benefit of any person obligated on the Obligations, and any such advances and extensions shall be under the terms and conditions contained in the Obligations or otherwise in the discretion of Bank.

E. The Obligations, including those presently in existence and those which may in the future come into existence, shall be evidenced by one or more instruments (to include promissory notes), chattel paper, general intangibles (to include payment intangibles), accounts, letters of credit, supporting obligations (to include guarantees), commitment letters, loan agreements, credit agreements, agreements relating to derivatives transactions (e.g. interest rate swaps, caps, floors or collar transactions, or other similar transactions made pursuant to an International Swap Dealers Association, Inc. Master Agreement or similar agreement) and other evidences of an indebtedness or other obligation owing to Bank by the person identified on the Information Schedule under the heading "Obligations" as the obligor or other person obligated on the Obligations, such evidences of indebtedness or other obligation and all extensions, renewals, modifications, amendments, substitutions and replacements thereof and therefor to be in a written or tangible medium, an electronic medium or in some other medium which is retrievable in a perceivable form, the terms and conditions (including the maturity dates of the Obligations) of which are incorporated herein by reference, and which Obligations may contain provisions for the adjustment of the interest rate or rates, adjustments in payments, extension or renewal of the term or terms, among other things.

NOW, THEREFORE, in consideration of the premises and for the purpose of securing the Obligations and the other indebtedness and obligations as aforesaid, and in further consideration of the sum of Ten Dollars (\$10) paid to Mortgagor by Bank, receipt of which is hereby acknowledged, Mortgagor has given, granted, bargained, sold, conveyed and mortgaged, and by these presents does give, grant, bargain, sell, convey and mortgage to Bank, its successors and assigns, upon the representations, warranties, covenants, terms and conditions set forth in this Mortgage, all of Mortgagor's right, title and interest in and to (1) the parcels of land described on Exhibit A, (2) the rights and benefits appurtenant to said parcels of land and (3) the buildings and other improvements (to include manufactured homes) now located thereon and thereunder and those which in the future may be or may come to be located thereon and thereunder (collectively, the "Property"), together with all equipment, fixtures, standing timber (to include timber to be cut, but this inclusion does not permit cutting of timber unless Bank agrees to such cutting in advance thereof), crops grown, growing and to be grown on the Property (to include crops that are produced on trees, vines and bushes, and aquatic goods) and other farm products (to include livestock - born and unborn, supplies and products of crops and livestock), oil, gas and other minerals and as-extracted collateral (but inclusion of as-extracted collateral does not permit extraction unless Bank agrees to such extraction in advance thereof) owned by Mortgagor and that in which the Mortgagor has any rights and interests, both now existing and located in, on, over and under the Property and that which may be hereafter acquired and located as aforesaid, whether used in connection with the ownership, possession, operation and maintenance of the Property, or otherwise (collectively, the "Collateral" and the Collateral includes any and all of the proceeds and products thereof, including insurance and

condemnation proceeds, accessions and additions thereto, and replacements and substitutions therefor). AND, IF THIS MORTGAGE SECURES A LEASEHOLD INTEREST, Mortgagor expressly agrees that if Mortgagor shall, at any time prior to payment in full of the Obligations and other indebtedness and obligations secured hereby, acquire fee simple title or any other greater estate to the premises described in whole or in part in this Mortgage and subject to such leasehold interest, the lien of this Mortgage shall attach to, extend to, cover and be a lien upon such fee simple title or such greater estate.

TO HAVE AND TO HOLD the Property and Collateral, with all the rights, privileges and appurtenances thereunto belonging or appertaining, to Bank, its successors and assigns, forever.

Mortgagor covenants with Bank that it is seized of the Property in fee, or if Mortgagor's interest in the Property is or includes a leasehold estate, that it holds a valid leasehold estate and interest in the Property, and in either case, that it is seized of the Collateral in fee, and has the right to convey its interest in the Property and Collateral as provided herein; that title is marketable and free and clear of all encumbrances; and that it will warrant and defend the title to the Property and Collateral against the lawful claims of all persons whomsoever, except for the exceptions set forth in the Information Schedule under the heading "Permitted Liens", or such other exhibit or schedule, if any, attached to this Mortgage.

Mortgagor represents, warrants, covenants and agrees with Bank as set forth above and in the Sections set forth hereinbelow:

Section 1. Future Advances. All terms and conditions under which future advances may be made, if any, are set forth in the Obligations. Bank shall make, and be obligated to make, future advances only in accordance with the terms and conditions of the Obligations, as the same may be amended or modified, from time to time.

Section 2. Ground Lease Provisions: If Mortgagor's interest in and to the Property is in whole or in part a leasehold interest, the provisions in Section 2.1 through Section 2.4 shall apply, in addition to the other terms and conditions hereof.

2.1 Performance of Leasehold Covenants. Mortgagor will: (1) pay the rent reserved by any and all leases under which it holds a leasehold interest in the Property, and through which it holds a leasehold interest in the Property if its leasehold interest is a subleasehold interest (collectively, the "Ground Lease"), as the same becomes due and payable; (2) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed or observed by the tenant under the Ground Lease; and do all things necessary to preserve and keep unimpaired its rights thereunder; (3) promptly notify Bank in writing of the exercise of any options to renew, extend or purchase under the Ground Lease, or of the commencement of a proceeding under the federal bankruptcy laws by or against the landlord under the Ground Lease; (4) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Bank pursuant to the requirements of the Ground Lease or the Obligations, promptly notify Bank in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (5) promptly notify Bank in writing of (i) any default under the Ground Lease by any party thereto, including, without limitation, Mortgagor, (ii) the nature of any default and the steps being taken to cure said default, and (iii) any action taken or threatened to be taken by any party to the Ground Lease on account of the default; and (6) promptly notify Bank in writing of any request made by any party to the Ground Lease to the other party or parties thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings, and promptly deliver to Bank a copy of the determination of the arbitrators or appraisers in each such proceeding.

2.2 Surrender of Leasehold Interest. So long as there is any balance due under the Obligations secured hereby, or any other indebtedness or obligations secured hereby, Mortgagor will not surrender nor permit the Ground Lease or any leasehold estate and interest therein to be surrendered, nor terminate or cancel or permit the termination or cancellation of the Ground Lease, and will not, without the prior written consent of Bank, modify, change, supplement, alter or amend the Ground Lease, either orally, in writing or electronically, and as further security for the repayment of the Obligations and other indebtedness and obligations hereby secured and for the performance of the covenants, agreements, obligations and conditions herein or in the Ground Lease contained, Mortgagor hereby

assigns to Bank all of its rights, privileges and prerogatives under the Ground Lease to terminate, cancel, modify, change, supplement, alter and amend the Ground Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, without the prior written consent thereto by Bank, shall not be binding upon Bank or enforceable against Bank.

2.3 Defaults under Leasehold Interest. Mortgagor expressly grants to Bank and its authorized representatives and agrees that Bank and its authorized representatives shall have the absolute and immediate right, in Bank's sole discretion, to prevent or to cure any default by Mortgagor under the Ground Lease and in connection therewith, contact, negotiate and settle with the landlord and other parties to the Ground Lease, or enter in and upon the property identified in the Ground Lease or any part thereof to such extent and as often as Bank, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Mortgagor. Bank may pay and expend such sums of money as Bank, in its sole discretion, deems necessary for any purpose related to the Ground Lease, including, without limitation, all those listed in this Section 2, and Mortgagor hereby agrees to pay to Bank, immediately and without demand, all such sums so paid or expended by Bank, together with interest thereon from the date of each payment at the contract rate at which interest accrues from time to time on the Obligations hereby secured, or if interest accrues at different contract rates, any one of the contract rates which interest accrues as selected by Bank, in its sole discretion, which rate may be fixed or variable (the "Contract Rate"), with all sums so paid and expended by Bank, and the interest thereon at the Contract Rate, being added to and secured by the lien of this Mortgage.

2.4 Merger of Estates. Unless Bank shall otherwise expressly consent in writing, the title to the property demised by the Ground Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in Mortgagor or in a third person by purchase or otherwise.

Section 3. Payment of Amounts Due under the Obligations. Mortgagor shall pay when due all amounts owing by it, and perform all other obligations required to be performed from time to time by it, under each and all of the Obligations and this Mortgage.

Section 4. Payment of Taxes, Assessments and other Amounts; Maintenance of Insurance.

4.1 Payment of Taxes, etc. Mortgagor covenants and agrees that it will pay when due, all taxes, assessments, levies and charges upon or against the Property and upon or against the Collateral, of every character which are now liens thereon and any which may hereafter become liens thereon; and immediately deliver to Bank official receipts therefor. Bank may, at its option, pay any such taxes, assessments, levies and charges against the Property and those against the Collateral, and the official receipts therefor shall be conclusive evidence of payment, the amount due and validity thereof. Any amounts so expended shall immediately become debts due by Mortgagor payable on demand, shall bear interest at the Contract Rate, and their payment shall be secured by this Mortgage.

4.2 Insurance. Mortgagor covenants and agrees that it will keep the Property and Collateral insured against loss and damage by fire, tornado and windstorm, and against such other hazards, events and circumstances as Bank may require, including, without limitation, business interruption, in amounts satisfactory to Bank, plus an amount sufficient to prevent any co-insurance liability against the owner of the Property or Bank, for the benefit of Bank, loss, if any, to be made payable in the policy or policies of insurance to Bank as its interest may appear, the loss payable clauses to be in such form as Bank may require. All insurance shall be in companies approved by Bank, the policies and renewals thereof shall, when issued, be immediately delivered to Bank to be held by it, and all insurance policies shall provide for at least thirty (30) days prior written notice of cancellation to Bank. Mortgagor will pay all premiums for such insurance when due and immediately deliver to Bank official receipts therefor. To the extent Mortgagor does not so pay, Bank may, at its option, pay the same and any amounts so expended shall immediately become debts due by Mortgagor payable on demand, shall bear interest at the Contract Rate, and their payment shall be secured by this Mortgage. In the event of loss, Mortgagor will give immediate notice by mail to Bank, who may make proof of loss if not made promptly by Mortgagor. Each insurance company concerned is hereby authorized and directed to make payment of such loss directly to Bank, instead of Mortgagor and Bank jointly. The proceeds of any insurance, or any part thereof, may be applied by Bank, at its option, either to the reduction of the indebtedness

hereby secured in such order as Bank so determines in its discretion, or to the restoration or repair of the Property and the Collateral – unless applicable law prohibits Bank from electing between those two options, in which event the proceeds shall be applied as applicable law mandates.

4.3 Escrow Accounts. If required by Bank, Mortgagor agrees to pay and shall pay on the first day of each month or such other day as Bank may direct, to Bank or to its duly authorized representative, a sum equal to one-twelfth of the known or estimated (by Bank) yearly taxes, assessments and insurance premiums on or against the Property and the Collateral. Bank shall be under no obligation to pay interest on such payments, unless payment of interest is mandated under applicable law and then only the minimum amount required under applicable law. Bank shall hold and apply such payments to the payment of taxes, assessments and insurance premiums as and when due. If the total of such monthly payments shall exceed the amount needed, the excess shall be held for future needs, unless a different application is mandated under applicable law; but, should such monthly payments at any time fail to provide sufficient funds to pay taxes, assessments and insurance premiums when due, then Mortgagor shall, upon written demand, pay to Bank, within ten (10) days of receipt of such demand, the amount necessary to cover the deficiency. In the event of a foreclosure sale or deed-in-lieu thereof, Bank may apply any balance remaining of the funds accumulated for the above purposes to the payment of the indebtedness secured by this Mortgage, unless such application is prohibited under applicable law.

Section 5. Maintenance of the Property. Mortgagor covenants and agrees that (1) it will not commit or permit any waste to the Property and the Collateral, and will keep the Property and Collateral in as good order, repair and condition as it is now, reasonable wear and tear excepted, and (2) it will do and cause to be done – and refrain from doing and causing to be done – such acts relating to the Property and the Collateral as Bank may, from time to time, request. Bank shall have the right to inspect, at all reasonable times, the Property and Collateral, together with the books and records maintained and kept in connection therewith; and unhindered access thereto shall be permitted for that purpose to Bank and its authorized representatives, and Bank and its authorized representatives shall have the right to make such copies or other extracts of the aforementioned books and records as Bank and its representatives deem necessary and shall have the right to take possession of and remove the aforementioned books and records from the place or places at which they are kept by Mortgagor to such other place or places as Bank may select. In the event that such investigation reveals any matter constituting a breach of this covenant made by Mortgagor to Bank, then the costs of such investigation shall be reimbursed to Bank by Mortgagor, shall immediately become a debt due by Mortgagor payable on demand, shall bear interest at the Contract Rate, and shall be secured by this Mortgage.

Section 6. Financial Statements. Mortgagor covenants and agrees that it will from time to time furnish or cause to be furnished to Bank, without cost to Bank, such financial and operating statements and reports, in form and certified in a manner satisfactory to Bank, as may be required or otherwise requested by Bank.

Section 7. Assignment of Rents, Leases and Profits; Management of Property; Appointment of Receiver. As further security for the payment of the Obligations and the other indebtedness and obligations secured by this Mortgage, Mortgagor assigns to Bank all rents, profits, revenues, royalties, accounts, moneys, contract rights, leases, intangible rights and other benefits arising from, related to and otherwise connected to or flowing from the Property and the Collateral, all of which are a part of and included as a subset within the terms "Property" and "Collateral" (the rents, profits, etc. are collectively, the "Rents and Profits"); and Bank shall have the absolute and unconditional right, upon the occurrence of an Event of Default hereunder, or the occurrence of an event which, with the giving of notice or a lapse of time, or both, would become an Event of Default hereunder, either by entering upon and taking possession of either or both the Property and the Collateral, or otherwise, to rent or continue renting the same, at any reasonable rate of rent determined by Bank and to otherwise manage and operate the Property and the Collateral in such manner as it deems necessary or appropriate, to collect the Rents and Profits, and, after deducting from any Rents and Profits actually collected from the management and operation of the Property and the Collateral the costs and expenses thereof (including, without limitation, payment of all expenses related to the Property and the Collateral as may be required or permitted under this Mortgage or which may be necessary to protect the security of this Mortgage, as Bank in its discretion deems appropriate), to apply the remainder to payment of the Obligations secured hereby and any other indebtedness and obligations secured hereby, in such order as Bank may determine, unless a specific order of application is mandated under applicable law. Also, Bank shall have the absolute and unconditional right to apply for and to obtain the appointment of a receiver or similar official for all or a portion of the Property and the

Collateral, to, among other things, manage and operate the Property and the Collateral, or any part thereof or interest therein, and to collect and apply the Rents and Profits as provided above. In the event of such application, Mortgagor consents to the appointment of such receiver or similar official and agrees that such receiver or similar official may be appointed without notice to Mortgagor (unless notice is mandated under applicable law and then with only such minimum notice as may be mandated under applicable law), without regard to the adequacy of any security for the indebtedness secured hereby and without regard to the solvency of Mortgagor or any other person who may be liable for the payment of the Obligations or any other indebtedness or obligations secured hereunder – unless thresholds for adequacy of security or solvency are mandated by applicable law and then with only the minimum thresholds so mandated. All expenses related to the appointment of a receiver or other similar official hereunder shall be the responsibility of Mortgagor, but if paid by Bank, Mortgagor hereby agrees to pay to Bank, immediately and without demand, all such expenses, together with interest thereon from the date of payment of the same at the Contract Rate. All sums so paid by Bank, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

Section 8. Condemnation. Unless otherwise prohibited by applicable law, Mortgagor covenants and agrees that the condemnation, or other taking by eminent domain or other proceeding, of the Property and the Collateral, or any part of or interest, right or estate in either or both, shall be an Event of Default under this Mortgage and shall entitle Bank to exercise, at its option, any and all rights and remedies provided to Bank under this Mortgage upon the occurrence of an Event of Default; and, in addition to its other rights and remedies upon the occurrence of an Event of Default, Bank is hereby authorized and empowered and shall have the right and option to apply for, collect and receive the awards or payments made in connection with such condemnation or other proceeding and to apply them in whole or in part in reduction of the Obligations and the other indebtedness and obligations secured by this Mortgage in such order as Bank, in its discretion, may elect, or such order as may be otherwise mandated by applicable law, if any. Mortgagor agrees to execute such further assignments of any such awards or payments as Bank may require and agrees that notwithstanding anything herein to the contrary, the liens and security interests created and established by this Mortgage shall extend to and encumber the awards or payments made in connection with such condemnation or other proceeding.

Section 9. Sale or Transfer of Property; Junior Liens. Except as provided in the Information Schedule under the heading "Jurisdiction Specific Provisions", Mortgagor covenants and agrees that the sale, conveyance-in-lieu-of-condemnation, lease, demise, further encumbrance (including, without limitation, by way of mortgage, deed of trust, security deed, deed to secure debt, declaration of trust, assignment, pledge or security agreement), transfer or other disposition by Mortgagor, either directly or indirectly, voluntarily or involuntarily, of all or any part of the Property or the Collateral, or any interest, right or estate in either or both, without Bank's prior written consent, which may be withheld in Bank's sole discretion, shall be an Event of Default under this Mortgage and shall entitle Bank to exercise, at its option, any and all rights and remedies provided to Bank under this Mortgage upon the occurrence of an Event of Default.

Section 10. Security Agreement; Harmonization of Conflicts. Mortgagor hereby grants to Bank a security interest in the Collateral and any of the Property constituting personal property for the purpose of securing the payment of the Obligations, with interest thereon, and extensions, renewals, modifications and amendments thereof, or substitutions and replacements therefor, in whole or in part, the payment of all other sums, with interest thereon, at the Contract Rate, advanced in accordance with the Obligations or hereunder to protect the security of this Mortgage, or advanced to protect the rights of Bank hereunder or under the Obligations, and to secure the performance of the covenants and agreements contained herein and in the Obligations. This Mortgage constitutes a "security agreement" with respect to the Collateral and the Property constituting personal property as that term is now or hereafter used in the Uniform Commercial Code as enacted in the jurisdiction whose laws govern this Mortgage, and Bank shall have all of the rights and remedies provided to a secured party now or hereafter under the Uniform Commercial Code as enacted in such jurisdiction, including, without limitation, the right to proceed against the Collateral and the Property constituting personal property in accordance with the provisions of the Uniform Commercial Code relating to default and enforcement of a security interest by a secured party, or to proceed as to the Collateral and the Property, including, without limitation, that which constitutes personal property, in accordance with laws applicable to foreclosure of real estate interests in the jurisdiction whose laws govern this Mortgage, as provided herein. If Mortgagor has executed and delivered to Bank a separate security agreement or agreements in connection with any or all of the Obligations, that security agreement or those security agreements and the security

interests created therein shall be in addition to and not in substitution of this Mortgage and the liens and security interests created hereby and this Mortgage shall be in addition to and not in substitution of the other security agreement or agreements and the security interests created thereby. In all cases this Mortgage and the aforesaid security agreement or agreements, as well as all other evidences and records of any and all of the Obligations and agreements of other persons who may be obligated on any of the Obligations, shall be applied and enforced in harmony with and in conjunction with each other to the end that Bank realizes fully upon its rights and remedies in each and the liens and security interests created by each; and, to the extent conflicts exist between this Mortgage and the other security agreements or records, they shall be resolved in favor of Bank for the purpose of achieving the full realization of Bank's rights and remedies and the liens and security interests as aforesaid.

Section 11. Hazardous Substances, Public Health and Safety.

11.1 Compliance with Laws. Mortgagor represents and warrants to Bank, after due inquiry and investigation, that while Bank has any interest in or lien upon the Property, the Property and Collateral is and at all times hereafter will continue to be in substantially full compliance with all applicable federal, state and local laws, regulations, ordinances, directives, orders, guidelines and advisory opinions, including, without limitation, (i) environmental laws, regulations, ordinances, directives, orders, guidelines and advisory opinions, (ii) laws, regulations, ordinances, directives, orders, guidelines and advisory opinions relating to access to, from, in, around and over the Property by persons with physical or other disabilities (e.g. Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder and any similarly motivated state and local laws and regulations) and (iii) other laws, regulations, ordinances, directives, orders, guidelines and advisory opinions relating to public health, welfare and safety. Mortgagor further represents and warrants to Bank, after due inquiry and investigation: (1) as of the date hereof, (i) there are no hazardous materials, substances, wastes or other environmentally regulated, controlled or sensitive materials or substances, including, without limitation, any oil, gas or other petroleum related products, any lead based paints, any materials containing asbestos or any biological, chemical or nuclear contaminated materials or substances, located on, in or under the Property or used in connection with the Property or the Collateral, and (ii) there are no harmful or hazardous levels or concentrations of mold, spores or other fungi on, in or under the Property and there are no harmful or hazardous levels or concentrations of radon or other similar gases on, in or under the Property (collectively (i) and (ii), "hazardous substances"); or (2) Mortgagor has fully disclosed to Bank, in writing, the existence, extent and nature of any such hazardous substances, and (i) Mortgagor is legally authorized and empowered to maintain such hazardous substances on, in or under the Property or use them in connection with the Property or the Collateral, (ii) as represented in the first sentence of this Section, such hazardous substances are being used, maintained and controlled in substantially full compliance with all applicable federal, state and local laws, regulations, ordinances, directives, orders, guidelines and advisory opinions and (iii) Mortgagor has obtained and will constantly maintain all licenses, permits and approvals required with respect thereto, and is and will remain in substantially full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

11.2 Notices. Mortgagor represents and warrants to Bank that it will promptly notify Bank of the existence of, or any change in the nature or extent of any hazardous substances located or maintained on, in or under the Property or used in connection with the Property or Collateral. Mortgagor has, as of the date hereof, delivered to Bank copies of any citations, orders, notices and other correspondence or communication (collectively, the "regulatory notices") received by Mortgagor with respect to any hazardous substances affecting the Property or Collateral and copies of any regulatory notices known to Mortgagor and received by any other present or former owner or occupant of the Property or Collateral with respect to any hazardous substances affecting the Property or Collateral. Mortgagor covenants and agrees to immediately transmit to Bank copies of any regulatory notices received with respect to any hazardous substances affecting the Property or Collateral.

11.3 Indemnification. Mortgagor shall indemnify and hold Bank harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including, without limitation, clean-up costs), judgments and expenses (including, without limitation, attorneys', consultants' and experts' fees and expenses) of every kind and nature suffered by or asserted against Bank as a direct or indirect result of: (1) any warranty or representation made by Mortgagor in this Section 11 being false or untrue in any material respect; (2) any breach by Mortgagor of a covenant or agreement in this Section 11; or (3) any requirement under any federal, state or local law, regulation, ordinance, directive, order, guideline or advisory opinion which requires the elimination, removal,

containment or control of any hazardous substances. Mortgagor's obligations hereunder to Bank shall not be limited by the term of the Obligations secured hereby, and, as to any act or event occurring prior to payment in full and satisfaction of the Obligations and all other indebtedness and obligations under this Mortgage, Mortgagor's obligations hereunder shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of the Obligations and this Mortgage or foreclosure under this Mortgage or delivery of a deed-in-lieu of foreclosure.

Section 12. Anti-Money Laundering and Anti-Terrorism. Mortgagor represents, warrants and covenants to Bank as follows: (1) Mortgagor (a) is not and shall not become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) does not engage in and shall not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not and shall not otherwise become associated with any such person in any manner violative of Section 2, (c) is not and shall not become a person on the list of Specially Designated Nationals and Blocked Persons, and (d) is not and shall not become subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order; (2) Mortgagor is and shall remain in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001); and (3) Mortgagor has not and shall not use all or any part of the proceeds, advances or other amounts or sums constituting or evidenced by the Obligations, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 13. Third Party Mortgagors. Any Mortgagor who executes this Mortgage but is not a party to or obligated on any of the Indebtedness included in the Obligations, is executing this Mortgage to mortgage, grant and convey Mortgagor's interest in the Property and the Collateral under the terms of this Mortgage and, except as otherwise provided in this Mortgage with respect to obligations of Mortgagor hereunder or referred to in this Mortgage, is not personally obligated to pay the sums secured by this Mortgage over and above the value of the Property and the Collateral and the loss such Mortgagor will incur from a foreclosure thereon or from delivery of a deed-in-lieu of foreclosure.

Section 14. Events of Default; Remedies upon Default.

14.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder: (1) the occurrence of an event of default or other default condition under any or all of the Obligations; (2) Mortgagor's breach of any of the terms, conditions or covenants contained in this Mortgage or the occurrence of some other default under this Mortgage; (3) the actual or threatened demolition, injury or waste to the Property, the Collateral, or any part of either or both, which, in the sole opinion of Bank, may impair its value, or the actual or threatened decline in value of the Property or the Collateral; (4) the Property, the Collateral, or any part of either or both, or interest therein, is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days, or if Mortgagor is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon all or any part of the Property or Collateral or any interest therein, or if a notice of lien, levy or assessment is filed of record with respect to the Property or Collateral, or any part thereof or interest therein, by any person, and the same is not paid within ten (10) days after Mortgagor receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Mortgagor; (5) the insolvency of Mortgagor or any other person obligated on any of the Obligations, or the appointment of a receiver for, or the filing of a petition of bankruptcy by or against Mortgagor or any person obligated on any of the Obligations; (6) Mortgagor's default in or breach of the Ground Lease, if applicable, or any of the terms, conditions, covenants or agreements contained in any separate assignment of leases given as additional

security for the Obligations; (7) Mortgagor's default under the terms of any instrument or other agreement to which this Mortgage is subordinate or which is subordinate to this Mortgage, or the execution or foreclosure on, or the giving of any notice relative to the execution or foreclosure on any security interest in or lien upon the Property or the Collateral, or any part thereof or any interest therein, to which the security interest and lien of this Mortgage is subordinate or which is subordinate to the security interest and lien of this Mortgage; (8) default by Mortgagor, or any other person obligated thereon (other than Bank), in keeping, performing or observing any term, covenant, agreement or condition of any commitment letter upon which all or any portion of any of the Obligations was predicated, or the default by Mortgagor, or any other person obligated thereunder, under any other loan document executed or delivered by Mortgagor or on behalf of Mortgagor, or such other person, to or in favor of Bank in connection with any of the Obligations; (9) any past, present or future false statement, misrepresentation or withholding of facts by Mortgagor, or any other person obligated on any of the Obligations, to or from Bank in connection with any of the Obligations or this Mortgage, including, without limitation, any false statement, misrepresentation or withholding of facts relative to the Property or the Collateral or in any loan application or other document provided by Mortgagor or such other person to Bank or its representatives, or in any presentation made by Mortgagor or such other person to Bank or its representatives, as to any matter relied upon by Bank in evaluating whether to extend financing to Mortgagor or such other person; (10) default by Mortgagor, or any other person obligated on any of the Obligations, under any indebtedness or other obligation that is not included within the term "Obligations", now owing or which hereafter arises and is owing by Mortgagor or such other person to Bank, or if Mortgagor is an organization and not an individual, default by any subsidiary of Mortgagor under any indebtedness or other obligation now owing or which hereafter arises and is owing by any such subsidiary to Bank regardless of whether such subsidiary is or may in the future be obligated on any of the Obligations; or (11) a determination by Bank that the prospect of payment or performance by Mortgagor, or any other person obligated on any of the Obligations, under all or any of the Obligations is insecure or that a material adverse change in the financial condition of Mortgagor or such other person has occurred since the effective date of this Mortgage.

14.2 Rights and Remedies. Upon the occurrence of an Event of Default under Section 14.1 or any other event defined in this Mortgage as an "Event of Default", or the occurrence of an event which, with the giving of notice or a lapse of time, or both, would become an Event of Default hereunder, Bank shall have the rights and remedies set forth in Sections 14.2.1 through 14.2.4, in addition to its other rights and remedies set forth in this Mortgage.

14.2.1 Accelerate Obligations. Bank shall have the right, at its option, to declare all amounts payable under any or all of the Obligations, as well as any or all of the other indebtedness and obligations secured hereby that are not already due hereunder, to be immediately due and payable without demand or any notice (unless notice is required under any of the Obligations or by law, then such notice as may be required under the Obligations or by law), whereupon the same shall become immediately due and payable, regardless of the maturity date thereof.

14.2.2 Protection of Security. Bank, without any obligation on its part to determine the validity or necessity thereof, may do and cause to be done any one or more of the following: (1) pay the sums for which Mortgagor is obligated, (2) perform or cause to be performed the obligations of Mortgagor or (3) take such other actions as Bank deems necessary to maintain, protect, repair, restore and preserve the Property and the Collateral, and the lien created by this Mortgage, and, in connection therewith, Bank may advance, pay or expend such sums as may be proper or necessary for the maintenance, protection, repair, restoration and preservation of the Property and the Collateral, to maintain insurance (including, without limitation, title insurance), to provide security guards and systems to protect the Property and the Collateral and intervene in any condemnation, foreclosure and other proceedings or disputes affecting the Property or the Collateral. Mortgagor hereby agrees to pay to Bank, immediately and without demand, all such sums so advanced, paid or expended, together with interest thereon from the date of each payment at the Contract Rate. All sums so advanced, paid or expended by Bank, and the interest thereon, shall be added to and be secured by the lien of this Mortgage. Any amounts advanced, paid or expended shall be at Bank's sole option and shall not constitute a waiver of any Event of Default or right arising from the occurrence of an Event of Default.

14.2.3 Foreclosure. Bank shall have the right, at its option, to exercise the rights and remedies set forth in the Information Schedule under the heading "Jurisdiction Specific Provisions". In any foreclosure sale or

sales, the Bank shall have the right to sell or cause to be sold either or both the Property and the Collateral, or parts thereof or interests therein, subject to any liens, security interests and other encumbrances and rights which are subordinate to the lien and security interest hereof, including, without limitation, any leases which may be subordinate hereto; and any such sale or sales shall not release Mortgagor or any other person obligated on the Obligations or the other indebtedness and obligations secured hereby, and shall not provide to them any claim or defense in any action or proceeding brought hereunder by Bank or otherwise brought by Bank to collect full payment of the indebtedness and other obligations secured hereby.

14.2.4 Discontinuance of Proceedings; Position of Parties Restored. If Bank shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Bank, then and in every such case Mortgagor and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceedings had occurred or had been taken.

Section 15. Miscellaneous.

15.1 Incorporation of Exhibits. All exhibits, supplements, schedules, addenda and other attachments to this Mortgage are by this reference incorporated herein and made a part hereof as if fully set forth in the body of this Mortgage. The recitals set forth in this Mortgage are also a part of this Mortgage.

15.2 Maintenance of Records by Bank. Bank is authorized to maintain, store and otherwise retain evidences of the Obligations, this Mortgage, any separate security agreements and other agreements executed or delivered or to be executed or delivered by Mortgagor or others on Mortgagor's behalf to Bank in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form.

15.3 Accuracy of Information Regarding Mortgagor. Mortgagor represents to Bank the information contained in this Mortgage and other information provided to Bank by or on behalf of Mortgagor is true, accurate and correct and Mortgagor agrees to promptly inform Bank in writing of any changes therein or any inaccuracies thereto, such notices to be addressed to Bank and mailed, postage prepaid, to Bank's address set forth herein.

15.4 Credit Investigations; Sharing of Information; Control Agreements. Bank is irrevocably authorized by Mortgagor to make or have made such credit investigations as it deems appropriate to evaluate Mortgagor's credit, personal and financial standing and employment. Mortgagor authorizes Bank to share with consumer reporting agencies and creditors its experiences with Mortgagor and other information in Bank's possession relative to Mortgagor, the Property and the Collateral, but Bank shall not have any obligation to (1) provide information to third persons relative to any of the foregoing or otherwise, (2) subordinate its liens and security interests in the Property and in the Collateral and (3) enter into control agreements and other agreements relative thereto.

15.5 No Deductions for Taxes or Withholdings; Documentary Taxes. All payments made by Mortgagor under this Mortgage shall be made by Mortgagor free and clear of and without deduction for any and all present and future taxes, levies, charges, deductions and withholdings, and if any present or future applicable law requires such deduction or imposes a tax, levy or charge on this Mortgage or Bank's interest hereunder which is required to be paid by Bank, the same shall be an Event of Default and Bank may exercise, at its option, any and all rights and remedies provided to Bank hereunder upon the occurrence of an Event of Default. In addition, to the extent not prohibited by applicable law and notwithstanding who is liable for payment of the taxes or fees, Mortgagor shall pay upon demand any stamp tax, documentary tax, intangible tax and other taxes, levies and charges of any jurisdiction with respect to the execution, delivery, registration, performance and enforcement of this Mortgage.

15.6 Marshalling of Assets. Mortgagor hereby waives, to the extent permitted by law, the benefit of all homestead, appraisalment, valuation, stay, extension, reinstatement and redemption laws now in force and any hereafter arising and in force and all rights of marshalling in the event of any sale hereunder of the Property, the Collateral or any part or any interest in either or both. Further, Mortgagor hereby expressly waives any and all rights

of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property or the Collateral subsequent to the date of this Mortgage and on behalf of all other persons to the extent permitted by law.

15.7 Waiver of Statutory Rights. Mortgagor waives any right to require Bank to bring any action against any other person or to require that resort be had to any security or to any balances of any deposit or other accounts on the books of Bank in favor of any other person; and, without limiting the foregoing, but in furtherance thereof, Mortgagor waives any rights Mortgagor otherwise might have or have had under the statutory provisions identified in the Information Schedule under the heading "Jurisdiction Specific Provisions", or any other laws that require or may require Bank to recover against some other person, or to realize upon any security which Bank holds for the Obligations. Mortgagor also waives any and all right of subrogation, contribution, reimbursement and indemnity whatsoever or any right of recourse to or with respect to the assets or property of any person that is or may be security for the Obligations.

15.8 Jury, Venue, Jurisdiction. This Mortgage shall be deemed to have been executed and delivered in the jurisdiction listed on the Information Schedule as the jurisdiction whose laws govern this Mortgage, regardless of where the signatories may be located at the time of execution and shall be governed by and construed in accordance with the substantive laws of such jurisdiction, excluding, however, the conflict of law and choice of law provisions thereof. Mortgagor, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Mortgage.

15.9 Cumulative Rights, etc. The rights, powers and remedies of Bank under this Mortgage shall be in addition to all rights, powers and remedies given to Bank at law and in equity, and in any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised by Bank from time to time and at any number of times successively, concurrently and alternatively without impairing Bank's rights under this Mortgage.

15.10 No Waiver; No Course of Dealing; No Invalidity. Bank, at any time or times, may grant extensions of time for payment or other indulgences or accommodations to any person obligated on any of the Obligations, or permit the renewal, amendment or modification thereof or substitution or replacement thereof, or permit the substitution, exchange or release of any property securing any of the Obligations and may add or release any person primarily or secondarily liable on any of the Obligations, all without releasing Mortgagor from any of its liabilities and obligations under this Mortgage and without Bank waiving any of its rights and remedies under this Mortgage, or otherwise. No delay or forbearance by Bank in exercising any or all of its rights and remedies hereunder or rights and remedies otherwise afforded by law or in equity shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any Event of Default as set forth herein or in the event of any subsequent Event of Default hereunder. Also, no act or inaction of Bank under this Mortgage shall be deemed to constitute or establish a "course of performance or dealing" that would require Bank to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

15.11 No Oral Change. Subject to the exercise by Bank of its rights and remedies as set forth in this Mortgage and without limiting any of such rights and remedies, this Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Bank, but only by an agreement in writing, signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

15.12 No Usury. Bank does not intend to and shall not reserve, charge or collect interest, fees or charges hereunder in excess of the maximum rates or amounts permitted by applicable law. If any interest, fees or charges are reserved, charged or collected in excess of the maximum rates or amounts, it shall be construed as a mutual mistake by Bank, Mortgagor and the person making the payment if different from Mortgagor, and appropriate adjustments shall be made by Bank and to the extent paid, the excess shall be returned to the person making such a payment.

15.13 Power of Attorney; Financing Statements. Mortgagor does hereby irrevocably constitute and appoint Bank its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to execute, deliver or file such agreements, documents, notices, financing statements and records as Bank, in its sole discretion, deems necessary or advisable to effect the terms and conditions of this Mortgage and to otherwise protect the security of the liens and security interests created by this Mortgage; and, to the extent Bank deems necessary or appropriate, to make public in financing statements or other public filings such information regarding Mortgagor as Bank deems necessary or appropriate, including, without limitation, federal tax identification numbers, social security numbers and other identifying information. The foregoing appointment is and the same shall be coupled with an interest in favor of Bank.

15.14 Payment of Expenses. Without limiting any other provision of this Mortgage relating to Mortgagor's payment of costs and expenses incurred by Bank and those incurred on behalf of Bank, but in addition thereto, Mortgagor shall pay to Bank, on demand, any and all costs and expenses, including, without limitation, legal expenses and attorneys' fees, fees of legal assistants and fees and expenses of other professionals and service providers, incurred or paid by Bank and those incurred or paid on behalf of Bank in doing any one or more of protecting its interest in the Property and the Collateral, collecting any amount payable hereunder or secured hereby, and enforcing its rights hereunder with respect to the Property and the Collateral (including, without limitation, commencing any foreclosure action or prosecuting or defending any legal or equitable proceeding), together with interest thereon at the Contract Rate from the date paid or incurred by or on behalf of Bank until such costs and expenses are paid by Mortgagor. All sums so paid or expended by Bank, and the interest thereon, shall be added to and be secured by the lien of this Mortgage.

15.15 Relationship of Parties; Successors and Assigns. The relationship of Bank to Mortgagor is that of a creditor to an obligor or debtor; and in furtherance thereof and in explanation thereof, Bank has no fiduciary, trust, guardian, representative, partnership, joint venturer or other similar relationship to or with Mortgagor and no such relationship shall be drawn or implied from this Mortgage or any of Bank's actions or inactions hereunder or with respect hereto - and, Bank has no obligation to Mortgagor or any other person relative to administration of the Obligations secured by this Mortgage or the Property or Collateral, or any part or parts thereof or interests therein. The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto, as well as any persons who become bound to this Mortgage as a debtor, but nothing herein contained shall alter or negate the provisions of Section 9. If two or more persons have joined as Mortgagor, each of the persons shall be jointly and severally obligated to perform the obligations herein contained. The term "Bank" shall include any payee of the Obligations or other indebtedness or obligations hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise, and Bank may transfer, assign or negotiate all or any of the Obligations or other indebtedness or obligations secured by this Mortgage from time to time without the consent of Mortgagor and without notice to Mortgagor and any transferee or assignee of Bank or any transferee or assignee of another may do the same without Mortgagor's consent and without notice to Mortgagor. Mortgagor waives and will not assert against any transferee or assignee of Bank any claims, defenses, set-offs or rights of recoupment which Mortgagor could assert against Bank, except defenses which Mortgagor cannot waive.

15.16 Notices. All notices, certificates, requests for information and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses of the parties as set forth in this Mortgage. Mortgagor and the Bank may, by written notice given hereunder, designate a different address where communications should be sent and Bank may direct, by notice to Mortgagor, for communications to be sent electronically or in some other non-tangible medium.

15.17 Use and Application of Terms. To the end of achieving the full realization by Bank of its rights and remedies under this Mortgage, including payment in full of the Obligations, in using and applying the various terms, provisions and conditions in this Mortgage, the following shall apply: (1) the terms "hereby", "hereof", "herein", "hereunder", and any similar words, refer to this Mortgage; (2) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number, and vice versa; (3) words importing persons include firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, limited liability companies, trusts, business trusts, corporations and other legal organizations, including public and quasi-public

bodies, as well as individuals; (4) the use of the terms "including" or "included in", or the use of examples generally, are not intended to be limiting, but shall mean, without limitation, the examples provided and others that are not listed, whether similar or dissimilar; (5) the phrase "costs and expenses", or variations thereof, shall include, without limitation, reasonable attorneys' fees and fees of legal assistants, and reasonable fees of accountants, engineers, surveyors, appraisers and other professionals or experts – and all references to attorneys' fees or fees of legal assistants, or fees of accountants, engineers, surveyors, appraisers or other professionals or experts shall mean reasonable fees; (6) as the context requires, the word "and" may have a joint meaning or a several meaning and the word "or" may have an inclusive meaning or an exclusive meaning; (7) the term "subsidiary" means any registered organization or other organization (i) the majority (by number of votes) of the outstanding voting interests of which is at the time owned or controlled by Mortgagor, or by one or more subsidiaries of Mortgagor, or Mortgagor and one or more subsidiaries of Mortgagor, or (ii) otherwise controlled by or within the control of Mortgagor or any subsidiary; (8) all terms used in this Mortgage that are not defined in this Mortgage or in the Obligations secured hereby, but are defined in the Uniform Commercial Code in effect in the jurisdiction whose laws govern this Mortgage, shall have the meaning ascribed to such terms from time to time in said Uniform Commercial Code; (9) any reference contained in this Mortgage to specific statutes or laws shall include any successor statutes or laws, as the case may be; (10) headings and captions used in this Mortgage are for convenience only, and shall not be used to interpret, construe, define, limit or expand the terms and conditions of this Mortgage; (11) this Mortgage shall not be applied, interpreted and construed more strictly against a person because that person or that person's attorney drafted this Mortgage; and (12) "Mortgage" means this Mortgage, Assignment of Rents and Security Agreement, together with any and all extensions, renewals, amendments, modifications, restatements, substitutions and replacements hereof or herefor.

15.18 Cancellation and Period of Mortgage. If at any time during the period of this Mortgage there is no indebtedness outstanding under any of the Obligations, no obligation of Bank to make any further or additional advances to any person under the Obligations, and all indebtedness and other obligations due and owing under this Mortgage and the Obligations, whether by Mortgagor, some other person or Mortgagor and some other person (jointly and severally), have been paid and satisfied in full, Bank will, upon written request of Mortgagor and at Mortgagor's costs and expense (including, without limitation, attorneys' fees) if permitted by applicable law, execute and deliver to Mortgagor a reconveyance or satisfaction of this Mortgage. Unless earlier cancelled as provided in the preceding sentence and without extending the due date of any payment and the date of performance of any obligation under any of the Obligations and under this Mortgage as set forth herein and therein, and assuming no other provision in this Mortgage specifically provides to the contrary, the period of this Mortgage (including its lien and security interest) and the period by which all of the terms and conditions of this Mortgage are required to be finally and fully performed shall be a date thirty (30) years from the effective date of this Mortgage.

(Signatures Begin on the Next Page, Followed by Information Schedule, Attachments, Etc.)

Notice - Waiver of Right of Appraisal

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.

The undersigned has executed this Mortgage as of the effective date stated in the Information Schedule.

Signed, sealed and delivered in the presence of:

Witness:

THE BROTHERS OF SC, LLC,

Successor by merger to THE BROTHERS OF NC, LLC

Mark J. Sharpe
Print Name: MARK J. SHARPE

By: John E. Marko, Jr.
Print Name: John E. Marko, Jr.
Title: Manager

Elizabeth B. Dasburg
Print Name: Elizabeth B. Dasburg

Witness:

Mark J. Sharpe
Print Name: MARK J. SHARPE

By: Evan R. Marko
Print Name: Evan R. Marko
Title: Manager

Elizabeth B. Dasburg
Print Name: Elizabeth B. Dasburg

Acknowledgments to
Mortgage

STATE OF South Carolina)
COUNTY OF Charleston)

I, Elizabeth B. Dasburg, Notary Public for South Carolina, do hereby certify that The Brothers of SC, LLC, successor by merger to The Brothers of NC, LLC, by John E. Marko, Jr., its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 11 day of October, 2007.

Elizabeth B. Dasburg
Notary Public for the State of SC
My Commission Expires: 7-13-08

STATE OF South Carolina)
COUNTY OF Charleston)

I, Elizabeth B. Dasburg, Notary Public for South Carolina, do hereby certify that The Brothers of SC, LLC, successor by merger to The Brothers of NC, LLC, by Evan R. Marko its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 11 day of October, 2007.

Elizabeth B. Dasburg
Notary Public for the State of SC
My Commission Expires: 7-13-08

**Mortgage Supplement
& Information Schedule**

Subject		Information
Effective Date:		Date: October 11, 2007
Mortgagor:	Full Legal Name:	The Brothers of SC, LLC
	Street Address:	32 South Battery
	P.O. Box:	
	City:	Charleston
	State:	South Carolina
	Zip Code:	29401
	Type of Organization:	Limited liability company
	State of Organization:	South Carolina
	Jurisdiction Organization No.:	None
	Chief Executive Office:	32 South Battery, Charleston, South Carolina 29401
Bank:	Full Name:	RBC Centura Bank
	Street Address:	100 Calhoun Street, Second Floor
	P.O. Box:	
	City:	Charleston
	State:	South Carolina
	Zip Code:	29401
Obligations:		In this Mortgage the term "Obligations" shall mean, and this Mortgage secures payment and performance of, among other indebtedness and obligations as provided herein, each and all of the following: the promissory note dated of even date with this Mortgage executed by Mortgagor in favor of Bank in the face amount of Four Million Nine Hundred Thousand and No/100 Dollars (\$4,900,000.00), and any and all extensions, renewals, modifications, amendments, substitutions and replacements therefor and thereof, in whole and in part;
Permitted Liens:		1. None
Jurisdiction whose Laws Govern Mortgage:		State of South Carolina
Changes to Mortgage		See Attachment dated as of the effective date of this Mortgage

Jurisdiction Specific Provisions	
1.	Future Advance Mortgage. This is a Mortgage for future advances as provided in Section 29-3-50 of the Code of South Carolina (1976), as amended from time to time, or any successor statute ("S.C. Code"); and this Mortgage and the parties hereto shall be subject to such statute and receive all of the rights, privileges and benefits afforded by such statute. In accordance with S.C. Code §29-3-50, the total principal amount of existing indebtedness and future advances outstanding under the Obligations at any one time may not exceed the maximum principal amount of present and future obligations stated in Recital B to this Mortgage.
2.	Remedies – Foreclosure. (a) Foreclosure. Upon the occurrence of an Event of Default under Section 14.1 or any other event defined in this Mortgage as an "Event of Default", or the occurrence of an event which, with the giving of notice or a lapse of time, or both, would become an Event of Default hereunder, Bank is authorized and shall have the power to foreclose this Mortgage through one or more suits at law, proceedings in equity or any other proceedings relating to foreclosure of mortgages or collection of indebtedness secured by a mortgage which are permissible at the time of the occurrence of the Event of Default (or the event which, with the giving of notice or a lapse of time, or both, would become an Event of Default), including power of sale if such remedy is available or becomes available or judicial foreclosure, without declaration of such option and without notice to Mortgagor, unless notice is required by applicable law. In any proceeding to foreclose this Mortgage or otherwise to collect on the indebtedness and obligations secured hereby, Bank may sell or cause to be sold at one or more sales the Property (together with the Collateral if Bank so chooses), or such part or parts thereof or interests therein as Bank may select, in order to pay the Obligations and all other indebtedness and obligations secured hereby, together with all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees actually incurred and all costs of such sale or sales. (b) Separate Sales. In furtherance of the provisions in (a) above and in order to provide Bank the widest possible discretion permitted by law with respect to all aspects of any sale or sales – which Mortgagor agrees Bank is entitled, in the event of any sale under this Mortgage pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels at one or more sales and in such manner or order as Bank in its sole discretion may elect, and if Bank so elects, Bank may sell the Collateral covered by this Mortgage with the Property, or at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State of South Carolina, and one or more exercises of the rights and remedies herein granted shall not extinguish nor exhaust such rights and remedies until the entire Property is sold or the Obligations and other indebtedness and obligations secured hereby are paid in full. Without limiting the foregoing, but in furtherance thereof, if the Obligations or any of them, or any of the other indebtedness or obligations secured hereby are secured by any other mortgage, deed to secure debt, deed of trust, security deed, security agreement, pledge, assignment, guaranty or other supporting obligation or other security document, Bank may at its option exhaust the remedies granted under any of said security documents either concurrently, alternately, successively or independently, and in such order and at such time or times as Bank may determine in its discretion. (c) Application of Proceeds. Unless a different order of application is mandated under applicable law, proceeds derived from any sale as provided above shall be applied to pay, <u>first</u>, costs and expenses of the foreclosure proceeding, including court costs, reasonable attorneys' fees and fees of legal assistants, fees of other professionals such as accountants, reasonable auctioneers' fees if such expenses have been incurred, and any other expenses or advances made or incurred in the protection of the rights of Bank or in the pursuit of any remedy hereunder; <u>second</u>, to taxes and assessments due and unpaid, if Bank deems it appropriate to do so; <u>third</u>, to the payment of any indebtedness and other obligations (including, without limitation, principal, interest, fees, premiums, penalties, charges and costs and expenses on the Obligations) secured by this Mortgage in such order as may be directed by Bank; and <u>fourth</u>, the balance, if any, to the person or

	persons entitled thereto, or if a conflict exists as to the person or persons entitled thereto, the same shall be held by or paid to the appropriate court in the county in which the foreclosure was held. (d) <u>Purchase by Bank.</u> Upon any foreclosure sale or sales of all or any portion of the Property or Collateral as provided herein, Bank may bid for and purchase the Property and Collateral through a credit bid against the Obligations and other indebtedness and obligations secured hereby, or otherwise.
3.	Deficiency Judgment. Mortgagor acknowledges that in any foreclosure proceeding or thereafter, Bank may seek a deficiency judgment against Mortgagor pursuant to S.C. Code §29-3-660 or other applicable law.
4.	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. <u>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.</u> (S.C. Code Ann. §29-3-680 through 760).

Mortgagor's Acknowledgement:

THE BROTHERS OF SC, LLC,
Successor by merger to THE BROTHERS OF NC, LLC

Witness:

By: [Signature]
Print Name: John E. Marko, Jr.
Title: Manager

[Signature]
Print Name: MARK S. SHARPE

By: [Signature]
Print Name: Evan R. Marko
Title: Manager

Witness:
[Signature]
Print Name: Elizabeth B. Daskburg

Attachment
To
Mortgage
(Changes to Mortgage)

The Mortgage is amended as follows:

1. The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(1) of the Mortgage, unless the event of default or default condition under the Obligations; or the act, omission, or occurrence giving rise to such event of default or default condition, shall have continued unremedied beyond applicable cure and/or notice period, if any, set forth in the Obligations.

2. The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(2) of the Mortgage that is or arises from the failure of the Mortgagor to perform a monetary obligation, unless the Bank shall have first given the Mortgagor notice of such failure, and such failure shall have continued unremedied for ten (10) days thereafter.

3. The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(2) of the Mortgage that is or arises from the failure of the Mortgagor to perform a obligation other than an obligation of the payment of money, unless the Bank shall have first given the Mortgagor notice of such failure, and such failure shall have continued unremedied for a period of thirty (30) days after written notice thereof is given by the Bank to the Mortgagor; provided, however, that if such breach or default does not arise from an obligation, covenant or agreement for the payment of money and is susceptible of being cured by the Mortgagor, but not reasonably within thirty (30) days, no default shall be deemed to have occurred so long as the Mortgagor commences cure within such thirty (30) days and diligently pursues such cure to completion and such cure is completed within ninety (90) days.

4. The Bank shall not exercise any remedy resulting from the threatened (but not actual) demolition, injury, or waste to the Collateral as described in Section 14.1(3) of the Mortgage, if within ten (10) days after demand by the Bank the Mortgagor shall have provided adequate assurance acceptable to the Bank in its sole discretion that no such demolition, injury, or waste to the Collateral will occur.

5. The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(7) of the Mortgage, unless the default under the instrument or agreement giving rise to such Event of Default shall have continued unremedied thereafter beyond any applicable cure and/or notice period set forth in the instruments or other agreements referred to in Section 14.1(7);

6. The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(8) of the Mortgage that is or arises from the failure of the Mortgagor to perform a monetary obligation, unless the Bank shall have first given the Mortgagor notice of such failure, and such failure shall have continued unremedied for ten (10) days thereafter.

7. The Bank shall not exercise any remedy resulting from the occurrence of an Event of Default described in Section 14.1(8) of the Mortgage that is or arises from the failure of the Mortgagor to perform a obligation other than an obligation of the payment of money, unless the Bank shall have first given the Mortgagor notice of the default under the Commitment giving rise to the Event of Default, and such default shall have continued unremedied thereafter for a period of thirty (30) days after written notice thereof is given by the Bank to the Mortgagor; provided, however, that if such breach or default does not arise from term, covenant, agreement, or condition for the payment of money and is susceptible of being cured by the Mortgagor, but not reasonably within thirty (30) days, no default shall be deemed to have occurred so long as the Mortgagor commences cure within such thirty (30) days and diligently pursues such cure to completion and such cure is completed within ninety (90) days;

8. Section 14.1(9) is hereby deleted in its entirety and the following section 14.(9) is substituted in its stead:

"(9) any past, present or future material false statement, misrepresentation or withholding of facts by Mortgagor, or any other person obligated on any of the Obligations, to or from Bank in connection with any of the Obligations or this Mortgage, including, without limitation, any material false statement, misrepresentation or withholding of facts relative to the Property or the Collateral or in any loan application or other document provided by Mortgagor or such other person to Bank or its representatives, or in any presentation made by Mortgagor or such other person to Bank or its

representatives, as to any matter relied upon by Bank in evaluating whether to extend financing to Mortgagor or such other person;"

9. Section 14.1(10) and Section 14.(11) of the Mortgage are hereby deleted.

The undersigned have executed this Attachment to Mortgage as of the day and year first above stated.

THE BROTHERS OF SC, LLC,
Successor by merger to THE BROTHERS OF NC, LLC Witness:

By: [Signature]
Print Name: John E. Marko, Jr.
Title: Manager

[Signature]
Print Name: MAKAR J. CHARGE

By: [Signature]
Print Name: Eyan R. Marko
Title: Manager

Witness:
[Signature]
Print Name: Elizabeth B. Dasburg

EXHIBIT A

PARCEL A:

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of Florence, County of Florence, State of South Carolina, being shown on a plat prepared for West Evans-Florence Venture by A&S of Columbia, Inc., dated October 6, 1995, recorded in Plat Book _____, at page _____, in the Office of the Clerk of Court for Florence County, South Carolina, and according to said plat having the following metes and bounds, to wit:

Beginning at an iron pin along the eastern boundary of the right of way of North Cashua Drive at its intersection with the right-of-way of West Evans Street and running N19-57-40E along the right of way of North Cashua Drive for a distance of 357.85 feet to an iron; then turning and running S88-39-55E along property now or formerly of Daniel W. Tyler et al., for a distance of 328.45 feet to an iron; then turning and running S01-21-40W along said property for a distance of 190.01 feet to an iron; then turning and running N88-36-05W along property now or formerly of Jane R. Lingle and Elizabeth W. Lingle and along property now or formerly of Southern National Bank of S.C. for a distance of 163.93 feet to an iron; then turning and running S19-58-40W along property now or formerly of Southern National Bank of S.C. for a distance of 207.60 feet to an iron; then turning and running N88-37-45W along the right of way of West Evans Street for a distance of 178.42 feet to an iron; then turning and running N34-19-25W for a distance of 58.23 feet to an iron at the point of beginning, be all measurements a little more or less.

PARCEL B:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, for the purposes of ingress and egress over and across the property denoted on the aforementioned plat as "Easement No. 1", contained in instrument recorded in Book A315, page 513, aforesaid records, and more particularly described as follows:

Beginning at an iron located on the eastern edge of the right-of-way of North Cashua Drive, said iron being approximately 357.85 feet north of its point of intersection with the right-of-way of West Evans Street, then turning North 19 degrees 57 minutes 40 seconds East, for a distance of 27.44 feet to a point; then turning and running South 88 degrees 39 minutes 55 seconds East, for a distance of 319.80 feet to a point; then turning and running South 01 degrees 21 minutes 40 seconds West for a distance of 26.00 feet to a hole in concrete curb; then turning and running North 88 degrees 39 minutes 55 seconds West for a distance of 328.45 feet to the point of beginning, be all measurements a little more or less,

PARCEL C:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, for the purposes of ingress and egress over and across the property denoted on the aforementioned plat as "Easement No. 3" contained in instrument recorded in Book A315, page 513, aforesaid records, and more particularly described as follows:

Beginning at an iron located on the northern edge of the right-of-way of West Evans Street, said iron being approximately 178.42 feet east of its point of intersection with the right-of-way of North Cashua Drive, then running North 19 degrees 58 minutes 40 seconds East, for a distance of 207.60 feet to an iron; then turning and running South 88 degrees 36 minutes 05 seconds East, for a distance of 15.83 feet to a point, then turning and running South 19 degrees 58 minutes 40 seconds West, for a distance of 207.60 feet to a point, then turning and running North 88 degrees 37 minutes 45 seconds West, for a distance of 15.83 feet to the point of beginning, be all measurements a little more or less.

PARCEL D:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, as shown on plat entitled "Final As-Built Survey for West Evans-Florence Venture, a Partnership", prepared by Ervin Engineering Company, Inc., recorded in the Office of the Clerk of Court for Florence County, South Carolina in Plat Book 42, page 445, for the purposes of installation, operation and maintenance of an underground sanitary sewer line, in accordance with the terms and conditions of the instrument creating the easement, the same being that certain Easement among Daniel W. Tyler, Jack S. Tyler, Jr., Peggy T. Broach, Marjorie W. Tyler as Trustee under the Family Trust created under the Will of Walter D. Tyler, Jr., and West Evans-Florence Venture, recorded in Book A451, page 1945, aforesaid records.

This is the same property conveyed to The Brothers of NC, LLC (now known as The Brothers of SC, LLC), by deed of conveyance of Edens & Avant Properties Limited Partnership dated November 11, 2002, and recorded November 12, 2002, in Book A706, page 1565, in the Clerk of Court for Florence County, SC.

737

Received 1/30/2009 09:17:37 AM

Book B 227 Page 0970

Modification Agreement

CONNIE REEL-SHEARIN
FLORENCE COUNTY CLERK OF COURT
CITY-COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

RECEIVED FROM: WARREN AND SINKLER 39440 (env. provided)

DATE: 013009

P.O. Box 1254
Charleston, SC 29402

RECEIPT NO: 310869-000000

DESCRIPTION

# OF INST.	AMOUNT	FEES	#PAGES	STATE	COUNTY	TOTAL
Modification Agreement	.00	12.00	8			12.00

THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====

TOTAL RECEIPT: 12.00 .00 .00 12.00

TOTAL	CHECK	CASH	CHANGE
12.00	25.00	.00	.00

CR2

CLERKPAY

69 KIM WINBURN

091737



Return to:
Mark S. Sharpe
Warren & Sinkler LLP
P.O. Box 1254
Charleston, South Carolina 29402

2009 JAN 30 AM 9:14

REEL-SHEARIN
CCCCP & GS
FLORENCE COUNTY, SC

Space Above Line for Processing Data

Prepared by:
Mark S. Sharpe
Warren & Sinkler, LLP
P.O. Box 1254
Charleston, South Carolina 29402

State of South Carolina

County of Florence

RBC Bank

Modification Agreement Supplement
(Cover Page)

From: THE BROTHERS OF SC, LLC ("Borrower", whether one or more) with a mailing address of 32 South Battery, Charleston, South Carolina 29401

To: RBC BANK (USA) ("Bank"), formerly known as RBC Centura Bank, with a business address of 134 N. Church Street, Rocky Mount, North Carolina 27804 and a mailing address of Post Office Box 1220, Rocky Mount, North Carolina 27802-1220, which mailing address is the place to which all notices and communications should be sent to Bank regarding this Modification Agreement Supplement.

Date: January 26, 2009

Cross Reference – Recorded Documents Modified:

That certain Mortgage, Assignment of Rents, and Security Agreement executed by The Brothers of SC, LLC, successor by merger to The Brothers of NC, LLC, in favor of RBC Centura Bank, dated October 11, 2007, and recorded October 12, 2007, in Book B139, page 715, in the Clerk of Court of Florence County, S.C.

B227-0970

971

THIS MODIFICATION AGREEMENT SUPPLEMENT ("Supplement"), entered into as of the 26th day of January, 2009, by THE BROTHERS OF SC, LLC ("Borrower", whether one or more) with a mailing address 32 South Battery, Charleston, South Carolina 29401, and RBC BANK (USA) ("Bank"), formerly known as RBC Centura Bank, with a mailing address of 100 Calhoun Street, Suite 200, Charleston, SC 29401.

- A. Borrower and Bank have entered into a Modification Agreement dated of even date herewith ("Modification Agreement") with respect to the instruments, documents and other agreements described in the Modification Agreement, which instruments, documents and other agreements are collectively referred to therein as the Contract.
- B. The Contract consists in part of the documents identified on the Cover Page to this Supplement under the heading "Recorded Documents Modified" (the "Recorded Documents").
- C. In addition to making other modifications to the Contract, the Modification Agreement modified the terms of the Recorded Documents.
- D. Borrower and Bank, through this Supplement, desire to reflect on the public records those modifications to the Recorded Documents which were effected through the Modification Agreement.
- E. This Supplement is supplemental to the Modification Agreement and is a part thereof. Reference is hereby made to the Modification Agreement for modifications to those parts of the Contract other than the Recorded Documents.
- F. Borrower and Bank acknowledge and agree that, except as modified in the Modification Agreement and reflected in part through this Supplement, the terms and provisions of the Contract and the individual instruments, documents and agreements that make up the Contract (including, without limitation, the Recorded Documents) shall remain unchanged and the Contract, as modified in the Modification Agreement and as reflected in part through this Supplement, shall continue in full force and effect as therein and herein written.

NOW, THEREFORE, Bank and Borrower, in consideration of the premises and the sum of One Dollar (\$1.00) to each in hand paid by the other, receipt and sufficiency of which are hereby acknowledged by each, do hereby agree as follows:

Section 1.1. Modification. The Recorded Documents shall be, and the same are, modified as follows:

1.1.1. That certain Mortgage, Assignment of Rents, and Security Agreement executed by The Brothers of SC, LLC, successor by merger to The Brothers of NC, LLC, in favor of Bank, dated October 11, 2007, and recorded October 12, 2007, in Book B139, page 715, in the Clerk of Court of Florence County, S.C., is amended as follows: Notwithstanding any provision in the said Mortgage, Assignment of Rents, and Security Agreement to the contrary, the term "Obligations" shall mean, and the said Mortgage, Assignment of Rents, and Security Agreement shall secure payment and performance of, among other indebtedness and obligations as provided therein, each and all of the following (collectively, the "Restated Obligations"):

(1) All Indebtedness now owing by Deborah Rice-Marko to Bank, and all Indebtedness that may arise and be owing by Deborah Rice-Marko to Bank in the future, including future advances, including without limitation that certain promissory note dated January 11, 2007, in the face amount of Six Million Five Hundred Thousand and 00/100 Dollars (\$6,500,000.00) executed by Deborah Rice-Marko in favor of Bank, as amended by a Modification Agreement dated of even date herewith;

(2) All Indebtedness now owing by ROA, LLC, to Bank, and all Indebtedness that may arise and be owing by ROA, LLC to Bank in the future, including future advances, and including without limitation (i) that certain promissory note dated June 24, 2005, in the face amount of One Million

Seven Hundred Sixty-Three Thousand and No/100 Dollars (\$1,763,000.00) executed by ROA, LLC, a South Carolina limited liability company, in favor of Bank, as amended and increased to Three Million Seventy-Five Thousand Six Hundred Eighty-Nine and No/100 Dollars (\$3,075,689.00) pursuant to a Modification Agreement dated August 30, 2006, as amended by a Modification Agreement dated March 22, 2007, as further amended by a Modification Agreement dated February 25, 2008, and as further amended by a Modification Agreement dated of even date herewith; and (ii) that certain promissory note dated November 9, 2007, in the face amount of Three Million Nine Hundred Twenty Thousand and 00/100 Dollars (\$3,920,000.00) executed by ROA, LLC, a South Carolina limited liability company, in favor of Bank, and amended by a Modification Agreement dated of even date herewith;

(3) All Indebtedness now owing by USS Clarksville, LLC to Bank, and all Indebtedness that may arise and be owing by USS Clarksville, LLC to Bank in the future, including future advances, and including without limitation that certain Promissory Note dated June 24, 2005, in the face amount of Five Hundred Fifty Thousand Four Hundred and No/100 Dollars (\$550,400.00) executed by Deborah Rice-Marko, in favor of Bank, as amended by a Modification Agreement dated August 30, 2006, which decreased the face amount of the Note to Four Hundred Thirty-One Thousand Four Hundred Six and No/100 Dollars (\$431,406.00), and as assumed by USS Clarksville, LLC, pursuant to an Assignment and Assumption Agreement dated as of March 22, 2007, between Deborah Rice-Marko and USS Clarksville, LLC, and as amended pursuant to a Modification Agreement dated March 22, 2007, and as further amended by a Modification Agreement dated February 25, 2008, and as further amended by a Modification Agreement dated of even date herewith;

(4) All Indebtedness now owing by Liberty Cottages, LLC to Bank, and all Indebtedness that may arise and be owing by Liberty Cottages to Bank in the future, including future advances, and including without limitation that certain promissory note dated March 22, 2007, in the face amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00), executed by Liberty Cottages, LLC, in favor of Bank, as amended by a Modification Agreement dated February 25, 2008, and as further amended by a Modification Agreement dated of even date herewith; and

(5) All Indebtedness now owing by Royal Beach Properties, LLC to Bank, and all Indebtedness that may arise and be owing by Royal Beach Properties, LLC to Bank in the future, including future advances, and including without limitation that certain commercial note dated May 19, 2000, in the face amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) executed by Deborah Rice-Marko in favor of Bank, as amended and increased to Three Million Two Hundred Sixty-Two Thousand Five Hundred and No/100 Dollars (\$3,262,500.00) pursuant to a Modification Agreement dated March 23, 2006, and as further amended pursuant to a Modification Agreement dated August 30, 2006, and as further amended pursuant to a Modification Agreement dated July 18, 2007, as assumed by Royal Beach Properties, LLC, pursuant to an Assignment and Assumption Agreement dated August 26, 2008, between Deborah Rice-Marko, as assignor, Royal Beach Properties, LLC, as assignee, and Bank, and as further amended by a Modification Agreement dated of even date herewith.

1.1.2. That certain Mortgage, Assignment of Rents, and Security Agreement executed by The Brothers of SC, LLC, successor by merger to The Brothers of NC, LLC, in favor of Bank, dated October 11, 2007, and recorded October 12, 2007, in Book B139, page 715, in the Clerk of Court of Florence County, S.C., is amended as follows: Paragraph "B" on page 2 is hereby amended to provide that The maximum principal amount of the Obligations, including present and future advances and obligations, that may be secured by this Mortgage at any one time is an amount up to Twenty-Five Million and No/100 Dollars (\$25,000,000.00).

Section 1.2. In addition to and not in lieu of the Events of the Default set forth in the Contract, each of the following shall constitute an Event of Default under the Contract, including without limitation the Note:

- A. The occurrence of an Event of Default under and as defined in any promissory note now outstanding or hereafter executed by ROA, LLC in favor of Bank, including without limitation (i) that certain promissory note dated June 24, 2005, in the face amount of One Million Seven Hundred Sixty-Three Thousand and No/100 Dollars (\$1,763,000.00) executed by ROA, LLC, a South Carolina limited liability company, in favor of Bank, as amended and increased to Three Million Seventy-Five Thousand Six Hundred Eighty-Nine and No/100 Dollars (\$3,075,689.00) pursuant to a Modification Agreement dated August 30, 2006, and as amended by a Modification Agreement dated March 22, 2007, as further amended by a Modification Agreement dated February 25, 2008, and as further amended by a Modification Agreement dated of even date herewith; and (ii) that certain promissory note dated November 9, 2007, in the face amount of Three Million Nine Hundred Twenty Thousand and 00/100 Dollars (\$3,920,000.00) executed by ROA, LLC, a South Carolina limited liability company, in favor of Bank, as amended by a Modification Agreement dated of even date herewith.
- B. The occurrence of an Event of Default under and as defined in any promissory note now outstanding or hereafter executed by USS Clarksville, LLC in favor of Bank, including without limitation that certain Promissory Note dated June 24, 2005, in the face amount of Five Hundred Fifty Thousand Four Hundred and No/100 Dollars (\$550,400.00) executed by Deborah Rice-Marko, in favor of Bank, as amended by a Modification Agreement dated August 30, 2006, which decreased the face amount of the Note to Four Hundred Thirty-One Thousand Four Hundred Six and No/100 Dollars (\$431,406.00), and as assumed by USS Clarksville, LLC, pursuant to an Assignment and Assumption Agreement dated as of March 22, 2007, between Deborah Rice-Marko and USS Clarksville, LLC, and as amended pursuant to a Modification Agreement dated March 22, 2007, as further amended by a Modification Agreement dated February 25, 2008, and as further amended by a Modification Agreement dated of even date herewith.
- C. The occurrence of an Event of Default under and as defined in any promissory note now outstanding or hereafter executed by Liberty Cottages, LLC in favor of Bank, including without limitation that certain promissory note dated March 22, 2007, in the face amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00), executed by Liberty Cottages, LLC, in favor of Bank, as amended by a Modification Agreement dated February 25, 2008, and as further amended by a Modification Agreement dated of even date herewith.
- D. The occurrence of an Event of Default under and as defined in the Note, as amended by a Modification Agreement of even date herewith, or under any and all extensions, renewals or further modifications thereof.
- E. The occurrence of an Event of Default under and as defined in any promissory note now outstanding or hereafter executed by Royal Beach Properties, LLC in favor of Bank, including without limitation that certain commercial note dated May 19, 2000, in the face amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) executed by Deborah Rice-Marko in favor of Bank, as amended and increased to Three Million Two Hundred Sixty-Two Thousand Five Hundred and No/100 Dollars (\$3,262,500.00) pursuant to a Modification Agreement dated March 23, 2006, and as further amended pursuant to a Modification Agreement dated August 30, 2006, and as further amended pursuant to a Modification Agreement dated July 18, 2007, as assumed by Royal Beach Properties, LLC, pursuant to an Assignment and Assumption Agreement dated August 26, 2008, between Deborah Rice-Marko, as assignor, Royal Beach Properties, LLC, as assignee, and Bank, and as further amended by a Modification Agreement dated of even date herewith.
- F. The occurrence of an Event of Default under and as defined in any promissory note now outstanding or hereafter executed by Deborah Rice-Marko in favor of Bank, including without limitation that certain promissory note dated January 11, 2007, in the face amount of Six Million Five Hundred Thousand and 00/100 Dollars (\$6,500,000.00) executed by Deborah Rice-Marko in favor of Bank, as amended by a Modification Agreement dated of even date herewith.

Section 1.3. Effect of Modification. Nothing contained in this Supplement shall in any way impair the security now held for the indebtedness evidenced by the Contract, nor waive, annul, vary and affect any provision, condition, covenant and agreement contained in the Contract, except as modified in the Modification Agreement and reflected in part through this Supplement, nor affect and impair any rights, powers and remedies under the Contract. The Modification Agreement (including this Supplement) does not extend the expiration dates or enlarge the terms of any property, physical damage, credit and any other insurance written in connection with or financed by said Contract.

Section 1.4. Documentary Stamps, etc. To the extent not prohibited by law and notwithstanding who is liable for payment of the taxes and fees, Borrower shall pay, on Bank's demand, all intangible taxes, documentary stamp taxes, excise taxes and other similar taxes assessed, charged and required to be paid in connection with the Modification Agreement (including this Supplement), and any future extension, renewal and modification of the Contract, or assessed, charged and required to be paid in connection with any of the instruments, documents and other agreements which make up the Contract.

Section 1.5. Anti-Terrorism. Borrower represents, warrants and covenants to Bank as follows: (1) Borrower (a) is not and shall not become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) does not engage in and shall not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not and shall not otherwise become associated with any such person in any manner violative of Section 2, (c) is not and shall not become a person on the list of Specially Designated Nationals and Blocked Persons, and (d) is not and shall not become subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order; (2) Borrower is and shall remain in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001); and (3) Borrower has not and shall not use all or any part of the extension of credit evidenced by the Note, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 1.6. Maintenance of Records. Bank is authorized to maintain, store and otherwise retain the Modification Agreement (including this Supplement) and the other instruments, documents and agreements constituting the Contract in their original, inscribed tangible forms or records thereof in an electronic medium or other non-tangible medium which permits such records to be retrieved in perceivable forms.

Section 1.7. Reservation of Rights: Entire Agreement. Bank does hereby reserve all rights and remedies it may have against all parties secondarily liable for repayment of the indebtedness evidenced by the Contract. The Contract, as modified by the Modification Agreement (including this Supplement), contains the entire agreement of the parties and the undersigned do hereby ratify and confirm the terms of the Contract, all of which shall remain in full force and effect, as modified by the Modification Agreement (including this Supplement). The Modification Agreement (including this Supplement) shall be binding upon any assignee and successor in interest of the parties hereto. Borrower waives and will not assert against any transferee and assignee of Bank any claims, defenses, set-offs and rights of recoupment which Borrower could assert against Bank, except defenses which Borrower cannot waive.

The undersigned has executed this Supplement as of the date first set forth above.

Signed, sealed and delivered in the presence of:

THE BROTHERS OF SC, LLC

Witness:

Elizabeth B. Dasburg
Print Name: Elizabeth B. Dasburg

By: John E. Marko, Jr.
Print Name: John E. Marko, Jr.
Title: Manager

Witness:

Mark S. Skane
Print Name: Mark S. Skane

By: Evan R. Marko
Print Name: Evan R. Marko
Title: Manager

SOUTH CAROLINA,

CHARLESTON COUNTY.

I, Elizabeth B. Dasburg, Notary Public for South Carolina, do hereby certify that THE BROTHERS OF SC, LLC, a South Carolina limited liability company, by John E. Marko, Jr. and Evan R. Marko, its Managers, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 26 day of January, 2009.

Elizabeth B. Dasburg
Notary Public for South Carolina
My Commission Expires: 3-12-18

The undersigned has executed this Supplement as of the date first set forth above.

Signed, sealed and delivered in the presence of:

Witness:

Print Name:

Witness:

Print Name:

BANK:

RBC BANK (USA), formerly known as RBC Centura Bank

By:

Name: Michael E. Baker

Title: Banking Officer

SOUTH CAROLINA,

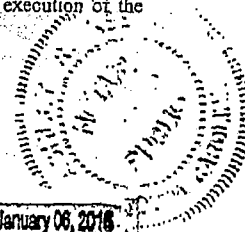
CHARLESTON COUNTY.

I, Abby Vernon, Notary Public for South Carolina, do hereby certify that RBC BANK (USA), a North Carolina banking corporation, formerly known as RBC Centura Bank, by Michael E. Baker, its Banking Officer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 21st day of January, 2009.

Abby V. Vernon
Notary Public for South Carolina

My Commission Expires: My Commission Expires January 06, 2016



Received 7/26/2011 12:58:11 AM

Book B 361 Page 0466

Modification Agreement

CONNIE REEL-SHEARIN
FLORENCE COUNTY CLERK OF COURT
CITY-COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

RECEIVED FROM: NELSON MULLINS RILEY 671947

DATE: 072611

ATTN: Noah Rogers
Meridian / N Floor
1320 main St.

RECEIPT NO: 346205-000000

DESCRIPTION
Columbia SC 29201

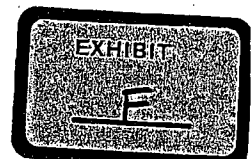
# OF INST.	AMOUNT	FEES	#PAGES	STATE	COUNTY	TOTAL
Modification Agreement	.00	14.00	10			14.00

THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====

TOTAL RECEIPT: 14.00 .00 .00 14.00

TOTAL	CHECK	CASH	CHANGE
14.00	14.00	.00	.00

CR1 CLERKPAY 15 Melanie Barr 125812



FILED

2011 JUL 26 PM 1:03

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Cross reference to:
Book B 139 at Page 715
Florence County Records

Nathan C. Fuller, Esq.
Nelson Mullins Riley & Scarborough LLP
100 North College Street, Suite 4200
Charlotte, NC 28202

MODIFICATION OF MORTGAGE

by and from

The Brothers of SC, LLC "Mortgagor"

to

RBC Bank (USA), "Mortgagee"

(the successor in interest to RBC Centura Bank and Centura Bank)

Dated as of July 15, 2011

Location: 4 Parcels
City of Florence
County: Florence
State: South Carolina

#4825-0991 *121 v 1

B361-4666

467

MODIFICATION OF MORTGAGE
(City of Florence, Florence County, South Carolina)

THIS MODIFICATION OF MORTGAGE (this "**Modification**"), is dated as of this 15th day of July, 2011, by The Brothers of SC, LLC, having an address of 32 South Battery, Charleston, South Carolina 29401 ("**Mortgagor**"), and RBC Bank (USA), having an office at 4961 Long Beach Road, Southport, North Carolina 28461 (the successor in interest to RBC Centura Bank and Centura Bank, together with its successors and assigns, "**Mortgagee**").

WITNESSETH:

WHEREAS, the Obligors (hereinafter defined) and Mortgagee are party to certain Loan Documents (as defined in the Forbearance Agreement, hereinafter defined);

WHEREAS, **DEBORAH RICE-MARKO**, a resident of the State of South Carolina ("**DRM**"), **GW DORCHESTER, LLC**, a South Carolina limited liability company ("**Dorchester**"), **LIBERTY COTTAGES, LLC**, a South Carolina limited liability company ("**Liberty Cottages**"), **ROA, LLC**, a South Carolina limited liability company ("**ROA**"), **ROYAL BEACH PROPERTIES, LLC**, a South Carolina limited liability company ("**Royal**"), **THE BROTHERS OF SC, LLC**, a South Carolina limited liability company (as successor in interest to The Brothers of NC, LLC, "**Brothers**"), and **USS CLARKSVILLE, LLC**, a South Carolina limited liability company ("**Clarksville**") (**DRM**, **Dorchester**, **Liberty Cottages**, **ROA**, **Royal**, **Brothers** and **Clarksville** are each referred to herein as a "**Borrower**" and collectively as the "**Borrowers**"), **DRM** (in her capacity as a guarantor), **LIBERTY COTTAGES LAND, LLC**, a South Carolina limited liability company ("**Liberty Land**"), **JOHN E. MARKO, JR.**, a resident of the State of South Carolina ("**JEM**"), **EVAN R. MARKO**, a resident of the State of South Carolina ("**ERM**"), and **THE ESTATE OF EVELYN D. RICE** ("**Estate**") (**DRM**, **Liberty Land**, **JEM**, **ERM** and **Estate** are each referred to herein as a "**Guarantor**" and collectively as the "**Guarantors**"; the **Borrowers** and the **Guarantors** are collectively referred to herein as the "**Obligors**" and individually as an "**Obligor**") and Mortgagee are entering into that certain Forbearance Agreement dated as of the date hereof (the "**Forbearance Agreement**"); all capitalized terms used herein without definition shall have the respective meanings ascribed to them in the Forbearance Agreement).

WHEREAS, to secure the indebtedness described in each Original Mortgage (as defined below), Mortgagor executed a mortgage dated as of October 11, 2007, in favor of Mortgagee and recorded on October 12, 2007, in Book B 139 at Page 715 (as amended or modified prior to the date hereof, individually and collectively, each an "**Original Mortgage**" and collectively, the "**Original Mortgages**"), encumbering the real property described therein;

WHEREAS, pursuant to the Forbearance Agreement, the Mortgagee has agreed to continue to provide certain financial accommodations to the Obligor;

WHEREAS, Mortgagor is receiving a good and valuable benefit, the sufficiency and receipt of which is hereby acknowledged, from the Mortgagee in its continuing to extend credit and provide financial accommodations under the Forbearance Agreement and the other Loan Documents;

WHEREAS, Mortgagor and Mortgagee wish to further modify each Original Mortgage to secure the additional obligations of the Obligors with respect to the financial accommodations provided pursuant to the Forbearance Agreement and the other Loan Documents; and

WHEREAS, each Original Mortgage, as modified hereby, is referred to herein as the "**Modified Mortgage.**"

NOW, THEREFORE, in consideration of mutual covenants contained herein, the indebtedness secured by each Original Mortgage, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Modification of Mortgage.

a. In order to have each Original Mortgage secure the additional indebtedness, liabilities and obligations presently or hereafter extended to the Obligors pursuant to the Forbearance Agreement and the other Loan Documents, in addition to all indebtedness, liabilities and obligations secured thereunder as of the date of such Original Mortgage, the indebtedness, liabilities and obligations secured by each Original Mortgage are hereby modified to add and include the indebtedness described below (without duplication):

All Loans, and other indebtedness, advances, debts, liabilities, obligations, covenants and duties owing by any Obligor to the Mortgagee or any other person or entity required to be indemnified, that arises under any Loan Document, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guaranty, indemnification or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired, including without limitation (i) payment of all sums, with interest thereon, now or hereafter advanced under any Loan Document to maintain, protect, repair, restore, preserve and enforce the Collateral and the liens and security interests created by any Loan Document; (ii) payment of all sums, with interest thereon, now or hereafter advanced to protect and enforce the rights and remedies of Mortgagee hereunder or under any one or more of the other Loan Documents, (iii) payment of any and all present and future indebtedness and other obligations under each one of and all of the Loan Documents that are not encompassed in the foregoing, including payment of any and all premiums and other obligations relating to any Rate Management Transaction; (iv) performance of the covenants, terms and conditions contained in each one of and all of the Loan Documents, and (v) payment of all monetary

obligations incurred by or accrued to the Mortgagee during the pendency of any bankruptcy, insolvency, receivership or other similar proceedings, regardless of whether allowed or allowable in such proceeding, relative to a Loan Party or any one or more of the Loan Documents.

2. Increase to the Maximum Aggregate Principal Sum Secured by the Mortgage. All references in each Original Mortgage to a maximum amount indebtedness secured thereby are hereby deleted and replaced with the amount of \$25,000,000.00

3. Maturity Date. All references in each Original Mortgage to a maturity date are hereby deleted and replaced with the date of July 15, 2013.

4. Additional Modifications to Mortgage. Notwithstanding anything in the recitals to the Original Mortgages or any other provision of the Original Mortgages to the contrary, each Original Mortgage is hereby amended and modified to provide that (a) wherever in such Original Mortgage reference is made to any promissory note or notes such reference shall be to the promissory notes set forth on Exhibit A, as amended or modified from time to time; (b) wherever in such Original Mortgage reference is made to any borrower, such reference shall be to the Obligors, as defined herein; (c) wherever in such Original Mortgage reference is made to any loan document, such reference shall include the Loan Documents, as defined in the Forbearance Agreement; and (d) wherever in such Original Mortgage reference is made to any default or event of default, such reference shall include each Event of Default, as defined in the Forbearance Agreement, and (i) any default (and the expiration of all applicable cure periods) or event of default under each Modified Mortgage shall be an Event of Default under the Forbearance Agreement, and (ii) any Event of Default under the Forbearance Agreement shall be an event of default under each Modified Mortgage. In the event of any inconsistency or conflict between the terms of any Original Mortgage and the terms of this Modification, the terms of this Modification shall control. In the event of any inconsistency or conflict between the terms of any Modified Mortgage and the terms of the Forbearance Agreement, the terms of the Forbearance Agreement shall control.

5. Ratification. Except as modified hereby, the terms and conditions of the Original Mortgages shall remain in full force and effect, and Mortgagor hereby ratifies the terms and conditions thereof and reaffirms the covenants, representations and warranties given therein.

6. No Release or Novation. This Modification does not extinguish the outstanding indebtedness or any other obligation or discharge or release the lien of any Original Mortgage or any other security. Nothing herein contained shall be construed as a substitution or novation of any Original Mortgage or the indebtedness secured thereby, which shall remain in full force and effect, except as modified hereby. Each Modified Mortgage constitutes a binding obligation of the Mortgagor and a continuing lien over and security interest in the property encumbered thereby.

7. Successors and Assigns. This Modification shall be binding upon and inure to the benefit of the Mortgagor and Mortgagee and their respective successors and assigns.

8. Multiple Counterparts. This Modification may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

9. General Terms. Each Modified Mortgage and the other Loan Documents, including the Obligations and the Forbearance Agreement, are incorporated into each other and they are each a part of the other. The terms and conditions of one or more of the Loan Documents may include, among other things, provisions for the increase or decrease in the principal amount of the Obligations, adjustment of the interest rate or rates applicable to the Obligations, adjustments in payments relative to the Obligations and extension or renewal of the maturity date or dates of the Obligations. One or more of the Loan Documents may also contain provisions permitting other adjustments in the Obligations. All of the Loan Documents will be applied and enforced in harmony with and in conjunction with each other to the end that Mortgagee realizes fully upon its rights and remedies in each and the liens and security interests created by each; and, to the extent conflicts exist between any Modified Mortgage and the other Loan Documents, including conflicts relative to the meanings/use of terms, they will be resolved in favor of Mortgagee for the purpose of achieving the full realization of Mortgagee's rights and remedies and the liens and security interests as aforesaid. The recitals are part of each Modified Mortgage. All exhibits and other attachments to each Modified Mortgage are incorporated herein. Mortgagor waives the benefit of all present and future homestead, appraisement, valuation, stay, extension, reinstatement and redemption laws, and all rights to require marshalling. Mortgagor, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to each Modified Mortgage. Each Modified Mortgage will be governed by and construed in accordance with the laws of the State of South Carolina, excluding, however, the conflict of law and choice of law provisions thereof. Except as otherwise provided in each Modified Mortgage, the terms and conditions of each Modified Mortgage may be changed only by an agreement in writing signed by Mortgagee and Mortgagor. Mortgagor does hereby irrevocably constitute and appoint Mortgagee its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to do or cause to be done such acts as Mortgagee, in its sole discretion, deems necessary and advisable to effect the terms and conditions of each Modified Mortgage and the other Loan Documents and to otherwise realize Mortgagor's rights, authority and powers hereunder and thereunder, and the benefits provided to Mortgagor herein and therein. The foregoing appointment is and the same will be coupled with an interest in Mortgagee's favor. Subject to the limitations on Mortgagor's right to assign set forth herein and any other limitations on assignment in any of the other Loan Documents, the covenants, terms and conditions contained in each Modified Mortgage will bind, and the benefits and powers will inure to, the respective heirs, executors, administrators,

successors and assigns of the parties hereto. At any time or times and without notice to Mortgagor or any other person, Mortgagor may assign any or all of the Obligations or sell or transfer one or more participations in any of the Obligations, and in connection with any such assignments, sales or other transfers, may assign Mortgagor's rights and benefits under each Modified Mortgage and any of the Loan Documents in whole or in part; and, each Modified Mortgage will apply to, be binding upon and inure to the benefit of each one of and all of Mortgagor's participants, successors and assigns, including any agent that may administer or service any of the Obligations for any holder of any of the Loan Documents, or any assignees, transferees or participants. All notices and other communications under each Modified Mortgage will be given in accordance with the applicable provisions of the Forbearance Agreement. Mortgagor and Mortgagee may, by written notice given hereunder, designate a different address where communications should be sent and Mortgagee may direct, by notice to Mortgagor, for communications to be sent electronically or in some other non-tangible medium.

10. Deficiency Judgment. Mortgagor acknowledges that in any foreclosure proceeding or thereafter, Mortgagee may seek a deficiency judgment against Mortgagor pursuant to S.C. Code §29-3-660 or other applicable law.

[SIGNATURES BEGIN ON NEXT PAGE]

WAIVER OF APPRAISAL. 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 premises 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 PREMISES.

IN WITNESS WHEREOF, the undersigned have executed this Modification as of the day first above written.

MORTGAGOR:

THE BROTHERS OF SC, LLC

Witness

Witness

By:

Name:

Title:

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Acknowledgment

John E.
Marko, Jr.

I, the undersigned Notary Public for the State and County, so hereby certify that ~~John E. Marko, Jr.~~ is the ^{Member} ~~Notary Public~~ of The Brothers of SC, LLC, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn To and Subscribed Before Me

This 15th day of July, 2011.

Notary Public of

My commission expires: 7-24-2014

(U.S.) (SEAL)

Witness Allison J. Williams

Witness Jesse Webb

MORTGAGEE:

RBC BANK (USA)

By: [Signature]
Name: William H. Harrington, Jr.
Title: Bank Officer

STATE OF North Carolina

COUNTY OF Brunswick

) Acknowledgment
)

I, the undersigned Notary Public for the State and County, so hereby certify that William H. Harrington, Jr. is the Bank Officer of RBC Bank (USA), whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Sworn To and Subscribed Before Me

This 1st day of July, 2011.

[Signature] (L.S.) (SEAL)
Notary Public of Brunswick County

My commission expires: 4/24/2016

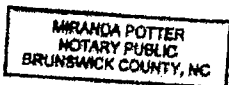


EXHIBIT A

Promissory Notes

1. Amended and Restated Promissory note made by DRM in favor of Mortgagor dated July 15, 2011, in the principal amount of \$1,595,983.91.
2. Amended and Restated Promissory note made by Dorchester dated July 15, 2011, in the principal amount of \$2,327,500.00.
3. Amended and Restated Promissory note made by Clarksville dated July 15, 2011, in the principal amount of \$430,324.41.
4. Amended and Restated Promissory Note made by Liberty Cottages dated July 15, 2011, in the principal amount of \$1,271,220.00.
5. Amended and Restated Promissory Note made by ROA dated July 15, 2011, in the principal amount of \$1,294,197.25.
6. Amended and Restated Promissory Note made by ROA dated July 15, 2011, in the principal amount of \$3,396,459.83.
7. Amended and Restated Promissory Note made by Royal dated July 15, 2011, in the principal amount of \$3,262,500.00.
8. Amended and Restated Promissory Note made by Brothers dated July 15, 2011, in the principal amount of \$1,087,495.68, and
9. Amended and Restated Promissory Note made by Brothers dated July 15, 2011, in the principal amount of \$4,900,000.00

Received 7/22/2011 09:42:48 AM

Book B 360 Page 1491

UCC W/PAGES-MTG BOOK

COURT CLERK SHIRAZI
CLERK COUNTY CLERK OF COURT
CITY COUNTY COMPLEX 180 N. IRBY ST., MSC-E
FLORENCE SOUTH CAROLINA 29501
TEL: 843-666-1031

RECEIVED FROM: NATIONAL CORPORATE RESEARCH

41-566 Street
Spartanburg
Albany NY 12207

RECEIPT NO: 346094-000000

BOOK	AMOUNT	FEES	#PAGES	STATE	COUNTY	TOTAL
UCC W/PAGES-MTG BOOK	11.00	11.00	5			11.00
BOOK: B360 FROM PAGE: 1491 THRU PAGE: 1495						

THIS SHEET IS NOW PART OF THIS DOCUMENT
PLEASE LEAVE ATTACHED

TOTAL RECEIPT:	11.00	.00	.00	11.00
TOTAL	CHECK	CASH	CHANGE	
11.00	11.00	.00	.00	

002 CLERKPAY 69 KIM WINBURN 094248



UCC FINANCING STATEMENT

FOUR-ONE INSTRUCTIONS (front and back) CAREFULLY

1. DEBTOE'S NAME OF CONTACT AT FILER (optional)

Nathan Fuller 704-417-3000

2. SEND ACKNOWLEDGMENT TO: (Name and Address)

Please Return To:

P

National Corporate Research, Ltd.
41 State Street, Suite 600
Albany, New York 12207
(800)828-0938 (518)434-0938

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOE'S EXACT FULL LEGAL NAME (insert only one debtor name (1a or 1b) - do not abbreviate or combine names)

1a. ORGANIZATION'S NAME
The Brothers of SC, LLC

OR 1b. INDIVIDUAL LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

1d. JURISDICTION

CHARLESTON

SC

29401

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

South Carolina

1g. ORGANIZATIONAL ID # (if any)

1h. ORGANIZATION'S TYPE

LLC

1i. ORGANIZATION'S TYPE

1j. ORGANIZATION'S TYPE

2. ADDITIONAL DEBTOE'S EXACT FULL LEGAL NAME (insert only one debtor name (2a or 2b) - do not abbreviate or combine names)

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. JURISDICTION

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATION'S TYPE

2h. ORGANIZATION'S TYPE

2i. ORGANIZATION'S TYPE

2j. ORGANIZATION'S TYPE

3. SECURED PARTY'S NAME (NAME OF TOTAL ASSIGNOR or ASSIGNORSHIP) (insert only one secured party name (3a or 3b))

3a. ORGANIZATION'S NAME

OR 3b. INDIVIDUAL LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

3d. JURISDICTION

Southport

NC

28461

3e. TYPE OF ORGANIZATION

3f. JURISDICTION OF ORGANIZATION

3g. ORGANIZATION'S TYPE

3h. ORGANIZATION'S TYPE

3i. ORGANIZATION'S TYPE

3j. ORGANIZATION'S TYPE

4. THIS FINANCING STATEMENT covers the following collateral:

All fixtures and proceeds thereof.

B240-1491

1498

FILED IN THE OFFICE OF THE CLERK OF SUPERIOR COURT
FLORENCE COUNTY, SOUTH CAROLINA
ON JUL 22 2011
FILED BY: [Signature]
RECEIVED BY: [Signature]

Filed with: SC - Florence County

F11119
A847704

PLEASE OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV 05/22/03)

EXHIBIT A

PARCEL A:

ALL that certain place, parcel or tract of land, situate, lying and being in the City of Florence, County of Florence, State of South Carolina, being shown on a plat prepared for West Evans-Florence Venture By A&S of Columbia, Inc., dated October 6, 1995, recorded in Plat Book _____ at page _____, in the Office of the Clerk of Court for Florence County, South Carolina, and according to said plat having the following metes and bounds, to wit:

Beginning at an iron pin along the eastern boundary of the right of way of North Cashua Drive at its intersection with the right-of-way of West Evans Street and running N19-47-40E along the right of way of North Cashua Drive for a distance of 147.65 feet to an iron; then turning and running S44-39-55E along property now or formerly of Daniel W. Tyler et al., for a distance of 328.45 feet to an iron; then turning and running S01-21-40W along said property for a distance of 130.01 feet to an iron; then turning and running N88-36-05W along property now or formerly of Jane R. Lingle and Elizabeth W. Lingle and along property now or formerly of Southern National Bank of S.C. for a distance of 163.93 feet to an iron; then turning and running S19-38-40W along property now or formerly of Southern National Bank of S.C. for a distance of 207.60 feet to an iron; then turning and running N88-37-45W along the right of way of West Evans Street for a distance of 178.42 feet to an iron; then turning and running N34-19-25W for a distance of 38.23 feet to an iron at the point of beginning, be all measurements a little more or less.

PARCEL B:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, for the purpose of ingress and egress over and across the property denoted on the abovesaid plat as "Easement No. 1", contained in instrument recorded in Book A315, page 512, abovesaid records, and more particularly described as follows:

Beginning at an iron located on the eastern edge of the right-of-way of North Cashua Drive, said iron being approximately 357.85 feet north of its point of intersection with the right-of-way of West Evans Street, then turning North 19 degrees 57 minutes 40 seconds East, for a distance of 27.44 feet to a point; then turning and running South 88 degrees 39 minutes 55 seconds East, for a distance of 319.80 feet to a point; then turning and running S44th 01 degrees 21 minutes 40 seconds West for a distance of 26.00 feet to a hole in concrete curb; then turning and running North 88 degrees 39 minutes 55 seconds West for a distance of 328.45 feet to the point of beginning, be all measurements a little more or less.

PARCEL C

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, for the purposes of ingress and egress over and across the property denoted on the aforesaid plat as "Easement No. 3" contained in instrument recorded in Book A315, page 313, aforesaid records, and more particularly described as follows:

Beginning at an iron located on the northern edge of the right-of-way of West Evans Street, said iron being approximately 178.42 feet east of its point of intersection with the right-of-way of North Cashus Drive, then running North 19 degrees 58 minutes 40 seconds East, for a distance of 207.60 feet to an iron; then turning and running South 88 degrees 36 minutes 05 seconds East, for a distance of 15.83 feet to a point; then turning and running South 19 degrees 58 minutes 40 seconds West, for a distance of 207.60 feet to a point; then turning and running North 88 degrees 37 minutes 45 seconds West, for a distance of 15.83 feet to the point of beginning, be all measurements a little more or less.

PARCEL D

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, as shown on plat entitled "Final As-Built Survey for West Evans-Florence Venture, a Partnership", prepared by Ervin Engineering Company, Inc., recorded in the Office of the Clerk of Court for Florence County, South Carolina in Plat Book 42, page 445, for the purposes of installation, operation and maintenance of an underground sanitary sewer line, in accordance with the terms and conditions of the instrument creating the easement, the same being that certain easement among Daniel W. Tyler, Jack S. Tyler, Jr., Peggy T. Broach, Marjorie W. Tyler as Trustee under the Family Trust created under the Will of Walter D. Tyler, Jr., and West Evans-Florence Venture, recorded in Book A451, page 1945, aforesaid records.

This is the same property conveyed to The Brothers of NC, LLC (now known as The Brothers of SC, LLC), by deed of conveyance of Edens & Avant Properties Limited Partnership dated November 11, 2002, and recorded November 12, 2002, in Book A706, page 1565, in the Clerk of Court for Florence County, SC.

1495

739

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
Nathan Fuller	704-417-3000
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
Nelson Mullins Riley & Scarborough LLP Bank of America Corporate Center 100 North Tryon Street - Suite 4200 Charlotte, NC 28202-4000 nathan.fuller@nelsonmullins.com	

SC Secretary of State
File ID: 110721-1545378
Lapse Date: 07/21/2016

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names				
1a. ORGANIZATION'S NAME The Brothers of SC, LLC				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 32 South Battery				
CITY Charleston		STATE SC	POSTAL CODE 29401	COUNTRY
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION LLC	1f. JURISDICTION OF ORGANIZATION South Carolina	1g. ORGANIZATIONAL ID #, if any ☒ NONE
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names				
2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS				
CITY		STATE	POSTAL CODE	COUNTRY
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any ☐ NONE
3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME RBC Bank (USA)				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 4961 Long Beach Road				
CITY Southport		STATE NC	POSTAL CODE 28461	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:
All assets of Debtor, now or hereafter acquired, wherever located.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Affidavit (if applicable)	7. Check to REQUEST SEARCH REPORT (S) on Debtor(s) (optional)		8. OPTIONAL FILER REFERENCE DATA			
Filed with: SC - Secretary of State			F#311127 A#457011			

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV: 05/22/02)

Received 7/29/2011 09:59:29 AM

Book B 361 Page 1461

Deeds

CONNIE REEL-SHEARIN
FLORENCE COUNTY CLERK OF COURT
CITY-COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

Fedex env.
RECEIVED FROM: NELSON MULLINS RILEY 672398

DATE: 072911

*1320 Main St.
Columbia SC 29201*

RECEIPT NO: 346326-000000

DESCRIPTION

# OF INST.	AMOUNT	FEES	#PAGES	STATE	** FEE ** COUNTY	TOTAL
Deeds	.00	17.00	12	BOOK: B361 FROM PAGE: 1461 THRU PAGE: 1472		17.00

THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====

TOTAL RECEIPT: 17.00 .00 .00 17.00

TOTAL	CHECK	CASH	CHANGE
17.00	19.00	.00	.00

CR1

CLERKPAY

15 Melanie Barr

095929



FILED

2011 JUL 29 AM 9:32

CONRAD RIEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Space Above Line for Processing Data

RBC Bank

Assignment of Leases, Rents and Profits

Prepared by and after recording return
to:

Nathan C. Fuller, Esq.
Nelson Mullins Riley & Scarborough
LLP

100 North Tryon Street
Suite 4200

Charlotte, North Carolina 28202

State of South Carolina

County of Florence

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS ("Assignment"), entered into as of July 15, 2011 ("Effective Date"), by THE BROTHERS OF SC, L.L.C., a South Carolina limited liability company ("Assignor") with a mailing address of 32 South Battery, Charleston, South Carolina 29401, to RBC BANK (USA), a North Carolina banking corporation ("Bank"), with a mailing address of Post Office Box 1220, Rocky Mount, North Carolina 27802-1220.

NOW THEREFORE, for value received, and as additional security for the indebtedness and other obligations referred to below in the Section entitled "Absolute Assignment Given as Security", Assignor hereby sells, transfers and assigns unto Bank all of Assignor's presently existing right, title and interest and all of Assignor's right, title and interest which may arise in the future in and to each and all of the following: (1) the Leases; (2) the Rents; and (3) the Security Deposits.

This Assignment is subject to the following terms and conditions:

Forbearance Agreement

Assignor, certain affiliates of Assignor and Bank have entered into that certain Forbearance Agreement dated as of July 15, 2011 ("Forbearance Agreement"). The Forbearance Agreement is by this reference incorporated in this Assignment and made a part of this Assignment.

44891-7414-T081 v.4

B361-1461

1462

and repair of the Collateral, or any part or parts thereof or interests therein, upon Bank, and will not make Bank responsible or liable for any negligence or willful misconduct in the management, operation, upkeep, repair and control of any or all of the Collateral resulting in loss or injury or death to any lessee, tenant, licensee, employee, guest, invitee or stranger.

Consequences of Receipt of Rents. The receipt by Bank of any Rents pursuant to this Assignment after acceleration of the Collateral Obligations secured hereby will not cure any Default or Event of Default nor will the receipt thereof at any subsequent time cure any Default or Event of Default, affect Bank's right to institute foreclosure or collection proceedings under the Mortgage or any of the other Loan Documents or affect any sale pursuant thereto or any other action taken by Bank or others on Bank's behalf. Neither the existence of this Assignment nor the exercise of Bank's privilege to collect the Rents, will be construed as a waiver by Bank of the right to enforce payment of the Collateral Obligations hereby secured in accordance with the terms and provisions of the Forbearance Agreement, the Mortgage and the other Loan Documents.

Waiver of Rights by Assignor. If there is any case law, statute or regulation requiring Bank to take actual possession of the Collateral (or some action equivalent thereto, such as securing the appointment of a receiver) in order for Bank to perfect or activate its rights and remedies as set forth herein, then Assignor waives the benefits of such law and agrees that such requirement of law may be satisfied solely by (1) Bank sending Assignor written notice that Bank intends to enforce, and is enforcing, its rights in and to the Collateral and Rents assigned herein and (2) Bank sending written notice to any one or more of the lessees and tenants of the Collateral, and any other person in possession of all or part of either or both, to commence making payments directly to Bank or its designee as provided herein.

Appointment of Receiver. Bank will have the absolute and unconditional right to apply for and to obtain the appointment of a receiver or similar official for any part of and for all of the Collateral, to, among other things, manage and operate the Collateral, and any part of and interest therein, and to collect and apply Rents as provided above. In the event of such application, Assignor consents to the appointment of such receiver or similar official and agrees that such receiver or similar official may be appointed without notice to Assignor, without Bank having to post a bond or other security, without regard to the adequacy of any security for the Collateral Obligations secured hereby and without regard to the solvency of Assignor and without regard to the solvency of any other person who or which may be liable for the payment of the Collateral Obligations secured hereby. All costs and expenses related to the appointment of a receiver or other similar official hereunder will be the responsibility of Assignor, but if paid by Bank, Assignor hereby agrees to pay to Bank, immediately and without demand, all such costs and expenses, together with interest thereon from the date of each payment by Bank at the rate of interest applicable to the Loans. All sums so paid by Bank, and the interest thereon, will be added to and be secured by this Assignment, the Mortgage and the other Loan Documents securing the Collateral Obligations secured hereby.

Power of Attorney. Assignor does hereby irrevocably constitute and appoint Bank its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to do or cause to be done such acts as Bank, in its sole discretion, deems necessary and advisable to effect the terms and conditions of this Assignment and to otherwise realize Bank's rights, authority and powers hereunder, and the benefits provided to Bank herein; and in connection therewith, Bank may appear in any action and collect any award or payments relating to the Collateral (including the Leases and Rents). The foregoing appointment is and the same will be coupled with an interest in favor of Bank.

Assignor waives the benefit of all present and future homestead, appraisal, valuation, stay, extension, reinstatement and redemption laws, and all rights to require marshalling. Assignor waives any rights Assignor might have or have had under any law requiring Bank to pursue remedies against the Borrowers or any collateral provided by any Borrower or any other similar laws.

This Assignment will be governed by and construed in accordance with the laws of the State of South Carolina, excluding, however, the conflict of law and choice of law provisions thereof.

Except as otherwise provided in this Assignment, the terms and conditions of this Assignment may be changed only by an agreement in writing signed by Bank and Assignor.

Subject to the limitations on Assignor's right to assign contained herein and any other limitations on assignment in any of the other Loan Documents, the covenants, terms and conditions contained in this Assignment will bind, and the benefits and powers will inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto, including Bank's authorized representatives and any administrative or servicing agents for Bank or any holder of or participant in all or any part of the Collateral Obligations.

All notices and other communications under this Assignment will be given in accordance with the applicable provisions of the Forbearance Agreement. Assignor and Bank may, by written notice given hereunder, designate a different address where communications should be sent and Bank may direct, by notice to Assignor, for communications to be sent electronically or in some other non-tangible medium.

Definitions

In this Assignment: (1) "Assignment" means this Assignment, as amended or modified from time to time; (2) "Collateral" means the Land and the Personalty, and the Collateral includes the Leases, Rents, any and all general intangibles relating to or arising from the Land, Personalty, Leases or Rents, the proceeds and products of all the foregoing, including insurance and condemnation proceeds, accessions and additions thereto, replacements and substitutions therefor and the books and records related thereto or used in connection therewith; (3) "Land" means the real property described on Exhibit A attached hereto, together with all buildings and other improvements now located thereon and all buildings and improvements located thereon in the future, and all rights now or in the future appurtenant thereto; (4) "Leases" means all leases, rental agreements and other demising agreements with respect to the Collateral or any part or parts thereof or interests therein, now existing or hereafter made, executed and delivered (whether written, electronic or verbal), together with all present and future extensions, renewals, modifications and amendments thereof, and substitutions and replacements therefor, and the Leases include the leases, rental agreements or other demising agreements, if any, listed on an attachment to this Assignment; (5) "Personalty" means all furnishings, equipment and fixtures owned by Assignor and in which Assignor has any rights and interests, both now existing and located in, on, over and under the Land and which may be acquired in the future and located as aforesaid, whether used in connection with the ownership, possession, operation or maintenance of the Land, or otherwise; (6) "Rents" means all present and future rents, issues, profits, revenues, royalties, accounts, moneys, rights and other benefits arising from or related to all, or any part or parts of the Collateral or interests therein; (7) "Security Deposits" means all security deposits and other deposits or escrows now held or hereafter acquired and held in connection with the Collateral, including the Leases or Rents; and (8) any terms or phrases used in this Assignment that are not defined herein or whose uses are not explained herein but that are defined in the Forbearance Agreement, or the uses thereof are explained in the Forbearance Agreement, will have the meanings use given them in the Forbearance Agreement.

EXECUTED by the undersigned under SEAL as of the date of this Assignment.

ASSIGNOR:

THE BROTHERS OF SC, LLC

Witness

Alonah L. Mullen

Witness

Robb Murray

By: [Signature]

Name:

John E. Mullen

Title:

Member

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Acknowledgment

I, the undersigned Notary Public for the State and County, so hereby certify that John E. Mullen is the Member of The Brothers of SC, LLC, whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn To and Subscribed Before Me

This 25th day of July, 2011.

[Signature]
Notary Public of South Carolina

(L.S.) (SEAL)

My commission expires: 7/24/2014

EXHIBIT A

PARCEL A:

ALL that certain piece, parcel or tract of land, situate, lying and being in the City of Florence, County of Florence, State of South Carolina, being shown on a plat prepared for West Evans-Florence Venture by A&S of Columbia, Inc., dated October 6, 1995, recorded in Plat Book _____, at page _____, in the Office of the Clerk of Court for Florence County, South Carolina, and according to said plat having the following metes and bounds, to wit:

Beginning at an iron pin along the eastern boundary of the right of way of North Cashua Drive at its intersection with the right-of-way of West Evans Street and running N19-57-40E along the right of way of North Cashua Drive for a distance of 357.85 feet to an iron; then turning and running S88-39-55E along property now or formerly of Daniel W. Tyler et al., for a distance of 328.45 feet to an iron; then turning and running S01-21-40W along said property for a distance of 190.01 feet to an iron; then turning and running N88-36-05W along property now or formerly of Jane R. Lingle and Elizabeth W. Lingle and along property now or formerly of Southern National Bank of S.C. for a distance of 163.93 feet to an iron; then turning and running S19-58-40W along property now or formerly of Southern National Bank of S.C. for a distance of 207.60 feet to an iron; then turning and running N88-37-45W along the right of way of West Evans Street for a distance of 178.42 feet to an iron; then turning and running N34-19-25W for a distance of 58.23 feet to an iron at the point of beginning, be all measurements a little more or less.

PARCEL B:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, for the purposes of ingress and egress over and across the property denoted on the aforementioned plat as "Easement No. 1", contained in instrument recorded in Book A315, page 513, aforesaid records, and more particularly described as follows:

Beginning at an iron located on the eastern edge of the right-of-way of North Cashua Drive, said iron being approximately 357.85 feet north of its point of intersection with the right-of-way of West Evans Street, then turning North 19 degrees 57 minutes 40 seconds East, for a distance of 27.44 feet to a point; then turning and running South 88 degrees 39 minutes 55 seconds East, for a distance of 319.10 feet to a point; then turning and running South 01 degrees 21 minutes 40 seconds West for a distance of 26.00 feet to a hole in concrete curb; then turning and running North 88 degrees 39 minutes 55 seconds West for a distance of 328.45 feet to the point of beginning, be all measurements a little more or less.

PARCEL C:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, for the purposes of ingress and egress over and across the property denoted on the aforementioned plat as "Easement No. 3" contained in instrument recorded in Book A315, page 513, aforesaid records, and more particularly described as follows:

Beginning at an iron located on the northern edge of the right-of-way of West Evans Street, said iron being approximately 178.42 feet east of its point of intersection with the right-of-way of North Cashua Drive, then running North 19 degrees 56 minutes 40 seconds East, for a distance of 207.60 feet to an iron; then turning and running South 88 degrees 36 minutes 05 seconds East, for a distance of 15.83 feet to a point, then turning and running South 19 degrees 58 minutes 40 seconds West, for a distance of 207.60 feet to a point, then turning and running North 88 degrees 37 minutes 45 seconds West, for a distance of 15.83 feet to the point of beginning, be all measurements a little more or less.

PARCEL D:

A permanent, non-exclusive easement appurtenant to the property described as Parcel A above, as shown on plat entitled "Final As-Built Survey for West Evans-Florence Venture, a Partnership", prepared by Ervin Engineering Company, Inc., recorded in the Office of the Clerk of Court for Florence County, South Carolina in Plat Book 42, page 445, for the purposes of installation, operation and maintenance of an underground sanitary sewer line, in accordance with the terms and conditions of the instrument creating the easement, the same being that certain Easement among Daniel W. Tyler, Jack S. Tyler, Jr., Peggy T. Broach, Marjorie W. Tyler as Trustee under the Family Trust created under the Will of Walter D. Tyler, Jr., and West Evans-Florence Venture, recorded in Book A451, page 1945, aforesaid records.

This is the same property conveyed to The Brothers of NC, LLC (now known as The Brothers of SC, LLC), by deed of conveyance of Edens & Avant Properties Limited Partnership dated November 11, 2002, and recorded November 12, 2002, in Book A706, page 1565, in the Clerk of Court for Florence County, SC.

Absolute Assignment Given as Security

This Assignment is absolute and is given as additional security for the payment and performance of the Obligations, those obligations described in and secured by that certain Mortgage (as amended or modified from time to time, the "Mortgage"), dated on or about October 11, 2007, which Mortgage is incorporated herein by this reference, and those obligations evidenced by, secured by or otherwise described in the other Loan Documents (the foregoing indebtedness and other obligations, collectively the "Collateral Obligations").

The amounts collected under this Assignment will be applied first to the costs and expenses incurred by Bank and those incurred on behalf of Bank under this Assignment in collecting and receiving Rents, or as otherwise provided herein, and then in reduction of the Collateral Obligations from time to time outstanding. The order of application of amounts collected to reduction of the Collateral Obligations will be as provided in the Forbearance Agreement or if no order is provided therein, in such order as selected by Bank, in its discretion. The term of this Assignment will be until the Collateral Obligations have been fully paid and satisfied and the cancellation of the Mortgage will constitute a release hereof.

Management and Collection of Rents and Profits

Until release of this Assignment by Bank as provided above in the Section entitled "Absolute Assignment Given as Security", but subject to the revocable license granted by Bank to Assignor as provided below in the Section entitled "Revocable License Given to Assignor", the sole right and authority to collect the Rents will be with and will lie with Bank and such right, authority and power may be exercised by Bank and may be exercised by either or both Bank's designee or a receiver or other official appointed as provided below, from time to time and in such manner as Bank deems necessary or appropriate, in its sole discretion; and, in connection with such right of collection, Assignor hereby directs each and all of the lessees and tenants of the Collateral or any part or parts thereof or interests therein, and any other person obligated to pay Rents on account of the Collateral, to pay Rents as may now be due and as may hereafter become due to Bank, its designee or a receiver or other official appointed for such purpose, upon demand for payment thereof by Bank or such other person or persons from time to time and at any time. Without limiting the foregoing, but in furtherance thereof, Bank, itself or through its designee or a receiver or other official appointed as provided below, will have the additional rights and powers set forth in the three subsections immediately below.

Communications

Bank, at any time and from time to time, may give notice in writing of this Assignment to any and all of the lessees and tenants under the Leases and to any other persons in possession of the Collateral, or any part or parts thereof or interests therein; and, Bank, for the purpose of fully enforcing its rights and powers under this Assignment, may otherwise communicate with such lessees, tenants and other persons regarding this Assignment and Bank's rights, authority and powers hereunder.

Management

Bank, at its option and at any time or times, will have the right to enter and take possession of all or any part or parts of the Collateral and to manage and operate the Collateral, to let or re-let the Collateral and any part or parts thereof or interests therein, to cancel and modify any one or more of the Leases, to grant rent concessions and other inducements, to evict any one or more lessees, tenants and other persons, to bring and defend any suits in connection with possession of all or any of the Collateral in its own name or Assignor's name, to make repairs as Bank deems appropriate, and to perform such other acts in

connection with the management and operation of the Collateral as Bank, in its discretion, may deem proper, all at the cost and expense of Assignor.

Security Deposits.

Bank will have the right to hold and possess, and Assignor will turn over to Bank immediately upon demand of Bank, the Security Deposits held by Assignor, and those held by its employees or agents, under and pursuant to the Leases. Bank will hold and apply the Security Deposits received in connection with the Leases to the purposes specified in the Leases, in accordance with the terms and conditions thereof. Except to the extent required by law or otherwise required in the Leases, Bank will not be obligated for the payment of interest on Security Deposits delivered to it.

Revocable License Given to Assignor

Revocable License. Until the occurrence of a Default or an Event of Default or the breach of or default under this Assignment by Assignor, Assignor will have a license and Bank hereby grants to Assignor a revocable license to continue collecting Rents in the normal and ordinary course of Assignor's business; provided, however, (1) Assignor will not collect any rental installments under any Leases more than one month in advance of their scheduled payment date without the prior written consent of Bank and if Assignor does so do in contravention hereof, Assignor will promptly remit such advanced rental installments to Bank for application by Bank against the Collateral Obligations secured hereby, such installments to be applied as provided in the Section of this Assignment entitled "Absolute Assignment Given as Security", (2) Assignor will pay to Bank, upon receipt by Assignor and in the same form as received (with any necessary endorsements), (i) any award made after the Effective Date in any court procedure involving any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state court and in any federal court and (ii) any payments made and consideration given by tenants and lessees in lieu of rental payments under any of the Leases, or in settlement of or on account of a claim or dispute under or with respect to any Leases, and (3) Assignor will promptly comply with such other directives as Bank may from time to time give to Assignor regarding collection of Rents.

Termination of Revocable License. If Assignor should breach this Assignment or default hereunder, or if a Default or an Event of Default occurs, Bank may, at its option, terminate the privilege and license granted to Assignor by Bank in the subsection above entitled "Revocable License", and upon a determination by Bank to terminate, the privilege and license granted to Assignor will automatically terminate without any notice from Bank to Assignor and without any further or additional acts on the part of Bank, unless notice is required under any of the Loan Documents or under applicable law, and then only such minimum notice as may be required. Upon such termination, Assignor will cease all collection activities and will pay over to Bank all Rents received by it on and after such termination. All amounts which are received by Assignor from and after the termination of Assignor's license will be received in trust for the benefit of Bank, will be segregated from other funds of Assignor and will be immediately paid over to Bank in the same form as received (with any necessary endorsements).

Additional Provisions Relating to Collection of Rents and Profits

Limitation on Accountability of Bank. Bank will not be liable for laches and will not be liable for the failure to collect the Rents. Bank is obligated to account only for such sums as are actually collected and will not be obligated to perform and will not be obligated to discharge any obligation to be performed or discharged by Assignor under any of the Leases. Assignor hereby agrees to indemnify Bank for, and to save Bank harmless from, any and all liability arising from the Leases and any and all liability arising from this Assignment. This Assignment will not place responsibility for the control, care, management

Representations and Warranties

Assignor represents and warrants to Bank as follows, which representations and warranties will be continuing representations and warranties from Assignor to Bank: (1) Assignor has full right, title and authority to assign to Bank the Leases and Rents due or to become due thereunder or with respect to the Collateral; (2) the terms of the Leases have not been amended, modified, replaced or changed from the terms in the copies of the Leases submitted to Bank for approval, which copies are true and exact copies of the Leases currently outstanding with respect to the Collateral; (3) no other assignment of any interest in the Leases has been made by Assignor or any other person to anyone other than Bank; (4) there are no existing defaults under any of the Leases by any party thereto; and (5) there has been no anticipation or prepayment of any rental installments by any lessees or tenants occupying or possessing the Collateral or by any of the lessees or tenants in any of the Leases.

Covenants Regarding Leases

Assignor will not enter into any new Leases after the Effective Date without Bank's prior written approval.

Assignor will fully perform its obligations under the Leases in a timely manner and will take such actions as may be reasonably necessary to ensure that all lessees and tenants under any of the Leases fully and timely perform their respective obligations thereunder, all at Assignor's sole cost and expense.

Assignor will provide to Bank such information with respect to the Leases and Rents as Bank may from time to time request; such information to be delivered to Bank promptly by Assignor and in a form and medium directed by Bank.

Assignor will not after the Effective Date, without the prior written consent of Bank (1) cancel any of the Leases, surrender any of the Leases or terminate any of the Leases; (2) exercise any option which might lead to a cancellation, surrender or termination of any of the Leases; (3) except for changes that would reasonably be deemed to have only a minimal affect on the overall value of a Lease as security for the Collateral Obligations, amend, alter, modify or otherwise change any of the Leases; (4) consent to the release of any party liable under any of the Leases; or (5) consent to the assignment and subletting of the lessee's or tenant's interest in any of the Leases.

Assignor will maintain the Security Deposits in a separate agency account maintained by Assignor with Bank, if so requested by Bank, and designated as the account for the deposit of Security Deposits with respect to the Collateral. Assignor will provide to Bank within thirty (30) days of the end of each of Assignor's fiscal years, or more frequently if so requested by Bank, a written verification of the amount of Security Deposits maintained in the account together with a list of the Leases with respect to which the deposits are maintained.

General Terms

The recitals are part of this Assignment. All exhibits and other attachments to this Assignment are incorporated herein.

This Assignment and the other Loan Documents, including the Forbearance Agreement and the Mortgage, are incorporated into each other and they are each a part of the other. All of the Loan Documents will be applied and enforced in harmony with and in conjunction with each other to the end that Bank realizes fully upon its rights and remedies in each and the liens and security interests created by each, and, to the extent conflicts exist between this Assignment and the other Loan Documents, they will be resolved in favor of Bank for the purpose of achieving the full realization of Bank's rights and remedies and the lien and security interests as aforesaid.

EXHIBIT A

The Land

See attached.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PNC Bank, N.A., successor to RBC
Bank (USA),

Plaintiffs,

vs.

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) IN THE NINTH JUDICIAL CIRCUIT

) Civil Action No. 2013-CP-10-2624

**AMENDED ANSWER AND
COUNTERCLAIMS OF DEBORAH
RICE-MARKO, LIBERTY
COTTAGES, LLC, LIBERTY
COTTAGES LAND, LLC, ROYAL
BEACH PROPERTIES, LLC, ROA,
LLC AND USS CLARKSVILLE, LLC**

(JURY TRIAL DEMANDED)

FILED
2014 AUG 27 PM 1:08
CLERK OF COURT

Defendants Deborah Rice-Marko, Liberty Cottages, LLC, Liberty Cottages, Land, LLC, Royal Beach Propertius, LLC, ROA, LLC, and USS Clarksville, LLC ("Defendants") hereby answer Plaintiff's complaint and deny each and every allegation thereof not specifically admitted below, and demand a jury trial on all claims, defenses, and counterclaims. Defendants further answer as follows:

FOR A FIRST DEFENSE

1. Defendants admit the allegations of paragraphs one through sixteen of the Complaint.
2. Responding to the allegations of paragraphs seventeen through thirty-three of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs'

allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs seventeen through thirty-three of the Complaint and therefore deny them.

3. Responding to the allegations of paragraphs thirty-four through forty-two of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs thirty-four through forty-two of the Complaint and therefore deny them.

4. Responding to the allegations of paragraphs forty-three through fifty-five of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity

of the remaining allegations of paragraphs forty- three through fifty-five of the Complaint and therefore deny them.

5. Responding to the allegations of paragraphs fifty-six through sixty-three of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs fifty-six through sixty-three of the Complaint and therefore deny them.

6. Responding to the allegations of paragraphs sixty-four through seventy-eight of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs sixty-four through seventy-eight of the Complaint and therefore deny them.

7. Responding to the allegations of paragraphs seventy-nine through eighty-five of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs'

allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs seventy-five through eighty-five of the Complaint and therefore deny them.

8. Responding to the allegations of paragraphs eighty-six through nine-three (including paragraphs numbered therein as sixteen and seventeen) of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs eighty-six through nine-three (including paragraphs numbered therein as sixteen and seventeen) of the Complaint and therefore deny them.

9. Responding to the allegations of paragraphs ninety-four through ninety-nine of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to

the truth or falsity of the remaining allegations of paragraphs ninety-four through ninety-nine of the Complaint and therefore deny them.

10. Responding to the allegations of paragraphs 100 through 117 of the Complaint, Defendants admit the execution of the documents referred to therein, and therefore deny them and in connection therewith demand that all original documents that Plaintiff alleges were signed by the Defendants or any of them be presented for inspection by Defendants. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 100 through 117 of the Complaint and therefore deny them.

11. Responding to the allegations of paragraphs 118 through 124 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 118 through 124 of the Complaint and therefore deny them.

12. Responding to the allegations of paragraphs 126 and 127, Defendants deny execution of the documents referred to therein. Defendants further deny that an attorney in fact was authorized to execute the documents that are attached to the complaint as Exhibit KK and Exhibit LL. Responding to the allegations in paragraphs 128 through 139 of the Complaint, Defendants admit the execution of the documents referred to therein, except as to Exhibits KK & LL, the execution of which is denied. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 125 through 139 of the Complaint and therefore deny them.

13. Responding to the allegations of paragraphs 140 through 147 of the Complaint, Defendants admit the execution of the documents referred to therein, except as to Exhibits KK and LL, the execution of which is denied. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 140 through 147 of the Complaint and therefore deny them.

14. Responding to the allegations of paragraphs 148 through 158 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege

that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 148 through 158 of the Complaint and therefore deny them.

15. Responding to the allegations of paragraphs 159 through 165 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 159 through 165 of the Complaint and therefore deny them.

16. Responding to the allegations of paragraphs 166 through 175 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of

the remaining allegations of paragraphs 166 through 175 of the Complaint and therefore deny them.

17. Responding to the allegations of paragraphs 176 through 183 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 176 through 183 of the Complaint and therefore deny them.

18. Responding to the allegations of paragraphs 184 through 193 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 184 through 193 of the Complaint and therefore deny them.

19. Responding to the allegations of paragraphs 194 through 200 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations,

characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 194 through 200 of the Complaint and therefore deny them.

20. The allegations of paragraphs one through nineteen above are incorporated herein in response to the allegations of paragraph 201 of the Complaint.

21. Responding to the allegations of paragraph 202, Defendants admit that Plaintiff seeks the appointment of a receiver, but deny that Plaintiff is entitled to the appointment of a receiver.

FOR A SECOND DEFENSE TO ALL CLAIMS

22. Defendants incorporate the allegations of paragraphs one through twenty-one above.

23. In dealing with Defendants with respect to the notes, mortgages, guaranties, and other agreements that are referred to in the Complaint, Plaintiff has consistently dealt with Defendants in an oppressive and unfair way, including but not limited to threatening legal action to coerce Defendants into modifying the terms of various loans and other agreements to the detriment of Defendants and to the benefit of Plaintiff; misrepresenting the availability of alternative remedies and solutions to the issues that were raised by Plaintiff; exercising or threatening to exercise its purported rights or otherwise acting in bad faith for the purpose of consistently improving its position in relation to Defendants; refusing to permit an increase in a HELOC that would have provided funds to prevent and/or cure a potential default under another

line of credit; by refusing to finance the acquisition of replacement property as a part of a 1031 exchange that would have provided additional equity and income to support her loans; by falsely promising to work with Defendants in the future if they would agree to predicate conditions imposed by Plaintiff, and then refusing to cooperate with Defendants thereafter, and making confidential and private information about Defendants and their financial condition and assets available to third parties to pressure Defendants to deal with Plaintiff on terms dictated by Plaintiff and to interfere with Defendants' efforts to resolve the issues between Plaintiff and Defendants, and by wrongly declaring the loans to be in default.

24. This conduct by Plaintiff was wrongful, tortuous, beneath the standard of care owed by lenders to borrowers, oppressive, and coercive, taken in bad faith, and resulted in Plaintiff having unclean hands.

25. The conduct of Plaintiff therefore bars or limits any rights that Plaintiff might otherwise have to enforce the agreements to which Defendants are a party.

FOR A THIRD DEFENSE

26. Defendants incorporate the allegations of paragraphs one through twenty-five herein.

27. As a result of the wrongful conduct of Plaintiff as alleged above, Defendants' free will was overcome and they were forced to act under conditions that amounted to economic duress.

28. Plaintiff's ability to enforce any agreements against Defendants that were the result of such duress is therefore limited or barred.

FOR A FOURTH DEFENSE

29. Defendants incorporate the allegations of paragraphs one through twenty-eight herein.

30. Some of the agreements between Plaintiff and Defendants contain provisions that are illegal, or that violate the public policy of South Carolina, or are contrary to the constitutional rights of Defendants guaranteed by the United States or South Carolina constitutions, such as the right to trial by jury, and the right to seek the protection of the United States Bankruptcy Court.

31. Plaintiff is barred from enforcing any such provisions against Defendants or any of them.

FOR A FIFTH DEFENSE

32. Defendants incorporate the allegations of paragraphs one through thirty-one herein.

33. The conduct of Plaintiff as alleged above constitutes unclean hands.

34. Plaintiff is therefore not entitled to equitable relief from this Court.

FOR A SIXTH DEFENSE

35. Defendants incorporate the allegations of paragraphs one through thirty-four herein.

36. Defendants and Plaintiff are parties to several written agreements, including a document entitled Forbearance Agreement dated as of July 15, 2011.

37. All agreements to which Plaintiff and Defendants are parties are governed by the laws of the State of South Carolina.

38. Plaintiff wrongly declared a default under the terms of the Forbearance Agreement dated July 15, 2011 and further wrongly demanded payment in full of all sums that Plaintiff contended were due and owing to Plaintiff under the various loans at issue.

39. The purported event of default on which Plaintiff relied to declare the default and demand payment in full was the alleged failure of Defendants to provide financial information to Plaintiff.

40. Any failure by Defendants to provide such information was justified, however, because of the failure of Plaintiff to protect the confidentiality of such information.

41. Any such failure to provide financial information was not a material default in any event, and therefore did not justify the declaration of default and demand for immediate payment in full of the debt.

42. The declaration of default and demand for payment in full were therefore themselves material breaches of the Forbearance Agreement that deprived Defendants of the benefit of the agreement, frustrated the purpose of the agreement, and further proximately caused Defendants to incur damages.

43. The material breach of the Forbearance Agreement by Plaintiff further discharged any duty by Defendants to perform thereunder, including any obligation that Defendants might otherwise have had to comply with the terms of the various loan documents.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

44. Defendants incorporate the allegations of paragraph one through forty-three herein.

45. Plaintiff committed one or more material breaches of the agreements between the parties as alleged herein, including but not limited to the Forbearance Agreement.

46. The breaches of contract by Plaintiff, including but not limited to wrongly declaring a default under the Forbearance Agreement, made it impossible for Defendants to utilize the value of the property securing the debt to repay or refinance the loans or to access the equity in those properties, and otherwise proximately caused damages to Defendants..

47. As a direct and proximate result of the breach of the agreements by Plaintiff, Defendants have been damaged at the minimum by the loss of the equity in the properties that secured the various debts, and in such other ways as may be established.

48. Defendants are informed and believe that they are entitled to actual damages in an amount to be proven at trial that at the minimum reflects the value of Defendants' equity in the properties that secured the loans prior to the material breach by Plaintiff, together with such other damages as may be proven.

49. Defendants further seek their attorneys' fees and costs.

FOR A EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

50. Defendants incorporate the allegations of paragraphs one through forty-nine herein.

51. Defendants and Plaintiff are parties to several written agreements, including a document entitled Forbearance Agreement dated as of July 15, 2011.

52. All agreements to which Plaintiff and Defendants are parties are governed by the laws of the State of South Carolina.

53. All agreements to which Plaintiff and Defendants are parties contain a covenant of good faith and fair dealing to which Plaintiff is bound as a matter of law.

54. Plaintiff has breached the covenant of good faith and fair dealing as set out in paragraph twenty-three, and in such other ways as may be proven at trial.

55. The breach of the covenant of good faith and fair dealing is a material breach of each and every agreement to which Plaintiff and Defendants are parties.

56. The breaches of the covenant of good faith by Plaintiff made it impossible for Defendants to utilize the value of the property securing the debts to repay or refinance the loans or to otherwise obtain access the equity in those properties, and otherwise proximately caused Defendants to be damaged.

57. As a result of the material breaches by Plaintiff of the agreements between the parties, any further duties of Defendants under those agreements are discharged as a matter of law and therefore Plaintiff may not enforce those agreements against Defendants or any of them.

58. Defendants have been damaged as a proximate result of the breaches of the covenants of good faith and the agreements, and are entitled to judgment in their favor for all damages that may be established at trial, which at the minimum would reflect the value of Defendants' equity in the properties that secured the loans prior to the material breaches by Plaintiff.

59. Defendants further seek their attorneys' fees and costs.

FOR A SEVENTH DEFENSE CLAIMS AND BY WAY OF COUNTERCLAIM

60. Defendants incorporate the allegations of paragraphs one through fifty-nine herein.

61. As a result of the relationship between Plaintiff and Defendants, Plaintiff became privy to private, confidential financial information of Defendants.

62. Plaintiff was under a statutory, contractual and common law duty to protect the confidentiality of that information, and not to disclose it to third parties.

63. Plaintiff breached that duty by intentionally and purposefully disclosing Defendants' confidential financial information to third parties who used such information to the detriment of Defendants.

64. Plaintiff's conduct in this regard was willful, wanton and reckless.

65. Defendants were proximately damaged as a result of Plaintiff's wrongful disclosure of such information.

66. Additionally, the disclosure of Defendants private, confidential financial information prevented Defendants from satisfying certain obligations to Plaintiff.

67. Defendants are therefore entitled to an award of actual damages in such amount as may be proven at trial, and punitive damages, as well as a discharge of their obligations to Plaintiff.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

68. Defendants incorporate the allegations of paragraphs one through sixty-seven herein.

69. Upon information and belief Plaintiff has combined with others for the purpose of injuring and damaging Defendants.

70. The actions of Plaintiff have caused Defendants to suffer special damages, including but not limited to damage to their creditworthiness, their ability to acquire additional or alternative financing, and in such other way as may be established at trial.

71. Plaintiff's conduct in this regard was intentional, willful, and wanton.

72. Defendants are therefore entitled to an award of actual damages against Plaintiff for all amounts that may be established at trial.

73. Defendants are also entitled to an award of punitive damages.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM

74. Defendants incorporate the allegations of paragraphs one through seventy-three herein.

75. Plaintiff owed Defendants a duty to use reasonable care in its dealings with Defendants.

76. Plaintiff breached that duty in some or all of the following particulars:

- a) by threatening legal action to coerce Defendants into modifying the terms of various loans and other agreements to the detriment of Defendants and to the benefit of Plaintiff;
- b) by misrepresenting the availability of alternative remedies and solutions to the issues that were raised by Plaintiff;
- c) by exercising or threatening to exercise its purported rights or otherwise acting in bad faith for the purpose of consistently improving its position in relation to Defendants;
- d) by refusing to permit an increase in a HELOC that would have provided funds to cure a potential default under another line of credit;
- e) by refusing to finance the acquisition of replacement property as a part of a 1031 exchange that would have provided additional equity and income to support her loans;
- f) by falsely promising to work with Defendants in the future if they would agree to predicate conditions imposed by Plaintiff, and then refusing to cooperate with Defendants thereafter, and

- g) by making confidential and private information about Defendants and their financial condition and assets available to third parties to pressure Defendants into dealing with Plaintiff on terms dictated by Plaintiff and to interfere with Defendants' efforts to resolve the issues between Plaintiff and Defendants.

77. Plaintiff's conduct was not only negligent, but was also intentional, willful, wanton, and reckless.

78. Plaintiff's conduct has proximately caused Defendants to suffer actual damages in such amount as may be established at trial.

79. Defendants further seek their attorneys' fees and costs.

80. Defendants are informed and believe that they are also entitled to a judgment against Plaintiff for punitive damages in such amount as may be awarded by the jury.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM

81. Defendants incorporate the allegations of paragraphs one through eighty herein.

82. Plaintiff made one or more false representations to Defendants, including, but not limited to the statement that there was no special assets department or workout group with whom Defendants could speak regarding their loans; that Plaintiff would work with Defendants regarding payments due; and that Defendants would forbear for a period of two years in order to provide time for Defendants to sell or re-finance the properties that secured the debt to Plaintiff.

83. Plaintiff had a pecuniary interest in making these misrepresentations because it was attempting at all times to improve its position with respect to the loans at issue in this case.

84. Plaintiff owed defendants a duty of care to communicate truthful information to Defendants.

85. Plaintiff breached this duty by failing to exercise due care to insure that the statements made to Defendants were correct.

86. Defendants justifiably relied on these statements made by Plaintiff in deciding to go along with the proposals that Plaintiff was making and in agreeing to the terms demanded by Plaintiff.

87. Defendants were injured as a direct and proximate result of their reliance on the misrepresentations made to them.

88. Plaintiff's conduct has proximately caused Defendants to suffer actual damages in such amount as may be established at trial.

89. Defendants also seek an award of punitive damages.

90. Defendants further seek their attorneys' fees and costs.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

91. Defendants incorporate the allegations of paragraphs one through ninety herein.

92. The conduct of Plaintiff and its predecessor, including but not limited to the acts described above, occurred in a business setting and constitute unfair or deceptive acts or practices in the conduct of a trade or business that are unlawful under S.C. Code Ann. §39-5-10 *et seq.*

93. The unlawful acts and practices are capable of repetition and will be repeated with respect to other borrowers unless prohibited by this Court as a result of this action.

94. The unlawful conduct of Plaintiff and its predecessor adversely affects the public interest because it unfairly takes advantage of borrowers, breaches the lender's duty of good faith and fair dealing, violates the contractual agreements between the parties, violates duties imposed

upon Plaintiff by law, has caused significant damage to Defendants, and if repeated will cause significant damage to others in South Carolina.

95. As a direct and proximate result of the use by Plaintiff and its predecessor of unfair and deceptive acts or practices, Defendants have sustained an ascertainable loss of money or property as is set out herein and are entitled to recover actual damages in such amount as may be established at trial.

96. The use of unfair and deceptive acts or practices by Plaintiff and its predecessor constitutes willful or knowing violations of S.C. Code § 39-5-10 et seq. and Defendants are therefore entitled to recover three times their actual damages.

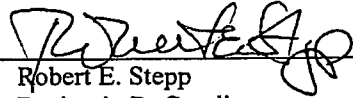
97. Because of the violations of S. C. Code Ann. § 39-5-10 et seq. by Plaintiff and its predecessors as described herein, Defendants are entitled to recover their attorneys' fees and costs.

Wherefore having fully answered plaintiff's complaint and stated their defenses thereto and counterclaims against Plaintiff, Defendants pray as follows:

- a) that Defendants have a jury trial on all claims, defenses, and counterclaims;
- b) that the Complaint be dismissed with prejudice and trial be had on the counterclaims set out herein;
- c) that the Court declare that all further duties or responsibilities of Defendants to Plaintiff are discharged and that all agreement between Plaintiff and Defendants, including but not limited to all notes, guaranties, and mortgages, are null and void.
- c) that judgment be entered against Plaintiff in favor of Defendants for actual and punitive damages in such amount as is properly determined at trial;

- d) that judgment be entered against Plaintiff in favor of Defendants for three times the actual damages awarded;
- e) that Defendants be awarded their attorneys' fees and costs; and
- f) that Defendants have such other and further relief as may be just and proper.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 
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(803) 929-1400

Attorneys for Defendants Liberty Cottages, LLC,
USS Clarksville, LLC, Liberty Land Cottages, LLC,
ROA, LLC, Royal Beach Properties, LLC, and
Deborah Rice-Marko a/k/a Deborah G. Rice-Marko

Columbia, South Carolina
August 25, 2013

CERTIFICATE OF SERVICE

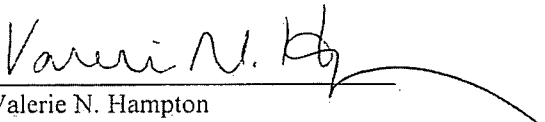
I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants Liberty Cottages, LLC, USS Clarksville, LLC, Liberty Cottages Land, LLC, ROA, LLC, Royal Beach Properties, LLC, and Deborah Rice-Marko a/k/a/ Deborah G. Rice-Marko, do hereby certify that I have served all counsel in these actions with a copy of the documents specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Documents: Amended Answer and Counterclaims of Deborah Rice-Marko, Liberty Cottages, LLC, Liberty Cottages Land, LLC, Royal Beach Properties, LLC, ROA, LLC and USS Clarksville, LLC

Counsel Served: Willard D. Hanna, Jr., Esquire
Hanna Law, P.A.
1661 Glenss Bay Road
Surfside Beach, South Carolina 29575
*Counsel for Defendants Evan R. Marko, John E. Marko, Jr.,
The Brothers of SC, LLC and GW Dorchester, LLC*

Tara C. Sullivan, Esquire
Frank B. B. Knowlton, Esquire
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Post Office Box 11070
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Counsel for Plaintiff

FILED
2014 AUG 27 PM 1:08
JULIE A. JOHNSON
CLERK OF COURT
BY _____


Valerie N. Hampton

August 25, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PNC Bank, N.A., successor to RBC Bank (USA),

Plaintiff,

vs.

Liberty Cottages, LLC; GW Dorchester, LLC;
USS Clarksville, LLC; Liberty Cottages Land,
LLC; ROA, LLC; Royal Beach Properties, LLC;
The Brothers of SC, LLC; Deborah Rice-Marko
a/k/a Deborah G. Rice-Marko; Evan R. Marko and
John E. Marko, Jr.,
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-2624

AMENDED
ANSWER AND COUNTERCLAIM
OF DEFENDANTS
GW DORCHESTER, LLC; THE
BROTHERS OF SC, LLC; LLC;
EVAN R. MARKO; AND
JOHN E. MARKO, JR.

(Breach of Express and Implied
Warranties of Confidentiality)

(Negligence)

(Illegality)

(Economic Duress)

(Conspiracy)

(Unclean Hands)

JURY TRIAL DEMANDED

FILED
2014 OCT 23 AM 10:29
JULIE HARRIS
CLERK OF COURT

The Defendants **GW DORCHESTER, LLC; THE BROTHERS OF SC, LLC; EVAN R. MARKO; AND JOHN E. MARKO, JR.**, hereby amending their answer to Plaintiff's complaint and denying each and every allegation thereof not specifically admitted below, and demanding a jury trial on all claims, defenses, and counterclaims. Defendants further answer as follows:

FOR A FIRST DEFENSE

1. Defendants admit the allegations of paragraphs one through sixteen of the Complaint.
2. Responding to the allegations of paragraphs seventeen through thirty-three of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further

deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs seventeen through thirty-three of the Complaint and therefore deny them.

3. Responding to the allegations of paragraphs thirty-four through forty-two of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs thirty-four through forty-two of the Complaint and therefore deny them.

4. Responding to the allegations of paragraphs forty-three through fifty-five of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs forty-three through fifty-five of the Complaint and therefore deny them.

5. Responding to the allegations of paragraphs fifty-six through sixty-three of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs fifty-six through sixty-three of the Complaint and therefore deny them.

6. Responding to the allegations of paragraphs sixty-four through seventy-eight of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs sixty-four through seventy-eight of the Complaint and therefore deny them.

7. Responding to the allegations of paragraphs seventy-nine through eighty-five of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and

further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs seventy-five through eighty-five of the Complaint and therefore deny them.

8. Responding to the allegations of paragraphs eighty-six through nine-three (including paragraphs numbered therein as sixteen and seventeen) of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs eighty-six through nine-three (including paragraphs numbered therein as sixteen and seventeen) of the Complaint and therefore deny them.

9. Responding to the allegations of paragraphs ninety-four through ninety-nine of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs ninety-four through ninety-nine of the Complaint and therefore deny them.

10. Responding to the allegations of paragraphs 100 through 117 of the Complaint, Defendants admit the execution of the documents referred to therein, and therefore deny them and in connection therewith demand that all original documents that Plaintiff alleges were signed by the Defendants or any of them be presented for inspection by Defendants. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 100 through 117 of the Complaint and therefore deny them.

11. Responding to the allegations of paragraphs 118 through 124 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 118 through 124 of the Complaint and therefore deny them.

12. Responding to the allegations of paragraphs 126 and 127, Defendants deny execution of the documents referred to therein. Defendants further deny that an attorney in fact was authorized to execute the documents that are attached to the complaint as Exhibit KK and

Exhibit LL. Responding to the allegations in paragraphs 128 through 139 of the Complaint, Defendants admit the execution of the documents referred to therein, except as to Exhibits KK & LL, the execution of which is denied. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 125 through 139 of the Complaint and therefore deny them.

13. Responding to the allegations of paragraphs 140 through 147 of the Complaint, Defendants admit the execution of the documents referred to therein, except as to Exhibits KK and LL, the execution of which is denied. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 140 through 147 of the Complaint and therefore deny them.

14. Responding to the allegations of paragraphs 148 through 158 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that

Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 148 through 158 of the Complaint and therefore deny them.

15. Responding to the allegations of paragraphs 159 through 165 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 159 through 165 of the Complaint and therefore deny them.

16. Responding to the allegations of paragraphs 166 through 175 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 166 through 175 of the Complaint and therefore deny them.

17. Responding to the allegations of paragraphs 176 through 183 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 176 through 183 of the Complaint and therefore deny them.

18. Responding to the allegations of paragraphs 184 through 193 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 184 through 193 of the Complaint and therefore deny them.

19. Responding to the allegations of paragraphs 194 through 200 of the Complaint, Defendants admit the execution of the documents referred to therein. Defendants further allege that the referenced documents speak for themselves, and therefore deny Plaintiffs' allegations, characterizations or summaries of their terms and conditions. Defendants further deny that the documents are valid or enforceable against Defendants (or any of them), and further deny that

Defendants (or any of them) are liable to Plaintiff as a result of the execution of those documents. Defendants lack information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraphs 194 through 200 of the Complaint and therefore deny them.

20. The allegations of paragraphs one through nineteen above are incorporated herein in response to the allegations of paragraph 201 of the Complaint.

21. Responding to the allegations of paragraph 202, Defendants admit that Plaintiff seeks the appointment of a receiver, but deny that Plaintiff is entitled to the appointment of a receiver.

FOR A SECOND DEFENSE TO ALL CLAIMS

22. Defendants incorporate the allegations of paragraphs one through twenty-one above.

23. In dealing with Defendants with respect to the notes, mortgages, guaranties, and other agreements that are referred to in the Complaint, Plaintiff has consistently dealt with Defendants in an oppressive and unfair way, including but not limited to by threatening legal action to coerce Defendants into modifying the terms of various loans and other agreements to the detriment of Defendants and to the benefit of Plaintiff; by misrepresenting the availability of alternative remedies and solutions to the issues that were raised by Plaintiff; by exercising or threatening to exercise its purported rights or otherwise acting in bad faith for the purpose of consistently improving its position in relation to Defendants; by refusing to permit an increase in a HELOC that would have provided funds to cure a potential default under another line of credit; by refusing to finance the acquisition of replacement property as a part of a 1031 exchange that would have provided additional equity to support the loans; by falsely promising to work with

Defendants in the future if they would agree to predicate conditions imposed by Plaintiff, and then refusing to cooperate with Defendants thereafter, and by making confidential and private information about Defendants and their financial condition and assets available to third parties in order to put additional pressure on Defendants to deal with Plaintiff on terms dictated by Plaintiff and to interfere with Defendants' efforts to resolve the issues between Plaintiff and Defendants.

24. This conduct by Plaintiff is wrongful, tortious, beneath the standard of care owed by lenders to borrowers, oppressive, and coercive, was taken in bad faith, and results in Plaintiff having unclean hands.

25. The conduct of Plaintiff therefore bars or limits any rights that Plaintiff might otherwise have to enforce the agreements to which Defendants are a party.

FOR A THIRD DEFENSE

26. Defendants incorporate the allegations of paragraphs one through twenty-five herein.

27. As a result of the wrongful conduct of Plaintiff as alleged above, Defendants' free will was overcome and they were forced to act under conditions that amounted to economic duress.

28. Plaintiff's ability to enforce any agreements against Defendants that were the result of such duress is therefore limited or barred.

FOR A FOURTH DEFENSE

29. Defendants incorporate the allegations of paragraphs one through twenty-eight herein.

30. Some of the agreements between Plaintiff and Defendants contain provisions that are illegal, or that violate the public policy of South Carolina, or are contrary to the constitutional

rights of Defendants guaranteed by the United States or South Carolina constitutions, such as the right to trial by jury, and the right to seek the protection of the United States Bankruptcy Court.

31. Plaintiff is barred from enforcing any such provisions against Defendants or any of them.

FOR A FIFTH DEFENSE

32. Defendants incorporate the allegations of paragraphs one through thirty-one herein.

33. The conduct of Plaintiff as alleged above constitutes unclean hands.

34. Plaintiff is therefore not entitled to equitable relief from this Court.

FOR A SIXTH DEFENSE

35. Defendants incorporate the allegations of paragraphs one through thirty-four herein.

36. Defendants and Plaintiff are parties to several written agreements, including a document entitled Forbearance Agreement dated as of July 15, 2011.

37. All agreements to which Plaintiff and Defendants are parties are governed by the laws of the State of South Carolina.

38. Plaintiff wrongly declared a default under the terms of the Forbearance Agreement dated July 15, 2011 and further demanded payment in full of all sums that Plaintiff contended were due and owing to Plaintiff under the various loans at issue.

39. The purported event of default on which Plaintiff relied to declare the default and demand payment in full was the alleged failure of Defendants to provide financial information to Plaintiff.

40. Any failure by Defendants to provide such information was justified, however, because of the failure of Plaintiff to protect the confidentiality of such information.

41. Any such failure to provide financial information was not a material default in any event, and therefore did not justify the declaration of default and demand for immediate payment in full of the debt.

42. The declaration of default and demand for payment in full were therefore themselves material breaches of the Forbearance Agreement that deprived Defendants of the benefit of the agreement, frustrated the purpose of the agreement, and further proximately caused Defendants to incur damages.

43. The material breach of the Forbearance Agreement by Plaintiff further discharged any duty by Defendants to further perform thereunder, including any obligation that Defendants might otherwise have had to comply with the terms of the various loan documents.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

44. Defendants incorporate the allegations of paragraph one through forty-three herein.

45. Plaintiff committed one or more material breaches of the agreements between the parties as alleged herein, including but not limited to the Forbearance Agreement.

46. The breaches of contract by Plaintiff, including but not limited to wrongly declaring a default under the Forbearance Agreement, made it impossible for Defendants to utilize the value of the property securing the debt to repay or refinance the loans or to otherwise obtain access the equity in those properties, and otherwise proximately caused damages to Defendants..

47. As a direct and proximate result of the breach of the agreements by Plaintiff, Defendants have been damaged by the loss of the equity in the properties that secured the various debts, and in such other ways as may be established.

48. Defendants are informed and believe that they are entitled to actual damages in an amount to be proven at trial that at the minimum reflects the value of Defendants' equity in the properties that secured the loans prior to the material breach by Plaintiff, together with such other damages as may be proven.

49. Defendants further seek their attorneys' fees and costs.

FOR A EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

50. Defendants incorporate the allegations of paragraphs one through forty-nine herein.

51. Defendants and Plaintiff are parties to several written agreements, including a document entitled Forbearance Agreement dated as of July 15, 2011.

52. All agreements to which Plaintiff and Defendants are parties are governed by the laws of the State of South Carolina.

53. All agreements to which Plaintiff and Defendants are parties contain a covenant of good faith and fair dealing to which Plaintiff is bound as a matter of law.

54. Plaintiff has breached the covenant of good faith and fair dealing as set out in paragraph twenty-three, and in such other ways as may be proven at trial.

55. The breach of the covenant of good faith and fair dealing is a material breach of each and every agreement to which Plaintiff and Defendants are parties.

56. The breaches of the covenant of good faith by Plaintiff made it impossible for Defendants to utilize the value of the property securing the debts to repay or refinance the loans

or to otherwise obtain access the equity in those properties, and otherwise proximately caused Defendants to be damaged.

57. As a result of the material breaches by Plaintiff of the agreements between the parties, any further duties of Defendants under those agreements are discharged as a matter of law and therefore Plaintiff may not enforce those agreements against Defendants or any of them.

58. Defendants have been damaged as a proximate result of the breaches of the covenants of good faith and the agreements, and are entitled to judgment in their favor for all damages that may be established at trial, which at the minimum would reflect the value of Defendants' equity in the properties that secured the loans prior to the material breaches by Plaintiff.

59. Defendants further seek their attorneys' fees and costs.

FOR A SEVENTH DEFENSE CLAIMS AND BY WAY OF COUNTERCLAIM

60. Defendants incorporate the allegations of paragraphs one through fifty-nine herein.

61. As a result of the relationship between Plaintiff and Defendants, Plaintiff became privy to private, confidential financial information of Defendants.

62. Plaintiff was under a statutory, contractual and common law duty to protect the confidentiality of that information, and not to disclose it to third parties.

63. Plaintiff breached that duty by intentionally and purposefully disclosing Defendants' confidential financial information to third parties who used such information to the detriment of Defendants.

64. Plaintiff's conduct in this regard was willful, wanton and reckless.

65. Defendants were proximately damaged as a result of Plaintiff's wrongful disclosure of such information.

66. Additionally, the disclosure of Defendants private, confidential financial information prevented Defendants from satisfying certain obligations to Plaintiff.

67. Defendants are therefore entitled to an award of actual in such amount as may be proven at trial, and punitive damages, as well as a discharge of their obligations to Plaintiff.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

68. Defendants incorporate the allegations of paragraphs one through sixty-seven herein.

69. Upon information and belief Plaintiff has combined with others for the purpose of injuring and damaging Defendants.

70. The actions of Plaintiff have caused Defendants to suffer special damages, including but not limited to damage to their creditworthiness, their ability to acquire additional or alternative financing, and in such other way as may be established at trial.

71. Plaintiff's conduct in this regard was intentional, willful, and wanton.

72. Defendants are therefore entitled to an award of actual damages against Plaintiff for all amounts that may be established at trial.

73. Defendants are also entitled to an award of punitive damages.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM

74. Defendants incorporate the allegations of paragraphs one through seventy-three herein.

75. Plaintiff owed Defendants a duty to use reasonable care in its dealings with Defendants.

76. Plaintiff breached that duty in some or all of the following particulars:
- a) by threatening legal action to coerce Defendants into modifying the terms of various loans and other agreements to the detriment of Defendants and to the benefit of Plaintiff;
 - b) by misrepresenting the availability of alternative remedies and solutions to the issues that were raised by Plaintiff;
 - c) by exercising or threatening to exercise its purported rights or otherwise acting in bad faith for the purpose of consistently improving its position in relation to Defendants;
 - d) by refusing to permit an increase in a HELOC that would have provided funds to cure a potential default under another line of credit;
 - e) by refusing to finance the acquisition of replacement property as a part of a 1031 exchange that would have provided additional equity to support the loans;
 - f) by falsely promising to work with Defendants in the future if they would agree to predicate conditions imposed by Plaintiff, and then refusing to cooperate with Defendants thereafter, and
 - g) by making confidential and private information about Defendants and their financial condition and assets available to third parties in order to put additional pressure on Defendants to deal with Plaintiff on terms dictated by Plaintiff and to interfere with Defendants' efforts to resolve the issues between Plaintiff and Defendants.

77. Plaintiff's conduct was not only negligent, but was also intentional, willful, wanton, and reckless.

78. Plaintiff's conduct has proximately caused Defendants to suffer actual damages in such amount as may be established at trial.

79. Defendants further seek their attorneys' fees and costs.

80. Defendants are informed and believe that they are also entitled to a judgment against Plaintiff for punitive damages in such amount as may be awarded by the jury.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM

81. Defendants incorporate the allegations of paragraphs one through eighty are incorporated herein.

82. Plaintiff made one or more false representations to Defendants, including, but not limited to the statement that there was no special assets department or workout group with whom Defendants could speak regarding their loans; that Plaintiff would work with Defendants regarding payments due; and that Defendants would forbear for a period of two years in order to provide time for Defendants to sell or re-finance the properties that secured the debt to Plaintiff.

83. Plaintiff had a pecuniary interest in making these misrepresentations because it was attempting at all times to improve its position with respect to the loans at issue in this case.

84. Plaintiff owed defendants a duty of care to communicate truthful information to Defendants.

85. Plaintiff breached this duty by failing to exercise due care to insure that the statements made to Defendants were correct.

86. Defendants justifiably relied on these statements made by Plaintiff in deciding to go along with the proposals that Plaintiff was making and in agreeing to the terms demanded by Plaintiff.

87. Defendants were injured as a direct and proximate result of their reliance on the misrepresentations made to them.

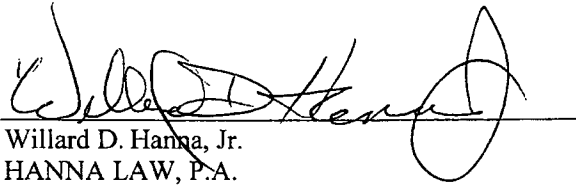
88. Plaintiff's conduct has proximately caused Defendants to suffer actual damages in such amount as may be established at trial.

89. Defendants also seek an award of punitive damages.

90. Defendants further seek their attorneys' fees and costs.

WHEREFORE having fully answered plaintiff's complaint and stated their defenses thereto and counterclaims against Plaintiff, Defendants pray as follows:

- a) that Defendants have a jury trial on all claims, defenses, and counterclaims;
- b) that the Complaint be dismissed with prejudice and trial be had on the counterclaims set out herein;
- c) that the Court declare that all further duties or responsibilities of Defendants to Plaintiff are discharged and that all agreement between Plaintiff and Defendants, including but not limited to all notes, guaranties, and mortgages, are null and void.
- c) that judgment be entered against Plaintiff in favor of Defendants for actual and punitive damages in such amount as is properly determined at trial;
- d) that Defendants be awarded their attorneys' fees and costs; and
- e) that Defendants have such other and further relief as may be just and proper.



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Surfside Beach, SC 29575
843.651.9000

*Attorney for Defendants GW Dorchester, LLC;
The Brothers of SC, LLC; Evan R. Marko; and
John E. Marko, Jr.*

August 25, 2014

Surfside Beach, South Carolina

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON
 3 PNC Bank, N.A., successor to RBC
 4 Bank (USA),
 5 Plaintiff(s),
 6 vs. C/A No: 2013-CP-10-2624
 7 Liberty Cottages, LLC; GW
 8 Dorchester, LLC; USS Clarksville,
 9 LLC; Liberty Cottages Land, LLC;
 10 ROA, LLC; Royal Beach Properties,
 11 LLC; The Brothers of SC, LLC;
 12 Deborah Rice-Marko a/k/a Deborah G.
 13 Rice-Marko; Evan R. Marko and John
 14 E. Marko, Jr.,
 15 Defendant(s).

16 D E P O S I T I O N
 17 WITNESS: Deborah Rice-Marko, Volume I
 18 DATE: Monday, July 14, 2014
 19 TIME: 10:13 a.m.
 20 LOCATION: Nelson Mullins Riley & Scarborough
 21 151 Meeting Street, Suite 600
 22 Charleston, South Carolina
 23 TAKEN BY: Attorneys for the Plaintiff
 24 REPORTED BY: HEATHER M. CURLIN
 25 Registered Professional Reporter
 26 - - - - -

27 COMPUSCRIPTS, INC.
 28 A Full-Service Court Reporting Agency
 29 Post Office Box 7172
 30 Columbia, South Carolina 29202
 31 803-988-0086
 32 1-888-988-0086
 33 www.compuscriptsinc.com

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12
13 ATTORNEYS FOR THE DEFENDANTS LIBERTY COTTAGES, LLC;
14 USS CLARKSVILLE, LLC; LIBERTY LAND COTTAGES, LLC;
15 ROA, LLC; ROYAL BEACH PROPERTIES, LLC; and DEBORAH
16 RICE-MARKO a/k/a DEBORAH G. RICE-MARKO:

17
18 SOWELL GRAY STEPP & LAFFITTE, LLC
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24
25 ATTORNEYS FOR THE DEFENDANTS EVAN R. MARKO; JOHN E.
MARKO, JR.; THE BROTHERS OF SC, LLC; and GW
DORCHESTER, LLC:

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2 BY: WILLARD D. HANNA, JR., ESQUIRE
3 1661 Glenns Bay Road
4 Surfside Beach, South Carolina 29575
5 843.651.9000
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7
8 ALSO PRESENT: Evan Marko
9 John E. Marko, Jr.
10 Stephen Wursta, Jr.

11
12 (INDEX AT REAR OF TRANSCRIPT)

13
14 www.compuscripts.com

1 (The deponent reserves the right to read and
2 sign the deposition transcript.)

3 (Exhibit Nos. 1 through 6 were marked.)

4 - - - - -

5 DEBORAH RICE-MARKO, being first duly sworn,
6 testified as follows:

7 EXAMINATION

8 BY MR. KNOWLTON:

9 Q. Ms. Marko, my name is Frank Knowlton. You
10 and I have met before --

11 A. Yes.

12 Q. -- at prior depositions and hearings in this
13 case, right?

14 A. Yes.

15 Q. Thanks for coming this morning. Today is our
16 opportunity to ask you questions about positions that
17 you or your companies have taken with respect to the
18 lawsuits, and I'm going to get to some of that
19 information in a little while. I first want to talk
20 about some stipulations for the day while your counsel
21 is present.

22 One of the things we -- the cases were filed
23 in three different counties and have been consolidated
24 now into Charleston County, so the attorneys have agreed
25 that the depositions today are for all three actions as

1 Q. Okay. We talked about your mother dying and
2 your relationship with the father's business changing in
3 about 2008. And my understanding, during that time
4 period, you were living up in North Carolina, but I may
5 have the sequence wrong about where you're living. At
6 some point you moved to Charleston. I'm trying to get
7 to that.

8 A. Again, I'm -- my dates, I'm -- I am not
9 clear. It is my recollection that I was spending a
10 portion of my time in South Carolina prior to 2008 and a
11 portion of my time in North Carolina; after 2008, the
12 majority of my time in South Carolina, Charleston.

13 Q. When did you move your residence to
14 Charleston?

15 A. Again, my legal residence, probably in 2004
16 or '5, but I just cannot be certain.

17 Q. And before that, you were just rotating back
18 and forth?

19 A. Yes.

20 Q. And what made you decide to come to
21 Charleston as opposed to some other city?

22 A. I had visited here in the 1970s as a college
23 student and had fallen in love with the city and had set
24 a goal that I would live here at or near retirement.

25 Q. And you're currently living on the South

1 Battery. Is it 33 South Battery?

2 A. 32.

3 Q. 32. Thank you. And when did you buy that
4 house?

5 A. Again, approximation of dates. I would say
6 2003, maybe.

7 Q. Okay. And I assume you had a loan and a
8 mortgage on the house?

9 A. I do.

10 Q. Okay. Do you have more than one mortgage on
11 the house?

12 A. I do.

13 Q. Let's start with the first mortgage and loan.
14 Who is the acquisition loan from?

15 A. I'm not quite sure who owns the loan, but
16 originally, it was SunTrust Mortgage.

17 Q. And how much was the loan for?

18 A. 3,950,000.

19 Q. And was that to purchase the house?

20 A. Yes, sir.

21 Q. Okay. And they put a mortgage on the house?

22 A. Yes, sir.

23 Q. Okay. Do you know the current balance of
24 that loan?

25 A. 3,950,000.

- 1 Q. So the loan balance hasn't changed?
- 2 A. No, sir.
- 3 Q. Okay. And are there other mortgages on that
- 4 house?
- 5 A. Yes, sir.
- 6 Q. Okay. Who has the other mortgages?
- 7 A. RBC, PNC, if you will, has a line of credit.
- 8 Q. And how much is the balance of that?
- 9 A. As I recall, it's 650,000.
- 10 Q. Okay. Does anyone else have a mortgage on
- 11 the property?
- 12 A. Yes, sir.
- 13 Q. All right. Who is the next in line?
- 14 A. White Lion Capital.
- 15 Q. And what's the balance of that mortgage?
- 16 A. In excess of \$2 million.
- 17 Q. And tell me about that -- well, let me go
- 18 back to that. Any other mortgagees on the property?
- 19 A. No, sir, not that I'm aware.
- 20 Q. Okay. So that's all the debt on the Battery
- 21 house?
- 22 A. That's my recollection, yes.
- 23 Q. And you had a home equity line of credit on
- 24 there with PNC/RBC?
- 25 A. Yes, sir.

1 Q. And what did you use that money for, the
2 \$650,000?

3 A. To reduce the principal balance on the line
4 of credit debt with RBC.

5 Q. Okay. The Royal Beach loan or was that the
6 business line of credit?

7 A. The line of credit debt that's the subject of
8 the complaint, Deborah Rice-Marko.

9 Q. Right. And White Lion, who is White Lion?

10 A. White Lion is an LLC owned by my sons.

11 Q. And did they -- did this entity loan you
12 money?

13 A. Yes.

14 Q. And it was \$2 million?

15 A. I don't know how much money they loaned me
16 over a period of time.

17 Q. Well, you have a mortgage of \$2 million, so
18 what I'm trying to get at is they loaned you \$2 million
19 and took a mortgage back?

20 A. Yes, they've loaned me over \$2 million over a
21 period time.

22 Q. Okay.

23 A. My recollection.

24 Q. And do you have a note with White Lion?

25 A. I don't recall.

1 extended again to March 23rd, 2007. Do you see that?

2 A. Yes, I do now. Yes. Section 4.

3 Q. Section 4, yes, ma'am.

4 A. Uh-huh.

5 Q. Okay. And turning back to page 3 of the
6 agreement, that's your signature, is it not?

7 A. Yes, that appears to be my signature.

8 Q. And do you recall whether you read this
9 document at the time you signed it?

10 A. No, sir.

11 Q. Do you recall in March of 2006 whether you
12 were represented by counsel?

13 A. No, sir.

14 Q. Would it have been your practice to have
15 entered into agreements like this without the benefit of
16 counsel?

17 A. I can't tell you what my practice was in 2006
18 with any degree of accuracy.

19 Q. All right. And do you remember whether you
20 had any claims or defenses to the enforceability of this
21 document at the time you signed it?

22 MR. STEPP: Object to the form.

23 A. I don't recall.

24 BY MR. KNOWLTON:

25 Q. Sitting here, you don't recall that you had

1 if I asked you this, pardon me -- but you don't recall
2 whether you had counsel or not?

3 A. No, I do not recall.

4 Q. At the time you executed this document, did
5 you have any claims or defenses to the enforceability of
6 this document by the bank?

7 A. I don't recall.

8 MR. STEPP: Object to the form of that last
9 question.

10 (Exhibit No. 15 was marked.)

11 BY MR. KNOWLTON:

12 Q. Ms. Rice-Marko, the court reporter has handed
13 you what's been marked as Exhibit Number 14 [sic] to
14 your deposition. It's a modification to the agreement
15 dated August 30, 2006. Do you see that?

16 A. Excuse me, I think it's 15. Isn't it 15?

17 Q. I'm sorry, you're right. Excuse me. Pardon
18 me. It's 15.

19 A. Same one?

20 Q. Yes. This appears to be a modification to
21 the agreement dated August 30, 2006. Do you see that?

22 A. Yes, it does.

23 Q. Okay. And if you'll turn to page 3, is that
24 your signature?

25 A. Yes, that appears to be my signature. Yes.

1 Q. Okay. I want you to go back to Exhibit 13
2 just for a moment. I forgot to ask you a question.

3 A. Sure.

4 Q. If you look at page 3 above your signature
5 block, you see the Section 10, waiver of jury trial?

6 A. Yes, I do.

7 Q. Okay. And you see that that language is
8 bolded?

9 A. Yes, I do.

10 Q. And, typically, language is bolded to get
11 your attention?

12 A. Yes.

13 Q. Is that correct?

14 A. Yes, that's correct.

15 Q. And it appears you agree to waive your right
16 to a jury trial in this document, does it not?

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

19 A. This has a waiver of jury trial, which is in
20 the document. Yes, it is.

21 BY MR. KNOWLTON:

22 Q. Okay. A document you signed?

23 A. Yes.

24 Q. And you don't have any trouble reading and
25 understanding the English language, do you?

1 A. No, sir.

2 Q. Okay. Back to Exhibit 15, if you'll look at
3 page 2 of that document -- do you have it?

4 A. On 15?

5 Q. 15, that's correct. Do you see Section 10?

6 A. Yes.

7 Q. That's a jury trial waiver as well, correct?

8 A. That's correct.

9 Q. Okay. And you waived your right to a jury
10 trial in this document; did you not?

11 MR. STEPP: Object to the form.

12 A. As part of this document, yes.

13 BY MR. KNOWLTON:

14 Q. And you signed this document of your own free
15 will, correct?

16 A. Yes, it appears to be.

17 Q. At the time you signed this agreement, August
18 30, 2006, did you have any issues with the bank?

19 MR. STEPP: Object to the form.

20 A. I don't recall any issues.

21 BY MR. KNOWLTON:

22 Q. And at the time you signed this document, do
23 you recall whether or not you had any claims or defenses
24 to the enforceability of this document by the bank?

25 MR. STEPP: Object to the form.

1 (Exhibit No. 17 was marked.)

2 BY MR. KNOWLTON:

3 Q. Okay. Ms. Rice-Marko, I'm handing you what
4 has been marked as Exhibit Number 17 to your deposition.
5 This appears to be a modification agreement dated July
6 18, 2007 by and between you and RBC Bank. Do you see
7 that?

8 A. There's no signature here. Oh, I'm sorry.
9 There it is. Excuse me.

10 Q. Is that your signature on page 3?

11 A. Appears to be, yes.

12 Q. Okay. And this is a modification agreement
13 by and between you and the bank dated July 18, 2007,
14 correct?

15 A. Yes.

16 Q. Okay. And it -- if you look on page 3,
17 Section 10, there's a waiver of jury trial provision; do
18 you see that?

19 A. Yes.

20 Q. And you signed this document of your own free
21 will?

22 A. Appears to be, yes.

23 Q. And that's bolded language to get your
24 attention, correct?

25 A. Yes. It's legal language.

1 Q. Did you have counsel -- corporate counsel
2 advise you to do this?

3 A. I don't -- I don't know.

4 Q. Okay. Why was Royal Beach Properties
5 assuming the obligations on the loan?

6 A. I don't know.

7 Q. Okay. And if you look on page 3 in Section
8 12, you see there's a waiver of jury trial there. Do
9 you see that?

10 A. Yes, sir, I do.

11 Q. All right. This is the document you signed,
12 right?

13 A. It appears to be a copy of my signature, yes.

14 Q. Okay. And on page 5, is that your signature?

15 A. It appears to be a copy of it, yes.

16 Q. Okay. And if you look on page 6, there's a
17 signature block for Royal Beach Properties. Do you see
18 that?

19 A. Yes, sir.

20 Q. Okay. And that's your signature as the
21 manager for Royal Beach Properties, correct?

22 A. Again, it appears to be a copy, yes.

23 Q. Okay. And do you recall at the time of this
24 document, which would have been August 26, 2008, whether
25 you were represented by counsel?

1 you see that?

2 A. Yes, I do.

3 Q. And if you look back on page 3, it's executed
4 by Deborah Rice-Marko as manager for Royal Beach
5 Properties; do you see that?

6 A. It appears to be my signature or a copy of,
7 yes.

8 Q. And that's your signature. Okay.

9 And above that, in Section 10, you see the
10 waiver of jury trial provisions?

11 A. Yes, I do.

12 Q. And that's in bolded language, is it not?

13 A. Yes, it is.

14 Q. Okay. And at the time of this document, the
15 loan had not been repaid, had it?

16 A. It appears not.

17 Q. Okay. And, in fact, you have requested
18 another extension of the maturity date to August 18,
19 2009; is that correct?

20 A. I don't know it was at my request, but yes,
21 there is an extension, a modification.

22 Q. Are you contending that the bank asked for
23 the maturity dates to be extended?

24 A. I don't know that it was not a mutual
25 agreement.

1 dated August 26, 2008 from you, Deborah Rice-Marko, to
2 RBC Bank. Do you see that?

3 A. Yes, I do.

4 Q. And you're guaranteeing this loan, are you
5 not?

6 MR. STEPP: Object to the form.

7 A. Yes.

8 BY MR. KNOWLTON:

9 Q. Okay. And on page 7, do you see Section
10 9.10?

11 A. Yes, I do.

12 Q. And you see there's a jury trial waiver there
13 in bold?

14 A. No, sir. 9.10?

15 Q. That's correct.

16 A. Oh. I'm sorry. Little "A." Yes, I do.

17 Q. Okay. And if you look on page 11, that's
18 your signature?

19 A. Appears to be a copy, yes.

20 Q. Okay. And, again, on page 9?

21 MR. STEPP: I don't have page 11. Hold on.

22 MR. KNOWLTON: Mine is out of order. I
23 apologize. But on pages 9 and 11.

24 MR. STEPP: Hold on. I'm sorry. Let me
25 catch up with you.

1 A. I don't have an 11. It just goes to 10. Oh,
2 it is out of order. I apologize. Excuse me.

3 BY MR. KNOWLTON:

4 Q. But those are your signatures, correct?

5 A. Are you referring to page 9?

6 Q. 9.

7 A. And 11?

8 Q. And 11. That's correct. Are those your
9 signatures?

10 A. That appears to be copies of my signature,
11 yes.

12 Q. Okay. All right. Ms. Rice-Marko, we're
13 going to change gears a little bit and go to a different
14 loan. We're going to go to The Brothers' loan of
15 1,100,000.

16 (Exhibit No. 23 was marked.)

17 BY MR. KNOWLTON:

18 Q. Ms. Rice-Marko, I'm handing you what's been
19 marked as Exhibit 23 to your deposition. It's a
20 commercial note dated August 7, 2001. Do you see that?

21 A. Yes, I do.

22 Q. And it's in the amount of \$1.1 million; is
23 that correct?

24 A. That's correct.

25 Q. And it appears to have a maturity date of

1 A. Johnny Warren. Yeah, he did. I'm sorry.

2 However, I think Scott Barnes has done some
3 corporate work for me.

4 Q. What kind of work has Mr. Barnes done for
5 you?

6 A. I think it was very minimal, but it was
7 either some LLCs, setting up some LLCs or something like
8 that. I don't know even that I was the one who was
9 directly working with him. It may have been someone in
10 the office, but I think Scott Barnes, in that office.

11 (Exhibit No. 30 was marked.)

12 BY MR. KNOWLTON:

13 Q. Ms. Rice-Marko, I'm handing you what's been
14 marked as Exhibit Number 30 to your deposition. It's a
15 modification agreement dated August 30, 2006 by and
16 between The Brothers of South Carolina and the bank. Do
17 you see that?

18 A. Yes.

19 Q. And on page 3, there's your signature on
20 behalf of the borrower, The Brothers of South Carolina;
21 is that correct?

22 A. Appears to be a copy of, yes.

23 Q. And that's your signature, right?

24 A. Yes.

25 Q. And you're signing as the manager of The

1 Brothers of South Carolina?

2 A. Yes.

3 Q. Did you have authority to sign on behalf of
4 The Brothers?

5 A. I would assume so. I don't know -- I don't
6 know specifically, but yes.

7 Q. Okay. You wouldn't testify here today that
8 you'd never sign anything for them that you didn't have
9 authority to sign?

10 A. Not to my knowledge.

11 Q. Okay. And in Section 10, there's a bolded
12 waiver of jury trial paragraph. Do you see that?

13 A. Yes.

14 Q. Okay. That's the document we -- do you
15 recall reviewing this document before you signed it?

16 A. Not specifically, no.

17 Q. Okay. On paragraph -- page 5, there's a
18 guarantor's consent form with your signature on there as
19 guarantor. Do you see that?

20 A. Yes.

21 Q. And that's your signature, right?

22 A. Appears to be a copy of.

23 Q. Okay. And if you go back to Attachment 2, it
24 appears this loan wasn't paid off by it's maturity date,
25 correct?

1 Q. Okay. At what point in time do you recall
2 that John and Evan would have signed in their own
3 capacity for The Brothers' loans?

4 A. I don't know.

5 Q. Okay.

6 (Exhibit No. 31 was marked.)

7 BY MR. KNOWLTON:

8 Q. Ms. Rice-Marko, shifting gears, we're going
9 to start talking about another one of the loans that are
10 outstanding, and this is a personal loan of yours. I've
11 handed you what's been marked as Exhibit Number 31 to
12 your deposition. It's a promissory note from you to the
13 bank dated January 13, 2005. Do you see that?

14 A. Yes.

15 Q. In the amount of \$5 million. Do you see
16 that?

17 A. Yes.

18 Q. And what was the purpose of this loan?

19 A. My recollect --

20 Q. Is this the line of credit that you talked
21 about earlier? I will direct you to page 2, about the
22 middle of the page, where it says "line of credit."

23 A. We've got two questions on the table. Which
24 would you like for me to answer?

25 Q. Well, answer the second one. Is this a

1 business line of credit that you had with the bank?

2 A. The purpose of this loan was for personal and
3 investment activities.

4 Q. Okay. What were the personal and investment
5 activities?

6 A. Investment in commercial properties,
7 investment -- or purchasing stock or just -- I can't
8 recall specifically, but those in general.

9 Q. It's set up as a line of credit. Did you
10 take a draw of \$5 million at the outset, or did you take
11 a little bit over time?

12 A. I don't recall.

13 Q. Okay. That is your signature at the bottom
14 of the page?

15 A. Appears to be a copy of.

16 Q. Okay. And at some point in time, the money
17 was advanced to you? Was it --

18 A. Yes.

19 Q. Okay. And you can't specifically agree -- or
20 recall what you did with the money?

21 A. No, sir, I have no tracing of the funds at
22 this time.

23 Q. But you did agree to repay that money
24 pursuant to this note, correct?

25 MR. STEPP: Object to the form.

1 A. I have no recollection.

2 Q. And at the time you executed this note, did
3 you have any claims or issues with the bank?

4 A. Again, I have no recollection.

5 MR. STEPP: Object to the form.

6 (Exhibit No. 32 was marked.)

7 BY MR. KNOWLTON:

8 Q. Ms. Rice-Marko, I'm handing you what's been
9 marked as Exhibit Number 32 to your deposition. It's a
10 commercial pledge agreement dated -- bear with me. I'll
11 find the date. -- dated January 13, 2005. Do you see
12 that?

13 A. Yes.

14 Q. Okay. And looking on page -- the last page
15 of the document, is that your signature?

16 A. Appears to be a copy of, yes.

17 Q. Okay. And what was the purpose of this
18 document?

19 A. This appears to be dated the same date as the
20 promissory note, and it appears that the purpose of this
21 document is to grant the security interest in the
22 collateral.

23 Q. And that would secure the \$5 million loan?

24 A. Yes, that's right.

25 Q. Okay. And it looks like the value of those

1 securities, according to the collateral description, was
2 \$5,688,433.86?

3 A. Brokerage account, A. G. Edwards, in the name
4 of Deborah G. Rice-Marko dated January 12th of '5,
5 having a value of \$5,688,433. Yes.

6 Q. This was mostly Wachovia stock that was in
7 this account?

8 A. As I recall, yes, mostly.

9 Q. Okay.

10 A. I can't say with any specificity whether any
11 other stock, but yes, mostly.

12 Q. And when did the Wachovia stock start to
13 decline; do you recall?

14 A. My recollection is the end -- last quarter of
15 2007.

16 Q. Okay. And do you recall whether you were
17 represented by counsel when you signed this document?

18 A. No, sir.

19 Q. You don't recall?

20 A. I do not recall, no, sir.

21 (Exhibit No. 33 was marked.)

22 BY MR. KNOWLTON:

23 Q. Ms. Rice-Marko, I'm handing you what has been
24 marked as Exhibit Number 33 to your deposition. This
25 looks like a modification agreement dated August 30,

1 2006. Do you see that?

2 A. Yes.

3 Q. And is that your signature on page 3?

4 A. Appears to be a copy of, yes.

5 Q. Were you represented by counsel when you
6 signed this document?

7 A. I have no recollection.

8 Q. You don't recall whether you had an attorney?

9 A. No.

10 Q. And you'll note on page 2 there's a Section
11 10, a waiver of a jury trial provision. Do you see
12 that?

13 A. Yes.

14 Q. And it's in all bold, right?

15 A. Yes.

16 Q. Okay. Did you have any issues or claims
17 against the bank at the time you executed this document?

18 MR. STEPP: Object to the form.

19 A. I have no recollection of any.

20 BY MR. KNOWLTON:

21 Q. You just don't recall any?

22 A. No.

23 Q. Okay.

24 (Exhibit No. 34 was marked.)

25 BY MR. KNOWLTON:

1 Q. Ms. Rice-Marko I'm handing you what's been
2 marked as Exhibit 34 to your deposition. This appears
3 to be a renewal note of the -- of your original \$5
4 million loan. Is that correct?

5 A. A renewal note?

6 Q. That's correct. It says, "Master Note
7 Renewal." Do you see that --

8 A. Oh, yes.

9 Q. -- in the top right corner?

10 A. I'm sorry. Yes.

11 Q. That's okay. It's dated January 11, 2007,
12 correct?

13 A. Yes, it is.

14 Q. Okay. And if you look at page 6 --

15 A. Yes.

16 Q. -- you've signed this document. Is that your
17 signature?

18 A. Appears to be a copy of, yes.

19 Q. And page 7, you signed that page as well?

20 A. Appears to be a copy of, yes.

21 Q. And that's your signature, though, right?

22 A. Yes.

23 Q. All right. And it extends the maturity date
24 in Section 2.2; is that not correct? Section 2.2 on
25 page 2?

1 Q. Ms. Rice-Marko, I'm handing you what's been
2 marked as Exhibit Number 35 to your deposition. This
3 appears to be a modification agreement dated January 11,
4 2007. Do you see that?

5 A. Yes, I do.

6 Q. Okay. And it's between you and the bank,
7 correct?

8 A. Yes.

9 Q. And it's signed by you on page 3. Is that
10 your signature?

11 A. Appears to be a copy of.

12 Q. Okay. And looking at Section 10, there's a
13 jury trial waiver. Do you see that?

14 A. Yes.

15 Q. And that's in all bold, correct?

16 A. Yes.

17 Q. Did you have counsel represent you in
18 connection with this document?

19 A. Not that I recall.

20 Q. Okay. And at the time you executed this
21 document, did you have any issues or claims against the
22 bank?

23 A. I have --

24 MR. STEPP: Object to the form.

25 A. -- no recollection.

1 BY MR. KNOWLTON:

2 Q. You just don't recall having any?

3 A. I just don't recall having any.

4 Q. Okay. All right. We're going to shift to
5 the Clarksville loan.

6 (Exhibit No. 36 was marked.)

7 BY MR. KNOWLTON:

8 Q. Ms. Rice-Marko, I'm handing you what has been
9 marked Exhibit 36 to your deposition. It's a promissory
10 note dated June 24th, 2005 in the amount of \$550,400.
11 Do you see that?

12 A. Yes.

13 Q. And this is executed by you in favor of the
14 bank. Do you see that?

15 A. Yes.

16 Q. And looking at the last page, that's your
17 signature, correct?

18 A. Appears to be a copy of, yes.

19 Q. All right. And the second paragraph, in all
20 caps, you see the waiver of a right to a jury trial?

21 A. Yes.

22 Q. Okay. Right above your signature?

23 A. The paragraph before, yes.

24 Q. Right. And the maturity date of this loan is
25 July 5th, 2006. Do you see that? On the first page,

1 looked at?

2 A. Yes.

3 Q. And does this refresh your recollection that
4 you were the owner of that land at the time of the loan?

5 A. I would have to assume, again, without seeing
6 the -- I would have to assume the mortgage would be in
7 my name as well if the land was in my name, yes.

8 Q. Okay.

9 A. I don't know that for a fact. But yes, I'll
10 make that assumption.

11 Q. And that's your signature on page 17?

12 A. Yes, appears to be a copy of it.

13 Q. Okay. And on page 16, Paragraph 33, do you
14 see the waiver of jury trial paragraph?

15 A. Yes.

16 Q. Okay. And that's part of the document you
17 executed, right?

18 A. Yes.

19 Q. And the first third of that paragraph is all
20 caps, correct?

21 A. Yes.

22 Q. Were you represented by counsel when you
23 executed this document?

24 A. I don't know.

25 Q. And do you recall, at the time of this

1 Q. So you extended the maturity date to January
2 15, 2007?

3 A. Yes, it appears for what --

4 Q. On page --

5 A. -- four months?

6 Q. -- 3 --

7 A. Four months?

8 Q. Yes.

9 A. Just four months.

10 Q. On page 3, there's your signature. Is that
11 your signature?

12 A. Appears to be a copy of, yes.

13 Q. Okay. And if you look at page 2, there's a
14 Section 10, waiver of jury trial. Do you see that?

15 A. Yes.

16 Q. And that's in all bold, right?

17 A. Yes.

18 Q. Okay. And did you consult with counsel when
19 you executed this document?

20 A. I don't know.

21 Q. Don't recall?

22 A. Don't recall.

23 Q. And did you have any claims or defenses
24 against the bank at the time you executed this document?

25 MR. STEPP: Object to the form.

1 A. Not that I'm aware of today.

2 (Exhibit No. 39 was marked.)

3 BY MR. KNOWLTON:

4 Q. Ms. Rice-Marko, I'm handing you what has been
5 marked as Exhibit 39 to your deposition. It's an
6 assignment and assumption agreement dated March 22nd,
7 2007. Do you see that?

8 A. Yes.

9 Q. And from this document, does it appear that
10 you're assigning this loan to the USS Clarksville, LLC?

11 A. Yes.

12 Q. Okay. And on page 4 is your signature on
13 behalf of USS Clarksville. Do you see that?

14 A. Appears to be a copy of, yes.

15 Q. And you were authorized to sign on behalf of
16 the entity?

17 A. Yes.

18 Q. And on page 3, Section 12, there's a waiver
19 of jury trial. Do you see that?

20 A. Yes.

21 Q. And that was in all bold?

22 A. Yes.

23 Q. At the time you executed this document, did
24 you have any legal representation?

25 A. I do not know.

1 Q. You don't recall?

2 A. No, I do not recall.

3 Q. And at the time you executed this document,
4 did you have any claims or defenses against the bank?

5 MR. STEPP: Object to the form.

6 A. None that I'm aware of today.

7 (Exhibit No. 40 was marked.)

8 BY MR. KNOWLTON:

9 Q. Ms. Rice-Marko, I'm handing you what's been
10 marked as Exhibit 40 to your deposition. It's a
11 mortgage, assignment of rents, and security agreement.
12 It's dated March 22nd, 2007. Do you see that?

13 A. Yes.

14 Q. And if you look on the second-to-the-last
15 page, there's an Exhibit A that describes the collateral
16 that this mortgage is secured by, the 4.817 acres in
17 Mount Pleasant. Is this the Park West property?

18 A. Yes.

19 Q. Okay. And on page 14 -- bear with me. I'm
20 sorry. On page -- doesn't have a page, but at the top
21 of the page is the book page number, page 384, towards
22 the back.

23 A. Yes.

24 Q. Is that your signature on behalf of the
25 entity?

1 A. Appears to be a copy of.

2 Q. Okay. Did you have authority to sign?

3 A. Yes.

4 Q. Okay. Do you recall whether you had any
5 issues with the bank at the time you executed this
6 agreement?

7 MR. STEPP: Object to the form.

8 A. I do not recall.

9 BY MR. KNOWLTON:

10 Q. Okay. And did you have counsel at the time
11 you executed this?

12 A. I don't know. I don't recall.

13 Q. And if you'll look at the mortgage supplement
14 and information guide.

15 MR. STEPP: Is that at the very end where --

16 MR. KNOWLTON: Yeah, towards the end. Yeah,
17 it's at the top of the page number 380.

18 MR. STEPP: Okay. Hold on -- now I've got
19 it.

20 BY MR. KNOWLTON:

21 Q. Okay. And if you look down, Ms. Rice-Marko,
22 the last section is called "Obligations." And to the
23 right it describes the obligations secured by the
24 mortgage. Do you see that?

25 A. Yes.

1 Q. And it describes the \$2.5 million loan to
2 Liberty Cottages. Do you see that?

3 A. Yes.

4 Q. Okay. And do you see in Paragraph 2 it talks
5 about the ROA loan in the amount of 1.7 -- \$1,763,000.
6 Do you see that?

7 A. Yes.

8 Q. Okay. And it further describes an obligation
9 that it secures on Section 3 -- or Paragraph 3, which is
10 the loan from Deborah Rice-Marko in favor of the bank in
11 the amount of \$550,400. Do you see that?

12 A. Yes.

13 Q. Okay. And at the time you signed this, if I
14 hadn't already asked you, did you have counsel
15 representing you?

16 A. Not that I recall.

17 Q. Okay. And did you have any issues or claims
18 against the bank at this time?

19 MR. STEPP: Object to the form.

20 A. Not that I recall.

21 BY MR. KNOWLTON:

22 Q. Okay. And on page 11, Section 15.8 --

23 A. Yes.

24 Q. -- there's a jury trial waiver. Do you see
25 that? The bold language there at the --

1 A. Yes.

2 Q. -- last sentence. Do you see that?

3 A. "To the extent permitted by law"?

4 Q. Right.

5 A. Yes.

6 Q. So this jury trial waiver is in bold, and you
7 executed this document, did you not?

8 A. Yes.

9 Q. Okay.

10 (Exhibit No. 41 was marked.)

11 BY MR. KNOWLTON:

12 Q. Ms. Rice-Marko, I'm handing you what's been
13 marked as Exhibit 41 to your deposition. It's a
14 modification agreement dated March 22nd, 2007. Do you
15 see that?

16 A. Yes.

17 Q. And this is between USS Clarksville and the
18 bank. Do you see that?

19 A. Yes.

20 Q. Dated March 22nd, 2007?

21 A. Yes.

22 Q. So apparently the bank -- you didn't repay
23 this loan to the bank by the maturity date, did you?

24 A. It does not appear.

25 Q. Okay. And if you look at Attachment 2 to

1 this document, the maturity date is extended again to
2 January 15, 2008. Do you see that?

3 A. Yes.

4 Q. Okay. Were you represented by an attorney at
5 the time of the execution of this document?

6 A. I do not recall.

7 Q. And do you recall whether you had any claims
8 or defenses against the bank at the time you executed
9 this document?

10 MR. STEPP: Object to the form.

11 A. I do not recall.

12 BY MR. KNOWLTON:

13 Q. Did you have authority to sign on behalf of
14 USS Clarksville?

15 A. Yes.

16 Q. And do you understand the concept of a
17 cross-default?

18 MR. STEPP: Object to the form.

19 A. Do I today understand it?

20 BY MR. KNOWLTON:

21 Q. Yes.

22 A. Yes.

23 Q. Okay. And looking on page 1 of the
24 Attachment 2 to the modification agreement, you see what
25 I'm calling the cross-default, it's cross-defaulted with

1 Q. Okay.

2 A. I would say that's accurate, yes.

3 Q. All right. And at the time you executed this
4 document, did you have any claims or defenses against
5 the bank?

6 MR. STEPP: Object to the form.

7 A. Not that I recall.

8 BY MR. KNOWLTON:

9 Q. Okay.

10 (Exhibit No. 42 was marked.)

11 BY MR. KNOWLTON:

12 Q. Ms. Rice-Marko, the court reporter has handed
13 you what has been marked as Exhibit 42 to your
14 deposition. It's a guaranty dated March 22nd, 2007,
15 from you to the bank. Do you see that?

16 A. Yes.

17 Q. And it relates to the USS Clarksville loan,
18 which we've been talking about; is that correct?

19 A. Yes.

20 Q. And if you look back on page 9, is that your
21 signature?

22 A. Appears to be a copy of, yes.

23 Q. Okay. And looking back on page 7, Section
24 9.10, which carries over to page 8, it contains a jury
25 trial waiver in bold?

1 A. Yes.

2 Q. Okay. Were you represented by counsel when
3 you signed this document?

4 A. I don't recall.

5 Q. But it was to secure -- further secure the
6 USS Clarksville debt to the bank, right?

7 A. To give further security to the bank for the
8 debt?

9 Q. That's correct.

10 A. Yes.

11 Q. Okay. And, again, you didn't have any claims
12 or defenses against the bank at the time you executed
13 this document, did you?

14 MR. STEPP: Object to the form.

15 A. Not that I recall.

16 BY MR. KNOWLTON:

17 Q. Okay.

18 (Exhibit No. 43 was marked.)

19 BY MR. KNOWLTON:

20 Q. Ms. Rice-Marko, the court reporter has handed
21 you Exhibit 43 to your deposition. It's a modification
22 agreement dated February 25th, 2008 from USS Clarksville
23 to the bank. Do you see that?

24 A. Yes.

25 Q. So, apparently, the loan had not been repaid

1 by the prior maturity date, correct?

2 A. The prior maturity date was?

3 Q. January 15, 2008, which is Exhibit 41.

4 A. And this is the 25th of February, 2008?

5 Q. That's correct.

6 A. So yes, it does not appear that it had been
7 paid by then.

8 Q. Okay. And, in fact, if you look at Exhibit
9 43 on Attachment 2, it further extends the maturity date
10 to June 15, 2009. Do you see that?

11 A. Yes.

12 Q. Okay. And on page 3, there's a signature on
13 behalf of USS Clarksville. Is that your signature?

14 A. Appears to be a copy of.

15 Q. And bold in Section 11, the jury trial
16 waiver. Do you see that?

17 A. Yes.

18 Q. Okay. And there's also a signature for you
19 on page 6, a guarantor consent. Do you see that?

20 A. Page 6. Yes.

21 Q. And did you have -- and that's your
22 signature?

23 A. Appears to be a copy of.

24 Q. And did you have counsel represent you?

25 A. I do not recall.

1 Q. The development?

2 A. Yes.

3 Q. If you look on page 2, it references the
4 parcels that you bought, 27-4 and Parcel 27-2. Do you
5 see that?

6 A. Yes.

7 Q. Okay. And the maturity date of this document
8 is June [sic] 5th, 2006; is that right?

9 A. I'm looking for the maturity date.

10 Q. It's on the bottom line of the first page.

11 A. Bottom line of the first page. I'm sorry.
12 Oh, yes. July the 5th, 2006?

13 Q. Right.

14 A. I'm sorry. I thought you said June. I
15 apologize.

16 Q. That's okay.

17 A. July the 5th, 2006, yes.

18 Q. Okay. And at the time, you executed this
19 document, did you not?

20 A. Yes, it appears to be a copy of my signature.

21 Q. All right. And the very top of your
22 signature page, there's an all caps paragraph that --
23 where there's a jury trial waiver. Do you see that?

24 A. Yes.

25 Q. Okay. And at the time you signed this

1 secure the loan?

2 A. I don't know.

3 Q. You don't recall?

4 A. No, I do not.

5 Q. Okay.

6 (Exhibit No. 45 was marked.)

7 (A brief break transpired.)

8 MR. KNOWLTON: Back on.

9 BY MR. KNOWLTON:

10 Q. Ms. Rice-Marko, I've handed you what's been
11 marked by the court reporter as Exhibit 45 to your
12 deposition, it's an unconditional guaranty of payment
13 dated June 24, 2005. Do you see that?

14 A. Yes, I do.

15 Q. And that's to further secure this loan?

16 MR. STEPP: Object to the form.

17 A. Yes. Yes.

18 BY MR. KNOWLTON:

19 Q. Okay.

20 A. Yes.

21 Q. And looking at the last page of the document,
22 that's your signature?

23 A. Appears to be a copy of, yes.

24 Q. Okay. And in Section 23, there's an all caps
25 jury trial waiver. Do you see that?

1 A. Yes.

2 Q. Okay. And that's right above your signature?

3 A. Two paragraphs up, yes.

4 Q. Okay. And did you have a lawyer represent
5 you in connection with this document?

6 A. I don't recall.

7 Q. And do you recall whether you had any claims
8 or defenses against the bank at the time you executed
9 this document?

10 A. I don't recall.

11 MR. STEPP: Object to the form.

12 (Exhibit No. 46 was marked.)

13 BY MR. KNOWLTON:

14 Q. Ms. Rice-Marko, the court reporter has -- I'm
15 handing you what the court reporter has marked as
16 Exhibit 46 to your deposition. This appears to be an
17 assumption agreement between ROA, LLC to RBC Bank. Do
18 you see that?

19 A. Yes.

20 Q. Okay. And it's dated August 30, 2006 --

21 A. Yes.

22 Q. -- do you see that?

23 A. Yes.

24 Q. It looks like ROA is assuming the mortgage
25 from that 1031 exchange, the one we looked at earlier.

1 Do you see that? If you look at Paragraph B on that
2 second page.

3 A. That's what I'm reading. Yes.

4 Q. Right. Okay. And it appears from Paragraph
5 C that the borrower is assuming all the obligations
6 under the mortgage. Do you see that?

7 A. Yes.

8 Q. Okay. And you executed this document on
9 page --

10 A. I'm sorry, sir.

11 Q. You executed this document on page 3, did you
12 not?

13 A. Appears to be a copy of my signature, yes.

14 Q. And you signed as manager, member manager?

15 A. Member manager, yes.

16 Q. And were you authorized to sign on behalf of
17 ROA?

18 A. Yes.

19 Q. Did you have counsel represent you in
20 connection with this document?

21 A. I don't recall.

22 Q. Okay. And at the time you executed this
23 document, did you have any claims or defenses against
24 the bank?

25 MR. STEPP: Object to the form.

1 A. I don't recall.

2 BY MR. KNOWLTON:

3 Q. And Section 6 on page 2 is a jury trial
4 waiver. Do you see that?

5 A. Yes.

6 Q. And it's all bold?

7 A. Yes.

8 Q. Okay.

9 (Exhibit No. 47 was marked.)

10 BY MR. KNOWLTON:

11 Q. Ms. Rice-Marko, I'm handing you what has been
12 marked as Exhibit 47 to your deposition. It's a
13 modification agreement dated August 30, 2006. Do you
14 see that?

15 A. Yes.

16 Q. Okay. It's between ROA, LLC and RBC Centura
17 Bank. Do you see that?

18 A. Yes.

19 Q. And it looks like the loan had not been paid
20 in full by its last maturity date?

21 A. The maturity date appears on Exhibit 44 as
22 July the 5th of '6, and this is dated August 30th of '6.

23 Q. Right. And the loan was not repaid by that
24 maturity date, was it?

25 A. I assume not.

1 Q. Ms. Rice-Marko, the court reporter has handed
2 you what's been marked as Exhibit 49 to your deposition.
3 It's a mortgage of ROA, LLC dated March 22, 2007. Do
4 you see that?

5 A. Give me just a minute, please. My eyes just
6 don't work as quick. I'm sorry.

7 Q. That's okay.

8 A. I'm looking for the date, Mr. Knowlton. The
9 front page is the date? I just can't see.

10 Q. Let me find it. If you look back on page 14,
11 you see a date of the acknowledgment by the notary,
12 March 22nd, 2007. Do you see that?

13 A. That's the date of her notary.

14 Q. Right.

15 A. I don't know the date this document --

16 Q. And if you look at the very next page,
17 there's a mortgage supplement and information
18 schedule --

19 A. Yes.

20 Q. -- effective date of March 22nd, 2007?

21 A. Okay.

22 Q. Do you see that?

23 A. Yes, I see that in the supplement schedule.
24 Yes.

25 Q. Okay. And looking at page 14, you have

1 signed on behalf of ROA, LLC. Do you see that?

2 A. Yes, I do.

3 Q. And that's your signature, correct?

4 A. Appears to be a copy of.

5 Q. Okay. And were you represented by counsel at
6 the time of the execution of this document?

7 A. I do not recall.

8 Q. And at the time of the execution of this
9 document, did you have any claims or defenses against
10 the bank?

11 MR. STEPP: Object to the form.

12 A. I don't recall.

13 BY MR. KNOWLTON:

14 Q. And this mortgage appears to cover -- bear
15 with me -- the 7.68 acres in Park West. Do you see
16 that?

17 A. Not yet, but I'm getting there.

18 Q. I'm sorry --

19 A. Give me just a second.

20 Q. -- second to last page.

21 A. The Exhibit A?

22 Q. Correct.

23 A. Yes, sir. I can read that, yes.

24 Q. And on page 11, Section 15.8, there's a jury
25 trial waiver. Do you see that?

1 A. I -- it says, "To the extent permitted by
2 law, waives any right to a trial by jury." Yes, I see
3 that.

4 Q. Right. Okay. And you signed this document?

5 A. Appears to be, yes.

6 Q. Okay. And looking at the mortgage
7 supplement, it appears that this -- the obligation
8 secures -- that this mortgage secures include the
9 Liberty Cottages loan of \$2.5 million. Do you see that?

10 A. Yes, sir.

11 Q. And it also secures the ROA loan in the
12 amount of \$1,763,000. Do you see that?

13 A. Yes, sir.

14 Q. And it also secures the loan to you in the
15 amount of \$550,400. Do you see that?

16 A. Yes.

17 Q. Okay. And if I asked you about this
18 document, I apologize, but did you have counsel
19 represent you in connection with this document?

20 A. I do not recall.

21 Q. Do you recall whether you had any issues or
22 claims against the bank at the time you executed this
23 document?

24 MR. STEPP: Object to the form.

25 A. I don't --

1 BY MR. KNOWLTON:

2 Q. I'm sorry. What was your answer?

3 A. I don't --

4 THE WITNESS: I'm sorry, Mr. Stepp.

5 MR. STEPP: I think she got my objection to
6 the form.

7 BY MR. KNOWLTON:

8 Q. And your answer is?

9 A. I do not recall.

10 Q. Okay.

11 (Exhibit No. 50 was marked.)

12 BY MR. KNOWLTON:

13 Q. Ms. Rice-Marko, the court reporter has handed
14 you what's been marked as Exhibit 50 to your deposition.
15 It's a modification agreement dated March 22nd, 2007.
16 Do you see that?

17 A. Yes, I do.

18 Q. Okay. And you've signed on behalf of ROA,
19 LLC. Do you see that on page 4?

20 A. Yes, I do.

21 Q. And that's your signature?

22 A. Appears to be a copy of.

23 Q. Okay. And on page 3, there's a jury trial
24 waiver that carries over to page 4. Do you see that?

25 A. Yes, I do.

1 Q. And that's in all bold?

2 A. Yes, it is.

3 Q. Okay. Were you authorized to sign on behalf
4 of ROA, LLC?

5 A. Yes.

6 Q. Were you represented by counsel?

7 A. I do not recall.

8 Q. Okay. And did you have any claims or
9 defenses against the bank at the time you signed this
10 document?

11 MR. STEPP: Object to the form.

12 A. I don't recall.

13 BY MR. KNOWLTON:

14 Q. Okay. And, apparently, the loan hadn't been
15 repaid as of the last maturity date, had it?

16 A. This is an ROA loan, and the date of the
17 document is the 22nd of March of '7; and the maturity
18 goes back to the promissory note, matured January 15th
19 of '7? Is that -- I understand it from Exhibit 48.

20 Q. I think you're on track.

21 A. So January 15th was the maturity of '07, and
22 this document was dated the 22nd of March, '07.

23 Q. Okay. So we extended the maturity date yet
24 again. Do you see that?

25 A. Yes, it appears so.

1 A. That's right.

2 Q. Okay. And at the time you executed this
3 document, were you represented by counsel?

4 A. I do not recall.

5 Q. And at the time you executed this document,
6 do you recall whether you had any claims or defenses
7 against the bank?

8 MR. STEPP: Object to the form.

9 A. I do not -- I do not recall.

10 BY MR. KNOWLTON:

11 Q. Thank you.

12 (Exhibit No. 51 was marked.)

13 BY MR. KNOWLTON:

14 Q. Ms. Rice-Marko, I'm going to hand you what's
15 been marked as Exhibit 51 to your deposition. It's a
16 modification agreement dated March 22nd, 2007. Do you
17 see that?

18 A. I do.

19 Q. And is that your signature on page 3 [sic] on
20 behalf of ROA, LLC?

21 A. Page 4?

22 Q. That's correct.

23 A. Yes, it appears to be a copy of.

24 Q. And if you look at page 3, there's a Section
25 10, waiver of jury trial. Do you see that?

1 A. I do.

2 Q. And that's all bold, correct?

3 A. It is.

4 Q. Okay. And were you represented by counsel at
5 the time you executed this document?

6 A. I do not recall.

7 Q. Okay. And did you have any claims or
8 defenses against the bank at the time of the execution
9 of this document?

10 MR. STEPP: Object to the form.

11 A. I do not recall.

12 BY MR. KNOWLTON:

13 Q. Okay. Okay.

14 (Exhibit No. 52 was marked.)

15 BY MR. KNOWLTON:

16 Q. Ms. Rice-Marko, the court reporter has handed
17 you what's been marked as Exhibit 52 to your deposition.
18 It's a modification agreement dated February 25th, 2008.
19 Do you see that?

20 A. I do see that, yes.

21 Q. Okay. And by the last maturity date, the
22 loan had not been repaid, had it?

23 A. Last maturity date being? What's the last
24 maturity date?

25 Q. Would have been January 15, 2008.

1 A. I'm going to take your word for it because
2 I'm not seeing it on the documents, but that's okay.

3 Q. That's all right. It's in Exhibit 51, but
4 I'll rep- --

5 A. Exhibit 51?

6 Q. Yeah.

7 A. Okay. Thank you.

8 Q. And so the loan had not been repaid, had it.

9 A. Appears not.

10 Q. And the bank and the borrower extended the
11 maturity date to June 15, 2009 in Exhibit 52. Do you
12 see that?

13 A. Is it the attachment, maturity date June 15
14 2009?

15 Q. Correct.

16 A. From the 25th of February of '8?

17 Q. Right.

18 A. Yes.

19 Q. And on page 3, you've executed this on behalf
20 of the borrower, ROA, LLC, correct?

21 A. It appears to be, yes.

22 Q. And you had authority to sign on behalf of
23 ROA?

24 A. Yes.

25 Q. Were you represented by counsel at the time

1 of this document?

2 A. I do not recall.

3 Q. Do you recall whether you had any claims or
4 defenses against the bank at the time you executed this
5 document?

6 MR. STEPP: Object to the form.

7 A. I do not recall.

8 BY MR. KNOWLTON:

9 Q. Okay.

10 (Exhibit No. 53 was marked.)

11 BY MR. KNOWLTON:

12 Q. Ms. Rice-Marko, the court reporter has handed
13 you what has been marked Exhibit Number 53 to your
14 deposition. It's a guaranty from -- it's a guaranty
15 dated February 25th, 2008 by Liberty Cottages Land to
16 the bank. Do you see that?

17 A. Yes, I do.

18 Q. And is that your signature on page 9?

19 A. Appears to be a copy of, yes.

20 Q. Okay. Did you have authority to sign on
21 behalf of Liberty Cottages Land?

22 A. Yes.

23 Q. And were you represented by an attorney in
24 connection with this?

25 A. I do not recall.

1 Q. And you understood this to be further
2 security for the ROA debt to the bank?

3 MR. STEPP: Object to the form.

4 A. Yes.

5 BY MR. KNOWLTON:

6 Q. Okay. If you look at Section 9.10, which
7 carries over to page 8, there's a jury trial waiver. Do
8 you see that?

9 A. Yes.

10 Q. Okay. At the time you executed this, did you
11 have any issues or claims or defenses against the bank?

12 MR. STEPP: Object to the form.

13 A. Not that I recall.

14 BY MR. KNOWLTON:

15 Q. Okay.

16 MR. KNOWLTON: Bobby, I'm about to go to
17 another loan, and we can do whatever you want to. We
18 can soldier on for another seven minutes or -- what's
19 your --

20 MR. STEPP: Why don't we break it right here.

21 MR. KNOWLTON: All right.

22 MR. STEPP: Before we get into another set of
23 exhibits because I can barely keep them straight
24 anymore.

25 (The deposition was adjourned at 5:21 p.m.)

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 PNC Bank, N.A., successor to RBC
Bank (USA),

4

Plaintiff(s),

5

vs.

C/A No: 2013-CP-10-2624

6

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

10

11

Defendant(s).

12

13

D E P O S I T I O N

14

WITNESS: Deborah Rice-Marko, Volume II

15

DATE: Tuesday, July 15, 2014

16

TIME: 9:30 a.m.

17

LOCATION: Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, South Carolina

18

19

TAKEN BY: Attorneys for the Plaintiff

20

REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

21

- - - - -

22

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John E. Marko, Jr.
Stephen Wursta, Jr.

(INDEX AT REAR OF TRANSCRIPT)

1 trying to cut you off. If you have something that you
2 need to say that I didn't realize, please stop me, and I
3 want you to testify and get your testimony out.

4 A. Okay.

5 Q. Okay. And if you don't understand me, please
6 ask me to repeat it.

7 A. Okay.

8 Q. So we're going to start back at -- we've got
9 now what's been marked as Exhibit Number 54 to your
10 deposition. That appears to be a promissory note dated
11 November 18, 2005 in the amount of \$2,350?

12 A. I'm sorry. The amount --

13 MR. STEPP: 2 million three.

14 BY MR. KNOWLTON:

15 Q. I'm sorry. What did I say? Two thousand?
16 \$2,350,000.

17 This is from GW Dorchester to RBC Bank. Do
18 you see that?

19 A. Yes, I do.

20 Q. Okay. And if you turn in --

21 A. No. Excuse me.

22 Q. I want to take you to the back page, the
23 signature page.

24 A. Yes.

25 Q. And it appears that the borrower is Evelyn

1 Rice, but you're signing as her attorney-in-fact?

2 A. Yes.

3 Q. Is that what it appears to be?

4 A. Yes.

5 Q. And that's your signature?

6 A. That appears to be a copy of, yes?

7 Q. Okay. And you are authorized to sign as her
8 attorney-in-fact?

9 A. Yes.

10 Q. And Evelyn D. Rice was your mother?

11 A. Yes.

12 Q. And tell me how it came to be that you were
13 acting as her attorney-in-fact.

14 A. My mother and father had elected me to be
15 their power of attorney after a certain stage of their
16 lifetime.

17 Q. Okay. And was that document recorded
18 anywhere?

19 A. I can't say with certainty.

20 Q. Okay. And if you'll look at Section 5.6
21 on -- the pages are not numbered, but the middle of the
22 document, and Section 5.6 contains a jury waiver. Do
23 you see that?

24 A. Yes.

25 Q. And it's in bold?

1 A. Yes.

2 Q. Okay. What was the purpose of this loan?

3 A. I'm looking again. Mr. Knowlton, I'm trying
4 to see the name of the borrower. Is it -- I see Evelyn
5 Rice, but does it state an LLC or?

6 Q. It appears that this is in your mother's
7 name.

8 A. Yes.

9 Q. And it may later have been assumed by the GW
10 Dorchester. It appears, from my review, that -- and you
11 might confirm that, but it appears to be a loan to your
12 mother executed by you; is that right?

13 A. That's what it appears.

14 Q. Okay.

15 A. And I'm looking to see if there's a
16 description of the LLC or the property, and I'm not --
17 again, I'm not saying it's not there. I just don't see
18 it.

19 Q. Okay.

20 A. I'm looking.

21 Q. So you don't, just sitting here looking at
22 the document, recall what the purpose of the note was?

23 A. No. I'd have to look at the document to
24 refer, and I'm trying to find some reference to the LLC
25 or property and I'm just not seeing it.

1 A. Yes, sir, I do.

2 Q. So you don't have any reason to believe that
3 this was in not filed with your mortgage to RBC Bank, do
4 you?

5 A. I don't have enough information to --

6 Q. You don't know?

7 A. No.

8 Q. Okay.

9 A. No, sir, sorry, I do not.

10 Q. And that's your signature on the
11 third-to-the-last page -- I'm sorry, second-to-last
12 page, again?

13 A. Second-to-the-last page?

14 Q. Right.

15 A. Yes, that appears to be a copy of my
16 signature.

17 Q. Okay. You don't dispute that's your
18 signature?

19 A. No.

20 Q. And you signed with authority as
21 attorney-in-fact for your mother?

22 A. Yes.

23 Q. Okay. At the time you executed this
24 mortgage, did you have any issues or claims against the
25 bank?

1 A. All right. I'm looking on the second page.

2 Q. All right. Under "Parties," the parties to
3 the document are Evelyn D. Rice?

4 A. Yes.

5 Q. That's your mother?

6 A. Yes.

7 Q. GW Dorchester?

8 A. Yes.

9 Q. And RBC Centura Bank. Do you see that?

10 A. Yes.

11 Q. Okay. And on the third-to-the-last page,
12 there's a signature block where it appears you've signed
13 as attorney-in-fact for your mother; is that correct?

14 A. Yes.

15 Q. Okay. And you have authority to sign on her
16 behalf?

17 A. Yes.

18 Q. Okay. And in Section 12 on page 3, do you
19 see that, there's a waiver of a jury trial there? Do
20 you see that?

21 A. Yes, I do.

22 Q. Okay. And it's in bold, is it not?

23 A. Yes. It says, "To the extent permitted by
24 law, waiving a right to trial by jury."

25 Q. It very clearly says waiver of jury trial,

1 does it not?

2 A. Yes.

3 Q. Okay. At the time you executed this
4 document, were you represented by counsel?

5 A. I do not recall.

6 Q. Don't recall one way or the other?

7 A. No, sir.

8 Q. Okay. And did you, at the time of the
9 signing of this document on behalf of your mother, have
10 any claims or issues with the bank?

11 MR. STEPP: Object to the form.

12 A. I do not recall.

13 BY MR. KNOWLTON:

14 Q. You don't recall that you had any claims at
15 that time?

16 MR. STEPP: Object to the form.

17 A. No, I do not recall.

18 Q. So the last document effectively transfers
19 the loan to GW Dorchester. Does that refresh your
20 recollection as to what the purpose of the loan was?

21 A. The purpose of the loan, again, was to --

22 Q. To buy the property for the Goodwill store?

23 A. That's what it appears.

24 Q. Okay. Do you have any reason to dispute
25 that?

1 BY MR. KNOWLTON:

2 Q. Ms. Rice-Marko, I'm handing you what has been
3 marked as Exhibit 57 to your deposition. This is a
4 modification agreement dated August 30, 2006 between
5 Evelyn Rice and RBC Centura Bank. Do you see that?

6 A. Yes.

7 Q. Okay. And if you look on the page 3, it
8 appears that you have signed on behalf of your mother as
9 attorney-in-fact. Do you see that?

10 A. Yes.

11 Q. And that's your signature, right?

12 A. Appears to be a copy of, yes.

13 Q. Okay. And you signed with authority on
14 behalf of your mother?

15 A. Yes.

16 Q. Okay. And if you look at Section 10 on page
17 2, do you see that?

18 A. Yes.

19 Q. All right. There's a Section 10 that's a
20 waiver of jury trial, right?

21 A. Yes.

22 Q. And it's in bold?

23 A. Yes.

24 Q. Carries on over to the signature page, does
25 it not?

1 A. Yes.

2 Q. Okay. Were you represented by counsel at the
3 time you signed this document?

4 A. I do not recall.

5 Q. Okay. And at the time you signed this
6 document, did you have any claims or issues with the
7 bank?

8 MR. STEPP: Object to the form.

9 A. I do not recall.

10 BY MR. KNOWLTON:

11 Q. Don't recall that you had any claims at that
12 time?

13 MR. STEPP: Objection.

14 A. No, sir.

15 BY MR. KNOWLTON:

16 Q. Okay.

17 (Exhibit No. 58 was marked.)

18 BY MR. KNOWLTON:

19 Q. Ms. Rice-Marko, I'm handing you what has been
20 marked as Exhibit 58 to your deposition. It's a
21 modification agreement dated August 30, 2006. Do you
22 see that?

23 A. Yes, I do.

24 Q. Okay. And it's between Evelyn D. Rice, your
25 mother, and RBC Centura Bank. Do you see that?

1 A. Yes.

2 Q. And on page 3, there's your signature on
3 behalf of your mother. Do you see that?

4 A. Appears to be a copy of, yes.

5 Q. Okay. And you had authority to sign on her
6 behalf, did you not?

7 A. Yes.

8 Q. And on page 2, Section 10, which is a waiver
9 of jury trial, do you see that?

10 A. Yes.

11 Q. Okay. And it carries over to the signature
12 page on page 3, right?

13 A. Yes.

14 Q. And that section is in bold, correct?

15 A. Yes.

16 Q. Okay. At the time you signed this document,
17 did you have any claims or issues with the bank?

18 A. I do not --

19 MR. STEPP: Object to the form.

20 A. I do not recall.

21 BY MR. KNOWLTON:

22 Q. You don't recall that you had any?

23 A. No, sir.

24 MR. STEPP: Object to the form.

25 BY MR. KNOWLTON:

1 MR. STEPP: Wait a minute. What number is
2 that?

3 MR. KNOWLTON: 58.

4 MR. STEPP: No, it's 59.

5 MR. KNOWLTON: 59. I apologize.

6 BY MR. KNOWLTON:

7 Q. To keep me on track, why don't we make that
8 59A?

9 MR. McGEE: 58A?

10 MR. KNOWLTON: I mean 58A. Let's do it that
11 way because I got off track a little bit.

12 Can you just write it on this one and then
13 we'll jump to --

14 THE REPORTER: Sure.

15 MR. KNOWLTON: -- 59 for that.

16 (Exhibit No. 59 was re-marked as No. 58A.)

17 BY MR. KNOWLTON:

18 Q. Ms. Rice-Marko, I'm handing you what's been
19 marked as 58A, and it is a modification agreement dated
20 December 28, 2006. Do you see that?

21 A. Yes.

22 Q. All right. It's by and between GW Dorchester
23 and RBC Centura Bank. Do you see that?

24 A. Yes.

25 Q. On page 3, there's a signature block for GW

1 Dorchester where it appears you have signed on their
2 behalf. Is that correct?

3 A. Yes.

4 Q. And that's your signature?

5 A. It appears to be a copy of it, yes.

6 Q. Okay. And you signed with authority on
7 behalf of GW Dorchester?

8 A. Yes.

9 Q. Okay. GW Dorchester is the entity formed to
10 own the Dorchester County property for the Goodwill
11 store, right?

12 A. Yes.

13 Q. Okay. On page 2, you've got Section 10.
14 There's a waiver of jury trial. Do you see that?

15 A. Yes.

16 Q. And it's in bold, is it not?

17 A. Yes.

18 Q. And it carries over to the signature page,
19 doesn't it?

20 A. Yes.

21 Q. Okay. And if you look at page 5, you've
22 signed, again, on your mother's behalf; is that correct?

23 A. Yes.

24 Q. Okay. And that's your signature?

25 A. Yes, it appears to be a copy of.

1 Q. It's got a March blank date.

2 A. Oh, I'm so sorry. Please excuse me. Yes, I
3 do.

4 Q. Okay.

5 A. I apologize.

6 Q. Now, the page before that is a signature
7 page. And it's got your signature on behalf of Liberty
8 Cottages, LLC. Do you see that?

9 A. Yes, I do.

10 Q. Okay. And that's your signature?

11 A. Appears to be a copy of.

12 Q. And you signed on behalf of the company?

13 A. Yes.

14 Q. Were you authorized to sign on behalf of
15 Liberty Cottages?

16 A. Yes.

17 Q. And down below, you signed as a guarantor.
18 Is that your signature?

19 A. Appears to be a copy of, yes.

20 Q. And do you recall what the purpose of this
21 construction loan was?

22 A. For the development of the Park West land.

23 Q. Okay. And if you look at that acknowledgment
24 that we were looking at, on the third page of that
25 document, there's another signature block, the

1 borrower's acknowledgment, and it's got your signature
2 on behalf of Liberty Cottages, LLC. Do you see that?

3 A. Yes.

4 Q. And that's your signature, is it not?

5 A. Appears to be a copy of.

6 Q. Okay. And below that is a guarantor's
7 acknowledgement. Do you see that?

8 A. Appears to be a copy of.

9 Q. Okay. And that's your signature, right?

10 A. Appears to be a copy of.

11 Q. And you were going to get money from the bank
12 pursuant to this loan agreement; is that correct? Or
13 construction loan agreement?

14 A. Yes.

15 Q. And it appears to be a loan amount stated in
16 the supplement appears to be the lesser of \$2,500,000 or
17 the 75 percent of the as-improved appraised value of the
18 property. Do you see that?

19 A. Yes, I see that writing. Yes.

20 Q. And you did get that money, did you not?

21 A. I don't -- I don't know which amount I got.
22 I don't recall.

23 Q. But you did get money advanced as part of
24 this construction loan agreement?

25 A. Yes.

1 Q. And it's in the amount of \$2,500,000?

2 A. Yes.

3 Q. And it's from Liberty Cottages to RBC Centura
4 Bank. Do you see that?

5 A. Yes.

6 Q. Okay. And that's in connection -- this was
7 the note that was issued in connection with the
8 construction loan agreement we just looked at; is that
9 correct?

10 A. Yes, I would -- I would think so, yes.

11 Q. Okay. They're dated the same date, I think?

12 A. Well, no, I don't think the other one was
13 dated.

14 Q. Well, on page 6, it appears there's a
15 signature block with your name on behalf of Liberty
16 Cottages, LLC. Do you see that?

17 A. Yes.

18 Q. And that's your signature?

19 A. Appears to be a copy of.

20 Q. Okay. And you signed on behalf of the
21 company?

22 A. Yes.

23 Q. And you were authorized?

24 A. Yes.

25 Q. Were you represented by counsel?

1 Q. All right. And on page 9, is your signature,
2 correct?

3 A. Appears to be a copy of, yes.

4 Q. Okay. And you've signed again on page 11
5 under the attachment. Do you see that?

6 A. Appears to be a copy of my signature, yes.

7 Q. Okay. And this was executed contemporaneous
8 with the loan, was it not?

9 A. I would have no direct knowledge of that at
10 this time, but . . .

11 Q. Well, it appears --

12 A. I don't know.

13 Q. -- it's dated contemporaneous with the note
14 we just looked at, correct?

15 A. It's dated at the same date with a
16 handwritten date, yes.

17 Q. Okay. And it references Liberty Cottages
18 below that first paragraph, correct?

19 A. Yes.

20 Q. Okay. And it says that Liberty Cottages
21 wants to borrow money from the bank. Do you see that?

22 A. It says, "desires to obtain a loan or other
23 extension of credit from the bank," yes.

24 Q. All right. And in connection with that loan,
25 the bank asked you to guarantee the debt, did it not?

1 Q. Okay. Were you represented by an attorney at
2 the time you executed this document?

3 A. I do not recall.

4 Q. And did you have any claims or defenses
5 against the bank at the time you signed this document?

6 MR. STEPP: Object to the form.

7 A. I do not recall.

8 BY MR. KNOWLTON:

9 Q. Okay. Was -- had the bank, in your opinion,
10 defaulted in any way under the loan documents at the
11 date of this document?

12 MR. STEPP: Object to the form.

13 A. I have no knowledge today of any defaults
14 that existed February 2008.

15 BY MR. KNOWLTON:

16 Q. Okay. And if you'll look at Section 11 on
17 page 3, there's a waiver of jury trial in there. Do you
18 see that?

19 A. Yes.

20 Q. Okay. And it's in bold, correct?

21 A. Yes.

22 Q. Right above your signature line there?

23 A. Yes.

24 Q. Do you see that?

25 A. About four paragraphs above, yes.

1 Q. Okay. And on page 6, that's your signature
2 again, correct?

3 A. Appears to be a copy of.

4 Q. Okay. And I think we got this down, but the
5 maturity date has now been extended to June 15, 2009,
6 pursuant to this document, right?

7 A. Yes.

8 Q. Okay.

9 (Exhibit No. 63 was marked.)

10 BY MR. KNOWLTON:

11 Q. Ms. Rice-Marko, I'm handing you what has been
12 marked as Exhibit 63 to your deposition. It's a
13 mortgage from Liberty Cottages Land to RBC Centura Bank.
14 Do you see that?

15 A. Yes.

16 Q. And if you look in the second-to-the-last
17 page, there's a description of the land, approximately
18 19.244 acres. Do you see that?

19 A. I do see that.

20 Q. Okay. And was this for the Park West land or
21 some of the Park West land?

22 A. It's -- according to the exhibit, it's --
23 yes, and it defines this TMS number such-and-such, yes.

24 Q. Okay. And this was the Park West property
25 y'all had been developing?

1 A. This is -- yes.

2 Q. Okay. And if you look at page 14, there's a
3 signature block for Liberty Cottages Land. Do you see
4 that?

5 A. I'm sorry, direct me to that page again.

6 Q. Page 14.

7 A. Yes.

8 Q. That's your signature, correct?

9 A. Appears to be a copy of.

10 Q. All right. And you had authority to sign for
11 Liberty Cottages Land?

12 A. Yes.

13 Q. And were you represented by counsel when you
14 executed this document?

15 A. I do not recall.

16 Q. If you look at Section 11 -- I'm sorry, page
17 11, 15.8, there's a jury trial waiver there in bold. Do
18 you see that?

19 A. The last sentence, yes.

20 Q. Okay. And you understand that the property
21 described back here serves as collateral for the loan
22 that we've been talking about?

23 A. No, sir, that's what I was trying to read.
24 I'm not quite sure of this legal description.

25 Q. Well, it describes 19 acres of land.

1 A. Yes, sir.

2 Q. -- Liberty Cottages?

3 A. Yes, sir.

4 Q. Okay.

5 (Exhibit No. 64 was marked.)

6 BY MR. KNOWLTON:

7 Q. Ms. Rice-Marko, I'm handing you what's been
8 marked as Exhibit 64 to your deposition. It's an
9 unconditional guaranty agreement from Liberty Cottages
10 Land, LLC to RBC Bank. Do you see that?

11 A. Yes, sir.

12 Q. It's dated February 25th, 2008. Do you see
13 that?

14 A. Yes, sir.

15 Q. And if you look back on the back signature
16 page at page 9, you've signed on behalf of the company.
17 Do you see that?

18 A. I do.

19 Q. And that's your signature, right?

20 A. Appears to be a copy of it.

21 Q. Okay. And you signed with authority on
22 behalf of the company?

23 A. Yes.

24 Q. Were you represented by counsel when you
25 executed this document?

1 A. I do not recall.

2 Q. Okay. And do you remember at the time
3 whether you had any claims or issues with the bank when
4 you executed this document?

5 MR. STEPP: Object to the form.

6 A. I do not recall.

7 BY MR. KNOWLTON:

8 Q. And looking at Section 9.10, which begins on
9 page 7, there's a jury trial waiver in this document, is
10 there not?

11 A. On page 7, yes.

12 Q. Okay. Carries on to the next page. It's in
13 bold, in fact, is it not?

14 A. In bold, it says, "to the extent permitted by
15 law."

16 Q. Okay. It says more than that, doesn't it?

17 A. "Waives any right to trial by jury in any
18 action arising from or related to this guaranty or any
19 guaranty agreement or any obligation in question."

20 Q. Thank you.

21 A. Uh-huh.

22 Q. Ms. Rice-Marko, we're going to now talk about
23 a different loan. And this is going to be the ROA loan
24 in the amount of \$3,920,000 just to shift your
25 attention.

1 (Exhibit No. 65 was marked.)

2 BY MR. KNOWLTON:

3 Q. I'm going to hand you what's been marked as
4 Exhibit 65 to your deposition. This is a loan agreement
5 by and between RBC Centura Bank and ROA. Do you see
6 that?

7 A. Not quite. If you'll give me a moment,
8 please, I'll look for that.

9 Q. Take your time. I'll guide you to page 13.

10 A. Thank you. Okay. There's the signature
11 page.

12 Q. Okay. And that's -- the borrower's
13 identified as ROA, LLC. Do you see that?

14 A. It's a signature page --

15 Q. That's correct.

16 A. -- but that doesn't -- you know, it doesn't
17 refer back to this document, but yes.

18 Q. Well, it's numbered sequentially. Are you
19 contending that this document is not an accurate or
20 complete document?

21 A. I would have no way to know.

22 Q. Okay. And the borrower is identified as ROA,
23 LLC, correct?

24 A. On the signature page, yes, sir.

25 Q. That's right. All right. And you've signed

1 there on behalf of the borrower, correct?

2 A. Appears to be a copy of my signature.

3 Q. And that your signature below as guarantor.

4 Do you see that?

5 A. Appears to be a copy of my signature.

6 Q. Okay. And you recall making this loan with
7 the bank? And I'll draw your attention to the loan
8 agreement supplement.

9 A. Okay.

10 Q. All right.

11 A. Thank you.

12 Q. And it's got an effective date of the loan
13 agreement of November 9, 2007. Do you see that?

14 A. It does, but I have no way to know that it
15 refers to this loan agreement other than it's attached.

16 Q. It's attached. Okay.

17 A. Uh-huh.

18 Q. But you do remember making the loan, right?

19 A. Yes. I remember there is a loan to ROA.

20 Q. Okay. In fact, if you look at the third page
21 of that loan agreement supplement, you've signed it
22 again, have you not?

23 A. I signed the loan supplement agreement, yes.

24 Q. Okay. That's your signature, right?

25 A. Appears to be a copy of.

1 disbursed" --

2 Q. Okay.

3 A. -- "from time to time and remains unpaid
4 together with the interest" -- and it goes on.

5 Q. All right. And you don't know how much was
6 disbursed, do you?

7 A. No, sir.

8 Q. Okay. But some monies were disbursed, were
9 they not?

10 A. Yes, sir.

11 Q. Okay. And on page 6, that's your signature?

12 A. Appears to be a copy of.

13 Q. Okay. And you signed with authority on
14 behalf of ROA?

15 A. Yes.

16 Q. And on Section 5.6, there's another jury
17 trial waiver, correct?

18 A. Yes.

19 Q. And it's in bold?

20 A. The last sentence --

21 Q. Yeah.

22 A. -- "to the extent permitted by law."

23 Q. It says more than that, doesn't it?

24 A. Yes.

25 Q. What does it say?

1 A. "Waives any right to a trial by jury in any
2 action arising from or related to this matter."

3 Q. Thank you.

4 A. Uh-huh.

5 Q. And if you look at the last page, you've
6 signed again an acknowledgement. That's your signature,
7 correct?

8 A. Appears to be a copy of.

9 Q. All right. Who is Zan Suren-Deitz?

10 A. She works for a law firm.

11 Q. What law firm?

12 A. I'm not sure at the time which law firm it
13 was, but I believe now it's Eric Davidson -- or excuse
14 me, Eric Bradshaw.

15 Q. Who is Eric Bradshaw?

16 A. He's a real estate attorney.

17 Q. Okay. Was he representing you at the time?

18 A. I don't recall.

19 Q. Why would you have signed this in his office?

20 A. I don't know I did sign it in his office.

21 Q. Okay. Well, you signed with somebody who
22 worked for a law firm?

23 A. I don't know I did.

24 Q. Well, you said Ms. Zan Suren-Deitz worked for
25 a law firm?

1 November 5th, 2012 pursuant to Section 2.2, is it not?

2 A. November 5th, 2012, yes.

3 Q. Correct.

4 (Exhibit No. 67 was marked.)

5 BY MR. KNOWLTON:

6 Q. Ms. Rice-Marko, I'm handing you what's been
7 marked as Exhibit 67 to your deposition. It's a
8 mortgage between RBC Centura Bank and ROA, and feel free
9 to look at the signature blocks to confirm the entity
10 that was the mortgage -- mortgagor. And I'll direct you
11 to page 14.

12 A. Okay.

13 Q. All right. And that's your signature,
14 correct?

15 A. Yes, it appears to be a copy of.

16 Q. All right. And this looks to be a mortgage
17 between ROA and RBC Bank, correct?

18 A. Yes.

19 Q. And ROA is in the third paragraph on the
20 first page as well?

21 A. Yes.

22 Q. Do you see that?

23 A. Yes.

24 Q. Okay.

25 A. Uh-huh.

1 Q. And, again, your signature has been witnessed
2 by Eric Davidson and Zan Suren-Deitz, correct?

3 A. Yes, it appears to be.

4 Q. And Eric Davidson is -- you testified, I
5 think, was an attorney in Charleston who does real
6 estate closing-type work, correct?

7 A. At the time he was, yes.

8 Q. Okay. And was he representing the bank, or
9 was he representing you?

10 A. He would have been my attorney.

11 Q. So you do recall now that you had an attorney
12 representing you?

13 A. I don't recall that, but if you're asking me
14 do I see his signature on the page, yes, I do.

15 Q. Okay. And he has done real estate closing
16 work for you and your entities in the past?

17 A. Yes, he has.

18 Q. Okay. And if you look on the next page,
19 Exhibit A describes 438 King Street. Do you see that?

20 A. Yes.

21 Q. Okay. And the bank was taking a mortgage on
22 the 438 King as a part of this loan transaction; is that
23 correct?

24 A. Yes.

25 Q. If you'll look at Section 15.8 on page 11,

1 there's another jury trial waiver. Do you see that?

2 A. Yes.

3 Q. Okay. And you don't recall whether you had
4 any claims or defenses against the bank at the time you
5 signed this document, do you?

6 MR. STEPP: Object to the form.

7 A. I don't recall.

8 BY MR. KNOWLTON:

9 Q. You don't recall that you had any claims or
10 defenses against the bank at the time you signed the
11 document?

12 MR. STEPP: Object to the form.

13 A. No, I do not recall.

14 BY MR. KNOWLTON:

15 Q. Okay.

16 (Exhibit No. 68 was marked.)

17 BY MR. KNOWLTON:

18 Q. Ms. Rice-Marko, I'm handing you what has been
19 marked as Exhibit 68 to your deposition. It's an
20 unconditional guaranty agreement dated November 9, 2007.
21 Do you see that?

22 A. Yes.

23 Q. And it's value in favor of RBC Bank, correct?

24 A. Yes.

25 Q. And it's to secure the loan we were just

1 talking about with ROA, LLC. Do you see that?

2 A. Yes.

3 Q. Okay. And the bank asked you for this in
4 connection with that loan, did they not?

5 A. Yes.

6 Q. Okay. And on page 9, that's your signature?

7 A. Appears to be a copy of.

8 Q. Okay. And next to that is the attorney Eric
9 Davidson, who may or may not have been representing you
10 at the time of this document?

11 A. Yes.

12 Q. Okay. And on Section 9.10 there's another
13 jury trial waiver. Do you see that?

14 A. Yes.

15 Q. It's in bold, is it not?

16 A. The last -- or the middle sentence.

17 Q. Yeah, the portion that deals with the jury
18 trial waiver?

19 A. "To the extent permitted by law, waives any
20 right to a trial by jury in any action arising from or
21 related to this guaranty agreement or any obligation of
22 the customer."

23 Q. Okay. And at the time you signed this
24 document, did you have any claims or issues with the
25 bank?

1 marked as Exhibit 69 to your deposition. It's -- we're
2 now on the Royal Beach Properties loan. And the date of
3 this document is January 26, 2009. It's a modification
4 agreement. Do you see that?

5 A. Yes.

6 Q. And if you look at page 4, there's your
7 signature as the guarantor. Do you see that?

8 A. Yes.

9 Q. Okay. That's your signature, correct?

10 A. It appears to be a copy of.

11 Q. And that's Mark Sharpe signing as a witness.
12 He was counsel for the bank?

13 A. Yes.

14 Q. Okay. And it looks like you signed on behalf
15 of ROA on page 3. Is that your signature?

16 A. It appears to be a copy of.

17 Q. Okay. And Mr. Sharpe is witnessing your
18 signature there as well, correct?

19 MR. STEPP: Wait a minute. Hold on. Not
20 page 3. I don't have the same page 3.

21 THE WITNESS: Two page 3s.

22 MR. STEPP: Oh. Sorry.

23 MR. KNOWLTON: Yeah, signing multiple parts.

24 MR. STEPP: Sorry.

25 MR. KNOWLTON: That's all right.

1 BY MR. KNOWLTON:

2 Q. And that's a good point that your counsel
3 raises. Were you in the presence of -- was this signed
4 all at the same time, or did Mr. Baker sign at a
5 different time than you did?

6 A. It's my recollection that often Mr. Baker
7 signed at a different time. He didn't appear in the
8 offices with Mr. Sharpe.

9 Q. Okay. And at any rate, on the signature page
10 where you signed, Section 10 has got a waiver of jury
11 trial. Do you see that?

12 A. Yes.

13 Q. And it's in bold, is it not?

14 A. Yes.

15 Q. And witnessing Michael Baker's signature is
16 Ashley Keenan. Is that someone who worked with him?

17 A. I don't know --

18 Q. You don't know her?

19 A. -- who Ms. Keenan is, no.

20 Q. So as of the date of this document, January
21 26, 2009, this loan had not been repaid, had it?

22 A. No, not to my knowledge.

23 Q. It hadn't been repaid to date, has it?

24 A. Not to my knowledge.

25 Q. Okay. You know that's one of the loans that

1 BY MR. KNOWLTON:

2 Q. Ms. Rice-Marko, the loan wasn't paid by that
3 extended maturity date that we just looked at in the
4 letter, was it?

5 A. Not to my knowledge.

6 Q. Okay. I'm going the hand you what's been
7 marked as Exhibit 71 to your deposition. It's a change
8 in terms agreement dated February 24, 2010. Do you see
9 that?

10 A. Yes.

11 Q. And it's for the ROA loan in the amount of
12 \$1.294 million that we've been talking about, right?

13 A. Yes.

14 Q. And it appears that the bank has agreed,
15 again, to extend the maturity date to September 15,
16 2010, right?

17 A. Yes.

18 Q. Okay. And that's your signature on page 3?

19 A. It appears to be a copy of, yes, sir.

20 Q. Okay. And you signed on behalf of ROA, LLC?

21 A. Yes.

22 Q. Did you have authority to sign on their
23 behalf?

24 A. Yes.

25 Q. And at the time you signed this document, did

1 you have any claims or defenses against the bank?

2 MR. STEPP: Object to the form.

3 A. Not that I recall.

4 BY MR. KNOWLTON:

5 Q. Okay. And in the middle of page 2, there's a
6 jury waiver. Do you see that?

7 A. Yes.

8 Q. And that's in bold, right?

9 A. Yes.

10 Q. Okay. Were you represented by counsel at the
11 time you executed this document?

12 A. I do not recall.

13 (A brief break transpired.)

14 (Exhibit No. 72 was marked.)

15 BY MR. KNOWLTON:

16 Q. Ms. Rice-Marko, you realize you're still
17 under oath?

18 A. Yes, sir.

19 Q. Okay. I'm handing you what's been marked as
20 Exhibit 72 to your deposition. It's a modification
21 agreement in connection with the Deborah Rice-Marko
22 loans. It's dated January 26, 2009. Do you see that?

23 A. Yes.

24 Q. Okay. And looking at page 3, and again,
25 there are two page 3s. It looked like they were signed

1 in multiple counterparts. The first page 3 has got your
2 signature on it?

3 A. Appears to be a copy of, yes.

4 Q. Okay. But that's your signature, right?

5 A. Appears to be a copy of, yes.

6 Q. Okay. Do you have any reason to doubt the
7 authenticity of that signature?

8 A. Not today, no.

9 Q. Okay. Have you at any time in the past
10 disputed the authenticity of that signature?

11 A. Of this signature, no.

12 Q. And do you intend to contest the authenticity
13 of that signature at some later time?

14 MR. STEPP: Object to the form.

15 A. I don't know that I could attest to it at
16 some later time, but today I do not contest this.

17 BY MR. KNOWLTON:

18 Q. All right. And above that in Section 10, in
19 bold, at the top of the page is a waiver of a jury
20 trial. Do you see that?

21 A. Yes.

22 Q. Were you represented by counsel when you
23 signed this document?

24 A. I do not recall.

25 Q. Okay. And I'm referencing the January 26,

1 which was for the Park West.

2 Q. Right.

3 A. The Liberty Cottages loan.

4 Q. Uh-huh.

5 A. Appears to be The Brothers loan for the BB&T
6 building --

7 Q. Okay.

8 A. -- which was the collateral for the . . .

9 (Reporter Interjection.)

10 A. I'm sorry, the loan of which the collateral
11 was the BB&T building.

12 Appears to be the Royal Beach Properties.

13 BY MR. KNOWLTON:

14 Q. Okay. And your understanding with the
15 cross-default is that a default under any of one of
16 those documents is a default under all of them, right?

17 A. Yes..

18 Q. Okay. I think I asked you this question.
19 I'll ask it one more time. Were you represented by
20 counsel?

21 A. Not that I recall.

22 Q. Okay. And looking at your signature page on
23 page 3, there's a Section 10, waiver of jury trial. Do
24 you see that?

25 A. Yes.

1 Q. Okay. And it's in bold, is it not?

2 A. Yes.

3 Q. Okay. And at the time you executed this
4 document, did you have any claims or issues with the
5 bank?

6 MR. STEPP: Object to the form.

7 A. Not that I recall.

8 BY MR. KNOWLTON:

9 Q. You don't recall having any claims or
10 defenses against the bank at the time you signed this
11 document?

12 MR. STEPP: Object to the form.

13 A. Not that I recall.

14 BY MR. KNOWLTON:

15 Q. Okay. And the loan wasn't repaid by the
16 extended maturity date, was it?

17 A. The loan balance of --

18 Q. Whatever --

19 A. -- six million five was no longer the
20 balance, if that's what your question is.

21 Q. That was not my question.

22 A. Okay. I'm sorry.

23 Q. What I asked you was, was the loan repaid as
24 of the maturity date stated in that document?

25 A. Not completely, no.

1 BY MR. KNOWLTON:

2 Q. Ms. Rice-Marko, the loan we've been
3 discussing, the Deborah Rice-Marko loan, wasn't paid by
4 the extended maturity date, was it?

5 A. Not to my knowledge.

6 Q. Okay. It hasn't been paid today, has it?

7 A. Not to my knowledge.

8 Q. So it's fair to say that at the last maturity
9 date of December 15, 2009, it had not been repaid?

10 A. Not to my knowledge.

11 Q. Okay. I'm going to hand you what's been
12 marked as Exhibit 74 to your deposition. It's a change
13 in terms agreement dated February 23, 2010. Do you see
14 that?

15 A. Yes.

16 Q. And it extends the maturity date to September
17 15, 2010. Do you see that?

18 A. Yes.

19 Q. Okay. And on page 3, you signed this on your
20 own behalf, did you not?

21 A. Appears to be a copy of my signature, yes.

22 Q. Okay. You don't dispute the validity of this
23 document, do you?

24 A. Not at this time.

25 Q. And on the second page, there's a jury trial

1 waiver, do you see that, middle of the page?

2 A. Yes.

3 Q. In bold?

4 A. Yes.

5 Q. Okay. At the time you signed this document,
6 were you represented by counsel?

7 A. I'm sorry, would you please --

8 Q. At the time you signed this document, did
9 you -- were you represented by counsel?

10 A. I do not recall.

11 Q. Okay. And at the time you signed this
12 document, did you have any claims or defenses against
13 the bank?

14 A. I do not recall.

15 MR. STEPP: Object to the form.

16 BY MR. KNOWLTON:

17 Q. You don't recall that you had any claims or
18 defenses as of the date of this document?

19 MR. STEPP: Object to the form.

20 A. I do not recall.

21 BY MR. KNOWLTON:

22 Q. Okay. Just don't recall any?

23 MR. STEPP: Objection.

24 BY MR. KNOWLTON:

25 Q. Okay.

1 A. I don't know if it was an extension.

2 Q. And if you look at page 3, there's a
3 signature block for the entity GW Dorchester, LLC, and
4 that's your signature, right?

5 A. Appears to be a copy of.

6 Q. Okay. And you signed with authority on
7 behalf of GW Dorchester, LLC, correct?

8 A. Yes.

9 Q. And above your signature block, in Section
10 11, there is a bold waiver of jury trial paragraph. Do
11 you see that?

12 A. Yes.

13 Q. Okay. Were you represented by counsel when
14 you signed this document?

15 A. I do not recall.

16 Q. Did you have any claims or defenses against
17 the bank at the time you executed this document?

18 MR. STEPP: Object to the form.

19 A. I do not recall.

20 BY MR. KNOWLTON:

21 Q. You don't recall that you had any?

22 MR. STEPP: Same objection.

23 A. No, I do not recall.

24 BY MR. KNOWLTON:

25 Q. Okay.

1 (Exhibit No. 79 was marked.)

2 BY MR. KNOWLTON:

3 Q. Ms. Rice-Marko, I'm handing you what the
4 court reporter has marked as Exhibit 79 to your
5 deposition. This is an unconditional guaranty agreement
6 dated July 27, 2009 by you in favor of RBC Bank. Do you
7 see that?

8 A. Yes.

9 Q. And the bank asked you to sign this to
10 further secure the GW Dorchester loan that we've been
11 talking about, correct?

12 A. Yes, it appears so.

13 Q. Okay. And on page 9, you've signed this
14 document. That's your signature, right?

15 A. It appears to be a copy of.

16 Q. Okay. And there's a witness block, Elizabeth
17 Dasburg. Who is that?

18 A. My understanding is she's the paralegal for
19 Mark Sharpe, who represented RBC.

20 Q. Okay. Do you recall whether you were
21 represented by counsel at this time?

22 A. No, I do not recall.

23 Q. And was this executed about the same time as
24 the other document we just looked at?

25 A. I don't know. I mean, the date on the

1 document is the same, but I don't know that they were
2 executed the same --

3 Q. Okay. And as of the date you executed this
4 document, did you have any claims or defenses against
5 the bank?

6 MR. STEPP: Object to the form.

7 A. I do not recall.

8 BY MR. KNOWLTON:

9 Q. You don't recall that you had any?

10 MR. STEPP: Objection.

11 A. No, I do not recall.

12 BY MR. KNOWLTON:

13 Q. Okay.

14 (Exhibit No. 80 was marked.)

15 BY MR. KNOWLTON:

16 Q. Ms. Rice-Marko, I'm handing you what has been
17 marked as Exhibit 80 to your deposition. It's a change
18 in terms agreement dated January 22, 2010. Do you see
19 that?

20 A. Yes.

21 Q. And the borrower is GW Dorchester, LLC, and
22 it relates to the loan in the amount of \$2,337,500, does
23 it not?

24 A. That's what it says, yes.

25 Q. Okay. And you signed on behalf of GW

1 Dorchester, did you not?

2 A. Appears to be a copy of my signature.

3 Q. Okay. And you signed with authority to bind
4 the GW Dorchester?

5 A. Yes.

6 Q. Okay. And there's a jury waiver on page 2.
7 Do you see that, about two-thirds of the way down?

8 A. Yes.

9 Q. In bold, right?

10 A. The sentence is in bold, yes.

11 Q. Okay. And that loan, as of the date of this
12 document, had not been repaid, had it?

13 A. Not to my knowledge.

14 Q. And the bank had agreed to further extend the
15 maturity date to the September 15, 2010, did it not?

16 A. That's what it appears, yes.

17 Q. Okay. Were you represented by counsel when
18 you signed this document?

19 A. Not that I recall.

20 Q. At the time you signed this document, did you
21 have any claims or defenses against the bank at that
22 time?

23 MR. STEPP: Object to the form.

24 A. Not that I recall.

25 BY MR. KNOWLTON:

1 Q. Were you aware of any defaults by the bank at
2 that time?

3 MR. STEPP: Object to the form.

4 A. Not that I recall.

5 BY MR. KNOWLTON:

6 Q. All right. Now we're going to go back to the
7 Liberty Cottages loan, Ms. Rice-Marko.

8 (Exhibit No. 81 was marked.)

9 BY MR. KNOWLTON:

10 Q. I'm handing you what the court reporter has
11 marked as Exhibit 81 to your deposition. It's a
12 modification agreement dated January 26, 2009 by Liberty
13 Cottages and RBC Bank. Do you see that?

14 A. Yes.

15 Q. And on page 3, that's your signature, is it
16 not?

17 A. Appears to be a copy of.

18 Q. And you're signing on behalf of Liberty
19 Cottages, LLC, correct?

20 A. Yes.

21 Q. And you had authority to sign?

22 A. Yes.

23 Q. Okay. And if you look above your signature
24 block on page 3, there's a waiver of jury trial in
25 Section 10. Do you see that?

1 A. Yes.

2 Q. And that's in bold, is it not?

3 A. Yes.

4 Q. Okay. And if you go to page 4, the consent
5 of guarantor, you signed that there as well, have you
6 not?

7 A. Yes. Appears to be a copy of my signature.

8 Q. Okay. And this document -- this loan, as of
9 this date, had not been repaid, had it?

10 A. Not to my knowledge.

11 Q. It hadn't been repaid to date, has it?

12 A. Not to my knowledge.

13 Q. Okay. And in Section 2 of the attachment, it
14 further extends the maturity date to December 15, 2009,
15 does it not?

16 A. Yes, it does.

17 Q. Okay. And it further adds security for the
18 loan down in Section 3, do you see that?

19 A. Yes.

20 Q. Okay. Like the other loans that we've been
21 looking at at this time frame, it adds the Florence
22 property, correct?

23 A. Yes.

24 Q. And the Royal Beach property, correct?

25 A. Yes.

1 Q. And the bank had -- I mean, you apparently --
2 Liberty Cottages apparently had not repaid this loan as
3 of the date of this document, had it?

4 A. It doesn't appear so.

5 Q. Okay. That's why the maturity date was
6 extended, wasn't it?

7 A. I would assume so.

8 Q. Okay. And you signed this document on behalf
9 of Liberty Cottages, LLC?

10 A. Appears to be a copy of my signature.

11 Q. Okay. And on page 2, there's a jury waiver
12 in the middle of the page. Do you see that?

13 A. Yes.

14 Q. And that's in bold, correct?

15 A. Yes.

16 Q. Okay.

17 A. The one sentence, yes.

18 Q. All right. And if I asked you this already,
19 I apologize, but were you represented by counsel when
20 you signed this document?

21 A. Not that I recall.

22 Q. And did you have any claims or defenses
23 against the bank or issues with the bank of any type at
24 the time of this document?

25 MR. STEPP: Object to the form.

1 A. Not that I recall.

2 BY MR. KNOWLTON:

3 Q. Okay.

4 (Exhibit No. 84 was marked.)

5 BY MR. KNOWLTON:

6 Q. I'm going to turn -- we're going to now talk
7 about the ROA loan amendments that were done about this
8 time frame. And the first exhibit with respect to that
9 loan is Exhibit 84, which I'm handing to you. This is a
10 modification agreement by and between ROA, LLC and the
11 bank. Do you see that?

12 A. Yes.

13 Q. And it's dated January 26 of 2009. Do you
14 see that?

15 A. Yes.

16 Q. All right. And on page 3, there's your
17 signature on behalf of ROA, LLC. Do you see that?

18 A. Yes, it appears to be a copy of.

19 Q. And you had authority to sign this document?

20 A. Yes.

21 Q. And there's a waiver of jury trial, the
22 Section 10, above your signature block, is there -- is
23 it not?

24 A. Yes.

25 Q. And it's in bold?

1 A. Yes.

2 Q. And on page 4, you've signed the document
3 again as a guarantor. Do you see that?

4 A. Appears to be a copy of my signature.

5 Q. Okay. And this document adds security for
6 the loan just like the other documents have done, and it
7 cross-defaults the document, does it not?

8 A. Changes the interest rates.

9 Q. Uh-huh.

10 A. Adds security. Cross-defaults.

11 Q. Okay. And if I asked you, I apologize, but
12 were you represented by counsel at the date of this
13 document?

14 A. Not that I recall.

15 Q. And did you have any claims or issues with
16 the bank as of the date of this document?

17 MR. STEPP: Object to the form.

18 A. Not that I recall.

19 (Exhibit No. 85 was marked.)

20 BY MR. KNOWLTON:

21 Q. Ms. Rice-Marko, I'm going to hand you what
22 has been marked as Exhibit 85 to your deposition. It's
23 a modification agreement supplement. It's dated January
24 26, 2009. Do you see that?

25 A. Yes.

1 was told to make payments on two of the notes only until
2 we could work something out. So that's my recollection
3 of what happened that led up to the forbearance.

4 Q. Okay. Anything else?

5 A. Not that I recall at this time.

6 Q. All right.

7 A. There were no payment defaults; there were no
8 maturities, no maturity defaults.

9 (Exhibit No. 86 was marked.)

10 BY MR. KNOWLTON:

11 Q. Ms. Rice-Marko, I'm going to hand you what's
12 been marked as Exhibit 86 to your deposition. This is
13 the forbearance agreement we were just talking about
14 dated July 15, 2011. Do you see that?

15 A. Yes.

16 Q. And I want to ask you a few questions about
17 it. If you look on page 16, you signed this document on
18 behalf of yourself individually, correct?

19 A. Yes.

20 Q. GW Dorchester, LLC, correct?

21 A. Appears to be a copy of my signature, yes.

22 Q. Liberty Cottages, LLC, correct?

23 A. Appears to be a copy of my signature.

24 Q. ROA, LLC, correct?

25 A. Appears to be a copy of my signature.

1 Q. Royal Beach Properties, LLC, correct?

2 A. Appears to be a copy of my signature.

3 Q. You didn't sign for The Brothers of South
4 Carolina, but they signed also, it appears, correct?

5 A. I had no authority to sign for The Brothers
6 of South Carolina.

7 Q. That wasn't my question, but they appear to
8 have executed this document as well, did they not?

9 A. It appears to be a signature on behalf of The
10 Brothers, but I can't attest to the signature.

11 Q. You've seen your son's handwriting over the
12 course of many years, have you not?

13 A. Yes.

14 Q. And you recognize that to be his signature,
15 do you not?

16 A. I cannot tell you.

17 Q. You cannot recognize your son's handwriting?

18 A. I cannot -- his signature changes, and --

19 Q. Okay.

20 A. -- to ask me to attest to this, no, I cannot.

21 Q. Okay. Just wanted to know what you had to
22 say.

23 A. You'd have to ask him.

24 Q. And you signed on behalf of USS Clarksville,
25 did you not?

1 A. It appears to be a copy of my signature.

2 Q. And you had authority to sign on behalf of
3 all these entities?

4 A. Yes.

5 Q. Okay. And looking on page 17, you signed as
6 a guarantor, did you not?

7 A. Appears to be a copy of my signature.

8 Q. Both in your own capacity and as PR manager
9 for the estate of your mother, correct?

10 A. Appears to be a copy of my signature, yes.

11 Q. Okay. Now, were you represented by counsel
12 when this document was negotiated?

13 A. Yes.

14 Q. Who were you represented by?

15 A. The firm or the individual attorneys' names?

16 Q. Well, let's start with the individual
17 attorney, and if he's with a firm, tell me what firm
18 he's with.

19 A. Vaughn Ramsey with Tuggle Duggins.

20 Q. Uh-huh.

21 A. And Jeff Dunham, D-U-N-H-A-M; Tuggle Duggins.

22 Q. And were they North Carolina attorneys?

23 A. I don't know their licensing or their
24 admissions to the bar, but their firm is located in
25 North Carolina, if that's your question.

1 (Exhibit No. 88 was marked.)

2 BY MR. KNOWLTON:

3 Q. Ms. Rice-Marko, I'm going to hand you what's
4 been marked as Exhibit 88 to your deposition. This is a
5 continuing guaranty agreement dated July 15, 2011 by and
6 between you, your sons, Liberty Cottages Land, and RBC
7 Bank. Do you see that?

8 A. Yes, I do see that.

9 Q. Okay. And if you look on the last page, you
10 signed for yourself individually. Do you see that?

11 A. It appears to be a copy of my signature, yes.

12 Q. Okay. And similarly with respect to the
13 Liberty Cottages Land signature block, that's your
14 signature, correct?

15 A. It appears to be, yes.

16 Q. Okay. And you signed on their behalf?

17 A. Appears to be a copy of, yes.

18 Q. And you signed with the authority to bind the
19 company?

20 A. Yes.

21 Q. Okay. And this is dated contemporaneous with
22 the forbearance agreement, is it not?

23 A. It is.

24 Q. All right. And there appear to be certain
25 limitations on the guaranty that are set forth on page

1 2. Do you see that?

2 A. Yes.

3 Q. Okay. And do you recall negotiating those
4 limitations with the bank?

5 A. No, I do not.

6 Q. Okay. Do you recall how those limitations
7 were to work?

8 A. No, I do not.

9 Q. Okay. If you look on the following page 4,
10 in the middle of the page, do you see the jury trial
11 waiver there?

12 A. Page 4?

13 Q. Correct. Very middle of the page. "To the
14 extent permitted by law, guarantor waives any right to a
15 trial by jury on any action arising from or relating to
16 this guaranty."

17 Do you see that?

18 A. I'm having a hard time finding it.

19 Q. That's okay.

20 A. Oh, I see. That sentence. Okay.

21 Q. And that was in the document you signed,
22 correct?

23 A. I would assume that this is all -- all the
24 same document. Yes, sir.

25 Q. And you had an opportunity to consult with

1 Q. Ms. Rice-Marko, do you recall in connection
2 with the forbearance agreement that all of the loans
3 were modified to be consistent with the forbearance
4 agreement?

5 A. I don't understand modified and consistent.

6 Q. Well, don't -- I'm not trying to put words in
7 your mouth.

8 A. No, but I don't understand. I'm sorry.

9 Q. In connection with the closing on the
10 forbearance agreement, each of the loans was, in turn,
11 modified. What I'm getting ready to do is go through
12 those modifications with you. I say that more as a
13 point of reference than anything. So they're all going
14 to be dated the same date.

15 (Exhibit No. 89 was marked.)

16 MR. HANNA: Is this 89 or 90?

17 MR. KNOWLTON: Let's start this over.

18 BY MR. KNOWLTON:

19 Q. All right, Ms. Rice-Marko, I'm going to try
20 this over again. I'm handing you what's marked Exhibit
21 89 to your deposition. It's an amended and restated
22 promissory note dated July 15, 2011. Do you see that?

23 A. Amended and restated dated July 15th, '11.
24 Yes, sir.

25 Q. Thank you. And on the last pages, your

1 signature on behalf of Royal Beach Properties, LLC. Do
2 you see that?

3 A. Appears to be a copy of my signature.

4 Q. Okay. And this is a note in the amount of
5 \$3,262,500. Do you see that?

6 A. I do see that.

7 Q. And it's a note that you have signed on
8 behalf of Royal Beach Properties, LLC, correct?

9 A. It appears to be, yes.

10 Q. And you were authorized at the time to bind
11 the company, were you not?

12 A. Yes.

13 Q. And the date is the same date as the
14 forbearance agreement, correct?

15 A. It is.

16 Q. Okay. And at that time, you had the
17 opportunity to consult counsel about the documents you
18 were signing in connection with the forbearance
19 agreement closing?

20 A. Assuming these were presented prior to my
21 showing up at the McNair firm to execute them, yes.

22 Q. And you just don't know whether or not they
23 were or not at this point in time, correct?

24 A. No, sir, I don't.

25 Q. Okay. If you'll look on the

1 knowledgeable to.

2 Q. Okay.

3 (Exhibit No. 90 was marked.)

4 BY MR. KNOWLTON:

5 Q. Ms. Rice-Marko, I'm handing you what has been
6 marked as Exhibit Number 90 to your deposition. It's a
7 modification of mortgage dated July 15, 2011. Do you
8 see that?

9 A. Yes.

10 Q. And this relates to the Royal Beach Kiawah
11 loan, correct?

12 A. Yes.

13 Q. And looking on the second --
14 third-to-the-last page, that's your signature on behalf
15 of Royal Beach Properties, correct?

16 A. It appears to be a copy of.

17 Q. Okay. And you had -- this is at a time frame
18 you were represented by counsel, correct?

19 A. Yes, I was represented by counsel during the
20 time period of July 15, 2011, if that's your question.

21 Q. Okay. And you had the opportunity to consult
22 with counsel about this document?

23 A. Provided, however, it was provided at the
24 time, yes.

25 Q. And you just don't know one way or the other

1 whether it was or not?

2 A. No, I do not.

3 Q. Okay. If you'll look at Section 9, middle of
4 the page, I'll help you with the finger point, it
5 provides for a jury trial waiver in this document too,
6 doesn't it?

7 A. Buried in Section 9 somewhere?

8 Q. (Indicating.) Do you see that? It states,
9 "mortgagor to the extent permitted by law" --

10 A. Yes, sir, I do see that.

11 Q. Okay, you see that. And you had the
12 opportunity to review this before you signed it, did you
13 not?

14 A. Provided, again, it was part of the document
15 package or documents presented prior to my execution,
16 yes.

17 Q. You certainly reviewed it at some point in
18 time before you signed it, right?

19 A. The documents that were presented to me at
20 McNair's firm were voluminous, riddled with errors, and
21 some of which were sent back for correction, so that's
22 why I cannot sit here and say with certainty --

23 Q. Okay.

24 A. -- Mr. Knowlton, that I reviewed this
25 document or that's not --

1 A. Had I not fortunately --

2 Q. That's not my question, though.

3 A. -- found it and pulled it out --

4 Q. You found it, pulled it out?

5 A. I did not execute.

6 Q. Right. That's what I'm getting to. You
7 found it, pulled it out, refused to sign it, right?

8 A. Correct.

9 Q. Okay. And so no fourth mortgage was ever put
10 on the South Battery house?

11 A. Fortunately, not.

12 Q. Okay.

13 (Exhibit No. 91 was marked.)

14 BY MR. KNOWLTON:

15 Q. Ms. Rice-Marko, I'm going to hand you what's
16 been marked as Exhibit Number 91 to your deposition.
17 This is the amended and restated promissory note with
18 respect to your personal loan dated July 15, 2011. Do
19 you see that?

20 A. I do see that.

21 Q. And you signed it in your individual capacity
22 on the last page?

23 A. Appears to be a copy of my signature.

24 Q. Okay. You read this before you signed it?

25 A. I don't have any immediate recollection of

1 that.

2 Q. Just don't know one way or the other?

3 A. No, sir, I do not.

4 Q. And this is dated the same date as the
5 forbearance. Was this part of that forbearance closing
6 package, presumably?

7 A. I could not testify positively or negatively
8 to that, affirmatively or negatively. I'm sorry.

9 Q. Okay. But certainly by date and by topic it
10 relates to the forbearance agreement, correct?

11 A. Yes.

12 Q. It's one document you would have expected to
13 see in the closing package?

14 A. I don't know what I would have expected.

15 Q. Okay.

16 A. But if you're saying that . . .

17 Q. You just don't recall?

18 A. I do not recall.

19 Q. All right. And looking at the
20 second-to-the-last page, the first full sentence,
21 there's a jury trial waiver in this document. Do you
22 see that?

23 A. Yes. The one sentence, yes.

24 Q. Right. And that document that we're looking
25 at was dated at a time when you had the opportunity to

1 consult with counsel, correct?

2 A. Yes.

3 Q. Okay. Bear with me, Ms. Rice-Marko.

4 (Exhibit No. 92 was marked.)

5 BY MR. KNOWLTON:

6 Q. Ms. Rice-Marko, I'm handing you what's been
7 marked as Exhibit Number 92 to your deposition. This is
8 an amended and restated promissory note dated July 15,
9 2011 in the amount of \$430,324.41. And it's by and
10 between RBC Bank and USS Clarksville. Do you see that?

11 A. Let me state -- this one states, "made by the
12 borrower as assignee of Deborah Rice-Marko," as opposed
13 to the prior one that just stated, "made by the
14 borrower," so.

15 Q. Right. And if you look at the last page, you
16 signed on behalf of USS Clarksville, correct?

17 A. Yes --

18 Q. And this was one of the loans --

19 A. -- it appears to be a copy.

20 Q. -- that you had originally signed for and
21 then assigned to USS Clarksville?

22 A. Yes, I made those corrections.

23 Q. Okay. So that's probably what that reference
24 is in that language?

25 A. I would make that assumption.

1 Q. Okay. And the date of this document
2 corresponds to the date of the forbearance agreement,
3 correct?

4 A. It does correspond with that date.

5 Q. And that's at a time when you had the ability
6 to consult with counsel?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. And on the second-to-the-last page of this
11 document, the first full sentence, there's a jury trial
12 waiver. Do you see that?

13 A. That one sentence, yes.

14 Q. Okay. And you were authorized to sign on
15 behalf of USS Clarksville?

16 A. Yes.

17 Q. And you probably don't remember this, but was
18 this part of the closing package that you signed at the
19 McNair law firm?

20 A. No, sir, I do not remember.

21 Q. You just don't remember. But certainly by
22 the date, it's connected to the forbearance agreement,
23 correct?

24 A. I don't mean to be argumentative,
25 Mr. Knowlton, but there are a lot of things dated, I'm

1 sure, July the 15th, so I can't assume by this date it's
2 connected, but . . .

3 Q. It could just be a completely random restated
4 promissory note?

5 A. I don't -- I'm just saying -- I'm answering
6 your question as you asked it, Mr. Knowlton.

7 Q. Okay.

8 A. You said can I assume by the date that it's
9 connected, and I cannot assume that.

10 Q. I've got you.

11 (Exhibit No. 93 was marked.)

12 BY MR. KNOWLTON:

13 Q. Ms. Rice-Marko, I'm handing you what's been
14 marked as Exhibit Number 93 to your deposition. This is
15 an amended and restated promissory note dated July 15,
16 2011 in the amount of \$1,294,197.25 made payable by ROA,
17 LLC to the bank. Do you see that?

18 A. Yes.

19 Q. Okay. And that's your signature, correct?

20 A. Appears to be a copy of.

21 Q. And you had authority to sign on behalf of
22 the company?

23 A. Yes.

24 Q. Okay. And, again, based on this date, this
25 is correspondence of the same date as the forbearance

1 agreement, correct?

2 A. It is correspondence on the same date, yes.

3 Q. Okay. And that's at a time frame when you
4 had the opportunity to consult with counsel, is it not?

5 A. Yes.

6 Q. Okay. And if you look on the
7 second-to-the-last page, there's another jury trial
8 waiver at the top of that page. Do you see that?

9 A. The one sentence, yes.

10 Q. That is correct. Okay.

11 (Exhibit No. 94 was marked.)

12 BY MR. KNOWLTON:

13 Q. Ms. Rice-Marko, I'm going to hand you what's
14 been marked as Exhibit Number 94 to your deposition.
15 This is an amended and restated promissory note dated
16 July 15, 2011 from GW Dorchester to the bank in the
17 amount of \$2,327,500. Do you see that?

18 A. Yes.

19 Q. And that's your signature on the last page of
20 the document?

21 A. Appears to be a copy of.

22 Q. Okay. And you were authorized to sign on
23 behalf of GW Dorchester, LLC?

24 A. Yes.

25 Q. And this corresponds to the same date as the

1 forbearance agreement, correct?

2 A. Yes.

3 Q. Okay. And that was at a time when you had
4 the opportunity to consult with counsel, correct?

5 A. Yes.

6 Q. Okay. And if you look on the
7 second-to-the-last page of this document, the top of the
8 page, there's that jury trial waiver again. Do you see
9 that?

10 A. One sentence, yes.

11 Q. Okay.

12 (Exhibit No. 95 was marked.)

13 BY MR. KNOWLTON:

14 Q. All right, Ms. Rice-Marko. I'm handing you
15 what's been marked as Exhibit Number 95 to your
16 deposition. It's a modification of mortgage from GW
17 Dorchester to RBC Bank. Do you see that?

18 A. Yes.

19 Q. Okay. And the second-to-the-last page --
20 third-to-the-last page -- I'm sorry -- it appears to be
21 your signature there. Is that correct?

22 A. It appears to be a copy of it, yes.

23 Q. And you were authorized to sign on behalf of
24 GW Dorchester?

25 A. Yes.

1 Q. Okay. The witnesses, do you recognize those
2 signatures? Kathy Murray?

3 A. No, I do not. It says, down at the bottom,
4 "notary public certifies that" -- Kathy Murray has been
5 crossed out and then puts my name. And then she appears
6 as a witness on that same page, but I do not know who
7 she is.

8 Q. You don't remember a Kathy Murray?

9 A. I have no knowledge of a Kathy Murray --

10 Q. Okay.

11 A. -- to my immediate knowledge. No.

12 Q. And if you look at Paragraph 9 -- and I'll
13 give you the benefit of my finger pointing -- there's a
14 jury trial waiver in that document, is there not?

15 A. Yes, sir, I see that. I can even remember
16 the paragraph, yes.

17 Q. That's in the document you executed, correct?

18 A. I have to presume so, yes.

19 Q. Well, are you contending you didn't execute
20 this document?

21 A. I -- I would have to assume that all of this
22 document was presented to me to execute at the time as
23 opposed to a signature page. You're asking me if it was
24 presented to me to sign if I read it. I don't know.

25 Q. You don't remember?

1 A. I don't recall.

2 Q. But that is your signature? You did sign
3 this document?

4 A. I would say that is a copy of my signature,
5 yes.

6 Q. Okay. And the date of this document
7 corresponds to the date of the forbearance agreement,
8 correct?

9 A. Yes, sir.

10 Q. And that was at a time when you had the
11 opportunity to consult with counsel, correct?

12 A. Yes, sir.

13 Q. Okay.

14 (Exhibit No. 96 was marked.)

15 BY MR. KNOWLTON:

16 Q. Ms. Rice-Marko, I'm handing you what has been
17 marked as Exhibit Number 96 to your deposition. This is
18 an amended and restated promissory note dated July 15,
19 2011 made by Liberty Cottages, LLC in favor of the bank.
20 Do you see that?

21 A. Yes.

22 Q. And it's dated July 15, 2011, is it not?

23 A. Yes, it is.

24 Q. And that's the same date as the forbearance
25 agreement, is it not?

1 A. Yes, it is.

2 Q. Okay. And you signed there. Is that your
3 signature?

4 A. Appears to be a copy of.

5 Q. And you had authority to sign on behalf of
6 that entity?

7 A. Yes.

8 Q. And that's also at a time when you had the
9 opportunity to consult with counsel, is it not?

10 A. Yes.

11 Q. Okay. And on the second-to-the-last page,
12 the first full sentence is a jury trial waiver. Do you
13 see that?

14 A. Yes.

15 Q. Okay.

16 (Exhibit No. 97 was marked.)

17 BY MR. KNOWLTON:

18 Q. Ms. Rice-Marko, I'm handing you what's been
19 marked as Exhibit Number 97 to your deposition. It is a
20 modification of mortgage by and from Liberty Cottages
21 Land to RBC Bank. Do you see that?

22 A. Yes.

23 Q. And it's dated July 15, 2011, is it not?

24 A. Yes.

25 Q. Okay. And that's the same date as the

1 forbearance agreement, is it not?

2 A. Yes.

3 Q. And that's at a time when you had the ability
4 to consult with counsel, is it not?

5 A. Yes.

6 Q. Okay. And I'll direct you to Paragraph 9
7 that we've looked at before, the middle of the paragraph
8 talks about the jury trial waiver. Do you see that?

9 A. Excuse me just a moment, please. Yes.

10 Q. Okay. And that's your signature on the
11 last -- second-to-the-last page -- I'm sorry,
12 third-to-the-last page?

13 A. Appears to be a copy of, yes.

14 Q. Okay. And you're signing on behalf of
15 Liberty Cottages Land?

16 A. Yes.

17 Q. And you are authorized to sign on their
18 behalf?

19 A. Yes.

20 Q. Okay.

21 MR. KNOWLTON: Now we're going to pull this
22 one out that everybody wrote all over. I think.

23 MR. STEPP: We already --

24 MR. KNOWLTON: Okay.

25 MR. STEPP: We already did that one.

1 documents?

2 A. Yes.

3 Q. Okay. And on the last page, you signed on
4 behalf of ROA, LLC?

5 A. Appears to be a copy of my signature, yes.

6 Q. And you had authority to sign for that
7 entity?

8 A. Yes.

9 Q. And on the second-to-the-last page, the
10 carryover sentence here is that jury trial waiver there
11 at the top of the page. Do you see that?

12 A. That one sentence, yes.

13 Q. Okay.

14 (Exhibit No. 99 was marked.)

15 BY MR. KNOWLTON:

16 Q. All right. Ms. Rice-Marko, I'm handing you
17 what's been marked as Exhibit Number 99 to your
18 deposition. This is a modification of mortgage from
19 ROA, LLC to RBC Bank dated July 15, 2011. Do you see
20 that?

21 A. Yes, sir.

22 Q. All right. That is the same date as the
23 forbearance agreement, correct?

24 A. Yes, sir.

25 Q. And this document was signed by you as the

1 manager for ROA, LLC; is that correct?

2 A. Appears to be a copy of my signature, yes.

3 Q. Okay. And you had authority to sign on
4 behalf of the company?

5 A. Yes.

6 Q. And you had the opportunity to consult with
7 counsel before you executed this document, did you not?

8 A. Yes.

9 Q. Again, in Paragraph 9 of this document --
10 finger point reference you to -- there's a jury trial
11 waiver in that Section 9, is there not?

12 A. Yes.

13 Q. Okay.

14 A. Mr. Knowlton, if I may, please, you asked if
15 I had a chance to consult, and, again, I will tell you
16 that had this been presented to me with the other
17 documents, then I would have had a chance; otherwise, it
18 was presented to me without benefit of counsel.

19 Q. But you just don't know whether it was or
20 not?

21 A. No, sir, I just do not.

22 Q. But it was certainly at the time frame when
23 you were represented by counsel --

24 A. Yes, sir.

25 Q. -- in connection with the forbearance

1 Q. You're still under oath. We're going to
2 switch gears, actually. I know you're looking forward
3 to more loan documents, but I'm not going to go through
4 more loan document with you right now.

5 Ms. Rice-Marko, at some point, you know, we
6 talked about the financial covenants that were in the
7 forbearance agreement. Do you recall that conversation?

8 A. Yes, sir.

9 Q. And that agreement, the forbearance agreement,
10 had certain requirements for you to provide financial
11 information to the bank. Do you recall that?

12 A. Yes, sir.

13 Q. Okay. And at some point after you executed
14 the forbearance agreement, did the bank request
15 financial information which you refused to provide?

16 A. Yes, sir.

17 Q. Okay. Who made the request that you refused
18 to comply with?

19 A. My recollection was the first phone call that
20 Mr. Wursta made to me, and I believe it was June the
21 7th, 2012.

22 Q. And what did he say in that conversation?

23 A. Mr. Wursta introduced himself.

24 Q. You had not previously met Mr. Wursta?

25 A. No, sir.

1 Q. Okay.

2 A. This is by phone. Mr. Wursta introduced
3 himself, he explained that he was the new account
4 manager, that he had the full, I guess, faith and
5 confidence of the bank behind him to do the right thing,
6 wanted to know about each individual property. I went
7 down each property with him and gave him a verbal
8 description of the properties or the, I guess,
9 characteristics of the properties.

10 At the end of the phone call, he said that --
11 he wanted to know how I was going to pay the loan --
12 well, backing up, earlier in the phone call, I asked
13 him -- I told him that I'd heard that PNC would
14 technically default me on the contract, and I asked him
15 if it was his intent to technically default me.

16 Mr. Wursta's response was, as I recall, a
17 default is a default. There is no technical default.

18 Q. And you referred to a "technical default."
19 You mean a failure to provide financial information as
20 opposed to a covenant default, if you will, versus a
21 payment default?

22 Or let me ask it this way. What do you mean
23 by a "technical default"?

24 A. What I might term a nonmaterial default,
25 which would not affect the ability of the borrower to

1 service the debt or would impair my ability to pay the
2 debt.

3 Q. So not material is your judgment about what's
4 material. Would you think the bank would share that
5 view as to materiality?

6 A. I don't know what the bank would think or
7 would be.

8 Q. But that's your opinion, it would be
9 nonmaterial, and you distinguish a default between a
10 payment default and let's just say a nonpayment default?

11 A. Yes.

12 Q. Okay. And the financial information
13 covenant, the financial covenant, if you will, would
14 have been what you considered a nonpayment default,
15 correct?

16 A. Yes.

17 Q. Okay. And continue. I interrupted. You
18 were talking to me about your conversation with
19 Mr. Wursta.

20 A. Mr. Wursta went on to say that he wanted to
21 know how I was going to pay the loans off, encouraged me
22 to reach out to family and friends and investors, told
23 me that the bank -- or he realized, I'm not sure if he
24 said he or the bank -- realized that it was not a
25 motivation for the borrowers to sell the property

1 without some understanding of the deficiency if there
2 was a short sale or a deficiency, presuming there would
3 be a short sale or whatever.

4 I don't know, Mr. Knowlton, if it was at that
5 time that he told me he would be coming down or if he
6 told me in a subsequent phone call. I ended the phone
7 call. We had a pleasant conversation, as I was
8 concerned, and I told him I would provide to him the
9 additional information that he was asking for.

10 Q. And did he request to set up a meeting with
11 you in Charleston?

12 A. I don't know if it was at that phone call,
13 Mr. Knowlton, or if it was at a later phone call, but at
14 some point, yes, he did request to meet me.

15 Q. Okay. And he took it upon himself to come
16 down here to meet you, did he not?

17 A. Yes. He and -- excuse me, he and
18 Ms. Paulson, his supervisor.

19 Q. He brought his supervisor, Ms. Liz Paulson as
20 well?

21 A. Yes.

22 Q. And do you recall about when that meeting
23 took place in Charleston?

24 A. On or about July 9th or 10th of 2012.

25 Q. And you agreed to meet with him?

1 A. Yes. Me and my attorney.

2 Q. And who was your attorney at the time?

3 A. Harry Ragsdale.

4 Q. Now, who is Mr. Ragsdale with?

5 A. At the time, Mr. Ragsdale was with, I
6 believe, Corrigan & Chandler.

7 Q. And they're a law firm here in Charleston?

8 A. Yes.

9 Q. And was he representing you in connection
10 with these loans at that time?

11 A. Yes.

12 Q. Okay. Were -- did Mr. Wursta or Ms. Paulson
13 bring a lawyer with them?

14 A. No.

15 Q. And what did they tell you was the purpose of
16 their meeting here?

17 A. To gather more information about the
18 properties and, as I recall, to do a site visit for the
19 properties.

20 Q. Now, Mr. Wursta had just taken these loans on
21 from Mr. Harrington, correct?

22 A. I don't know the . . .

23 Q. But there was a transition at some point, you
24 don't know when, but at some point, Mr. Wursta replaced
25 Mr. Harrington as your asset manager, point of contact

1 with the bank?

2 A. And identified himself, yes, as the account
3 manager. Yes.

4 Q. And to your knowledge, he had not previously
5 had access to reviewing the properties here in
6 Charleston or Dorchester or Florence; is that correct?

7 A. Actually, Mr. Knowlton, prior to that visit
8 that was provided to me in discovery, I seem to recall
9 that there were photographs taken of some of the
10 properties, maybe for the purposes of appraisals or
11 whatever, I'm not sure, but there were photographs that
12 were dated, I believe, in June. My immediate
13 recollection -- and, again, I cannot be certain this
14 date, but I believe it was June the 27th, 2012, which
15 would have been prior to this meeting.

16 Q. And these were photographs that the bank had
17 access to or had taken?

18 A. That the bank provided to me in their
19 discovery --

20 Q. Okay.

21 A. -- or that your office would have provided to
22 Mr. Stepp, who then provided to me.

23 Q. And to your knowledge, based on that, you
24 think that Mr. Wursta may have had photographic evidence
25 of the properties but maybe not a site visit?

1 A. I don't know if he made -- I don't know who
2 made the photographs. I don't know if he made a site
3 visit.

4 Q. Right.

5 A. I understood --

6 Q. You don't know --

7 A. -- the question to be was there a site visit
8 prior to our meeting, and . . .

9 Q. By Mr. Wursta?

10 A. By Mr. Wursta. I have no knowledge of --

11 Q. As far as you know, he'd never seen the
12 properties before?

13 A. I don't know. I will go on to say that I
14 seem to recall, again, in the discovery that was
15 provided by PNC to your office, through Mr. Stepp, to
16 me, that there was a site visit -- I'm really scratching
17 my memory here, but I believe the site visit was in
18 possibly January 2012.

19 Q. By Mr. Wursta?

20 A. I don't know by whom.

21 Q. Okay.

22 A. I seem to recall that it was in reference to
23 an internal e-mail that went to a number of different
24 people, so I can't --

25 Q. But my question --

1 A. -- I can't be certain.

2 Q. -- is pretty simple. I'm not trying to trick
3 you. But as far as you know, Mr. Wursta had not had
4 access to the properties to have a site visit until he
5 called you and asked for it, had he?

6 A. He may have been on that e-mail that was an
7 internal e-mail chain. I don't know.

8 Q. That's not my question.

9 A. So I don't know when they referred to making
10 site visits, whether he was in that or not.

11 Q. My only question is: Do you have any
12 knowledge or recollection of him having a site visit
13 prior to the time he asked for it? I'm not trying to
14 trick you.

15 A. No, and I'm not trying -- I'm trying to
16 answer you. If he were on that e-mail that I seem to
17 recall that site visits were planned with account
18 managers early, then he may have been. I don't know.

19 Q. You just don't know?

20 A. I don't have any person- -- no.

21 Q. Okay. And prior to he and Ms. Paulson coming
22 to see you, you don't know whether he had ever even been
23 to Charleston before, do you?

24 A. Yes, sir, I do.

25 Q. Okay. How do you know that?

1 A. He told me in the phone conversation that he
2 liked coming to Charleston.

3 Q. Okay.

4 A. That he had had an Iranian friend who lived
5 here for a period of time, that he had actually wanted
6 to relocate here and live here, that he wasn't sure how
7 well he would be received if he came to Charleston or
8 came to live here. So by that phone conversation, I
9 understood that he was familiar with Charleston.

10 Q. So he'd been here before. Had he been here
11 before in his capacity as an asset manager on these
12 loans?

13 A. I don't know that.

14 Q. You just don't know?

15 A. I don't know. Huh-uh.

16 Q. So you don't know whether he'd been down here
17 before working on these loans or not, do you?

18 A. No, I do not know.

19 Q. And you don't know whether he'd ever been
20 down there for a site visit before, do you?

21 A. No, I do not know.

22 Q. Okay. All right. And so they came down, and
23 you agreed to meet with them?

24 A. Yes, sir.

25 Q. And one of the things he said he wanted was a

1 site visit and financial information, right?

2 A. Yes.

3 Q. Okay. And why did you feel the need to
4 engage counsel at that time?

5 A. Between the June 7th phone call that
6 Mr. Wursta had introduced himself to me, I had received
7 a phone call on June -- I believe it was 14th from
8 Kenneth Nix of Land South of Charleston, and Mr. Nix had
9 inquired about the PNC properties. It made me
10 concerned, especially with the close proximity of time
11 that Mr. Wursta had called and was coming to visit. I
12 had my attorney, Scott Hale, write a letter to, I
13 believe, Mr. Wursta dated June the 26th expressing those
14 concerns.

15 Q. Okay. And you were at the -- you were at the
16 deposition of Mr. Nix, were you not?

17 A. Yes, I was.

18 Q. Did you hear Mr. Nix testify that the only
19 person he got confidential information from regarding
20 you or your properties was from you?

21 A. I seem to recall that Mr. Nix had a
22 screenshot that he produced that was given to him from --
23 I don't know the source.

24 Q. And his recollection was he couldn't access
25 that, wasn't it?

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON
 3 PNC Bank, N.A., successor to RBC
 4 Bank (USA),
 5 Plaintiff(s),
 6 vs. C/A No: 2013-CP-10-2624
 7 Liberty Cottages, LLC; GW
 8 Dorchester, LLC; USS Clarksville,
 9 LLC; Liberty Cottages Land, LLC;
 10 ROA, LLC; Royal Beach Properties,
 11 LLC; The Brothers of SC, LLC;
 12 Deborah Rice-Marko a/k/a Deborah G.
 13 Rice-Marko; Evan R. Marko and John
 14 E. Marko, Jr.,
 15 Defendant(s).

13 D E P O S I T I O N

14 WITNESS: Deborah Rice-Marko, Volume III
 15 DATE: Tuesday, August 19, 2014
 16 TIME: 9:42 a.m.
 17 LOCATION: Nelson Mullins Riley & Scarborough, LLP
 18 151 Meeting Street, Suite 600
 19 Charleston, South Carolina
 20 TAKEN BY: Attorneys for the Plaintiff
 21 REPORTED BY: HEATHER M. CURLIN
 22 Registered Professional Reporter
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John E. Marko, Jr.
Stephen Wursta, Jr.

(INDEX AT REAR OF TRANSCRIPT)

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1 negotiating power over you. Why did it give the bank
2 negotiating power?

3 A. The decline in the value of the collateral
4 that was used for the line of credit loan.

5 Q. Okay.

6 A. And the refusal of the bank to allow
7 substitution of collateral to access any of the other
8 equities.

9 Q. Okay. Now, I'm going to get to that in a
10 second. So you go on to say -- you go on in Paragraph
11 23 to cite some examples, and I want to get into these a
12 little bit. The first example you cite of the bank
13 dealing with you in an oppressive and unfair way was,
14 "Threatening legal action to coerce the defendants into
15 modifying the terms of various loans and other
16 agreements to the detriment of defendants and to the
17 benefit of plaintiff."

18 Do you see that?

19 A. Yes.

20 Q. Okay. So I want to break that down a little
21 bit and start with the first part of that and your
22 allegation that the bank threatened legal action. What
23 do you mean by "threatened legal action"?

24 A. Mr. Baker told me that if I did not sign the
25 cross-collateralization and the cross-default documents

1 as they were presented to me -- I think they were first
2 presented December the 17th, 2008, and I did not sign
3 those when they were presented. He said if I did not
4 sign those that they would -- the bank would not renew
5 any upcoming notes as they had done in the past and as I
6 had come to rely on and that they would then foreclose
7 and force me and my family into financial ruin,
8 bankruptcy; that the result of their declaration of a
9 default on those matured loans would also cause other
10 lenders to default me on my loans. That's what I
11 recall.

12 Q. Okay. Other than Mr. Baker threatening you
13 with a legal action of foreclosure, were there any other
14 threats of legal actions?

15 A. I didn't have a contact with the bank other
16 than Mr. Baker.

17 Q. Okay. Well, I'm just trying to understand.
18 Were there other threats or were there not? I just --
19 all I want to know is if it's just this one threat,
20 that's fine. We'll move on.

21 A. Other threats from Mr. Baker or other threats
22 in general?

23 Q. Well, this is just one of your examples, and
24 I'm just trying to understand what you're going to
25 testify to. If you've got more examples of threats, I

1 characterize as, "misrepresenting the availability of
2 alternative remedies and solutions to the issues that
3 were raised by the plaintiff."

4 Do you see that?

5 A. Yes.

6 Q. Okay. Who misrepresented the availability of
7 alternative remedies and solutions to issues that were
8 raised by plaintiff?

9 A. As stated previously, Mr. Baker told me that
10 there was no internal workout department within the
11 bank. He told me that special assets was foreclosure.
12 He told me that if I went to special assets, that there
13 would be a ratcheting up of fees and interest rates and
14 that they would kill me with high rates and fees. He
15 referred to sending me or my loans to the,
16 quote/unquote, bad place, which gave me the connotation
17 that any other remedy to deal with anybody else would be
18 an unpleasant and hurtful experience.

19 He told me that when I asked to speak to
20 someone else to work specifically with this line of
21 credit loan-to-value margin call that the only people I
22 could speak with were people in Charlotte, and they
23 would kill me with high fees and they weren't talking to
24 anybody because of lender liability issues.

25 He told me that -- or Mr. Sharpe told

1 Mr. Ramsey that he was told by Mr. Baker, if I remember
2 correctly, that RBC was not selling notes, that they
3 were only foreclosing, and that was my only option. As
4 I sit here today, that's what I recall specifically.

5 Q. Okay. And were these misrepresentations, as
6 you call them, by Mr. Baker, were they in writing or
7 were they oral?

8 A. They were oral. There may be -- they were
9 oral.

10 Q. Sitting here --

11 A. There was one e-mail from Mr. Baker -- and I
12 believe the date was January the 20th, 2009. Maybe it
13 was the 21st -- that as I was searching continually for
14 options to these documents, Mr. Baker wrote me -- and
15 again, I'm paraphrasing, that my best option was to sign
16 the documents as they were presented. So obviously, we
17 were talking about options. That my best option was to
18 sign the documents as presented and that the bank would
19 work with me, as I recall.

20 Q. What did you understand that to mean?

21 A. That I had no choices, that I had no options,
22 that I had come to the end of the road, if you will. I
23 had engaged an attorney to speak with their attorney; I
24 had spoke with him. I had asked to speak to others in
25 the bank. Met all with road blocks. That if I would

1 A. In general, I understand that the rights that
2 would be referred to in this context would be
3 contractual rights and not necessarily rights given by
4 law or rights that are, if you will, to go to the
5 extreme, unalienable rights, but contractual rights.
6 And as a contractual right, it would be contingent upon
7 the actions of both parties, not just the action of one
8 party. And I would sit here today and try to explain to
9 you in my lay understanding the action of one party in a
10 contract would have the effect or could have the effect,
11 the wrongful action, if you will, of limiting or
12 negating rights under that contract for that party.

13 Q. Okay.

14 A. I think that's as simply and thoroughly as I
15 might be able to say it.

16 Q. All right. And this part of the paragraph,
17 "exercising or threatening to exercise its purported
18 rights," are you referring to what we've been talking
19 about these threats from Mr. Baker during the late
20 December 2008/January 2009 time frame of, you know,
21 foreclosing you, putting you in the bad place, or
22 whatever those threats were -- I don't mean to
23 mischaracterize them, but to briefly summarize, is that
24 what this is referring to?

25 A. Yes. I would have to say, as I sit here

1 today and reread this, that would be, yes, my
2 understanding.

3 Q. Okay. And these threats that you've talked
4 about and misrepresentations you were talking about, in
5 your mind, would preclude the ability of the bank to
6 enforce contract rights it might have in the loan
7 documents?

8 A. I think that the bank did not have those
9 rights specifically because the original loan documents
10 had addendums that excluded those rights from the
11 lender. Originally, when we negotiated the loan
12 documents, for instance, to give an example, the right
13 of cross-collateralization was excluded. So -- or the
14 right of cross-default would be another example, would
15 be excluded.

16 So for Mr. Baker -- and if I understand this
17 correctly, if I understand your question, and it's a
18 little confusing because there's so much I may not
19 understand legally, but for Mr. Baker to threaten
20 foreclosure on related or unrelated loans which were not
21 cross-defaulted with other loans would be wrongful. So
22 if there was a deemed default on an unrelated loan or a
23 related loan, that the holder or the borrower could not
24 threaten foreclosure with other loans if those loans
25 were not tied to that original loan document or those

1 contracts. So I think it was wrongful, if I understand
2 your question, for Mr. Baker to use that threat to
3 foreclose on loans that were unrelated or related that
4 were not tied contractually to that loan document.

5 Q. And is it your testimony that Mr. Baker
6 specifically threatened foreclosure of these various
7 loans, related or unrelated, trying to enforce a
8 cross-collateralization or cross-default right he did
9 not yet have?

10 A. If I understand your question, yes,
11 Mr. Baker, in bad faith, knowingly threatened
12 foreclosure for unrelated and related loans that there
13 was no contractual right that he should have used to
14 threaten foreclosure. Yes.

15 Q. So he was specifically trying to negotiate
16 cross-collateralization or cross-default provisions in
17 the 2009 loan documents, right?

18 A. Repeat your question again, please.

19 Q. So the 2009 loan documents effectively
20 cross-collateralized and cross-defaulted all of these
21 loans, right?

22 A. Yes.

23 Q. And what you're saying, what your testimony
24 is, that before those loan documents got signed by you,
25 that Mr. Baker was threatening to foreclose on all of

1 the loans through the very same thing that you're
2 complaining about that were in these documents that had
3 not yet been signed, cross-default,
4 cross-collateralization --

5 A. Yes.

6 Q. -- to name two of them?

7 A. If I understand your question, Mr. Baker was
8 using the threat of foreclosure for related and
9 unrelated loans that were not in default that had no
10 contractual tie or relationship.

11 Q. Did he draw a distinction between loans that
12 were maturing or that would mature and refusal to review
13 those loan terms versus foreclosure based on
14 cross-default and cross-collateralization?

15 A. As I recall, Mr. Baker said that by not
16 signing those documents in January of 2009 as they were
17 presented, with no negotiation, would result in the bank
18 no longer renewing loans as they would come due and,
19 therefore, they would go in default and force us into
20 bankruptcy.

21 Q. Okay. So he didn't actually use the words
22 "cross-collateralization," did he?

23 A. Mr. Baker told me that he would not renew the
24 loans as they became matured and foreclose on those
25 loans. His first -- as I recall, his first use of

1 cross-collateralization -- and, again, I could be
2 corrected, but I think his first use of
3 cross-collateralization to me was October the 3rd, 2008
4 in an e-mail.

5 Q. Okay. But he was threatening not to renew
6 the loans if you didn't sign the 2009 loan documents,
7 right?

8 A. Yes.

9 Q. Okay. He wasn't threatening to cross-default
10 all the loans; he was just threatening you that he
11 wouldn't renew them?

12 A. I don't understand the question. I'm sorry,
13 but . . .

14 Q. His threat to you was he wouldn't renew the
15 loans if you didn't sign the 2009 loan documents, right?

16 A. That's my understanding, yes.

17 Q. Okay. And that was the basis of his threat
18 to you?

19 A. That's my understanding, yes.

20 Q. Okay. And you reported that to counsel?

21 A. Yes.

22 Q. And had the opportunity to consult with
23 counsel before you signed the 2009 loan documents,
24 right?

25 A. Yes.

1 A. Again, I seem to recall it's a million five,
2 but it could --

3 Q. That's fine.

4 A. -- have been either one of those numbers.

5 Q. Okay. I didn't mean to misspeak.

6 And by their refusing to increase the HELOC,
7 you contended was oppressive and unfair, correct?

8 A. I feel as if, yes, the bank had not worked
9 with me fairly.

10 Q. Okay.

11 MR. KNOWLTON: All right. Let's take a
12 five-minute break real quick.

13 (A brief break transpired.)

14 BY MR. KNOWLTON:

15 Q. Ms. Rice-Marko, going back to --

16 MR. KNOWLTON: The exhibit is 112?

17 THE REPORTER: Yes, sir.

18 BY MR. KNOWLTON:

19 Q. And continuing with Paragraph 23, over now on
20 page 10, and another example you give here in this
21 defense is to your allegation that the bank consistently
22 dealt with you in an oppressive and unfair way was, "By
23 refusing to finance the acquisition of a replacement
24 property as a part of a 1031 exchange that would have
25 provided additional equity and income to support her

1 loans."

2 Do you see that?

3 A. Yes.

4 Q. Okay. What was the 1031 exchange that you
5 refer to here?

6 A. I'm sorry; what do you mean what was the
7 1031?

8 Q. Right.

9 A. Are you talking about what was --

10 Q. What property was involved there?

11 A. What was the replacement property, or what
12 was the sold? I'm not understanding, sir.

13 Q. Well, I don't want to characterize it any way
14 other than how you've characterized it. You've
15 characterized it as the bank's refusal to finance the
16 acquisition of a replacement property as part of a 1031
17 exchange, and I want to ask you what you mean by that.

18 A. You're asking what was the replacement
19 property? It was a shopping center located in
20 Asheville, North Carolina. The name of the center, as I
21 recall, was Rutledge Commons. And I had identified that
22 as a replacement property which would have provided
23 about a million two over -- equity over the required
24 guidelines of RBC and would have thrown off income to
25 help with payments.

1 A. I did.

2 Q. From whom?

3 A. I seem to recall the response came from
4 Mr. Baker in November, I believe it was, of 2008.

5 Q. And what was the response?

6 A. I can't recall the exact wording, but it was,
7 no, we would not finance -- or finance the acquisition
8 of the property.

9 Q. And did he explain why?

10 A. I don't recall.

11 Q. Was it in writing or was it orally?

12 A. I recall there was an e-mail, but I don't
13 recall the context or the e-mail.

14 Q. Okay. And who owned the Asheville Commons
15 property?

16 A. I don't recall.

17 Q. How were you going to -- I'm trying to
18 understand how -- you were going to buy the Asheville
19 shopping center and then replace that as the collateral
20 for the loan and take out the Wachovia stock?

21 A. There was, as I said, about a million two,
22 according to the guidelines of RBC, additional equity in
23 that property. As I recall RBC guidelines, they would
24 finance 80 percent, I believe, of the purchase price and
25 85 percent of the appraisal. It could be reversed. I

1 believe it was 85 percent of the purchase price and 80
2 percent of the appraisal. And that would have -- the
3 center was approximately \$6 million center, which would
4 have been financing of approximately four-eight.

5 Q. And what I'm trying to understand is -- I
6 wasn't a part of this, so I'm just trying to understand
7 what you're saying. When I think of a 1031 exchange, I
8 think of selling some property and having to take the
9 proceeds from that property and put it into another
10 asset within a certain period of time as defined by the
11 IRS rules and regulations. Is that a fair --

12 A. That would be a simple explanation, yes.

13 Q. Okay. And so you were going to sell some
14 property and, as a 1031 exchange, put that money into
15 the shopping center in Asheville; is that correct?

16 A. Yes.

17 Q. And what property were you going to sell to
18 replace with the Asheville Commons?

19 A. The property had already been sold.

20 Q. Okay. And what property was that?

21 A. That was the property in Wendover that we had
22 discussed earlier.

23 Q. Okay. And --

24 THE REPORTER: I'm sorry. That was the
25 property --

1 THE WITNESS: Wendover, W-E-N-D-O-V-E-R.

2 BY MR. KNOWLTON:

3 Q. And how much did you have by way of the sale
4 of the Wendover property?

5 A. What were the net proceeds?

6 Q. Correct.

7 A. Held in escrow were, as I recall,
8 approximately \$2 million.

9 Q. Okay. And who held that in escrow?

10 A. I don't recall the specific name, but I
11 believe it was a division of SunTrust Bank.

12 Q. Okay. So it wasn't an account controlled by
13 PNC or RBC?

14 A. No.

15 Q. Okay. And you were going to take the
16 proceeds from that sale to purchase the Asheville
17 shopping center, Asheville Commons, and finance the
18 remainder through PNC; that was the offer, correct?

19 A. Yes, RBC.

20 Q. Okay. And you don't know why they declined
21 to do that?

22 A. No, not that I sit here today. I don't have
23 any recollection, no.

24 Q. Okay. But that is one of your allegations
25 that the bank refused to deal with you -- or dealt with

1 you in an oppressive and unfair way, correct?

2 A. Yes. They had -- they had repeatedly
3 financed properties, 1031 properties for us in the past.

4 Q. Okay. And their refusal to do that here, in
5 your opinion, was oppressive and unfair?

6 A. I had come to rely on them to finance
7 properties when I sold properties, especially if the
8 property was an income property.

9 Q. What other properties had they exchanged?

10 A. As I sit here today, I recall the USS
11 Clarksville property; the ROA Note Number 1; I'm not
12 sure about 438 King Street, but possibly 438 King
13 Street. I'm not sure -- I'm not sure of any others, but
14 those I seem to recall with certainty.

15 Q. Okay.

16 A. Some amount of certainty.

17 Q. And because they had done that with you in
18 the past, you considered it unfair and oppressive if
19 they refused to do it here?

20 A. I felt as if they had established a pattern
21 of working with me on a finance of properties within
22 certain guidelines that this met and at the time would
23 have provided a solution, a business solution, to a
24 problem with the collateral for a line of credit loan.

25 Q. And do you contend that they had some legal

1 you if you signed the 2009 loan modifications, right?

2 A. Yes. I believe that's correct.

3 Q. And the context of the "work with you" was in
4 the context of these quarterly principal payments,
5 correct?

6 A. As my recollection, yes.

7 Q. And sometime after you signed the 2009 loan
8 modifications, you began to have difficulty or perceived
9 that you were going to have difficulty making all of
10 those principal curtailment payments, correct?

11 A. I perceived I would have difficulty prior to
12 signing them.

13 Q. Okay. You thought --

14 A. And after they were signed, I then instituted
15 action to meet with the lenders to come up with a
16 mutually beneficial or agreeable alternative.

17 Q. Thank you. And that led to the meeting at
18 your house?

19 A. Yes.

20 Q. Okay. And you can't recall what alternatives
21 you suggested to the bank?

22 A. Not as I sit here today, no.

23 Q. Okay. But did the bank offer any solutions
24 to you?

25 A. After several months, as I recall, yes.

1 Q. What were their solutions?

2 A. As I recall, a fourth mortgage on my home.

3 Q. Anything else?

4 A. Not that I recall at this time.

5 Q. Okay. So do you recall that you did provide
6 alternatives to the bank, or do you just not recall
7 whether you had provided alternatives or not?

8 A. I don't recall what alternatives were
9 discussed.

10 Q. Okay. There could have been other
11 alternatives discussed, you just don't recall?

12 A. Yes. I would think there may have been, but
13 today, sitting here, I cannot tell you.

14 Q. Okay. Other than the fourth mortgage, were
15 there any other alternatives that you can think of
16 today?

17 A. That the bank offered?

18 Q. Either you or the bank.

19 A. I can't think of any that I offered today,
20 but that's the only alternative that I seem to recall
21 the bank offered.

22 Q. Okay. And after the fourth mortgage idea was
23 suggested by the bank, what happened?

24 A. I explained to the bank that there was a
25 third mortgage and that the third mortgage had a

1 provision within that loan agreement that any subsequent
2 mortgages would cause the third mortgage to go in
3 default and that I was unable to meet that suggestion or
4 it wasn't -- I couldn't do it. It wasn't possible.

5 Q. Okay. And you say after you agree to the
6 predicate conditions of paying the quarterly payments,
7 the bank then refused to cooperate with you, right?
8 That's what this says here.

9 A. Yes.

10 Q. And your -- your description of the refusal
11 to cooperate is that you don't recall what solutions you
12 had; the bank only had one solution and that wouldn't
13 have worked with your other creditors, the fourth
14 mortgage idea?

15 A. That's -- as I recall here today, yes.

16 Q. Okay. And the fact that the bank didn't come
17 up with any other alternatives is what you characterize
18 as a refusal to cooperate?

19 A. I didn't feel like that was a viable
20 alternative. It wasn't one I could -- could perform.

21 Q. Okay. Okay. And then you go on to say that
22 the bank acted in an oppressive and unfair way by,
23 "making confidential and private information about
24 defendants and their financial conditions and assets
25 available to third parties to pressure defendants to

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

PNC Bank, N.A., successor to RBC
Bank (USA),

Plaintiff(s),

vs.

C/A No: 2013-CP-10-2624

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendant(s).

D E P O S I T I O N

WITNESS: Evan R. Marko, Volume I

DATE: Wednesday, August 20, 2014

TIME: 9:30 a.m.

LOCATION: Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: HEATHER M. CURLIN
Registered Professional Reporter

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23 John E. Marko, Jr.
24 Stephen Wursta, Jr.

25 (INDEX AT REAR OF TRANSCRIPT)

1 Q. Okay. If you'll look at page 9, is that your
2 signature?

3 A. That appears to be a copy of my signature.

4 Q. And does that appear to be a copy of your
5 brother's signature as a witness?

6 A. In all honesty, that kind of doesn't really
7 look like his signature. I don't know --

8 Q. It's almost as bad as my signature.

9 A. -- what that is. I just don't know what that
10 is.

11 Q. You guys were at Georgia at the same time?

12 A. I think he had graduated by this time.

13 Q. Okay.

14 A. So I think he would have been in Charleston.

15 Q. Okay. If you will look at page 11, please,
16 which is the attachment to the guaranty, does that
17 appear to be a copy of your signature?

18 A. It does appear to be a copy.

19 Q. And same question as to your brother. It
20 looks the same as the other one, but it looks to you --

21 A. It -- I mean, it looks -- I see his name
22 written there, but it doesn't look like his signature.
23 It just looks pretty scribbled.

24 Q. And would you have read this document before
25 you executed it and returned it, or do you know?

1 A. I don't recall that.

2 Q. Do you know if you were represented by
3 counsel in connection with the execution of this
4 document?

5 A. I don't recall.

6 Q. If you look at page -- page 7 -- excuse me,
7 page 8. 9 -- Paragraph 9.10, Section A, it's the bold
8 language, "that to the extent permitted by law, waives
9 any right to a trial by jury in any action arising from
10 or related to this guaranty agreement or any of the
11 obligations of customer."

12 Do you see that language?

13 A. Yeah, I read that.

14 Q. Do you recall reading that at the time that
15 you signed this document?

16 A. I don't recall.

17 Q. Okay. And, again, because this is dated the
18 same day, August 30, 2006, you don't recall any issues
19 or problems that you had with the bank as of that date;
20 is that right?

21 A. Not sitting here, no.

22 Q. How much older is your brother than you are?

23 A. He's a little over three years older than me.

24 (Exhibit No. 16 was marked.)

25 BY MR. MCGEE:

1 document before?

2 A. I could have.

3 Q. I'll point you to paragraph -- excuse me,
4 page 3.

5 A. Page 3.

6 Q. And it now looks like that -- as you
7 discussed earlier, it now looks like that you and your
8 brother are managers of The Brothers of SC, LLC; is that
9 right?

10 A. The title is manager, but in terms of the
11 legal documents, I don't know if it spelled us out as
12 manager not.

13 Q. Right. But you --

14 A. But it says "title" here.

15 Q. Your mother didn't -- this is the first
16 modification or first agreement that we've seen as to
17 the \$1.1 million loan where you and your brother signed
18 on behalf of the borrower instead of your mother; is
19 that right?

20 A. I believe so.

21 Q. Okay. And does that appear to be a copy of
22 your signature on page 3?

23 A. Appears to be a copy of, yes.

24 Q. And on -- page 6 is titled "Guarantors
25 Consent." Does that appear to be your signature?

1 why the principal wasn't being paid down and the loans
2 being paid off instead of successive extensions over
3 time. Was there a discussion, or was there a reason for
4 you guys doing that?

5 A. Not that I can recall.

6 Q. Do you know during this time period was the
7 principal being paid down, or were these only interest
8 payments that were being made?

9 A. I don't know for sure. I know the balance
10 that was different at some point in time, even from the
11 1.1 that's dated here, so I would have to look at the
12 history of the payments.

13 Q. I apologize for this. I forgot to ask a
14 couple questions on the prior exhibit.

15 A. No problem.

16 Q. Exhibit 18 -- or 17.

17 A. No problem.

18 Q. Do you recall if you or The Brothers were
19 represented by counsel for this modification agreement?

20 A. I don't recall.

21 Q. Do you recall whether you read this document
22 or not before you signed it?

23 A. I do not recall.

24 Q. Do you recall reading Section 10, a waiver of
25 jury trial, before you signed it?

1 A. I'm sorry, where was Section 10?

2 Q. On page 3, the top of page 3.

3 A. On page 3. I don't recall reading the
4 documents. I don't recall seeing that.

5 Q. How about Section 13, the all caps, bold, the
6 waiver of appraisal rights, do you recall that coming up
7 or reading that?

8 A. I don't recall.

9 Q. Okay. Thank you.

10 A. No problem.

11 Q. Back to Exhibit 18, again, it purports to be
12 an August 26, 2008 modification agreement. Do you
13 recall this document?

14 A. I could have seen it.

15 Q. Okay. Now that you are -- at this point in
16 time, you would have been back from Georgia, right?

17 A. It looks like, yeah, I would have just
18 started first year.

19 Q. And so how would that have changed -- rather
20 than having documents sent or FedExed to you to execute
21 and return, would they now be given to you by your
22 mother or . . .

23 A. I would -- from what I remember, it would
24 either be within the office or something like this, this
25 witness is people in Mark Sharpe's office, so I would

1 the prior maturity date; is that right?

2 A. I mean, I would assume because it's extending
3 or modifying for another year that it wasn't paid.

4 Q. Okay. And was that -- strike that.

5 Is it your signature on page 4 of this
6 agreement? Does it appear to be a --

7 A. Appears to be a copy of.

8 Q. Does that appear to be a copy of your
9 brother's signature as well?

10 A. It does appear to be a copy of his signature.

11 Q. And under of the terms of this modification
12 agreement, based on Exhibit 2 or Attachment 2, that the
13 maturity date is extended to August 7, 2009?

14 A. That's what it says.

15 Q. Is that your understanding of the import of
16 this agreement?

17 A. As to the date, I mean, I see the date right
18 here, yeah.

19 Q. I mean, was that the purpose in signing this
20 agreement was to modify it?

21 A. I think it's to modify it for another year.
22 Sorry for interrupting.

23 Q. No, no, that's fine.

24 On page 3, did you read this document prior
25 to executing it?

1 A. I don't recall.

2 Q. Do you recall seeing the waiver of jury trial
3 in Section 10 or the waiver of appraisal rights in
4 Section 13 prior to executing it?

5 A. I don't recall.

6 Q. And I think I asked you about page 4, the
7 signatures on page 4, the guarantor's consent, but on
8 page 3, on behalf of The Brothers of SC, does that
9 appear to be a copy of your signature and your brother's
10 signature?

11 A. It appears to be a copy of my signature and
12 my brother's signature.

13 Q. And at the time that this document was signed
14 on August 26, 2008, did you have any issues or problems
15 with any of the bank's acts at that time?

16 A. Not as I sit here today, I don't recall any.

17 (A brief break transpired.)

18 (Exhibit No. 19 was marked.)

19 BY MR. McGEE:

20 Q. I'm showing you what's been marked as Exhibit
21 19. It purports to be a change in terms agreement dated
22 July 29, 2009. Have you seen this document?

23 A. I believe so.

24 Q. And it looks like at the very top it says
25 principal amount, \$1,087,000 and change. So it does

1 Q. I'll show you what's been marked as Exhibit
2 35 to your deposition, which purports to be a
3 modification agreement dated February 26, 2008 by GW
4 Dorchester, LLC. Have you ever seen this document?

5 A. I don't believe so.

6 Q. And, again, this is prior to you and your
7 brother taking over the ownership of GW Dorchester, LLC;
8 is that right?

9 A. Yes.

10 Q. If you would, please, turn to page 3 of this
11 document. Does that appear to be your mother's -- a
12 copy of your mother's signature as manager for GW
13 Dorchester, LLC?

14 A. It appears to be a copy of her signature.

15 Q. Do you recall having any discussions with
16 your mother on or about February 26, 2008 concerning
17 this modification agreement?

18 A. No.

19 Q. If you turn to page 6, please. Does that
20 appear to be a copy of your mother's signature as Evelyn
21 D. Rice's attorney-in-fact?

22 A. Appears to be a copy of it.

23 Q. And the second-to-the-last page, Attachment
24 2, Section 1 is the first full paragraph. Does it
25 appear that the maturity date stated in the note is

1 Q. Did you play any role in the negotiation or
2 execution of Exhibit 42?

3 A. I don't believe so.

4 Q. And do you have any firsthand knowledge of
5 the contents or import of Exhibit 42?

6 A. No. I wasn't a part of GW Dorchester.

7 (Exhibit No. 43 was marked.)

8 BY MR. McGEE:

9 Q. All right. I'm going to show you what has
10 been marked as Exhibit 43, which purports to be a loan
11 agreement between RBC Centura Bank and The Brothers of
12 SC, LLC.

13 A. I don't see that on the first page.

14 Q. Look at page 13, if you would.

15 A. Okay. It says "The Brothers of SC" on the
16 signature page.

17 Q. Right. And is that your signature?

18 A. Appears to be a copy of it.

19 Q. And below as a guarantor, does that appear to
20 be a copy of your signature as well?

21 A. Appears to be a copy of it.

22 Q. And do those appear to be copies of the
23 signatures of your brother?

24 A. They appear to be copies of them.

25 Q. Have you seen this document before?

1 Q. And you and your brother both had authority
2 to sign this document on behalf of The Brothers of SC,
3 LLC?

4 A. Yes.

5 Q. I apologize if I asked this already, but do
6 you recall whether you were represented by counsel
7 leading up -- negotiating this agreement?

8 A. I don't recall.

9 Q. If you'll look at page 11 of Exhibit 43,
10 please. Do you see in Section 10.6 the bold text about
11 halfway down, "Borrower, to the extent permitted by law,
12 waives any right to a trial by jury in any action
13 arising from or related to this loan agreement and any
14 of the other loan documents"?

15 A. I see that written there.

16 Q. Okay. As of the date of this agreement,
17 October 11, 2007, did you have any issues or problems
18 with the bank in regards to this loan or this property?

19 A. Not that I recall.

20 (Exhibit No. 44 was marked.)

21 BY MR. MCGEE:

22 Q. I'm going to show you what's been marked as
23 Exhibit 44, which purports to be an October 11, 2007
24 commercial promissory note in the amount of \$4.9
25 million. Have you ever seen this document before?

1 A. I may have in the past.

2 Q. You don't have any specific recollection of
3 it?

4 A. Not that I can recall a specific time seeing
5 it.

6 Q. Do you know if you read this document before
7 you signed it?

8 A. I don't recall.

9 Q. Do you know if you, your brother, or The
10 Brothers of SC, LLC were represented by counsel prior to
11 or during the execution of this document?

12 A. I don't recall.

13 Q. If you'd look on page 6, please. Does that
14 appear to be copies of your and your brother's
15 signatures as managers for The Brothers of SC, LLC?

16 A. Appears to be a copy of them.

17 Q. And the very last page, page 8, same
18 question, does that appear to be copies of your and your
19 brother's signatures as managers for The Brothers of SC,
20 LLC?

21 A. Appears to be copies of them.

22 Q. And you and your brother both had authority
23 to sign Exhibit 44 on behalf of The Brothers of SC, LLC?

24 A. Yes.

25 Q. Do you know who -- what bank had the loan on

1 the BB&T building in Florence prior to RBC?

2 A. I think it was BB&T, but I'm not positive.

3 Q. Okay. If you'll look on page 5, please,
4 Section 5.6. You see the bold language there,
5 "Borrower, to the extent permitted by law, waives any
6 right to a trial by jury in any action arising from or
7 related to this note"?

8 A. I see those words.

9 Q. Do you recall reading that provision before
10 signing this document?

11 A. I don't recall.

12 Q. Tell me, do you recall, was there a closing
13 in a bank or tell me how you -- how or where you signed
14 these documents related to this loan for the Florence
15 property.

16 A. I don't recall specifically, but looking at
17 the witnesses, it looks like, again, it's in the bank's
18 attorney's office, Mark Sharpe.

19 Q. And is that here in Charleston?

20 A. Yes.

21 Q. Do you know Mr. Sharpe?

22 A. I've met him through these signings.

23 Q. Right. But I mean, you don't know him
24 outside of these transactions?

25 A. Not that I can recall.

1 BY MR. MCGEE:

2 Q. I'll show you what's been marked as Exhibit
3 45, which purports to be a mortgage assignment of rents
4 and security agreement. Have you seen this document
5 before?

6 A. I could have at some time.

7 Q. And this document relates to the Florence
8 County property that we've been discussing; is that
9 right?

10 A. That's what it appears.

11 Q. Is it your understanding that this mortgage
12 provides the bank security for the notes that we looked
13 at in Exhibits 43 and 44?

14 A. I think that's the basic premise for it.

15 Q. If you look at Paragraph 15.8 on page 11,
16 please. You see in that section -- sorry -- the bold
17 text, "To the extent permitted by law, mortgagor waives
18 any right to a trial by jury in any action arising from
19 or related to this mortgage"?

20 A. I see those words.

21 Q. On page 14, could you tell me if that appears
22 to be a copy of your signature and your brother's
23 signature as managers for The Brothers of SC, LLC?

24 A. Appears to be a copy of them.

25 Q. Do you recall whether you were represented by

1 counsel at the time that this mortgage was executed and
2 filed?

3 A. I don't recall.

4 Q. And based on your experience with loans and
5 mortgages, would you have expected to sign this document
6 at the same time that you signed the notes at
7 Mr. Sharpe's office?

8 A. That depends if they were prepared at the
9 same time.

10 Q. At the time this document was executed or
11 filed, October 11, 2007, did you have any issues or
12 problems with the bank as it pertains to this loan for
13 this property?

14 A. Not that I can recall.

15 (Exhibit No. 46 was marked.)

16 BY MR. MCGEE:

17 Q. I'll show you what's been marked as Exhibit
18 46 to your deposition, which purports to be an
19 assignment of leases, rents, and profits dated October
20 11, 2007. Have you seen this document before?

21 A. I could have.

22 Q. You don't specifically recall as you sit
23 here?

24 A. I don't recall reading over it, no.

25 Q. If you'll turn to page 6, please, Paragraph

1 4.6. You see the provision that states assignor in
2 bold, "Assignor, to the extent permitted by law, waives
3 any right to a trial by jury in any action from arising
4 or related to this assignment"?

5 A. I see those words.

6 Q. On page 8, does that appear to be a copy of
7 your signature and your brother's signature as managers
8 for The Brothers of SC, LLC?

9 A. Appears to be copies of them.

10 Q. Do you recall if you or your brother or The
11 Brothers of SC were represented by counsel at or around
12 the time this document was executed?

13 A. I don't recall.

14 Q. And this document dated, October 11, 2007,
15 again, you didn't have any issues or problems with the
16 bank as it related to this loan or this property at that
17 time, right?

18 A. Not that I can recall.

19 (Exhibit No. 47 was marked.)

20 BY MR. McGEE:

21 Q. I'll show you what's been marked as Exhibit
22 47 to your deposition, which purports to be an
23 unconditional guaranty agreement for Evan R. Marko.
24 Have you seen this document before?

25 A. I could have. I don't recall when.

1 Q. Document purports to be dated October 11,
2 2007, the same date as the promissory note and the
3 mortgage and assignment of rents; is that right?

4 A. That's what it says.

5 Q. Do you have any reason to believe that's not
6 accurate?

7 A. No.

8 Q. If you would look on page 7, please,
9 Paragraph 9.10. It states in bold, "Guarantor, to the
10 extent permitted by law, waives any right to a trial by
11 jury in any action arising from or related to this
12 guaranty agreement or any of the obligations of
13 customer."

14 Do you see that?

15 A. I see those words.

16 Q. Do you recall reading that prior to executing
17 this document?

18 A. I don't recall.

19 Q. Do you see -- on page 9, does that appear to
20 be your signature?

21 A. Appears to be a copy of it.

22 Q. And the final page of this exhibit, page 11,
23 does that appear to be a copy of your signature?

24 A. Appears to be a copy of it.

25 Q. Would you have read this document before you

1 Q. Tell me what you mean by that.

2 A. I mean we had no negotiation power. We were
3 told we had to sign these or we were going to be thrown
4 into financial ruin.

5 Q. And did somebody tell you that directly?

6 A. My mother relayed the message from Michael
7 Baker to us.

8 Q. And when did that -- when did your mother say
9 that that comment was made to her by Mr. Baker?

10 A. I believe it was in December of '08 or
11 January of '09 or multiple times throughout then.

12 Q. Did Mr. Baker or anybody else on behalf of
13 RBC Bank ever tell -- make that statement to you?

14 A. I -- not me personally.

15 Q. Okay. All right. If you'll look on page 3,
16 does that appear to be copies of signatures by you and
17 your brother as managers for The Brothers of SC, LLC?

18 A. Page 3?

19 Q. Yes.

20 A. First page 3?

21 Q. Yeah. Yeah.

22 A. Appears to be copies of our signatures.

23 Q. Do you recall whether you read this agreement
24 before you signed it?

25 A. I don't recall.

1 Q. Let me show you what's been marked as Exhibit
2 53, which purports to be a change in terms agreement for
3 The Brothers of SC, LLC, the principal amount 4.9
4 million. Have you seen this document before?

5 A. I believe so.

6 Q. It's dated January 21, 2010; is that right?

7 A. That's the date that's on here.

8 Q. Did you read this document before you signed
9 it?

10 A. I don't recall.

11 Q. Does that appear to be your and your
12 brother's signatures as managers for the The Brother of
13 SC, LLC on the third page?

14 A. Appears to be copies of them.

15 Q. And under the terms of this agreement, the
16 bank agreed to extend the maturity date; is that right?

17 A. They agreed to extend the maturity date.
18 They raised interest rates, and they added principal
19 payments of \$20,000, 420 -- \$20,425 each.

20 Q. Did you and your brother have authority to
21 sign this document on behalf of The Brothers of SC?

22 A. I don't -- oh, did we have authority to sign?

23 Q. Yes.

24 A. Yes.

25 Q. And you described the change in terms. Were

1 you involved in the discussions about the terms of this
2 agreement prior to signing it?

3 A. I remember expressing concern over the way
4 the interest was calculated in the payment section here.
5 It's incredibly confusing, and I thought it was
6 inaccurate.

7 Q. Who did you express those concerns to?

8 A. 2010, it was either through Robert Young, who
9 was the CFO at that time, or my mother.

10 Q. Were you and/or The Brothers of SC
11 represented by counsel leading up to the execution of
12 this document?

13 A. I don't recall.

14 Q. You don't know whether -- if Tuggle Duggins
15 or anyone else was working with the bank on this?

16 A. I don't recall at this time.

17 Q. Who would have been in direct communication
18 with the bank in discussions about the terms of this
19 agreement?

20 A. Either Robert Young or my mother, most
21 likely.

22 Q. If you look on page 2, about three-quarters
23 of the way down, jury waiver, "Lender and borrower
24 hereby waive the right to jury -- to any jury trial in
25 any action, proceeding, or counterclaim brought by

1 either lender or borrower against the other."

2 Do you recall reading that language prior to
3 signing this document?

4 A. I don't recall.

5 Q. And is it fair to say that you are not
6 pleased with the terms of this document when you signed
7 it?

8 A. That's -- yes, that's fair.

9 Q. And did you make any effort -- you personally
10 make any efforts to try to negotiate different terms
11 than are contained in here?

12 A. Not to the bank itself, I don't believe. I
13 may have had e-mails asking about the interest, but I
14 can't recall with specificity.

15 Q. I mean prior to signing this document, did
16 you reach out to anybody, any -- your mother, Mr. Young,
17 the bank, anybody to say, I don't like these terms, I
18 would propose that -- additional terms?

19 A. Yeah, I did. Yes. I said I don't like the
20 terms of \$20,000 principal payments; I didn't like the
21 interest rates being increased.

22 Q. Who did you say that to?

23 A. Probably Robert Young and my mother.

24 Q. Okay. Well, if the maturity date under
25 Exhibit 53 is September 15, 2010 and the date of the

1 with RBC?

2 A. I don't think Todd Brown and I really ever
3 had any discussions about that.

4 Q. Okay.

5 A. And if I did, it would have been a lunch or
6 something like that.

7 Q. This forbearance agreement, is it your
8 understanding that there were any loans that were in
9 default at the time that the forbearance agreement was
10 executed?

11 A. Can you -- which loans are you referring to?

12 Q. Any loan. Are you aware of any loans that
13 were in default at the time that the forbearance
14 agreement was signed?

15 A. I can't recall, but I don't think so.

16 Q. Let's look at page 16, if you would, please.
17 The Brothers of SC, LLC, on page 16 toward the bottom,
18 does that appear to be a copy of your brother's
19 signature on its behalf?

20 A. Appears to be a copy of his signature, yes.

21 Q. On the following page, guarantors, is that a
22 copy of your signature?

23 A. That is a copy of my signature, I think.

24 Q. Does that appear to be a copy of your
25 brother's signature?

1 don't know, but . . .

2 Q. Understood. This forbearance on page 4,
3 Section 2.1, the forbearance period, this forbearance
4 agreement ran through July 15, 2013. Is that your
5 understanding?

6 A. Yes.

7 Q. And during that time, if all the parties, all
8 the obligors as defined in this agreement complied with
9 this forbearance agreement, the bank would not do the
10 things that are set out right here, 2.11, accelerate the
11 loans; 2.12, require payment of interest. Is that your
12 understanding?

13 A. If the contract is not broken by the bank
14 itself, then yes.

15 Q. Look at page 6 if you would, please, Section
16 2.5. The waiver of jury trial in all caps, I'm not
17 going to read it, but -- because it's fairly long, but
18 do you recall reading that paragraph, in all caps, prior
19 to your signing the forbearance agreement?

20 A. I don't recall.

21 Q. Do you ever recall that term being discussed
22 prior to your execution of this document?

23 A. Can you define "term"?

24 Q. Strike that.

25 Next page, page 7, Article 3, Section 3.1,

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

PNC Bank, N.A., successor to RBC
Bank (USA),

Plaintiff(s),

vs.

C/A No: 2013-CP-10-2624

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
E. Marko, Jr.,

Defendant(s).

D E P O S I T I O N

WITNESS: Evan R. Marko, Volume II
DATE: Wednesday, August 20, 2014
TIME: 9:35 a.m.
LOCATION: Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, South Carolina
TAKEN BY: Attorneys for the Plaintiff
REPORTED BY: HEATHER M. CURLIN
Professional Court Reporter

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22 ALSO PRESENT: Deborah Rice-Marko
23 John E. Marko, Jr.
Stephen Wursta, Jr.
24

25 (INDEX AT REAR OF TRANSCRIPT)

1 BY MR. McGEE:

2 Q. Let me show you what's been marked as Exhibit
3 59 to your deposition. Have you seen this document
4 before?

5 A. I could have.

6 Q. Do you have any specific recollection of
7 seeing it, as you sit here today?

8 A. It looks like it was some sort of part of the
9 forbearance agreement judging by the date, so I could
10 have. But I don't have a specific recollection.

11 Q. And this document purports to be a continuing
12 guaranty agreement dated July 15, 2011; is that right?

13 A. Yes.

14 Q. If you would, please, turn to the
15 second-to-the-last page. Is that -- does that appear to
16 be a copy of your signature as a guarantor?

17 A. Appears to be a copy of it.

18 Q. And does that appear to be a copy of your
19 mother and your brother's signature as well?

20 A. Appears to be a copy of it.

21 Q. Do you know if you read this document prior
22 to its execution?

23 A. I don't recall.

24 Q. And this would have been -- this document has
25 the same date as the forbearance agreement; is that

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON
 3 PNC Bank, N.A., successor to RBC
 4 Bank (USA),
 5 Plaintiff(s),
 6 vs. C/A No: 2013-CP-10-2624
 7 Liberty Cottages, LLC; GW
 8 Dorchester, LLC; USS Clarksville,
 9 LLC; Liberty Cottages Land, LLC;
 10 ROA, LLC; Royal Beach Properties,
 11 LLC; The Brothers of SC, LLC;
 12 Deborah Rice-Marko a/k/a Deborah G.
 13 Rice-Marko; Evan R. Marko and John
 14 E. Marko, Jr.,
 15 Defendant(s).

16 D E P O S I T I O N

17 WITNESS: John E. Marko, Jr., Volume I
 18 DATE: Thursday, October 23, 2014
 19 TIME: 9:35 a.m.
 20 LOCATION: Nelson Mullins Riley & Scarborough, LLP
 21 151 Meeting Street, Suite 600
 22 Charleston, South Carolina
 23 TAKEN BY: Attorneys for the Plaintiff
 24 REPORTED BY: HEATHER M. CURLIN
 25 Registered Professional Reporter

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17 DORCHESTER, LLC:

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21

22 ALSO PRESENT: Deborah Rice-Marko
23 Evan Marko
24 Stephen Wursta, Jr.

23

24 (INDEX AT REAR OF TRANSCRIPT)

25

1 asserted in this case?

2 A. Exactly.

3 Q. Okay.

4 (Exhibit No. 4 was marked.)

5 BY MR. KNOWLTON:

6 Q. Mr. Marko, I'm going to hand you what's been
7 marked as Exhibit Number 4 to your deposition. This is
8 an unconditional guaranty agreement. Do you see that?

9 A. Yes.

10 Q. And it's dated December 28th, 2001. Do you
11 see that?

12 A. I do.

13 Q. All right. And if you'll look on the last
14 page, that's your signature, correct?

15 A. It appears to be a copy of, yes.

16 Q. Okay. And this address in Gilford, North
17 Carolina, is that a prior address of yours?

18 A. Yes.

19 Q. Okay. Where were you living at the time?

20 A. In 2001, I believe I would have had my
21 residence at my parents' house, but I would be at
22 college.

23 Q. Was this your parents' address --

24 A. It was.

25 Q. -- at the time? Okay.

1 A. I don't know if I got consideration for this
2 or not. I don't know.

3 Q. Well, I don't know either, but do you dispute
4 the validity of this document?

5 A. I -- I don't know.

6 Q. Did you read it at the time you signed it?

7 A. I don't recall.

8 Q. How old were you at the time you signed this?

9 A. I was 20 years old.

10 Q. Okay. And it appears to be in connection
11 with the note marked as Exhibit 2?

12 A. Yes.

13 Q. Okay. And if you'll turn to page -- the
14 second-to-the-last page, if you'll look at -- under
15 Section 9, Paragraph 6, do you see that? That paragraph
16 states that to the extent permitted by law you waive any
17 right to a trial by jury in any actions arising from or
18 referred to in this guaranty agreement and/or any of the
19 obligations of customer. Do you see that?

20 A. I see where that's written, yes.

21 Q. Okay. And that's in bold, correct?

22 A. I can't tell from this copy. I mean, I'll
23 show you.

24 Q. Okay.

25 A. I mean . . .

1 Q. But you certainly see those words in English,
2 correct?

3 A. Yes, barely, through the copy.

4 Q. Okay. But you don't have any trouble reading
5 the English language, do you?

6 A. I do not, no.

7 Q. Okay. And you certainly didn't when you were
8 20, did you?

9 A. No, I did not.

10 Q. Okay. And at the time you executed this, did
11 you have any issues or claims against the bank?

12 A. Not that I can recall, other than this is
13 signed four months later than that.

14 Q. Okay.

15 A. I don't know why I would have done that.

16 Q. Have you asserted any claim in this
17 litigation based on that or any other issue you have
18 with this guaranty?

19 A. I don't -- I don't believe --

20 MR. HANNA: Objection. Calls for legal
21 conclusion.

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

23 BY MR. KNOWLTON:

24 Q. Okay. As far as you know, you haven't
25 asserted any challenge to the enforceability of this

1 bank, correct?

2 A. Correct.

3 Q. And if you look at page 9, that's your
4 signature, correct?

5 A. Appears to be a copy of. Yes, sir.

6 Q. Okay. You don't dispute that that's your
7 signature, do you?

8 A. I do not.

9 Q. Okay. And next to your name is a witness
10 name. That's Mark Sharpe, correct?

11 A. Yes, it is.

12 Q. And he's counsel to the bank?

13 A. Yes, he is.

14 Q. Okay. And do you know whether you had
15 counsel representing you at the time you executed this
16 document?

17 A. I had counsel available to me. I don't know
18 if they reviewed this document.

19 Q. Okay. You certainly had the ability to call
20 them about this document, did you not?

21 A. I would.

22 Q. Okay. If you look at page 7, Section 9.10,
23 there's another jury paragraph. Do you see that?

24 A. I do.

25 Q. And on page 8, it provides that guarantor, to

1 the extent permitted by law, waives any right to a jury
2 trial -- to a trial by jury in any action arising from
3 or related to this guaranty agreement or any of the
4 obligations of customer. Do you see that?

5 A. I see those words, yes.

6 Q. And you agreed to be bound by those terms at
7 the time you signed this document, correct?

8 A. I don't know what I -- if I fully understood
9 at the time.

10 Q. Did you --

11 A. But at the time --

12 Q. Did you --

13 A. -- yes.

14 Q. Did you read the document?

15 A. I don't recall.

16 Q. Okay. You can read it now, can't you?

17 A. I can.

18 Q. And you understand what it says?

19 A. I do.

20 Q. Okay. And it's in bold, actually, isn't it?

21 A. Yes.

22 Q. How old were you at the time you executed
23 this document?

24 A. This is 2006; I would be 25 years old.

25 Q. And this was to further secure the \$1.1

1 A. Yes.

2 Q. Okay. And if we turn to Attachment 2,
3 Section 1, it again extends the maturity date out again,
4 this time to August 7, 2008. Do you see that?

5 A. Yes, sir.

6 Q. And so the loan continues to be extended and
7 renewed, correct?

8 A. Correct.

9 Q. Okay. Do you recall ever asking the bank why
10 they kept renewing as opposed to permanent financing?

11 A. As I spoke on the topic earlier, I -- I don't
12 recall specifically.

13 Q. Okay. And on page 9 -- I'm sorry, on page 3,
14 there's a signature on behalf of The Brothers. Is that
15 your signature?

16 A. That is my signature, a copy of.

17 Q. Okay. And your brother also signed on behalf
18 of the company as well, right?

19 A. It appears to be his signature, but I can't
20 testify to that, obviously.

21 Q. You've seen his signature many times, right?

22 A. I have.

23 Q. Okay. And you don't have any reason to
24 believe that that is not his signature?

25 A. I do not.

1 Q. Okay. It looks like y'all are both managers
2 of The Brothers; is that correct?

3 A. That is correct.

4 Q. Okay. And at this time, I guess your mother
5 had been replaced as manager by the two of y'all; is
6 that correct?

7 A. I think that is correct.

8 Q. Okay. And Section 10, above your signature,
9 is a waiver of jury trial provision much like what we
10 read before. Do you see that?

11 A. I do.

12 Q. And pursuant to that provision, to the extent
13 permitted by law, you waived your right to a jury trial,
14 correct?

15 A. Permitted by law, yes, sir.

16 Q. All right. And that's in bold, is it not?

17 A. It is.

18 Q. Okay. And at the time this document was
19 executed, did you and your brother have authority to
20 sign on behalf of The Brothers?

21 A. We did.

22 Q. At the time you executed this document, did
23 you have any claims or defenses or offsets against the
24 bank?

25 A. Not that I can recall.

1 Q. And you certainly have not asserted any
2 claims that relate back to that time period, have you?

3 A. Not at this time.

4 Q. Okay. And in August of 2007, the
5 relationship between the lender and the borrower
6 remained polite, professional, and cordial?

7 A. I would characterize it as that, yes.

8 Q. Okay. It was a good relationship?

9 A. Yes.

10 Q. Okay.

11 (Exhibit No. 14 was marked.)

12 BY MR. KNOWLTON:

13 Q. Mr. Marko, I'm going to hand you what has
14 been marked as Exhibit 14 to your deposition. It's a
15 modification agreement dated August 26, 2008 between The
16 Brothers of South Carolina and the bank. Do you see
17 that?

18 A. I do.

19 Q. Okay. And on page 3, signing on behalf of
20 The Brothers is your brother Evan and you, correct?

21 A. Correct. That's copies of our signatures.

22 Q. Okay. And you recognize your signature,
23 right?

24 A. I do.

25 Q. And you recognize your brother's signature,

1 right?

2 A. I do.

3 Q. And y'all are authorized to sign on behalf of
4 The Brothers --

5 A. We were.

6 Q. -- at the time you executed this document,
7 right?

8 A. Yes, we were.

9 Q. And looking at Section 10 above, you see
10 that -- the waiver of jury trial?

11 A. I do.

12 Q. And again, you agreed, to the extent
13 permitted by law, that the borrower waived any right to
14 a trial by jury in this action -- in any action related
15 to this agreement, correct?

16 A. Correct.

17 Q. Okay. And at the time you executed this
18 document, it was binding and enforceable, correct?

19 MR. STEPP: Object to the form.

20 MR. HANNA: Same here.

21 A. As a layperson, I just have an opinion. I
22 don't know what my counsel might have as their opinion
23 on this -- on the matter.

24 BY MR. KNOWLTON:

25 Q. What is your layperson's opinion?

1 Q. All right.

2 A. As soon as you put it in front of my face, I
3 couldn't tell.

4 Q. Okay. It's dated January 16, 2008. Do you
5 see that?

6 A. I do.

7 Q. Okay.

8 (Exhibit No. 21 was marked.)

9 BY MR. KNOWLTON:

10 Q. Mr. Marko, I'm handing you what's been marked
11 as Exhibit 21 to your deposition. It's a modification
12 agreement dated February 26, 2008 between GW Dorchester
13 and the bank. Do you see that?

14 A. I do.

15 Q. Okay. And it's signed by your mother as
16 manager on page 3. Do you see that?

17 A. I do.

18 Q. And that's her signature, correct?

19 A. Correct. A copy of.

20 Q. And she was authorized to sign on behalf of
21 GW Dorchester at the time?

22 A. Once again, I just don't know.

23 Q. Okay. And looking above that in Section 11,
24 do you see the waiver of jury trial?

25 A. I do.

1 Q. Okay. And that's in bold, correct?

2 A. Correct.

3 Q. And you don't have any reason to testify
4 today that this document was not enforceable at the time
5 it was executed?

6 A. It has not been conveyed to me personally by
7 my mother or anybody else.

8 Q. Okay. So as far as you know, it was
9 enforceable?

10 A. I -- I -- I don't want to speculate one way
11 or the other if -- I don't feel comfortable with that.

12 Q. How old were you at the time this document
13 was executed?

14 A. '08, I would be 27 years old.

15 Q. All right. And if you turn over to page 6,
16 the consent of guarantor and co-obligor, do you see your
17 mother signing as attorney-in-fact for your grandmother?

18 A. I do.

19 Q. And that's your mother's signature?

20 A. Copy of, yes.

21 Q. Okay. And if you turn to Attachment 2, which
22 is the second-to-the-last page, it appears that this
23 modification was extending the maturity date to June 15,
24 2009. Do you see that?

25 A. I do see that.

1 agreement by and between the bank and The Brothers. And
2 it's dated October 11, 2007. Do you see that?

3 A. Let me find the signature page.

4 Q. So page 13 is the signature page.

5 A. Okay.

6 Q. And then the loan agreement supplement is the
7 next page, which has the effective date of the
8 agreement. So this looks to be a loan agreement by and
9 between The Brothers and the bank, correct?

10 A. Correct.

11 Q. Okay. And you signed on behalf of The
12 Brothers as its manager. Do you see that?

13 A. Correct.

14 Q. Okay. And your brother Evan also signed as
15 manager. Do you see that?

16 A. Correct.

17 Q. And those are y'all's signatures?

18 A. Appears to be copies of.

19 Q. Okay. And you recognize those?

20 A. Yes.

21 Q. All right. And y'all were authorized to sign
22 on behalf of The Brothers at this time?

23 A. Yes.

24 Q. Okay. You were also guarantors of this loan?

25 A. Yes.

1 supplemental counsel and --

2 A. I would have supplemental counsel.

3 Q. Okay. You might have had lawyers in addition
4 to Tuggle Duggins?

5 A. I could have possibly.

6 Q. Okay. You just don't remember?

7 A. I just don't remember.

8 Q. Okay. But there were lawyers in addition to
9 Tuggle Duggins, were there not?

10 A. I would think in 2007, but I just can't say
11 for sure.

12 Q. Okay. Who would they have been, just
13 speculating?

14 A. Maybe -- I can't really think, on bank
15 documents, who else it might have been.

16 Q. Well, independent of bank documents, who were
17 you using as law -- as legal counsel?

18 A. '7, I'm thinking this must have been Tuggle
19 Duggins.

20 Q. Okay. And on page 11, turn your attention to
21 page 11, Section 10.6. It's entitled "Jury Venue and
22 Jurisdiction." Do you see that?

23 A. I do.

24 Q. And in the middle of that page, in bold, it
25 says, "The borrower, to the extent permitted by law,

1 waives any right to a trial by jury in any action
2 arising from or related to this loan agreement and any
3 of the other loan documents."

4 Do you see that?

5 A. I do.

6 Q. Did I read that accurately?

7 A. Yes, you did.

8 Q. Okay. And so at the time of this document,
9 the borrower had waived its right to jury trial. Do you
10 agree?

11 MR. STEPP: Object to the form.

12 A. To the extent permitted by law, yes.

13 BY MR. KNOWLTON:

14 Q. Okay. And at the time you signed this
15 document, was it valid and enforceable according to its
16 terms, correct?

17 MR. STEPP: Object to the form.

18 A. As a layperson, I can't answer that.

19 BY MR. KNOWLTON:

20 Q. Well, you signed the document -- you intended
21 to be bound by its terms when you signed it, did you
22 not?

23 A. I intended to as long as everything else was
24 met by the lender.

25 Q. Okay. And --

1 Q. Mr. Marko I'm going to hand you what's been
2 marked as Exhibit Number 23 to your deposition. It's a
3 commercial promissory note dated October 11, 2007. Do
4 you see that?

5 A. I do.

6 Q. And this is the note, the promissory note
7 that goes with the loan agreement we were just talking
8 about, correct?

9 A. It appears to be, yes.

10 Q. Okay. And this is the note whereby The
11 Brothers borrowed \$4.9 million from the bank, correct?

12 A. Correct.

13 Q. Okay. To purchase -- to refinance and
14 improve the Florence County property?

15 A. Correct.

16 Q. Okay. And on page 6, it looks like you've
17 signed as manager and Evan has signed as manager of The
18 Brothers. Do you see that?

19 A. I do.

20 Q. And that's your signature, correct?

21 A. It is a copy of.

22 Q. Okay. And you recognize your brother's
23 signature below yours?

24 A. I do.

25 Q. Okay. And you both were authorized to sign

1 documents on behalf of the borrower?

2 A. We were.

3 Q. Okay. And it looks like Mark Sharpe is a
4 witness here. Do you see that?

5 A. Yes.

6 Q. Along with his associate or assistant,
7 Elizabeth Dasburg?

8 A. Yes.

9 Q. So does that lead you to believe y'all signed
10 these documents in Mr. Sharpe's offices?

11 A. Once again, I would have to infer that we
12 did, but I do not know for sure.

13 Q. And I assume the questions would be the same,
14 these documents were probably executed on the same day,
15 as you recall? They're certainly dated the same day.

16 A. I would assume if they're dated that way, but
17 sometimes documents were given later, like as far as,
18 you know, notes and loan agreements and guaranties.
19 So . . .

20 Q. Right. But --

21 A. If it's dated the same, I don't, sitting here
22 today, have knowledge that it was signed on the same
23 day, but I would assume so.

24 Q. As far as you recall, it was?

25 A. Correct.

1 Q. Right. And I assume your answer is the same,
2 you had counsel available to you, did you not?

3 A. Yes.

4 Q. At Tuggle Duggins at least?

5 A. Yes.

6 Q. If not some other law firm in addition to
7 them?

8 A. (Witness nods head.)

9 Q. Is that a yes?

10 A. Yes.

11 Q. Okay. At the time you executed this
12 document, did you agree to be bound by its terms?

13 A. At the time, it was my intention.

14 Q. Okay. To be bound by its terms?

15 A. If everything was met by both parties, yes.

16 Q. As far as you know at the time, there were no
17 claims or defenses or offsets against the bank, were
18 there?

19 A. Not at this time.

20 Q. Okay. And if you look at Section 5.6 on page
21 5. Do you see that?

22 A. I do.

23 Q. It's a jury and jurisdiction paragraph?

24 A. Right.

25 Q. And the last sentence, in bold, is it not?

1 A. Yes.

2 Q. And it states, "Borrower, to the extent
3 permitted by law, waives any right to a trial by jury in
4 any action arising from or related to this note."

5 Do you see that?

6 A. I do.

7 Q. Okay. And you agreed at the time you
8 executed this document to waive your right to a jury
9 trial, correct?

10 A. I signed my name to this document where that
11 language is in there, but I don't think I fully
12 understood what I was signing away.

13 Q. Okay. And at the time you signed it -- it
14 certainly reads very clearly in English, does it not?

15 A. Yeah, it's English.

16 Q. Okay. And you had access to counsel,
17 correct?

18 A. I did.

19 Q. Okay. And you received money that's
20 documented by this note, correct? I say you. The
21 Brothers received the \$4.9 million?

22 A. I would have to assume so, yes.

23 Q. Okay. And you agreed, pursuant to this note,
24 to repay it according to the terms of this note,
25 correct?

1 A. By the terms of the note if both people
2 performed, yes.

3 Q. Correct. And as far as you knew at the time,
4 the bank performed on loaning you the money, correct?

5 A. Correct.

6 Q. Okay. And there was no claim at the time the
7 bank was not performing it's obligations under the
8 agreement, correct?

9 A. Correct.

10 Q. Okay.

11 (Exhibit No. 24 was marked.)

12 BY MR. KNOWLTON:

13 Q. Mr. Marko, I'm going to hand you what has
14 been marked as Exhibit Number 24 to your deposition.
15 It's the mortgage, assignment of rents, and security
16 agreement by The Brothers in favor of the bank, also
17 dated October 11, 2007. Do you see that?

18 A. I do.

19 Q. Okay. And this is the mortgage that secures
20 the \$4.9 million note, correct?

21 A. It appears that way, yes.

22 Q. Okay. And on page 14, both you and your
23 brother signed as managers of The Brothers of South
24 Carolina. Do you see that?

25 A. Yes.

1 Q. And you were authorized to sign as managers?

2 A. We were.

3 Q. Okay. Y'all were authorized to bind the
4 company?

5 A. We were.

6 Q. Okay. If you'll turn to page 11, Section
7 15.8, there's a paragraph entitled "Jury Venue and
8 Jurisdiction." Do you see that?

9 A. I do see it.

10 Q. And at the last sentence it says, "Mortgagor,
11 to the extent permitted by law, waives any right to a
12 trial by jury in any action arising from or related to
13 this mortgage."

14 Do you see that?

15 A. I see that.

16 Q. And that's in bold, is it not?

17 A. It is.

18 Q. Okay. And you signed this document intending
19 to be bound by its terms, correct?

20 A. I did.

21 Q. Okay. Do you know what the purpose of the
22 mortgage was?

23 A. To secure the promissory note?

24 Q. Correct. And if the note wasn't repaid, the
25 lender can typically foreclose on the note, correct?

1 BY MR. KNOWLTON:

2 Q. I'm asking you as a layperson.

3 A. Yeah, as a layperson, I think there's a lot
4 of nuance to that statement.

5 Q. Okay. You can't give me a clear answer on
6 that?

7 A. I don't believe I can.

8 Q. Okay. That's fair.

9 MR. KNOWLTON: All right. Let's take a
10 break.

11 (A brief break transpired.)

12 (Exhibit No. 25 was marked.)

13 BY MR. KNOWLTON:

14 Q. Mr. Marko, I'm going to hand you what's been
15 marked as Exhibit 25 to your deposition. It's entitled
16 "Unconditional Guaranty Agreement." And it's by and
17 between you and the bank. Do you see that?

18 A. Yes, sir.

19 Q. And it's dated October 11, 2007?

20 A. Yes, sir.

21 Q. All right. And that's your guaranty of the
22 loan, this \$4.9 million loan, is it not?

23 A. Let me go to the signature page. Yes, it
24 appears to be my guaranty.

25 Q. Okay. And that's your signature?

- 1 A. On page 9?
- 2 Q. Correct.
- 3 A. Yes, that is my signature.
- 4 Q. Okay. And Mark Sharpe is the witness on
- 5 that?
- 6 A. Correct.
- 7 Q. Okay. And that's also your signature on page
- 8 11?
- 9 A. It is.
- 10 Q. Again, you agreed to be bound by the terms of
- 11 this document when you signed it?
- 12 A. At the time.
- 13 Q. And at the time, you didn't know of any
- 14 claims or defenses you had against the bank, did you?
- 15 A. Not -- not as I sit here today.
- 16 Q. Okay. And you've not asserted any in this
- 17 litigation based on that time period, have you?
- 18 A. No, I have not.
- 19 Q. If you look at page 7, Section 9.10, there's
- 20 another jury trial waiver paragraph. Do you see that?
- 21 A. Yes.
- 22 Q. And it's in bold and that second sentence, it
- 23 says, "Guarantor, to the extent permitted by law, waives
- 24 any right to a trial by jury in any action arising from
- 25 or related to this guaranty agreement or any of the

1 obligations of customer."

2 Did I read that right?

3 A. Yes, you did.

4 Q. Okay. And so at the time you signed this,
5 you agreed to waive a right to jury trial, correct?

6 A. Once again, I signed the document with that
7 language in there. I just don't know if I fully grasped
8 the connotation.

9 Q. Okay. And you had access to counsel,
10 correct?

11 A. I did.

12 Q. Okay. You just don't know whether counsel
13 was involved with this loan closing or not?

14 A. Not with -- not with any type of guarantee.

15 Q. Okay. Not with any what?

16 A. Not with any -- I cannot guarantee that they
17 were involved.

18 Q. You don't recall one way or the other?

19 A. Correct.

20 Q. Now, we talked about the 2009 time frame, and
21 there were some loan modifications in that time frame.
22 Do you recall that?

23 A. With The Brothers?

24 Q. Well, with The Brothers, GW Dorchester, and
25 your mother's loans.

1 A. I did not.

2 Q. Okay. And you didn't go to him to ask him
3 what he meant by those threats, did you?

4 A. I did not.

5 Q. Okay. Do you know if your lawyer called him?

6 A. I do not recall.

7 Q. Do you know if your lawyer contacted counsel
8 for the bank?

9 A. I do not recall.

10 Q. Did you ask him to?

11 A. I don't recall.

12 Q. Okay.

13 MR. KNOWLTON: Take just five minutes.

14 (A brief break transpired.)

15 BY MR. KNOWLTON:

16 Q. I don't want to go back over questions I may
17 have asked because we got off a little bit.

18 A. Okay.

19 Q. But I want to look at page 3. You and your
20 brother signed as managers of The Brothers, correct?

21 A. Yes, sir.

22 Q. And those are your signatures there, right?

23 A. Yes, sir. Copies of them, yes.

24 Q. Okay. And you had authority to sign on
25 behalf of The Brothers, right?

1 A. Yes, sir.

2 Q. And at the time you signed this document, you
3 intended to be bound by its terms?

4 A. This is the one where I have a real
5 difficulty with being bound by its terms. I mean, this
6 is the very, very real concern of being bound by these
7 terms.

8 Q. All right. You signed this document without
9 intending to be bound by its terms?

10 A. These terms are -- I just don't -- I don't
11 know how to answer that question. I mean, I -- I never
12 wanted to be bound by these terms.

13 Q. I understand. And you were so upset by the
14 demands of the bank that resulted in this loan
15 modification that you went to counsel; and after
16 consulting counsel you still signed this document, did
17 you not?

18 A. I was forced to.

19 Q. Okay. You still signed the document after
20 you consulted with counsel, did you not?

21 A. I signed this document, yes.

22 Q. And you had the opportunity and did consult
23 with counsel about it, did you not?

24 A. I counsel -- yes, I -- yes, I went to
25 counsel.

1 Q. Okay. And you still signed the document,
2 correct?

3 A. I did sign the document.

4 Q. Okay. And that's your legal signature,
5 correct?

6 A. That is my legal signature.

7 Q. If you look above that in Section 10, there's
8 a waiver of jury trial. Do you see that?

9 A. I do.

10 Q. And in bold type, correct?

11 A. Yes.

12 Q. You waive your right to a jury trial,
13 correct?

14 MR. STEPP: Object to the form.

15 A. That's what the language says.

16 BY MR. KNOWLTON:

17 Q. That's what it says. Okay.

18 And you read the English language, correct?

19 A. I do.

20 Q. And you read this document before you signed
21 it, correct?

22 A. I did.

23 Q. Okay. If you turn to page 4, there's a
24 consent of guarantors?

25 A. Yeah.

1 A. I don't recall --

2 Q. Okay.

3 A. -- with -- what document or loan, I don't
4 know.

5 Q. Okay. I'm going to put an exhibit in front
6 of you --

7 A. Okay.

8 Q. -- that may speak to that. It's Exhibit
9 Number 32 to your deposition.

10 A. Okay. So we're skipping over 31?

11 Q. Right. We're skipping over 31 and going to
12 32. We've already done 31.

13 This Exhibit 32 is a change in terms
14 agreement dated January 31, 2010. Do you see that?

15 A. I do.

16 Q. And it's executed by you and your brother as
17 managers of The Brothers of South Carolina, correct?

18 A. Correct.

19 Q. That's your signature on page 3?

20 A. That is.

21 Q. And that's your brother's signature as well?

22 A. It appears to be.

23 Q. Okay. You recognize his signature, don't
24 you?

25 A. I do.

1 Q. Okay. And y'all were authorized to sign on
2 behalf of The Brothers of South Carolina?

3 A. We were.

4 Q. And did you intend to be bound by the terms
5 of this document when you executed it?

6 A. Once again, my normal response to that
7 question is -- is I believe this just extended the term
8 another nine months with the current cross, I believe.

9 Is that right or not? I don't know.

10 Q. Well, but we'll get to that.

11 A. Okay.

12 Q. But it does extend the maturity date if I
13 hadn't -- you were getting ahead of me, but that's okay.

14 At the top of the page, it says description
15 of change of terms. Do you see that?

16 A. I do.

17 Q. And it extends the maturity date to September
18 15, 2010. Do you see that?

19 A. I do.

20 Q. Okay. And at the time you signed this
21 document, you were, again, upset with the bank over
22 this -- the prior loan modification in January of 2009,
23 right?

24 A. Yes.

25 Q. Okay. And did you believe at the time that

1 you had any claims against the bank?

2 A. Oh, I'm sure.

3 Q. You did?

4 A. Yes, absolutely.

5 Q. Okay. And you signed this document anyway?

6 A. I -- at this point, I still have no option.

7 Q. Okay. And when you signed this document in
8 front of you, Exhibit 32, you believe you had claims
9 against the bank, did you not?

10 A. I would say so, yes.

11 Q. Okay. You thought you did at the time?

12 A. Yes. After those threats, yes.

13 Q. Okay. And you had counsel for the bank
14 represent -- or counsel representing you in connection
15 with this one as well?

16 A. I did.

17 Q. Okay. Tuggle Duggins?

18 A. I would say on this, yes.

19 Q. Okay. And did you have any other counsel in
20 South Carolina involved?

21 A. Not with this document, I don't believe.

22 Q. Okay. Did they look at this document before
23 you signed it?

24 A. I don't recall.

25 Q. All right. And on page 2 of this document,

1 you'll see about two-thirds of the way down there's a
2 jury waiver paragraph which states, "Lender and borrower
3 hereby waive the right to any jury trial in any action,
4 proceeding, or counterclaim brought by either lender or
5 borrower against the other."

6 Do you see that?

7 A. I do see that.

8 Q. And that's in bold, is it not?

9 A. Yes.

10 Q. And that's part of the agreement you signed,
11 correct?

12 A. I signed this document, yes.

13 Q. Okay. After consulting with counsel?

14 A. I would assume -- I don't know if I consulted
15 with counsel.

16 Q. But you had the opportunity to?

17 A. I did have the opportunity.

18 Q. Do you recall -- you testified that you had
19 consulted with them with regard to the January 2009 loan
20 modification. Can you specifically recall whether you
21 talked to counsel about any concerns you may have had
22 with regard to Exhibit 32?

23 MR. HANNA: Objection. You're asking him for
24 a privileged communication when you talk about the
25 subject matter of the conversation.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 PNC Bank, N.A., successor to RBC
Bank (USA),

4

Plaintiff(s),

5

vs.

C/A No: 2013-CP-10-2624

6

Liberty Cottages, LLC; GW
Dorchester, LLC; USS Clarksville,
LLC; Liberty Cottages Land, LLC;
8 ROA, LLC; Royal Beach Properties,
LLC; The Brothers of SC, LLC;
9 Deborah Rice-Marko a/k/a Deborah G.
Rice-Marko; Evan R. Marko and John
10 E. Marko, Jr.,

11

Defendant(s).

12

13

D E P O S I T I O N

14

WITNESS: John E. Marko, Jr., Volume II

15

DATE: Friday, October 31, 2014

16

TIME: 9:33 a.m.

17

LOCATION: Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, Suite 600
18 Charleston, South Carolina

19

TAKEN BY: Attorneys for the Plaintiff

20

REPORTED BY: HEATHER M. CURLIN
Registered Professional Reporter

21

- - - - -

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15
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21
22 ALSO PRESENT: Deborah Rice-Marko
Evan Marko
23

24 (INDEX AT REAR OF TRANSCRIPT)
25

1 Q. Okay. And if you'll look at page 16 --

2 A. Okay.

3 Q. -- there are signatures of your mother for
4 the borrowers, for herself individually. Do you see her
5 signature there?

6 A. I see a copy of it, yes.

7 Q. Okay. And that's her signature, correct?

8 A. It is.

9 Q. All right. And she also signs as manager of
10 GW Dorchester. Do you see that?

11 A. She does.

12 Q. Okay. And she signs as manager for Liberty
13 Cottages, correct?

14 A. She does.

15 Q. And she also signs for ROA, LLC, correct?

16 A. She does.

17 Q. And she signs for Royal Beach Properties,
18 does she not?

19 A. She does.

20 Q. And your brother signs on behalf of The
21 Brothers of South Carolina, correct?

22 A. No.

23 Q. I'm sorry, that is your signature?

24 A. Correct.

25 Q. Okay. And you recognize your signature,

1 right?

2 A. Correct.

3 Q. And at this time period, were you and Evan
4 both managers of The Brothers of South Carolina?

5 A. I can't recall if we were both managers or
6 not.

7 Q. Okay. But at this time, at least we know
8 that you were the managing member of The Brothers of SC?

9 A. I don't know if I was the managing member. I
10 know that I was a member.

11 Q. A member. Okay.

12 Were you authorized to sign this document on
13 behalf of The Brothers of South Carolina?

14 A. Yes.

15 Q. And you intended to be bound by this document
16 when you signed it, did you not?

17 A. I had some concerns about this document.

18 Q. You didn't want to sign the document, but you
19 did, correct?

20 A. I absolutely did not want to sign this
21 document.

22 Q. But you did sign it, correct?

23 A. I put my signature to it.

24 Q. Okay. And you had the advice of counsel?

25 A. I did.

1 that?

2 A. I do.

3 Q. And this is where it sets out the forbearance
4 period, the period of time that this agreement covers.
5 Do you understand that concept?

6 A. I do.

7 Q. Okay. And I think the parties had negotiated
8 it down to a two-year term, or what they call a
9 forbearance period. Do you see that?

10 A. I see where it says the forbearance period is
11 ended July 15, 2013. Yes.

12 Q. Okay. So is it fair to say that all the
13 loans would mature -- were renewed and would mature on
14 July 15, 2013?

15 A. That's what that section reads.

16 Q. All right. If you'll turn to page 6, there's
17 a section there -- we've seen this in a number of
18 documents already, have we not, Section 2.5?

19 A. Waiver of jury trial?

20 Q. That's correct.

21 A. I've seen it in some previous documents, yes.

22 Q. Okay. And this is entitled "Waiver of Trial
23 By Jury." Do you see that?

24 A. It's a lot of language. I would have to -- I
25 mean . . .

1 Q. Well, I'm just looking at the title.

2 A. The title, waiver of jury trial. Yes.

3 Q. Okay. And you understand that that paragraph
4 purports to waive your right to a jury trial?

5 A. That's what it purports to do, yes.

6 Q. And it's in all caps, correct?

7 A. It is.

8 Q. You had the opportunity to read this before
9 you signed it?

10 A. I don't recall reading this -- that specific
11 section, no.

12 Q. But you had the opportunity to read it, did
13 you not?

14 A. I probably had the opportunity.

15 Q. Okay. And your counsel had the opportunity
16 to read that before you signed this document, did you
17 not?

18 A. I don't know if they got to see this exact
19 language.

20 Q. Okay. Do you think this language changed
21 from draft to draft?

22 A. I have no way of knowing.

23 Q. Okay. But at some point if this was in the
24 document, they had a chance to see it?

25 A. If it was in the final document and as it was

1 Q. Okay. Do you recall signing this document?

2 A. I do not recall.

3 Q. Do you recall this is one of the documents
4 you signed in connection with the forbearance agreement?

5 A. I don't recall signing this specific
6 document.

7 Q. Okay. And if you look on the
8 second-to-the-last page, there's a signature block for
9 the guarantors; and you're the third one there, Johnny
10 Marko, Jr. individually, do you see that?

11 A. I see a copy of my signature.

12 Q. Okay. And that is your signature, correct?

13 A. Correct.

14 Q. Okay. And did you provide this document to
15 your counsel before you signed it?

16 MR. HANNA: Objection to the form.

17 MR. KNOWLTON: What's the objection to that
18 form?

19 MR. HANNA: He said he didn't recognize it.
20 How is he going to furnish it to his attorney?

21 BY MR. KNOWLTON:

22 Q. Well, can you answer the question?

23 A. I don't recall seeing this document.

24 Q. Okay. Do you think you provided one document
25 to your counsel, or would you have provided all the

1 documents that you had to sign to your counsel before
2 you signed them?

3 A. I don't know what the bank's counsel and my
4 counsel passed back and forth.

5 Q. Okay. But you understand that your counsel
6 and the bank's counsel were negotiating these documents?

7 A. We've discussed this before. Negotiating is
8 a -- is a term that I disagree with, but I know that
9 there was talk between them, yes.

10 Q. So we'll call it discussion. We don't have
11 to call it negotiation.

12 A. Thank you.

13 Q. Okay. And that word -- phrase is okay; they
14 were discussing these documents?

15 A. Yes.

16 Q. Okay. If you'll turn to the third page,
17 Mr. Marko, about the -- roughly the very middle of that
18 page is a sentence that reads, "To the extent permitted
19 by law, guarantor waives any right to a jury trial -- to
20 a trial by jury in any action arising from or related to
21 this guaranty or any of the liabilities."

22 Do you see that?

23 A. Third page, midway down.

24 Q. Almost the half -- middle half of the page.
25 (Indicating.) You're a page off. That's why. All

1 right. So I've got my finger by that sentence on the
2 third page.

3 A. It's the fourth page, but . . .

4 Q. Is it the fourth? Oh, I'm sorry; it is the
5 fourth page. Thank you.

6 So in the middle of the fourth page, there's
7 a sentence, I'll reread it. "To the extent permitted by
8 law, guarantor waives any right to a trial by jury in
9 any action arising from or related to this guaranty or
10 any of the liabilities."

11 Do you see that?

12 A. I do.

13 Q. Okay. And you understand that to be a jury
14 trial waiver?

15 MR. HANNA: Objection.

16 A. As a layperson, I don't know what it legally
17 does, but to the extent permitted by law.

18 BY MR. KNOWLTON:

19 Q. Okay. And this is one of the those rights
20 you believe you were deprived of by the bank, correct?

21 A. Correct.

22 Q. Okay. And the next paragraph, there's a
23 paragraph that -- it states, "At any time or times and
24 without notice to guarantor or any other person, bank
25 may sell one or more participations in any of the

1 Q. Okay. And on the last page, that's your
2 signature on behalf of The Brothers of SC, correct?

3 A. Yes, it appears to be a copy of.

4 Q. Okay. But you don't dispute that that's your
5 signature?

6 A. I do not.

7 Q. And this is dated as of the same date of the
8 forbearance agreement. Do you know whether your counsel
9 had the opportunity to review this document before you
10 signed it?

11 A. I do not.

12 Q. Okay. But you would have provided it to him
13 if you would have been given a copy before you signed it,
14 would you not?

15 A. I would have.

16 MR. HANNA: Objection.

17 BY MR. KNOWLTON:

18 Q. Okay. And if you look on page 2 under
19 "Payment Terms," it talks about a maturity date of July
20 15, 2013. Do you see that?

21 A. I do.

22 Q. And that's that two years that mirrors the
23 forbearance period in the forbearance agreement,
24 correct?

25 A. Correct.

1 Q. Okay. So it looks like these notes are being
2 renewed for two years to reflect the agreement reached
3 in the forbearance agreement, right?

4 MR. HANNA: Objection.

5 A. As a layperson, that's what I assume it to
6 do.

7 BY MR. KNOWLTON:

8 Q. And I'm not asking you as a lawyer. I
9 appreciate that clarification.

10 And if you look at the supporting documents,
11 it talks about this note is secured by the security
12 documents. It goes on to describe all of the mortgages
13 for the various loans. Do you see that?

14 A. I do.

15 Q. Okay. And that was the
16 cross-collateralization that you objected to, correct?

17 A. Correct.

18 Q. Okay. If you'll turn to the
19 second-to-the-last page of this exhibit, Mr. Marko, the
20 first full sentence of this document reads, "Borrower,
21 to the extent permitted by law, waives any right to a
22 jury -- to a trial by jury in any action or proceeding
23 arising from or related to this note."

24 Do you see that?

25 A. I do.

1 Q. Did I read that accurately?

2 A. "Borrower, to the extent permitted by law,
3 waives any right to a trial by jury in any action or
4 proceeding arising from or related to this note."

5 Q. Okay. And you can read that pretty clearly,
6 can't you?

7 A. I can.

8 Q. And you had the opportunity to consult with
9 counsel before you signed this document?

10 A. I don't know if I did on this document or
11 not.

12 Q. But you certainly had the opportunity to, if
13 you had been provided a copy of this document, correct?

14 MR. HANNA: Objection.

15 A. If I was provided it.

16 BY MR. KNOWLTON:

17 Q. Okay. Do you think you had a copy of this
18 document before you signed it?

19 A. I don't recall.

20 Q. Okay. And in the next paragraph, if you'll
21 look at that last sentence, "Bank may disclose financial
22 and other information concerning borrower and any other
23 person obligated on the loan to any participant or any
24 prospective participant and to any assignee or
25 prospective assignee."

1 parties that you're aware of by the bank?

2 A. In two thousand -- July 15, 2011, I don't
3 believe so.

4 Q. Okay. Thank you.

5 (Exhibit No. 38 was marked.)

6 BY MR. KNOWLTON:

7 Q. Mr. Marko, I'm going to hand you what's been
8 marked as Exhibit 38 to your deposition. This is a
9 document entitled "Modification of Mortgage By and From
10 The Brothers of SC, Successor By Merger to The Brothers
11 of NC, LLC."

12 Do you see that?

13 A. I do.

14 Q. It's dated July 15, 2011, correct?

15 A. It is.

16 Q. That's the same date as all these other
17 forbearance documents and the note we just looked at,
18 correct?

19 A. Correct.

20 Q. Okay. And if you look at page -- it's the
21 fourth page from the back, the signature page. I guess
22 it would be page 6 of the document.

23 A. (Indicating.)

24 Q. Correct. Thank you. The witness is pointing
25 to page 6.

1 This doesn't have a number 6 at the bottom,
2 but it comes after page 5, correct?

3 A. Correct.

4 Q. Okay. And that's your signature on behalf of
5 the mortgagor, The Brothers of SC, correct?

6 A. Correct.

7 Q. Okay. And you had --

8 A. A copy of.

9 Q. I'm sorry?

10 A. A copy of, yes.

11 Q. A copy of. Okay.

12 And you had the opportunity to consult with
13 counsel before you signed this document?

14 A. Yes.

15 Q. Okay. And you had authority to bind The
16 Brothers of SC at the time you signed this document?

17 A. To the best of my knowledge.

18 Q. Okay. And if you look on page 4, there's a
19 Section 9 called "General Terms." Do you see that?

20 A. I do.

21 Q. All right. In the middle of that paragraph,
22 and you may have to find this -- I may have to help you
23 find this -- there's a sentence that reads, "Mortgagor,
24 to the extent permitted by law, waives any right to a
25 trial by jury in any action arising from or related to

1 each modified mortgage."

2 Do you see that?

3 A. Can you just point it out to me --

4 Q. Certainly.

5 A. -- in the interest of time? It's a big,
6 lengthy paragraph.

7 Q. (Indicating.)

8 A. Yes. Now I found it.

9 Q. Okay. And that's the jury trial waiver
10 provision we've been discussing today, is it not?

11 MR. HANNA: Object to the form.

12 A. It's a jury trial -- references a jury trial.

13 BY MR. KNOWLTON:

14 Q. The waiver of a jury trial, correct?

15 A. Yeah, as permitted by law.

16 Q. Okay. And you had the opportunity to discuss
17 this with counsel before you executed the document, did
18 you not?

19 A. I would have had the opportunity.

20 Q. And if you turn back to page 3, Section 3
21 refers to the maturity date being extended to July 15,
22 2013. Do you see that?

23 A. I do.

24 Q. And that's consistent with the note
25 modification we just looked at with the note that goes

1 GW Dorchester from your grandmother?

2 A. Correct.

3 Q. Okay. And I assume your testimony would be
4 the same, you don't know whether your mother would have
5 been authorized to sign at the time on behalf of GW
6 Dorchester?

7 A. Correct.

8 Q. Okay.

9 (Exhibit No. 41 was marked.)

10 BY MR. KNOWLTON:

11 Q. We're going to talk about the other Brothers'
12 loan now, Mr. Marko. I'm going to hand you what's been
13 marked as Exhibit 41 to your deposition. It's an
14 amended and restated promissory note dated July 15, 2011
15 in the amount of \$4.9 million. Do you see that?

16 A. I do.

17 Q. If you'll turn to the signature page -- or
18 turn to the last page, if you will, and that's your
19 signature as member of The Brothers of South Carolina --
20 Brothers of SC, correct?

21 A. It's a copy of, yes.

22 Q. Okay. Were you authorized to sign this
23 document on behalf of The Brothers of SC at this time?

24 A. To the best of my knowledge.

25 Q. Okay. And you intended to be bound by the

1 terms of this document, did you not?

2 A. I can't agree to that.

3 Q. You signed a document you didn't intend to be
4 bound by?

5 A. That I felt like I was forced to sign.

6 Q. And you communicated that to counsel before
7 you signed it?

8 MR. STEPP: Object to the form.

9 MR. HANNA: Object to the form.

10 A. I prefer not to say what I said to my
11 counsel.

12 BY MR. KNOWLTON:

13 Q. Did you have the opportunity to confer with
14 counsel before you signed this document?

15 A. I did.

16 Q. Okay. And you would have given your counsel
17 any of the documents that you signed in connection with
18 the forbearance agreement for their input, would you
19 not?

20 A. If it was in my possession.

21 Q. Okay. And if you turn to the
22 second-to-the-last page, at the top of that page is a
23 sentence that reads, "Borrower, to the extent permitted
24 by law, waives any right to a trial by jury in any
25 action or proceeding arising from or related to this

1 note."

2 Do you see that?

3 A. I do see that language.

4 Q. And I read that accurately, did I not?

5 A. Yes.

6 Q. And you can read that sentence yourself,
7 can't you?

8 A. Yes.

9 Q. Do you recall reading this before you signed
10 it?

11 A. I do not.

12 Q. Okay. And like the last amended note that we
13 just -- the last two notes we've seen, in the next
14 paragraph, last sentence, it states, "Bank may disclose
15 financial and other information concerning borrower and
16 any other person obligated on the loan to any
17 participant or any prospective participant and to any
18 assignee or prospective assignee."

19 Do you see that?

20 A. I see that language, but I'd like to also put
21 on the record that I feel like a lot of this language,
22 when things were negotiated freely without leverage, as
23 we discussed earlier, would not have made it into this
24 document.

25 Q. Well, I'll move to strike because that

1 A. I do.

2 Q. And you signed on behalf of The Brothers of
3 SC, do you not?

4 A. I do.

5 Q. And that's your signature?

6 A. A copy of.

7 Q. And you were authorized to sign on behalf of
8 The Brothers of SC?

9 A. To the best of my knowledge.

10 Q. If you'll turn to -- well, bear with me a
11 second.

12 If you'll look at Paragraph 9 on page 4,
13 about the middle of that paragraph, it states,
14 "Mortgagor, to the extent permitted by law, waives any
15 right to a trial by jury in any action arising from or
16 related to each modified mortgage."

17 Do you see that?

18 A. Let me try to find it. Maybe if I look at
19 your copy.

20 Q. (Indicating.)

21 A. Yes. Okay. I see it now. Yes.

22 Q. Okay. And that's similar to the language
23 we've seen in the other mortgages and notes, correct?

24 A. Correct.

25 Q. Okay. And you don't recall this document, do

1 you?

2 A. Not this specific document.

3 Q. Okay. But you did sign it?

4 A. To the best of my knowledge.

5 Q. That is your signature, correct?

6 A. Correct.

7 Q. On page 6, correct?

8 A. Correct.

9 Q. And you had the opportunity to consult with
10 counsel before you signed this document?

11 A. If my counsel had this document, yes.

12 Q. All right.

13 MR. KNOWLTON: Y'all want to take a short
14 break?

15 (A brief break transpired.)

16 BY MR. KNOWLTON:

17 Q. Mr. Marko, we were talking about, earlier
18 today, about White Lion. Do you recall that testimony?

19 A. I do.

20 Q. And you said that it was formed for the
21 purchase of investing?

22 A. The purpose of investing, yes.

23 Q. Right. And you describe one asset, which was
24 the third mortgage on the -- is it 32 Battery --

25 A. Yes.

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
3 PNC BANK, N.A., successor)
to RBC BANK (USA),)
4)
Plaintiffs,)
5) Civil Action
No.)
6 vs.)
) 2013-CP-10-2624
7 LIBERTY COTTAGES, LLC; GW)
DORCHESTER, LLC; USS)
8 CLARKSVILLE, LLC; LIBERTY)
COTTAGES LAND, LLC; ROA,)
9 LLC; ROYAL BEACH)
PROPERTIES, LLC; THE)
10 BROTHERS OF SC, LLC;)
DEBORAH RICE-MARKO a/k/a)
11 DEBORAH G. RICE-MARKO;)
EVAN R. MARKO and JOHN E.)
12 MARKO, JR.,)
))
13 Defendants.)

14 D E P O S I T I O N

15 WITNESS: STEPHEN DRAPER
16 DATE: Wednesday, February 11, 2015
17 TIME: 10:05 a.m.
18 LOCATION: Nelson, Mullins, Riley & Scarborough
4140 Parklake Avenue
19 Raleigh, North Carolina
20 TAKEN BY: Attorneys for the Defendants
21 REPORTED BY: Cynthia S. Boyd, RPR
Court Reporter
22

23 -----
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23 EVAN R. MARKO

JOHN E. MARKO, JR.

24

25

(INDEX AT REAR OF TRANSCRIPT)

1 (The deponent does not waive the right to
2 read and sign the deposition transcript.)

3 - - - - -

4 (Deposition Exhibit Nos. 1 through 28 were
5 marked for identification purposes.)

6 EXAMINATION

7 BY MR. STEPP:

8 Q. We met just a few moments ago but my
9 name's Bobby Stepp and I represent Debbie
10 Rice-Marko and some of her entities in litigation
11 pending in South Carolina between PNC Bank, as
12 successor to RBC, and Debbie and some of her
13 entities. Her children, her sons, John, Jr. and
14 Evan, are here and they're also defendants in the
15 case. They're represented by Bill Hanna, who is
16 the person on the telephone.

17 I'm here today to ask you some questions
18 about this. If I ask you a question you don't
19 understand, if you would let me know that, I will
20 try to rephrase it or restate it and put it in a
21 way that you do understand.

22 A. Okay.

23 Q. If you have any questions about the
24 questions or about the deposition, the rules
25 require that you direct those questions to me and

1 not to your counsel, Mr. McGee. There
2 are circumstances under which you're entitled to
3 consult with Mr. McGee and there are circumstances
4 under which I would be entitled to ask you about
5 that consultation, but we'll cross that bridge if
6 we get there. If you want to take a break, let me
7 know.

8 A. Okay.

9 Q. Give me your full name for the record,
10 please.

11 A. Stephen, with a p-h, Brantley Draper.

12 Q. And what is your current residence
13 address, please?

14 A. [REDACTED]
15 [REDACTED]

16 Q. And your current occupation?

17 A. Retired.

18 Q. I saw on LinkedIn that you have some -- do
19 you have some position with the United Way?

20 A. I did when I was with PNC and RBC.

21 Q. Were you ever a full-time employee of the
22 United Way?

23 A. No.

24 Q. When you retired, did you retire from PNC
25 Bank?

1 A. Yes, I did.

2 Q. Would you just give me, please, your
3 employment history with RBC and then with PNC, the
4 major positions that you held, when you started and
5 that sort of thing?

6 A. Okay. RBC, I was with the bank that RBC
7 acquired.

8 Q. I'm sorry to interrupt but what bank was
9 that?

10 A. You want me to go back? Okay. I started
11 with People's Bank in March of 1982.

12 Q. Okay.

13 A. People's Bank and Planters Bank merged in
14 1991.

15 Q. Was that in North Carolina?

16 A. In North Carolina. Planters and People's
17 were both headquartered in Rocky Mount and had been
18 at each other's throats for 60 years and they
19 merged and became Centura Bank. From '91, we
20 operated as Centura Bank and grew from two and a
21 half billion to, I guess, 12 and a half billion.
22 In June of 2001, RBC closed, acquiring Centura
23 Bank. At that point with RBC Bank, I was a senior
24 credit officer dealing with commercial real estate
25 transactions.

1 Q. And in your banking career with People's,
2 Planters and Centura, up until that point had
3 commercial lending been your area of expertise?

4 A. Commercial real estate.

5 Q. What title did you have when Centura was
6 acquired by RBC?

7 A. Senior vice president.

8 Q. And were you an originator or a risk
9 manager or what sort of position did you have?

10 A. At the time of the acquisition, I was
11 actually -- there were three individuals that
12 reported to the president that basically handled
13 strategic functions. I handled commercial real
14 estate. There was a gentleman that handled
15 commercial and then one that handled retail from a
16 strategic standpoint.

17 Q. So you were just below -- your position
18 was just below the president of the bank at that
19 point?

20 A. Yes.

21 Q. You reported directly?

22 A. Reported directly to the -- I think he was
23 president. He was either president or executive
24 VP. It's been a long time.

25 Q. I understand. That's fine.

1 A. I think he was president of the bank.

2 Q. Okay. Then after -- during the time it
3 was RBC Bank in 2001, bring me up to about 2006.
4 How did your duties and responsibilities change?

5 A. I wouldn't say that my duties changed
6 other than I was only in that strategic role for
7 about a year. Prior to that at Centura Bank, I was
8 a credit risk manager in an approval capacity for
9 commercial real estate. And so at RBC Bank, I
10 basically moved back into that role. They didn't
11 need strategic folks. RBC was driving the strategy
12 then. And so I was a senior credit officer,
13 commercial real estate credit approver and reported
14 to a vice president located here in Raleigh.

15 Q. Tell me what a credit risk manager does.
16 What sorts of issues does that position encounter?

17 A. Primary responsibility is approving
18 commercial real estate loans that are presented by
19 the relationship manager.

20 Q. Okay.

21 A. Additionally I also tracked our commercial
22 real estate portfolio related to geographic
23 concentrations, property type concentrations,
24 things like that.

25 Q. You say you had responsibilities for

1 approval of loans originated by relationship
2 managers; is that right?

3 A. Yes.

4 Q. At what level? Was that true for all
5 commercial real estate loans or was there a certain
6 size of a loan that required your approval?

7 A. The way we had it structured, we had
8 specific relationship managers that handled
9 commercial real estate. If a non-commercial real
10 estate relationship manager ran across a real
11 estate opportunity, they would refer it to a
12 relationship manager. So I had a distinct group of
13 folks that would submit packages to me and there
14 were probably -- in 2001, I was the credit approver
15 for the southeastern United States. Most of our
16 bank was concentrated in North Carolina but we
17 eventually acquired a bank down in Georgia, a bank
18 in Florida, but primarily North Carolina.

19 Q. You talked about a distinct group of
20 relationship managers who reported to you. How
21 many people was that?

22 A. They didn't report to me.

23 Q. I'm sorry.

24 A. They reported on the production side to
25 maybe a market executive or actually -- and you'll

1 have to take into consideration that one of the
2 things that banks are famous for is changing the
3 organization almost on an annual basis. But
4 sometimes this group of folks reported directly to
5 a commercial real estate business leader and other
6 times they would report to a city exec within their
7 location. But they reported up the production
8 side. I was on the credit side and reported up
9 that way.

10 Q. All right. But there was a distinct group
11 of relationship managers who sent their loans to
12 you for approval? Is that the right way to say it?

13 A. Yes.

14 Q. And how many people was that?

15 A. It varied but anywhere from 10 to 15 early
16 on. As the bank changed, expanded, we added credit
17 approvers and my territory got more concentrated.
18 At the end, in addition to handling the municipal
19 loan portfolio, I was handling just North Carolina
20 and Tidewater, Virginia. And at that time there
21 might have been five or six.

22 Q. Okay. Now, I had mentioned -- is this
23 true in or around 2006 or so; is that right? Are
24 we in the same time period?

25 A. 2006 I had -- I know I had North Carolina

1 and South Carolina. I think the person in Georgia
2 had come on board and I did not have Georgia but
3 I'm not sure. I don't remember.

4 Q. Now, in this period of time when this
5 distinct group of people were bringing loans to you
6 for approval, were you a credit risk manager? Is
7 that the right name for what you were doing?

8 A. The title was senior credit officer. But
9 from a practical standpoint, credit risk manager as
10 far as what the job was.

11 Q. And if I understood your prior testimony,
12 for awhile you were the only one of those?

13 A. Yes.

14 Q. And then as the bank expanded, some
15 additional credit risk managers were brought on
16 board; is that correct?

17 A. Yes.

18 Q. But at all times between 2006 and 2012,
19 were you the credit risk manager for loans in North
20 Carolina and South Carolina?

21 A. No.

22 Q. Okay. Who else had that position?

23 A. Kirk Beason. And I believe that I handed
24 over South Carolina in early 2009.

25 Q. So were you the guy for South Carolina up

1 until early 2009?

2 A. Yes.

3 Q. And then you transferred --

4 A. For commercial real estate.

5 Q. For commercial real estate, right. And
6 then Mr. Beason, Kirk Beason took over your
7 responsibilities for commercial real estate loans
8 originated in South Carolina?

9 A. South Carolina.

10 Q. And then what was your responsibility from
11 2009 forward?

12 A. North Carolina and Tidewater, Virginia,
13 some of Alabama.

14 Q. After early 2009, whenever Mr. Beason came
15 on board, did you have anything else to do at that
16 point with any of the loans that were at issue in
17 this case?

18 A. From an approval standpoint, no.

19 Q. From some other standpoint you did?

20 A. I'm sure in the transition role questions
21 came up. He was sitting right next door to me and
22 he probably asked, hey, do you remember anything
23 about this or what's your thoughts about this? You
24 have been dealing with him.

25 Q. So you and Mr. Beason were physically

1 Q. So either an individual loan or loans in
2 the aggregate to a single relationship up to 15
3 million dollars were within your approval
4 authority?

5 A. Yes.

6 Q. And then who had the authority above you?

7 A. Tej Panjwani.

8 Q. And prior to -- now, he was a PNC guy,
9 right?

10 A. No. He was an RBC.

11 Q. RBC guy. I'm sorry.

12 A. He came -- I want to say it was around
13 2002 or 2003 but I'm not sure.

14 Q. So from the time he arrived, anything in
15 excess of whatever your limit was, 15 or 20 or
16 whatever it would have been, would have gone to
17 Mr. Panjwani?

18 A. Yes.

19 Q. And before he got there, who would it have
20 gone to?

21 A. His last name was McLachlan and I can't
22 remember his first name. He ended up -- he went
23 back to Canada with RBC and was a regional
24 president of a group up there.

25 Q. Tell me about how the bank defines

1 relationships where there are related borrowers or
2 how does the bank consider -- for example, we'll be
3 specific about these loans. Are you aware that
4 there were loans made to Debbie Rice-Marko
5 individually as well as -- one loan made to her
6 individually as well as loans made to LLCs of which
7 she was the manager or single member?

8 A. Yes.

9 Q. And do you also recall that there were
10 loans made to an LLC of which John Marko, Jr. and
11 Evan Marko, Jr. were one of the members and
12 managers?

13 A. Yes, I do.

14 Q. Was all that considered one relationship?

15 A. Initially as I recall they were set up as
16 two separate households, what we call households.

17 Q. Tell me what the bank meant by households.

18 A. It was related to we called it mind and
19 management and the ownership -- generally we would
20 include any entity that someone had 25 percent. I
21 think it was 25. It was either 20 or 25 percent
22 more interest, ownership interest, or whether they
23 guaranteed the transaction or whether they
24 basically ran the business. They would all be
25 included in one group. In this particular case,

1 while we negotiated with Debbie on the loans that
2 were to her two sons, we didn't have them set up as
3 within this household. She had no ownership
4 interest. I think early on they might have been
5 considered because I'm thinking that early on she
6 guaranteed the transaction. I don't remember for
7 sure. But I don't believe they were old enough to
8 enter into -- they were owners of the business.
9 I'm pretty sure Evan was still in college or maybe
10 even in high school. I'm not sure date wise. But
11 our negotiations and all were with Debbie.

12 Q. Okay.

13 A. But we didn't consider them as part of the
14 household from a technical standpoint because --
15 and this was a constant topic of conversation in
16 our bank related to a number of households because
17 the household -- we had household limits for each
18 household and they were based on the risk rating
19 for the household. So, you know, there was
20 constant discussion between the credit side and the
21 line side about what should be considered within a
22 household because the more that got aggregated
23 within a household, the less future business we
24 could do because we had a house limit.

25 Q. You mentioned the credit side versus the

1 line side. What is the line side?

2 A. The line would be the production side, the
3 folks, the relationship managers.

4 Q. So they were interested generally in doing
5 as much business as they could originate?

6 A. Yes.

7 Q. And on the credit side, you had to worry
8 about some aggregate limit issues; is that correct?

9 A. Yes.

10 Q. But if I understand you correctly, you did
11 not consider John and Evan to be part of the same
12 household with Debbie?

13 A. I don't believe they were because I recall
14 keeping a separate file for each household when we
15 were keeping hard copy files. I remember there
16 being a separate file for John Marko, and that
17 leads me to believe that there was a separate
18 household that was established at that time. But
19 once there was a cross collateralization, then
20 there were issues related to aggregation that they
21 would have been brought in and considered as part
22 of the same household.

23 Q. Well, that's where I was leading up to.
24 Did there come a time when they were regarded as
25 the same household?

1 properties that we had, that would create a default
2 in our loans, according to our loan documents. The
3 same related to looking at loans that SunTrust or
4 BB&T had financed. That's why we felt like we
5 needed to basically look at our existing collateral
6 pieces. Because if we recommended a solution that
7 involved taking a second lien on a piece of
8 property that was financed somewhere else, that
9 could trigger a default in that.

10 MR. MCGEE: Bobby, I'm sorry. It's almost
11 1. What do you want to do about lunch?

12 MR. STEPP: Give me about five minutes and
13 then we'll be at a stopping place.

14 MR. MCGEE: That's fine, as long as he's
15 fine.

16 MR. STEPP: Well, we're going to wrap up
17 this document and then we'll take a break.

18 MR. MCGEE: All right.

19 BY MR. STEPP:

20 Q. So on September 30th, 2008, your concern
21 on behalf of the bank was to improve the collateral
22 position of the bank with respect to all the
23 available collateral that the bank already had as
24 well as improve the position of the bank vis-a-vis
25 the relation of the borrowers to any other

1 creditors?

2 A. I would agree with the first part of the
3 statement and you would have to re-ask the second
4 part.

5 Q. Well, you didn't want SunTrust to be able
6 to -- whether it would have been a default or not,
7 you didn't want SunTrust to grab any equity that
8 might have been in any of these properties to
9 secure the SunTrust debt; you wanted to make sure
10 all that equity secured the RBC debt, correct?

11 A. I probably wasn't worried about what
12 SunTrust -- what might be done by another bank to
13 take a lien on our property, on the properties that
14 we had prior liens. Maybe I should have been
15 concerned about it. I don't know that that came in
16 to my thought process because it would have
17 defaulted those loans and I think it would have
18 just precipitated much quicker things coming to a
19 not-so-good position.

20 Q. I hear you. Let me put it this way:
21 Before the cross collateralization, if any one of
22 these properties had been sold and there was
23 equity, the net proceeds would have been released
24 to the borrower?

25 A. That's correct.

1 Q. And then those net proceeds could have
2 been used by the borrower to satisfy the
3 obligations to another creditor, correct?

4 A. That's correct.

5 Q. But after cross collateralization, that
6 was no longer possible?

7 A. That's correct.

8 MR. STEPP: Let's stop for lunch.

9 (Lunch recess taken.)

10 BY MR. STEPP:

11 Q. Mr. Draper, look at what we've marked
12 Exhibit 13.

13 MR. HANNA: What's the number, Bobby?

14 MR. STEPP: 24785.

15 BY MR. STEPP:

16 Q. Mr. Draper, look at Exhibit 13, if you
17 would, please.

18 A. Okay.

19 Q. And this is an e-mail from Michael Baker
20 to you dated October 2nd, 2008. And just for your
21 reference, Exhibit 6 we were looking at before we
22 broke for lunch was September 30, 2008. Okay? And
23 Mr. Baker is writing, he says, to follow up on
24 Debbie Rice-Marko. Do you see that?

25 A. Yes.

1 BY MR. HANNA:

2 Q. Okay. Do you have an opinion whether it's
3 proper for a bank official to threaten a client
4 with bankruptcy if they do not cooperate with
5 restructuring of financing?

6 MR. McGEE: Object to the form.

7 THE WITNESS: I don't have an opinion on
8 that.

9 BY MR. HANNA:

10 Q. Does PNC have -- are you aware of any
11 policies that PNC has with regard to
12 confidentiality of preserving the integrity of
13 financial documents belonging to their customers?

14 A. PNC, RBC, Centura Bank would all have had
15 financial disclosure policies, confidentiality
16 policies.

17 Q. Do you know what PNC's policies were,
18 let's say, between 2008 and 2010?

19 A. Well, 2008 and 2010, I don't know what
20 PNC's were because they weren't in the picture.

21 Q. All right. Well, what was RBC's policy?

22 A. We didn't disclose confidential financial
23 information in a brief form.

24 Q. What would you consider to be confidential
25 information as a bank official?

1 A. Information that's not public knowledge.

2 Q. Such as personal finances?

3 A. Personal financial statements.

4 Q. Have you ever disclosed personal financial
5 statements to third parties outside the bank
6 without the client's permission?

7 MR. McGEE: Object to the form.

8 THE WITNESS: No.

9 BY MR. HANNA:

10 Q. Would you consider that to be a breach of
11 RBC or PNC's policy?

12 MR. McGEE: Object to the form. No
13 foundation.

14 BY MR. HANNA:

15 Q. Sure.

16 A. Ask that question again.

17 Q. Would you consider such disclosure to be
18 in violation of the confidentiality policies in
19 effect by PNC or RBC?

20 MR. McGEE: Object to the form. Compound
21 question and no foundation.

22 BY MR. HANNA:

23 Q. Sure.

24 A. I'm not sure exactly what you are asking.
25 The disclosure of financial information to whom?

1 Q. I will rephrase it, then, for you, sir.

2 A. Okay.

3 Q. Would you consider the disclosure of
4 personal financial statements of your clients to
5 third parties outside the bank to be a breach of
6 the bank's policies on confidentiality?

7 MR. McGEE: Object to the form.
8 Foundation.

9 THE WITNESS: Yes.

10 BY MR. HANNA:

11 Q. Would you consider it to be improper for a
12 bank official to threaten a client with bankruptcy
13 unless they cooperated with restructuring?

14 MR. McGEE: Object to the form. Asked and
15 answered.

16 BY MR. HANNA:

17 Q. Sure.

18 A. I answered it, I believe.

19 Q. Well, do me a favor and answer it again.
20 I'm an old man and I have a bad memory.

21 MR. McGEE: No. You just don't like the
22 answer. Object to the form. Asked and
23 answered.

24 MR. HANNA: Are you going to instruct him
25 not to answer?

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON COURT OF COMMON PLEAS
 3 PNC Bank, N.A., successor to RBC
 4 Bank (USA),
 5 Plaintiff(s),
 6 vs. C/A No: 2013-CP-10-2624
 7 Liberty Cottages, LLC; GW
 8 Dorchester, LLC; USS Clarksville,
 9 LLC; Liberty Cottages Land, LLC;
 10 ROA, LLC; Royal Beach Properties,
 11 LLC; The Brothers of SC, LLC;
 12 Deborah Rice-Marko a/k/a Deborah G.
 13 Rice-Marko; Evan R. Marko and John
 14 E. Marko, Jr.,
 15 Defendant(s).

13 D E P O S I T I O N

14 30(b)(6)
 15 WITNESS: Michael E. Baker (PNC Bank)
 16 DATE: Tuesday, January 27, 2015
 17 TIME: 1:35 p.m.
 18 LOCATION: Nelson Mullins Riley & Scarborough, LLP
 19 151 Meeting Street, Suite 600
 20 Charleston, South Carolina
 21 TAKEN BY: Attorneys for the Defendants
 22 REPORTED BY: HEATHER M. CURLIN
 23 Registered Professional Reporter
 24 -----

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27 Mr. John Marko, Jr.
28 Mr. Evan Marko
29 Mr. Stephen Wursta, Jr.

30 (INDEX AT REAR OF TRANSCRIPT)

31

1 (The deponent reserves the right to read and
2 sign the deposition transcript.)

3 - - - - -

4 MICHAEL E. BAKER, having been previously
5 sworn, testified as follows:

6 EXAMINATION

7 BY MR. HANNA:

8 Q. Mr. Baker, if you would, state your full name
9 from me, please, sir.

10 A. Michael Evans Baker.

11 Q. And your present address?

12 A. [REDACTED]
13 [REDACTED]

14 Q. You're still here in the Charleston area?

15 A. I am.

16 Q. Yeah. Okay. Mr. Baker, before I start with
17 the questions I have for you, I have a few little
18 instructions that the court requires I give you.

19 A. Okay.

20 Q. First is to remind you that once the
21 deposition starts, if you have any questions about the
22 questions that are posed to you, you have to direct
23 those to me. You can't talk with your counsel about
24 your responses or anything. And the same thing when
25 Mr. Stepp is examining, if you have any questions about

1 the question he may ask of you, you're to direct those
2 questions to him. If you don't understand the question,
3 just let us know and we'll be happy to rephrase it until
4 you do understand.

5 A. Okay.

6 Q. If you don't -- if you answer the question,
7 I'm going to assume that you have understood the
8 question and you've given me an honest answer to it. Is
9 that fair enough?

10 A. Yes.

11 Q. All right. Give me a little bit of
12 background information. Who are you employed by at the
13 present time?

14 A. PNC Bank.

15 Q. And how long have you been with them?

16 A. Since they acquired RBC. It's been about
17 three years.

18 Q. And you worked for RBC before that?

19 A. RBC before that for -- previously for about
20 ten years.

21 Q. And where did you work before that?

22 A. Prior to that was Bank of America for about
23 seven years.

24 Q. And that's 20 years, that's about --

25 A. I think that should . . .