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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Opinion No. 5488 (S.C. Ct. App. filed May 24, 2017)

Linda Gibson, formerly known as Linda Ann Avinger
Individually and as Trustee of the Paul William Gibson
Family Trust, and Heritage Seven, LLC, ...Petitioner,

v.

Ameris Bank, ...Respondent.

APPENDIX VOLUME II OF IV

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was no longer with Reliance --

A. That is correct.

Q. -- at the time of this telephone call.

There was still a question in your mind about whether he was going to join Ameris or not, but at this time it was after he had left Reliance?

A. Correct. He was not employed at that time.

Q. And in this conversation Mr. Zerbst told you he was sending Mrs. Gibson to you to process the loan application for the apartments through Ameris?

A. Yes, sir. He called me and told me that Rolando had called him and wanted to know where I was at. Because he wasn't getting service at First Reliance and he wanted to know who could help him out. Karl said he couldn't, so he said give Benjie a call.

Q. I got you.

After this call -- I tell you what. Let's look at your deposition here for a minute.

MR. KEFALOS: I'm going to hand it up to the judge.

Q. (Continued) After that call you met with Karl?

A. I called Rolando to set up a meeting to come meet him out at the project.

Q. Well, you met with Karl after the telephone call?

A. Before the meeting with Rolando, yes. I met with Karl and we went out to the project.

Q. And it was an odd meeting because Karl called you up and then made arrangements to travel with you to go meet with Rolando?

A. That's correct.

Q. And he picked you up at the Publix on Daniel Island and you guys rode out to the apartments together?

A. No, sir. I picked him up.

Q. And at this time Karl was still not formally with Ameris.

Do you know whether he had interviewed with Ameris at this time?

A. I do not know.

Q. Now, Karl had a package with him as you rode to meet Rolando.

A. Correct.

Q. And this turned out to be the package from First Reliance, the loan package.

A. The documents in that package contained

documents that a customer would have a right to, such as the appraisals.

Q. But there were the documents from First Reliance?

A. I don't know for a fact.

Q. Well, they were part --

A. But they would be used for a loan decision.

Q. And Mr. Zerbst had these documents?

A. Yes, sir.

Q. But he didn't give these documents to you while you guys were in the car riding out?

A. No, sir.

Q. Nor did he say anything to you about these documents while you were riding out?

A. No, sir.

Q. And then when you got to the apartment complex and you met with Rolando he still didn't say anything to you about the package that he had?

A. No, he didn't.

Q. Instead he made an elaborate show of delivering the package to Rolando?

A. Yes, sir.

Q. In fact, he said: I'm now handing this package to Rolando.

A. That is correct.

Q. And then Rolando, after he received the package, turns to you and says: I want Ameris to do this deal.

A. Essentially, yes. He said he wanted Ameris to help him out on the loan request.

Q. Now, this whole charade appeared fishy to you at the time, didn't it?

A. It looked a little staged. You know, if he wanted to give me the package, he could have easily done so beforehand. He could have given it to Rolando without me seeing it.

You know, it did. It looked a little staged.

Q. Sure. He made a big deal about handing not the package directly to you as represented by Ameris, but handing it to Rolando so Rolando could then give it to you?

A. That's correct.

Q. Now, you prepared a loan committee application for this loan for Ameris dated October 22, 2007.

A. That's correct.

Q. Turn to Exhibit 27 in your package.

A. Mr. Kefalos, what number was that

again?

Q. 27. And this is the loan committee application?

A. Yes, sir.

Q. And the loan committee application included an Apartment Economic Analysis Form.

A. That is correct.

Q. Do you see it as part of 27?

A. Yes, sir. It would be that second page down at the bottom. That would be a rental cash flow analysis.

Q. Is it true that you used the package that Karl Zerbst gave you to help prepare this loan committee application and the Apartment Economic Analysis Form that you submitted to Ameris?

A. I did use the information that was a part of that package as a guide for the application.

Q. And the $2.8 million loan that was structured so that Linda Gibson put $700,000 down and got a construction loan for $700,000, that was the way Karl Zerbst had arranged the loan?

A. I did not know that at the time, no.

Q. But you testified that Karl Zerbst had arranged that.

A. No, sir.

Q. Well, do you have a copy of your deposition there?

A. No, sir, I do not.

Q. Well, let me hand you this then. This is Page 33 at Line 12. Did I ask you who structured the loan with the $700,000 down, the construction loan?

A. Yes, sir. The 2.8 million with the $700,000 down, that was the original structure; however, going and getting the funds for that 700,000, I did not know at that time where those funds came from.

Q. I'm not asking about where those funds came from. I'm just wanting to know whether you told us that Karl Zerbst had structured that loan in that fashion.

A. That is correct. Our loan request was very similar to the loan request that he had put together at First Reliance in terms of the dollar amount and the amount to be put down and the amount to be drawn for the construction loan.

Q. Turn your attention to Exhibit 29, a memo dated October 23, 2007 from John Hipp.

A. I'm there.

Q. Now, your loan committee application was dated October 22, 2007.

A. Correct.

Q. And the next day you get an email from John Hipp. Who is John Hipp?

A. At this time John Hipp was the state president for Ameris Bank.

Q. So the day after you submit an application for a new $2.8 million loan for a new customer you had an email back from the president of the bank saying: Thanks. I think we can draw a circle around this one.

A. That is correct. That's what it says.

Q. That's pretty quick approval, isn't it?

A. Given the circumstances of the package, everything was already in place, so that made the underwriting piece pretty expedient.

Also, being a community bank, that's one thing community banks prides itself on, is being able to react quickly to a loan request.

Q. Certainly. But even with being a community bank and even with all of the information that you had gathered from Mr. Zerbst, that's pretty quick approval for a large loan in the world of commercial lending.

A. That is a fast turnaround, but it's not completely unheard of.

Q. And that's a pretty quick approval for a new customer?

A. I would agree. At that time, though, the bank was in a growth strategy, so there was a need to grow the bank.

Q. They were looking for new business?

A. Absolutely.

Q. And let me ask you: At the time that you submitted this loan application, the loan committee application and the apartment economic analysis on the 22nd of October -- is it true at the time that you submitted this to the upper management at Ameris Bank that Linda Gibson had not even signed a loan application?

A. No; she had not signed a loan application.

Q. So that's a pretty quick turnaround for a $2.8 million loan for a new customer who has never even signed a loan application.

A. We had -- through Karl and through Rolando, they had mentioned that Linda -- you know, that they wanted us to process the loan. So we took that as a loan request.

Q. Through Karl?
A. And Rolando.
Q. Sure. But it is a pretty quick turnaround?
A. It's fast, but not unheard of.
Q. Did you get the impression that your supervisors at the bank knew about this loan before you brought it to them?
A. I can't say for sure.
Q. But that's the impression that you got?
A. Like I said, the loan got approved quickly.
Q. You didn't get much resistance from these supervisors at the bank on this loan, did you?
A. There wasn't a lot of questions asked in terms of rebuttals; but again, the bank was in a growth mode. When you're in a growth mode and times are good, loans do get approved.
Q. Even with the growth mode you normally would have expected more questions on a loan of this size with a new customer who hadn't even filed an application?
A. I can't say that for sure, but if I was the approver I would ask some questions.

Q. This was a pretty smooth transaction once you put it on the books?

A. The transaction was smooth, yes, sir.

MR. KEFALOS: I would like to move 27 and 29 into evidence.

MR. JORDAN: No objection.

(Plaintiff's Exhibits 27 and 29 in evidence.)

BY MR. KEFALOS:

Q. Will you turn your attention to Exhibit 33. Do you recognize Exhibit 33?

A. Yes, sir, I do.

Q. This is the construction loan agreement that was ultimately signed by Ameris Bank and Miss Gibson on November the 2nd, 2007?

A. This is signed by the borrower. You're correct.

Q. Now if you'll turn your attention to Paragraph 7(j) of this construction loan agreement. I think it's on the third page. It talks about plans and specifications.

A. That is correct.

Q. You understood that Miss Gibson was supposed to have plans and specifications in place before any advances were made on this loan?

A. This was a rehab of an apartment complex, so we were given an estimate by the contractor of what rehabs were going to be made to the units.

Q. My question was: Did you understand that she was supposed to have plans and specifications in place?

A. Plans and specs will be more towards vertical construction, new construction, where you would have drawings and then the like to go by. They would be submitted to an appraiser or whoever.

Q. Well, did you understand that this contract required plans and specifications?

A. That is a part of the construction loan agreement, yes, but it was not specific to this loan.

If you're redoing your kitchen in your house, you don't submit plans and specs to a bank to get a loan for the rehab of your kitchen.

Q. This wasn't a rehab of a kitchen, was it?

A. Correct. Those are small terms. But what I'm saying is if you're replacing carpets, painting walls, putting a new roof on, those would not require plans and specs. You're not moving the

building outwards. You're not changing the footprints of the building. So in my opinion that would not be a necessary document.

Q. And is that why you never obtained plans and specifications for the $700,000 renovation?

A. That's correct. Yes, sir.

Q. Now, look at Paragraph 6(e) in the construction loan agreement.

A. Yes, sir.

Q. 6(e) requires a construction contract before Ameris will advance any monies under the construction loan agreement.

A. Yes, sir.

Q. And is it true that Linda Gibson never had a construction contract?

A. There was a contract on file, but it was never signed.

Q. So there was never a signed contract; and in fact, you know that the contractor that was originally supposed to work on this actually quit because the contract wasn't signed?

A. I found that out much later, yes, sir.

Q. Now, look at 7(i) of this construction loan agreement. That's the project budget.

A. Yes, sir.
Q. Did you understand that this construction loan agreement required that there be a budget for the project before Ameris made the disbursements?
A. Yes, sir, and that was included in the contract.
Q. There was never a budget submitted, was there?
A. A budget was submitted, but there was never a signed contract.
Q. And Ameris disbursed on this project this $700,000 renovation without a budget?
A. That is correct.
THE COURT: Mr. Kefalos, is this the $700,000 loan?
MR. KEFALOS: Well, it was $2.8 million, but the 700,000 was for the renovation.
THE COURT: Thank you.
BY MR. KEFALOS:
Q. Now look at G(1). I think it's on the fourth page. There is something that talks about applications for disbursements.
A. Mr. Kefalos, you said G(1). I don't see a G(1).

Q. G(1), I think, is on the fourth page of the documents furnished. Page 4.

A. I'm there, yes, sir.

Q. 8(g)(1). 8 is conditions precedent to all loan disbursements, and (g)(1) is documents furnished. (G) is documents furnished and (1) is the application for disbursements.

Did you understand this construction loan agreement to require an AIA payment request form before Ameris was permitted to disburse any money on the construction loan?

A. This construction loan agreement is a boilerplate document, and with all boilerplate documents it contains language that would encapsulate lots of different types of loans.

This was a residential project, just like a home construction project. You would not receive an AIA draw. You would receive that more in a commercial building, if you're building a church or a bank building where an architect would actually go out and make the draws.

Q. Didn't the contract also require an architect?

A. An architect developed, to my knowledge, the drawings or what have you for the

green component of the project, not to make AIA draws.

Q. So you say this was boilerplate. That means it's a form that is used?

A. No, sir. These are -- I don't know what company this is. This is Banker Systems.doc. So no matter what kind of construction loan you do this language is contained in all construction loans. So it may or may not be applicable to that -- pertinent to that particular loan. It varies from case to case.

Q. Well, how do we tell what provisions in this contract are applicable if they're --

A. The way I read the construction loan agreement is the borrower is agreeing to -- so if the bank requests these documents they have to provide them. So if the bank deems that fit, then they would need to provide the bank with those documents for those draws.

Q. The question is: If it's all in the written document, how is a borrower supposed to know which are the ones the bank is going to report or insist on complying with and which ones are they going to waive?

A. It would be at the banker's request.

Q. Well, in any event, is it true that you never saw any AIA requests forms before making disbursements?

A. That is correct.

Q. And Ameris disbursed on this $700,000 construction loan without any AIA request forms; is that right?

A. That's correct.

Q. Ameris disbursed money at the request of Rolando Villavicencio?

A. Disbursements were made upon Rolando's request with submitted invoices for work that had been performed.

Q. And is it true that Linda Gibson was never aware of the advances that were being made?

A. Linda Gibson called me at the beginning of the project and told me that Rolando was going to be the project manager on this, and he would be handling the project.

Q. Is it true that she was never aware of the advances that were being made?

A. I do not know that for a fact.

Q. Look at your deposition on Page 30. Did you tell me on Page 30 of your deposition that Linda Gibson was never aware of the advances that

were being made?

A. What line would that be?

Q. I have the wrong citation. I apologize. It was Exhibit 30.

Let me ask you this: You've been in the banking business for a long time.

A. Nine years.

Q. And you were here, I think, when we talked with Mr. Zerbst about a bank officer's duties?

A. Correct.

Q. And you are familiar with what a loan officer's duties are?

A. Yes, sir.

Q. Will you agree that if a loan officer knows or has reason to know that one of its customers is being taken advantage of by one of their employees, the loan officer has the responsibility to alert the customer of that problem?

A. Absolutely.

MR. KEFALOS: That's all the questions I have.

THE COURT: Mr. Jordan?

CROSS-EXAMINATION

BY MR. JORDAN:

Q. Good afternoon, Mr. Lanier. I want to ask you about something that Mr. Kefalos was bringing up, and if you'll turn to Exhibit 33, which was that construction loan agreement.

A. Sure.

Q. Now, Mr. Kefalos pointed out a bunch of different provisions about the borrower will provide A, B and C to the bank, and you testified that it is your understanding that those were obligations that the bank imposes on the borrower, and it can waive those obligations; right?

A. That is correct.

Q. And in fact, if you'll look, for example, on Page 3, Section M. See where it says "soil test?"

A. I'm there.

Q. Is a soil test required on every construction project that the bank does?

A. No. That would be -- for example, if you were financing a gas station you would want an environmental study. If you're financing a home in a residential market or apartment complex, a soil test wouldn't necessarily be needed. We could

perform one for due diligence just to be on the safe side for the bank; but no, we would not require that.

Q. Is it fair to say, then, in a lot of construction projects obligations like the soil test are waived?

A. That is correct.

Q. And in fact, look over at the next page, which is Page 4 at Section F. Can you read that paragraph for us.

A. This would be the no waiver?

Q. That's right.

A. "Your acquiescence to my failure to comply with any condition of any loan disbursement does not waive my need to comply with this condition, so you may require my compliance with this condition at any time after your acquiescence."

Q. So that pretty expressly says even if we are not requiring something, we're not waiving any of our rights; right?

A. That is correct.

Q. Now, you were an employee -- when did you begin your employment at First Reliance?

A. I believe my start date was October 11

of 2007.

THE COURT: Was that First Reliance or was that Ameris?

MR. JORDAN: I asked about First Reliance.

THE WITNESS: I apologize, your Honor. My employment with First Reliance, January of 2003.

BY MR. JORDAN:

Q. While you were at First Reliance you had an occasion to assist Heritage Seven through Miss Gibson on the financing of the first shopping center; correct?

A. That is correct.

Q. And while assisting Heritage Seven with that purchase you had an occasion to meet Rolando; correct?

A. That is correct.

Q. Explain for the Court what role Rolando played in Heritage Seven's and Miss Gibson's purchase of the shopping center.

A. From my perspective Rolando seemed to be the point person, the person driving the deal. He put the package together. If you needed financials or whatever questions, he was the guy to go to and he would retrieve information as needed.

Q. And following the purchase of the shopping center Rolando in fact was managing the shopping center for Miss Gibson; correct?

A. That is correct.

Q. And did Rolando frequently deal with First Reliance on Miss Gibson's behalf?

A. Yes, sir; from time to time.

Q. While you were at First Reliance did you assist Heritage Seven and Ms. Gibson with any other matters?

A. No, sir, I did not.

Q. At First Reliance did you learn that Miss Gibson and Heritage Seven were seeking financing for the potential purchase of an apartment complex on Otranto Road?

A. I heard rumblings around the office. We were in a small office on that side of State Street and Cumberland. You know, Karl's office was down the hall from mine. So be it we talked about pipeline reports or whatever, I knew there was a loan in process for the purchase of an apartment complex.

Q. But you didn't really have any involvement at First Reliance with respect to that?

A. No, sir, not like my involvement on the

shopping center.

Q. Did you know anything about the apartment complex at that time?

A. Other than it was an apartment complex and Miss Gibson and Heritage Seven was going to be the borrower.

Q. And while you were at First Reliance you never took her out there or told her anything about the apartment complex?

A. No, sir.

Q. You testified that you joined Ameris in October of 2007; right?

A. That's correct.

Q. And what was your position once you joined Ameris?

A. I was a business banker.

Q. Can you explain a little bit the difference between a credit analyst at First Reliance and a business banker at Ameris.

A. Certainly. A credit analyst has the responsibility of taking the financials that are submitted underwriting those financials, typically writing out the financial analysis section of the memo, and times doing even more depending on their knowledge of the customer and the request.

A business banker, depending on the structure of the bank, would be the lender on the deal dealing directly with customers, gathering information, and making input to the recommendation of the credit.

Just to clarify, at the time I was at First Reliance when the apartment deal was being worked on by Karl I was a business banker at that point. I had been promoted that fall before to a business banker. When I came to Ameris as business bankers initially we did all our own underwriting.

Q. You testified a few minutes ago about a telephone call that you received from Mr. Zerbst saying that Rolando would be calling you about the apartment complex loan; is that correct?

A. That is correct.

Q. Where was Karl working at that time?

A. He was unemployed.

Q. And you then received a call from Rolando; correct?

A. Either Rolando called me or I reached out to Rolando.

Q. What do you remember, if anything, about that conversation?

A. We discussed the deal and I told him I

would like to set up a meeting. I would like to go see the project and see what we can do for him.

Q. And ultimately at that meeting did Rolando make the request for Ameris to consider making this loan to Heritage Seven and Miss Gibson?

A. That is correct.

Q. From that point on did the loan application process for this loan at Ameris proceed as any other loan application would?

A. No. It went through all the normal channels. It went through in an expedient fashion from the way it looks. But no; it went through all the normal approval channels just like any other loan would.

Q. Is it unusual for a borrower to apply to multiple banks when it's considering purchasing some property or renovating property?

A. Unfortunately for bankers, no. It's very common.

Q. You testified that some documents that you received from Rolando at the apartment complex contained the appraisal.

Is that a document that the borrower, potential borrower, is entitled to have?

A. Yes.

Q. Did Karl say anything to you at the meeting at the apartment complex or in a prior telephone conversation that would lead you to believe that he was acting on Ameris's behalf?

A. No.

Q. And in fact, as late as December of 2007 you understood that Karl had not yet decided whether he was even going to stay in banking; right?

A. That is correct. I went to Karl's house around the holiday time -- I know because a football game was on -- to help him with a computer problem he had. So I'm pretty good with computers. And I straight up asked him: Are you coming to work for Ameris? So he said: Honestly, I don't know.

So at that point, at least telling me, he was indecisive about what his future was going to be.

Q. And Karl didn't come to work for Ameris until January of 2008; correct?

A. That is correct.

Q. Do you have any information that would lead you to believe that he was working for Ameris any time prior to January of 2008?

A. No, not that I know of.
Q. When you were in your office at Ameris and there were emails going around about customers and potential loans, was Karl ever copied on any of that stuff?
A. Not to my knowledge, no. Are you speaking before January of 2008 or after?
Q. Before January of 2008.
A. No.
Q. If you'll look in the bigger notebook at Exhibit 18.
A. I'm there.
Q. Do you recognize that document?
A. Yes, sir, I do.
Q. Is that the loan committee memo that you prepared --
A. That is correct.
Q. -- at Ameris?
A. At Ameris, yes, sir.
Q. This loan committee memorandum references net worth of over $53 million from the borrower; is that correct?
A. That is correct.
Q. Did Rolando provide you with a personal financial statement concerning Miss Gibson?

A. He did, yes, sir.
Q. And if you'll look at Exhibit 11, does that appear to be a copy of a financial statement that Rolando gave you concerning Miss Gibson?
A. Yes, sir. That does appear to be the financial statement.
Q. If you flip over to the third page, it shows the net worth of 53 million and some change. Do you see that?
A. That is correct. I do.
Q. Did you rely on this document in preparing your loan committee application?
A. I relied on the fact that this net worth was an accurate depiction, but the loan decision was not made upon that net worth.
Q. Back on the loan committee memo on Tab 18 it also references the appraisal --
A. Correct.
Q. -- that Paul Moore & Associates did that showed an as-is value of 2.8 million and an as-complete value of 3.7.
A. That is correct.
Q. And did you review and rely on that appraisal in submitting your loan application?
A. I did.

Q. Did you have any reason to believe at this time that anything contained on that personal financial statement or any conclusions reached in the appraisal was anything but accurate?

A. No. I believed everything that was submitted to us was true and accurate.

Q. Let's look over at Exhibit 20.

A. I'm there.

Q. The first page is an email from you to yourself, but the attachment is a number of documents which comprise the loan committee application; is that right?

THE COURT: Is that email from him to himself? Is it supposed to have something on it, or is it just the attachment?

MR. JORDAN: Just the attachment.

THE WITNESS: Your Honor, I believe this was probably pulled off the server after my departure.

Q. (Continued) The document that is attached to this email, is that a document you prepared?

A. Yes, sir, it is.

Q. If you'll look on the page that is Bates stamped 000291, the first page of the loan

committee application.

A. Yes, sir.

Q. Down toward the bottom it talks about collateral recap. Do you see that?

A. I do.

Q. It discusses the value of the apartment complex as stated in the appraisal; correct?

A. That is correct.

Q. And below that it talks about the borrower/guarantor and describes the financial status from the personal financial statement; correct?

A. That is correct.

Q. And did you submit this loan committee application on to Ameris?

A. I did, yes, sir.

Q. And it contained the information that had been provided to you by Rolando in the personal financial statement?

A. Yes, sir.

Q. Who did you submit this application to?

A. This would have been first submitted to Marc Bogan. He would have vetted this application and it would have went to John Hipp, who at that time had the approval authority to approve this

loan.

Q. What was Mr. Bogan's position at the time?

A. Mr. Bogan was coastal executive.

Q. And are the remaining documents that are contained in Exhibit No. 20 additional documents that were submitted along with the loan committee application?

A. Yes, sir.

Q. And as you see in this stack you prepared a Global Cash Flow Analysis and you prepared an Apartment Economic Analysis Form?

A. That is correct.

Q. And you considered the tax returns that Mrs. Gibson had provided to you; correct?

A. I did, yes, sir.

Q. Mr. Kefalos raised questions about why Mr. Bogan or Mr. Hipp didn't raise more questions about this when it was submitted and how quickly it was turned around.

When you provided this loan information to Mr. Bogan and to Mr. Hipp, in fact they did raise some questions about it back to you, didn't they?

A. They had a question about the personal

financial statement and the ownership of those assets listed on the personal financial statement.

Q. And they asked you to obtain some additional information about the personal financial statement; correct?

A. That's correct.

Q. And in response to that request you called Miss Gibson; right?

A. I did put a call in to her, yes, sir.

Q. Do you remember if you actually spoke with her?

A. I do not believe I spoke with her.

Q. Did you leave her a telephone message?

A. I cannot remember.

Q. Look over at Exhibit 21.

After you weren't able to reach Miss Gibson did you send a request to Rolando regarding that same information?

A. It appears so, yes, sir.

Q. And is this the email that you sent to Rolando?

A. That does look like the email.

Q. And did Rolando respond? To your recollection.

A. He did respond.

Q. If you look over at Exhibit 24, the email that starts in the middle -- where it says "Rolando," is this Rolando's response to your questions that you had raised?

A. Correct.

Q. And he typed his answers into the body of your email and sent it back to you; correct?

A. That is correct.

Q. And this shows that when you received it from Rolando you sent this information about the personal financial statement on to Mr. Hipp and Mr. Bogan; correct?

A. That is correct.

THE COURT: Which exhibit is that?

MR. JORDAN: Exhibit 24, your Honor.

BY MR. JORDAN:

Q. Before this loan was approved did you suggest to Mr. Hipp or to Mr. Bogan that you would like to take them out and show them the property?

A. I did, yes, sir.

Q. Who did you make that suggestion to?

A. I went out with Marc Bogan and met at the project.

Q. You and Marc went out there and looked around to make sure everything looked good; is that

correct?

A. We looked at the collateral and met with Rolando and Marc, and I discussed the project with Rolando about what it was and what it was going to become.

Q. At the time that this loan application came in to Ameris there was already an appraisal done; right?

A. Correct.

Q. And is the appraisal something that would typically take some time and would slow down the loan application process?

A. Typically commercial appraisals take anywhere from two weeks to a month.

Q. So was that a big reason for it to be so quick, as Mr. Kefalos said?

A. That would definitely help move the process along.

Q. Now, the loan in the amount of $2.8 million was ultimately approved; correct?

A. Correct.

Q. At the time that it was approved what authorization within the bank was necessary to approve the $2.8 million?

A. At that time John Hipp would approve up

to $3 million.

Q. And I think you referred before to Hipp having $3 million on his pen. So if Hipp signed off on it and it was under $3 million, then it was approved through the bank?

A. That's correct.

Q. Did this loan application receive Mr. Hipp's approval?

A. It did, yes, sir.

Q. There was a grand opening party for the Ameris Bank Archdale Street location in Charleston on October 25, 2007; right?

A. That is correct.

Q. Did you attend that party?

A. I was in attendance.

Q. That same day did you have a meeting with Mr. Bogan and with Mr. Rolando?

A. That's correct. We went out and met with Rolando at the project that morning. It was part of a call blitz. We were leading up to the grand opening night.

Q. Now, Miss Gibson and Rolando and Rolando's wife, Portia, were all at the grand opening party; correct?

A. That is correct.

Q. And after you went out to the project you went back to your office and you prepared a commitment letter; correct?

A. That is correct.

Q. And we have seen that was dated, if you look at Exhibit 26, October 25, 2007.

A. Correct.

Q. And Miss Gibson and Rolando and Portia were at the grand opening party; correct?

A. That is correct.

Q. Do you recall handing her a copy of this letter at that party?

A. I do, yes, sir.

Q. Was the party over when you gave her this document?

A. No. It was not over.

Q. And you didn't take her back into a back office in the bank and have her sit down and sign any documents with you?

A. No, sir.

Q. Do you even remember her signing this document at the grand opening party?

A. To my knowledge, I don't even know that this document got signed at the grand opening. If it would have been, I would imagine it probably

would have been an exhibit.

Q. Was the party still ongoing when you gave her this document?

A. It was, and the party was still ongoing when I left.

Q. Did Miss Gibson appear to be under the influence of alcohol?

A. I could not say.

Q. Did you give her any alcohol that evening?

A. I would not serve any alcohol, no, sir.

Q. If you look in this document, the commitment letter on the first page, it talks about the Klister Lane property being included as collateral; is that correct?

A. That is correct.

Q. Did Miss Gibson ever say anything to you along the lines of she didn't understand that that was going to be part of the collateral or that wasn't part of the deal?

A. Not that I remember, no.

Q. In fact, did you discuss the fact that that would be included as collateral with Miss Gibson and with Rolando?

A. I did when I presented the commitment

letter.

Q. Did she do anything or say anything that led you to believe that that wasn't perfectly fine with her?

A. Not to my knowledge.

Q. The loan closed on November the 2nd, 2007; right?

A. Correct.

Q. If you'll look at Exhibits 29 through 34, and it's all the loan documents. Just reference them. And these documents consist of the construction loan agreement, the apartment mortgage, the Klister Lane mortgage, the promissory note and personal guarantee from Miss Gibson and a personal guarantee from the trust; correct?

A. That is correct.

Q. Is there anything unusual about any of these documents?

A. No, sir. Standard bank form documents.

Q. After the closing in November of 2007 you received a phone call from Mrs. Gibson; right?

A. That is correct.

Q. And she told you that she was going to be having some surgery and that she was going to be out of commission and that she wanted you to know

that Rolando was going to be in charge of this project; correct?

A. That is correct.

Q. And was that completely consistent with the way that Rolando and Mrs. Gibson had always dealt with both First Reliance and with Ameris?

A. Yes, it was.

Q. Was there anything suspect about that?

A. No.

Q. After that point did Rolando at some point approach you about the first request for money to be used to be paid to contractors?

A. Yes, he did.

Q. And at that time it was clear that he was acting on Mrs. Gibson's behalf?

A. Yes, sir.

Q. Did you consider the information that Rolando provided to you in connection with that draw request to be sufficient to satisfy yourself to make that disbursement?

A. Yes.

Q. We have heard testimony that from the beginning of the project until sometime in March Miss Gibson wasn't at the project.

During that period did you go out and

inspect the property?

A. Yes, I did.

Q. Tell the Court about how often you went out there over that three- or four-month period.

A. Maybe two or three times.

Q. When you went out there could you tell that work was being done?

A. Yes.

Q. So you never went out there and just saw a dead construction site?

A. No.

Q. Were you able to go out there and look and see what percentage of the completion of the project had been done?

A. Given the nature of this project, that would be impossible to do.

Q. And that's because this wasn't ground-up construction; this was a rehab, so you can't say the foundation has been poured. There is framing. It's a more difficult assessment; correct?

A. That's exactly right. The buildings were in different stages. They were also being gutted and redone, so to get an accurate percentage complete would be very difficult to do.

Q. But you were able to go out there and see that, for example, some of the supplies that had been ordered and paid for were indeed on the site; correct?

A. Yes. Correct.

Q. Can you give an example of --

A. The roofing.

Q. When was the next time that you heard from Linda Gibson?

A. I spoke with Linda in, I would say, late March of '08. I believe she called me or she came by the bank.

Q. But during that time period when she told you Rolando was in charge and then she contacted you again did she ever call you and say: Hey, how is progress on the construction going?

A. No, sir.

Q. Did she ever indicate to you during that time that: Benjie, look. I'm relying on you to make sure that this project is moving along as it should be?

A. No, sir.

Q. You said that at some point you thought in March or so of '08 Miss Gibson contacted you again; is that right?

A. Correct.
Q. What do you recall about that contact?
A. She came to the bank, and it was good to see her. She said that she was better now from her surgery. She had some complications. She said now that she is well she wanted to take over the project.
Q. At some point did she then -- when was the next time that you heard from her?
A. It was either that meeting or the next when we opened up the checking account for her.
Q. At the first meeting that you just discussed did she make requests for copies of the invoices and the disbursements that had been made on the project?
A. That is correct.
Q. And did you provide that information?
A. I did, out of my file.
Q. Did she say anything to you along the lines of that she was concerned about where the money had gone at that point?
A. No, sir.
Q. Did she make any complaints at that point about anything Ameris had done in disbursing the funds?

A. No, sir.

Q. You said that shortly thereafter she returned to the bank and said that she wanted to open up a checking account; correct?

A. Correct. We discussed if she was going to take over the project, if she had a draw request, given the fact that she -- if she mailed in an invoice, we either have to mail her a check or she would have to come all way downtown Charleston to pick the check up.

I said what we can do is open up a checking account. If you have an invoice, you send it in. We can fund your checking account and we can write the checks out of that account based on those invoices.

Q. When she returned to the bank to open up the checking account, that was a number of days after she had obtained a copy of the invoices and disbursements?

A. It would have been very shortly thereafter.

Q. But still at this point when she opened the checking account there was no complaint about anything about the disbursements?

A. No, sir.

Q. Did she ever make any kind of complaint that Ameris should not have been dealing with Rolando in this matter?

A. No, sir.

Q. Tell the Court from the time that Miss Gibson called and said I'm going to have surgery, Rolando is in charge, until when Miss Gibson came back what was the procedure between you and Rolando for submission of draw requests and disbursements from the construction loan.

A. Rolando would typically call me or email me and pose the draw request. Usually it was an invoice by invoice request, not unlike if you were doing a residential construction. You would go out and look at the project and say they are so far along on these different items and they have a funding amount. These were specific invoices to specific contractors or subcontractors.

Q. Flip over to Exhibit 42. Again, I don't need you to go through every one of these pages, but does this appear to be a copy of all the checks that were paid from the Ameris account to the contractors and suppliers on the project?

A. Yes, sir. These are the checks that

were issued.

Q. And these are the checks that were issued prior to the time Miss Gibson came in and set up the Heritage Seven checking account?

A. That would probably be the case, only the fact that when she did open up her checking account I believe she had some initial draw requests. Those would have been probably funded by cashier checks because she had not received her physical checks.

Q. Cashier checks directly to Linda Gibson or Heritage Seven?

A. Correct.

Q. Flip over to Exhibit 44. Is this an email that you got from Rolando?

A. Yes. That is correct.

Q. And it says Rolando is attaching a couple of invoices and sending them to you in November of 2007; correct?

A. That's correct.

Q. If you flip back on the third and fourth pages, these appear to be copies of invoices from Triton Construction that you received?

A. That is correct.

Q. For example, the last page is a Triton

Construction invoice for $49,200.

If you look back at Exhibit 42, the check -- this is Bates No. 00055.

A. Yes, sir.

Q. Is that a check made out to Triton Construction?

A. Yes, sir, it is.

Q. In the amount of $49,200?

A. Yes. That's correct.

Q. So is this indicative of the procedure that you and Rolando followed during the time that he was in charge of the disbursements?

A. That's correct.

Q. Was there ever a check made payable to Rolando?

A. Not to my knowledge, no.

Q. To your knowledge, during that time period were there any disbursements made without a supporting invoice?

A. Not to my knowledge.

Q. Did you receive some additional -- did you receive some reports from Rolando about how the project was going?

A. I believe I received emails or phone conversations.

Q. And did he always indicate that everything was going as planned?

A. Everything was always positive.

Q. Now, when Mrs. Gibson came back into the picture and set up a checking account, did anyone else have check writing authority to that Heritage Seven account?

A. To my knowledge, I believe either one of her daughters or both of her daughters may have access to the checks.

Q. Tell the Court how the disbursements were to be handled once Miss Gibson was back.

A. Like I said before, Miss Gibson over the project -- through discussion we found it would be easier if, instead of her mailing an invoice and us mailing a check out to her, she could call us up and say I need a draw and send us the invoice in either email or fax or regular mail. We would then deposit the money in her account, and that way she would have access to the funds, or we could cut cashier's checks like we did in the past and send those directly to the contractors and subcontractors.

Q. And that was in fact an arrangement that Miss Gibson herself requested; right?

A. Correct.
Q. Look over at Exhibit 66. This is an email. The bottom is from you to Tifton Loan Booking, which I assume is your office in Tifton.
A. That's correct.
Q. In this email you request some money be transferred from the construction loan account into the Heritage Seven checking account; correct?
A. That is correct.
Q. And this is, as just discussed, the procedure where Miss Gibson would make a request and you would ask the bank to transfer the money into a checking account; is that correct?
A. That's correct. We request the account be funded.
Q. So in overview of the project, from the time the project started and you were told by Miss Gibson that Rolando was in charge until the time Miss Gibson stepped back into the picture to your knowledge every payment disbursed was made out directly to the contractor or supplier and was supported by an invoice and was requested by Heritage Seven through Rolando; correct?
A. That's correct.
Q. And once Miss Gibson stepped back in

every fund from that point on that was disbursed was disbursed straight to Miss Gibson; correct?

A. That is correct.

Q. Now, did Miss Gibson follow the procedure that you had discussed about how she would obtain money from the construction loan account when she set up the checking account?

A. Not exactly.

Q. What happened?

A. Typically what would happen, we found out later, is she would call in to make requests for a draw and then she would cut a check off the account. There would not be a supporting invoice to be sent to the file.

Q. Let's look over at Exhibit 70. Is this an email that you got from Seven Oaks Apartment's email address in August of 2008?

A. That's correct.

Q. And it says: From Elizabeth. Who is Elizabeth?

A. Elizabeth Gibson. Miss Gibson's daughter.

Q. Do you recall why Elizabeth was sending you this information?

A. I'm pretty sure I probably requested a

list of updated expenses, monthly expenses.

Q. This is August. At this point had Mrs. Gibson or Elizabeth or anyone made any complaints about the way that Ameris had been handling the disbursements?

A. No, sir.

Q. In fact, they were continuing to work with you and --

A. Absolutely.

Q. Look over at 71. The bottom email is from you to Joli Donnelly. She's a branch manager or was a branch manager for Ameris at the time?

A. That's correct.

Q. And in your email you say you met with Linda and you're going to be able to help her with some additional accounts; is that correct?

A. That is correct.

Q. So this is August of '08 and Miss Gibson is continuing to do business and hadn't made any complaints about how Ameris has treated her?

A. Everything at this point was still going fine and smooth.

Q. Look over at Exhibit 72. It's an email that you sent to Mr. Snipes and Mr. Sturm at Ameris

in September of '08; correct?

A. That is correct.

Q. And this is in regards to Heritage Seven and Mrs. Gibson having come and requested potentially obtaining some more funding from Ameris to complete the renovation project; correct?

A. That is correct.

Q. And did Miss Gibson in fact request additional financing for the apartment complex?

A. Through our conversation, yes, she did make a request.

Q. At this point Miss Gibson is still in charge of managing this construction project; right?

A. That is correct.

Q. If you look at the last paragraph, you reference a meeting with Linda where you walk through and review the repairs that needed to be made; correct?

A. That is correct.

Q. During that meeting did she ever say anything to you about not being satisfied with the way Ameris had handled the disbursements for the project?

A. No, sir.

Q. Flip over to Exhibit 91. Is this a memo that you prepared?

A. That's correct.

Q. And it relates to a June 2nd, 2009 meeting that you and Karl had with Miss Gibson; correct?

A. That is correct.

Q. If you look at the second paragraph, the third sentence, it talks about Linda has had many challenges as of late due to the fact that several of her tenants have either lost their income or not had the money to pay their rent.

A. I see what you're saying.

Q. So at least part of the problem at this point is that the tenants that she had in place weren't paying her; right?

A. That's correct.

Q. This is middle of 2009 at this point.

Did Miss Gibson make any complaints about the way Ameris had been handling this?

A. Not about the bank, no, sir.

Q. Benjie, to your knowledge was any money ever withdrawn from that Heritage Seven checking account without Miss Gibson's knowledge?

A. No, not to my knowledge.

Q. In fact, she was in complete control of that account; right?

A. Her and the signers, which were her daughters, to my knowledge.

Q. Benjie, if you'll flip over to Exhibit 87. Are you there?

A. I am.

Q. This is a little bit hard to read. This is a promissory note dated January 9th, 2009. Do you see that?

A. I'm there, yes.

Q. And this is a renewal note that Miss Gibson signed in early 2009; correct?

A. That is correct.

Q. When she executed this note, did she ever make any complaint about the way that Ameris had handled the disbursements in this case --

A. No, sir.

Q. -- or any way that Ameris had handled the project in general?

A. No, sir.

MR. JORDAN: Nothing further, your Honor.

THE COURT: Mr. Kefalos, any follow-up questions?

MR. KEFALOS: Yes, sir. A couple.

REDIRECT EXAMINATION

BY MR. KEFALOS:

Q. Mr. Lanier, you were talking about at the time when Rolando was taking the advances on the construction loan and you were talking about how every check Ameris issued were for contractors or materials.

A. Yes, sir.

Q. That didn't solve the problem, did it? Do you remember Ameris cutting a check to the contractor at Triton Construction?

A. Yes, sir.

Q. And Triton took the money and left?

A. Yes, sir.

Q. It didn't do any work and just kept it?

A. They did not have an executed contract.

Q. So they kept $30,000 that y'all had cut to them.

Do you remember the problem with the windows?

A. No, sir.

Q. Don't you remember there was a check issued for purchase of replacement windows?

A. Yes, sir.

Q. And do you remember somebody ordered the windows, but they were the wrong windows?

A. I do remember you mentioning that one, yes, sir.

Q. And so instead of returning them or fixing them, they tried to cut the windows to make them fit.

A. Yes, sir.

Q. These windows were $35,000?

A. Yes, sir. I would have to check the invoice, but that sounds correct.

Q. Cutting the windows to try to make them fit then voided the warranty on the windows?

A. If you say so.

Q. When you did your apartment cash flow analysis, the thing that you submitted to the loan committee --

A. Yes, sir.

Q. -- did you take the repayment of the $700,000 second mortgage into account when you did that cash flow analysis?

A. No, sir, I did not.

Q. If you had taken that repayment of the 700,000, it would have made a big difference in the landscape of the loan, wouldn't it?

A. In the overall picture specific to the apartment complex, yes, sir.

MR. KEFALOS: At this point I would like to make sure that we have exhibits that are associated with Mr. Lanier. I want to go over them.

MR. STEPP: Do we need to do this before this witness is done? I think we've got maybe a couple more questions.

EXAMINATION

BY MR. JORDAN:

Q. Mr. Lanier, at any time when Rolando was involved in this project did you have any reason at all to believe that he was mismanaging any of the funds that were being disbursed to the contractors?

A. No, I did not.

Q. Did you have any reason to believe that he was doing anything improper in terms of his relationship to Miss Gibson?

A. No.

Q. Did you in any way intend to aid Rolando in violating the duties that he owed to Mrs. Gibson or Heritage Seven?

A. Absolutely not.

MR. JORDAN: No further questions.
THE COURT: I'm going to take a break. I may want to ask Mr. Lanier some questions.
(Short recess taken.)
MR. KEFALOS: I want to admit Plaintiff's 27, 28, 29, 43, 45, 47, 49, 50 and Mr. Zerbst's deposition as a court exhibit which we used for additional purposes.
MR. JORDAN: No objection.
THE COURT: Thank you, sir.
(Plaintiff's Exhibits 27, 28, 29, 43, 45, 47, 49 and 50 in evidence.)
THE COURT: Any more questions before -- I have a few questions for Mr. Lanier.

EXAMINATION

BY THE COURT:

Q. Mr. Lanier, for your benefit and for the others -- you guys have been with this case a long time and I have not, so I'm just trying to figure out some things that you folks are very familiar with. I don't want you to think I'm targeting you or any other witness. You just have some information that I haven't heard before. Okay?

A. Okay.

Q. I'm interested, Mr. Lanier, in you telling me about your relationship with Miss Gibson at First Reliance. I understand that you helped with some loan for the shopping center in Moncks Corner.

A. Yes, sir.

Q. Tell me about that involvement. How much involved -- what did you do generally and were you working with Mr. Zerbst, or did you do it on your own?

A. At that point in time -- that was 2005. I was a credit analyst for First Reliance Bank, so at that time that that loan request came in I was responsible for underwriting the financial part and relaying that information to Karl. So I would analyze the rent rolls. I would analyze her personal statement, tax returns, and relay that information to Karl.

We put that in the form of a credit memo, and that is what would get sent to be approved.

Q. And in that process did you have any personal interaction with Miss Gibson?

A. No, sir.

Q. And please help me with some of these

timelines. I think I have the dates correct. They may not be correct.

Tell me when you left Reliance.

A. I left First Reliance October 9th - 10th, might be my last day.

Q. And that would be 2007?

A. 2007, yes, sir. I apologize.

Q. And then you were employed by Ameris on October 11, 2007?

A. That's correct. That was my start date.

Q. When you left Reliance, were you aware of Mr. Zerbst and Mrs. Gibson having worked on this loan application prior to hearing about it today?

A. Yes, sir. I was aware that that loan request was in motion, but I did not know the details.

Q. I understood you to tell me that after October the 11th but before October the 25th that you received a call from Mr. Zerbst.

A. That's correct.

Q. Was that shortly after you were employed with Ameris or -- it was a short window anyway, but was that immediately afterwards or a week or so? If you have any idea.

A. I would say it was probably the following week. I got married that following weekend.

Q. You got married.

A. The 14th. So I remember that one.

Q. And you didn't get off of work after you got married?

A. I didn't get a break, your Honor.

Q. And after you received that call from Mr. Zerbst how long before you and Rolando and Mr. Zerbst went to the project?

A. It would have probably been that day, your Honor, or that next day. It was very shortly after the call.

Q. Now, when you received the call from Mr. Zerbst about this loan from Ameris Bank to help Miss Gibson -- after you received that call did you converse with anyone else at Ameris Bank before you went to the project?

A. I cannot recall, your Honor. I may have or I may not have.

Q. So you went and had the meeting. Was that in the morning or afternoon, or do you recall?

A. That would have been in the afternoon, your Honor.

Q. And my understanding is that you picked up Mr. Zerbst in Mount Pleasant somewhere.
A. Daniel Island.
Q. Daniel Island?
A. Yes, sir.
Q. And was Rolando there at that time?
A. He was on site at the apartment complex.
Q. You didn't pick up Rolando?
A. No, sir.
Q. It's my understanding that Mr. Zerbst had some package and that he didn't talk with you about it on the ride from Daniel Island to --
A. Correct. It was in a brown envelope.
Q. Did you have any conversation during that time that you think I should be aware of relating to this project during the ride?
A. No, sir.
Q. And what did you and Mr. Zerbst do when you first arrived at the project?
A. After we parked the car we got out and walked around, looked at the buildings.
Q. Rolando was already there?
A. He was already inside the clubhouse. I guess you could call it the office.

Q. Help me out. In my understanding, Rolando was managing that property before all this happened. Is that your understanding, too?

A. To my knowledge, yes, sir.

Q. Tell me what happened about the exchange of the package.

A. We were all sitting around the table, your Honor, and Karl takes the package and he hands it to Rolando and says: I want to give you this package of information. This is yours to do whatever you want to with, basically. And Rolando says: I want Benjie to have it. I want Ameris to work on the loan.

Q. And he gave you that package then?

A. Yes, sir.

Q. And you hadn't seen that package prior to that?

A. No, sir.

Q. I don't want to put words in your mouth, but you were kind of surprised by that? Or explain how you reacted, how you thought of that transaction.

A. It did seem kind of odd. Like I said, if he wanted to give me the information to work on the deal for Rolando and Miss Gibson, he could have

just gave it to me. I don't know why we had to go through that exchange. It just didn't . . .

Q. You've been in banking for a good while. Have you ever had any initial exchange with loan documents in that kind of environment before?

A. No, sir, but these weren't necessarily loan documents.

Q. I want to talk about that in a minute.

Have you ever been on the site with somebody that didn't own -- that wasn't the buyer and another banker, a former banker, and somebody was with him that was not the buyer and they sit you down and say: I want you to handle this loan?

Have you ever been involved in anything like that before?

A. No, sir.

Q. And after you received the package and Rolando said he wanted you to handle it what happened next?

A. I took it and ran with it. I went back to the bank.

Q. So you left then? Did you take Mr. Zerbst back the way you picked him up?

A. Correct. Yes, sir. I was referring to probably the next day. I got to the bank the next

day and took the package and ran with it.

Q. So you left the complex, the project is what I would call it, and took Mr. Zerbst back to Daniel Island?

A. Correct.

Q. And where was that on Daniel Island?

A. At Publix.

Q. And did the two of you have any conversation during that ride relating to this project?

A. Not that I can recall specifically.

Q. If I understand what you just told me, that you did not go back to the bank at that time. You went the next morning.

A. Yes, sir. Probably late afternoon when we got finished.

Q. And did you first look at the package when you got back to the bank, or did you look at it before you got to the bank?

A. I probably would have looked at the complete package when I got to the bank.

Q. Do you recall what was in the package?

A. From memory, I know the appraisal was in there. Maybe the folder with who the architect was. Maybe the construction budget.

Q. The construction budget?
A. Yes, sir. The contract and the budget that was attached to that.
Q. So in that package that you received were there any terms of any loans in that package?
A. No, sir. I do not recall.
Q. Nothing about 2.8 million at this percent? Nothing like that?
A. No.
Q. And after you looked at the package in the bank did you talk to anyone else in the bank about that package?
A. Probably at that point I would have discussed it with Marc Bogan who was there to let him know that a request was going to follow shortly for that project.
Q. When you went to work at Ameris, did you begin on a Monday?
A. No, sir. It was -- I believe that was a Wednesday or a Thursday.
Q. So when you come back -- but you believe that October the 11th, 2007 was a Wednesday or a Thursday?
A. Yes, sir. I believe it was a Thursday.
Q. But you told me you got married on the

14th. Was that on a Thursday?
A. That was a Sunday.
Q. October 14th?
A. Yes, sir.
Q. I can't figure that out. You have to help me. October the 7th was a Thursday and you got married October 14th. Why would it not be on a Thursday?
A. I started on the 11th.
Q. 11th. I'm sorry. Thank you. And that was on a Sunday?
A. Yes, sir.
Q. And did you go back to work on that Monday?
A. I went back to work I believe that Tuesday. Tuesday or Wednesday.
Q. The earliest you would have been back to work would be October the 16th or 17th, 2007?
A. That sounds correct, yes, sir.
Q. And up until that time you hadn't gotten the package yet?
A. No, sir.
Q. Now I'm narrowing it down a little bit.
Between October the 16th and October the 25th is when you had a call from Mr. Zerbst.

A. Correct.
Q. My understanding is the grand opening of Ameris Bank was on October the 25th.
A. Yes, sir.
Q. Was that on a Friday?
A. That was also on a Thursday.
Q. That was on Thursday night. What did you do -- you say you may have called Mr. Bogan. Is that the name?
A. Correct. Yes, sir.
Q. You may have called him that same day that you went in with the package; is that correct?
A. That's correct. He was down the hall, your Honor.
Q. He was down the hall?
A. Yes, sir.
Q. And did you have some discussions with Mr. Bogan about the package?
A. Yes, sir.
Q. What did y'all talk about?
A. I was letting him know there was going to be a loan request coming his way. Kind of laid out the particulars of the request itself and what we were thinking about in terms of the loan amount, structure. That type of thing.

Q. Did you mention to him how you got this package and who you received it from?
A. No, sir, not to my knowledge.
Q. So at that time when you first spoke with Mr. Bogan about this loan did you speak to him about Mr. Zerbst or Rolando or anything like that?
A. I did tell him about Rolando and Mrs. Gibson, my past experience with them, underwriting them with my previous bank.
Q. On that occasion you told Mr. Bogan about Rolando and Mrs. Gibson, but not about Mr. Zerbst?
A. Yes, sir.
Q. You didn't mention Mr. Zerbst?
A. No, sir.
THE COURT: You folks have to bear with me a minute now.
BY THE COURT:
Q. Plaintiff's Exhibit 28 is a loan commitment memorandum.
A. Yes, sir.
Q. And that's dated October the 22nd.
A. That's correct.
Q. Now, did you have any conversations with anyone else at Ameris Bank regarding this loan

between your conversation with Mr. Bogan on the 16th or the 17th and you drawing up this loan commitment memorandum?

A. I would have probably talked this through with Charles Stroggins, who was a counterpart at that time, a fellow business banker. He was also aware of Miss Gibson from -- he was previously employed at First Reliance as well.

Q. Where was he in your chain of command?

A. At that time he was a peer. His office was next door, yes, sir.

Q. So when you did this loan commitment memorandum, who does that go to?

A. That goes through the approval chain. So this initially went to Marc Bogan and then it would have went to John Hipp.

Q. So it would have gone to Mr. Bogan first?

A. Correct.

Q. Do you have any information or anything you can show me when you gave this to Mr. Bogan?

A. No, sir. It would have been between the 22nd and the 25th when the commitment letter was issued. So I would imagine it would either have been the 22nd, your Honor, possibly the 23rd,

just knowing the timeline of the emails and the exhibits.

Q. That's where all my confusion stems from.

A. You kind of go back and look at the email sent to Mr. Hipp, your Honor. I believe that was dated the 23rd. So at that point Marc had seen this, and possibly Mr. Hipp had looked over it.

Q. That helps me a lot.

So on October the 23rd at 3:40 p.m. you sent an email to Mr. Hipp. That's Plaintiff's Exhibit 29, if you want to look at that in the small book.

A. Yes, sir.

Q. And why would you send that the very next day to Mr. Hipp and not to Mr. Bogan?

A. At that point, your Honor, Marc Bogan had probably looked over the memo and was fine with it to go on ahead to Mr. Hipp.

Q. So did Mr. Bogan -- after looking over the loan commitment memo did he talk with you or tell you to talk to Mr. Hipp, or how did you get to Mr. Hipp all of a sudden?

A. He probably would have told me to forward it on to Mr. Hipp or he may have forwarded

the memo himself.

Q. Does Mr. Bogan know Mr. Zerbst?

A. Yes, sir.

Q. How did he know Mr. Zerbst, do you know?

A. At that time?

Q. Yes.

A. I believe Marc may have talked to Karl at some point about Ameris.

Q. So Mr. Bogan didn't know Mr. Zerbst from back from First Reliance? He wasn't working with y'all at First Reliance?

A. No, sir.

Q. He was at Ameris.

So sometime, then, between the time you brought that package back -- at least I know then that Mr. Bogan knew Mr. Zerbst. Is that a fair statement?

A. Yes.

Q. In that Plaintiff's Exhibit 29 where Mr. Hipp responded back to you he said: Thanks. I think we can draw a circle around this one quickly.

What did that mean to you?

A. I believe once we had the information

we needed on the financial statement he requested -- I guess what you don't see is Mr. Hipp either called me or there was another email that he wanted some clarification on the financial statement of what Mrs. Gibson's ownership -- the assets that she listed on her financial statement.

Q. That was in another email, wasn't it?

A. Correct. That was the follow-up email with Rolando.

MR. STEPP: That's a defendant exhibit, your Honor.

THE COURT: Thank you.

BY THE COURT:

Q. So on Plaintiff's Exhibit 29 Mr. Hipp writes you back at 7:41 p.m. on 10/23. He says: I think we can draw a circle around it. Is that correct?

A. That's correct.

Q. You sent your email at 3:40 p.m. and you think you had some discussions with Mr. Hipp between 3:40 p.m. and 7:41 p.m.?

A. No, sir. That would have been a request before 3:40. I believe Mr. Hipp had looked at the memo package, the financial statement, had questions, and asked me to reach out and get those

answers, and at 3:40 I was following up with him to let him know I reached out. Waiting to hear back something. I'll keep you posted.

Q. So from 20 minutes to 4:00 until 20 minutes to 8:00 you're telling me that Mr. Hipp contacted you and told you to get more information?

A. No, sir. The request for information would have taken place before this 3:40 email.

Q. Before?

A. Yes, sir.

Q. Before your email?

A. Yes, sir. It might have been earlier that day. He had some questions or clarifications. I went out and did what he had asked, reached out. And I sent him an email to kind of let him know where we stood at 3:40, and his response was at 7:40, that email.

Q. So you had already asked for the information --

A. Yes, sir.

Q. -- that you tell me Mr. Hipp had requested, and he gave this "I think we can circle it" before he saw that information.

A. Yes, sir. I mean, that's what his response was, sir.

Q. And Defendant's Exhibit 21, that's where you sent Rolando and asked him some questions. Defendant's Exhibit 21.

A. Correct.

Q. And that was done at 10/23 at 6:47 p.m.; correct?

A. Correct. And at that point, your Honor, I more than likely called Linda, left a message or I didn't get an answer, and I composed that email seeking Rolando to respond, seeking his information.

Q. And when did you get your response from Rolando? if you did get a response.

THE WITNESS: Do you have that defendant's exhibit number?

MR. STEPP: 24.

BY THE COURT:

Q. So I've got Defendant's Exhibit 24.

A. That looks correct.

Q. And does that show Rolando's response?

A. It does. What he does is he went in and filled in the body of my question of the second -- I guess you call it the second paragraph. That looks like my request that I was asking. This statement that starts "all real estate assets" on

down, he went in and typed that into the bottom of the email replying to me.

Q. But I can't tell from that when that reply came to you. I see there where you then sent it to Mr. Hipp 10/14 at 5:35

A. Yes, sir. I can't tell either. This could have been a case where I copied and pasted his responses into an email to Mr. Hipp and Mr. Bogan.

Q. And 10/24 -- that would have been on the next Wednesday.

A. Correct. That would have been the following day from the initial request for information.

Q. And what, if anything, did you hear after you sent that to Mr. Hipp?

A. Once we got this information and -- Yeah. The real estate ownership -- the financial statement was attached. It had all the percentages on the assets.

Q. Did you get anything from Mr. Hipp to say not only circle it, now you can seal the deal? Did you get any information from him like that?

A. Mr. Hipp took this information on that statement. This would have been the following day.

This was the day of the grand opening.

Q. On 10/24 you hadn't heard -- you think you heard from him the following day?

A. Correct. Because this was at 5:27. The following day, that morning, Marc Bogan and I went out and called on Rolando as part of our call blitz before the grand opening.

Q. So you and Mr. Bogan went to see Mr. Rolando where?

A. At the apartment complex. I wanted to show Marc the collateral and the vision for the collateral.

Q. What time of day?

A. That would have been early in the morning. Probably 10 o'clock, 10:30.

Q. Was anybody else there?

A. Rolando was there. His wife may have been there. I can't say that for a fact. I believe she was.

Q. And then after you went to visit the complex with Mr. Bogan and Mr. Rolando what did you do next on 10/25?

A. Marc and I -- Marc Bogan, that is -- probably went on two, three, four more times to various customers. Got back to the bank. I

relayed this information that Rolando. Sent in the email with the financial statement to Mr. Hipp.

Q. How did you do that?

A. He was on the site. He was there for the grand opening of the party.

Q. So you relayed this to him at the grand opening party or before it started?

A. Yes, sir.

Q. What did you relay to him? Something verbal?

A. We were sitting down meeting in my office and he was looking over the memo and he was looking over the financial statement, and that's when he had the suggestion about taking the Klister Lane property as collateral.

Q. The Klister Lane property, is that something that I should be aware of?

MR. STEPP: The cell tower.

A. That was the cell tower. Yes, sir.

Q. And then from there you drew up -- what was signed on 10/25 at the party? Do you recall that exhibit number?

MR. JORDAN: No. 26, defendant's.

THE COURT: Thank you.

Q. (Continued) How do you describe

Defendant's No. 26? What is that?

A. That's a commitment letter.

What transpired before that was Mr. Hipp requested that we take Klister Lane property as additional collateral, because that property had cash flow coming in off the cell tower lease. It would help supplement the apartments during construction. Because there would be vacancies, people would have to move out, and you would have natural vacancies.

His thought process was if we take this and we get an assignment of rent, we'll have additional cash to help overcome the shortfall.

Q. And you then worked this up. And you told me on the 25th at 10 o'clock you were at the apartment complex, and then you and Mr. Bogan went to some other customers and then you came and had a meeting with Mr. Hipp. And so what time did the party start?

A. I would say probably about 6 o'clock.

Q. 6 o'clock?

A. Yes, sir.

Q. So after doing all that sometime between your meeting with Mr. Hipp -- and you don't remember what time that was, do you?

A. It would have been probably shortly after lunchtime. Because, your Honor, after the meeting with Mr. Hipp I reached out to Rolando and relayed to him that we would need to take Klister Lane as additional collateral.

Q. Did you reach out to Miss Gibson during that time to tell her that?

A. No, sir. He was to relay that to Miss Gibson, and they were going to be in attendance that night at the party.

Q. Prior to your going to the project with Mr. Bogan on the morning of 10/25 did you have any idea that you would be giving a commitment letter that night at the party?

A. We had a good idea.

Q. You did. Tell me how you had that idea.

A. At that point Marc had reviewed the memo. Mr. Hipp had reviewed the memo. He wanted some clarification on those questions which we got the night before at 5:47 or whenever the email from Rolando came in. After meeting with Rolando at the project -- Marc seen the project. He was comfortable with the deal -- we reported to Mr. Hipp.

Q. Did they tell you to hurry up and get it done? Is that the normal way you handle a commitment letter?

A. No, sir. The pressure was coming from the borrower's side because they were supposed to close, and that's really how this supposedly came to be. Because the previous bank was putting them off and dragging their feet on getting it approved.

Q. So when were they supposed to close? That's something I hadn't heard. And how did you know when they were supposed to be closing?

A. From what we understood, they wanted to close as soon as possible.

Q. Who is "we?"

A. Rolando and Miss Gibson. They were getting pressure themselves.

Q. So Rolando was telling you he was getting pressure and they wanted to close as soon as possible.

Who is the "we?" You and who else wanted to close as soon as possible?

A. Me and Marc and Mr. Hipp.

Q. In your experience have you ever seen a process like this on a loan commitment? Have you ever done anything like this before?

A. This was very unique in the fact that we had a nearly complete package at the time, you know, between the time we went out and met Rolando and a few days later, and then the approval -- we had everything in place in terms of appraisals and that type of thing to get the approval done fairly quickly.

The underwriting and such, your Honor -- I had been in underwriting. That's how I started my career in banking. Became a lender, technical underwriter, and then a lender again. So I was very versed in putting a credit memo -- I could put one of those together in two or three hours if I had the information I need.

Q. Now we're at the party at 6 o'clock, and did you take this with you? Did you have it in an envelope?

A. Yes, sir. It was in an envelope in my office.

Q. In your office?

A. Yes, sir.

Q. You didn't --

A. The party was on site. It was at the bank building, in the bank parking lot.

Q. Do you have any idea what time of the

evening or afternoon -- where did you go to have Miss Gibson sign this?

A. To my knowledge, I don't remember her signing the commitment letter at the party. I remember giving her the commitment letter and going over it, but not to sign it.

Q. Was anybody else with you when you gave her the commitment letter?

A. Rolando would have been present. Rolando and Linda and Portia, Rolando's wife, as my memory recalls, they were in the lobby of the bank. I went to my office, got the commitment letter, brought it in the lobby and gave it to them. This would have probably been about 9:30 in the evening.

Q. No one else from the bank was at this exchange?

A. Not at that particular moment. There were people coming in and out, but there wasn't someone right there by my side, no, sir. There wasn't anybody right there by my side.

Q. Did that exchange take place in your office or out there --

A. In the lobby.

Q. In the lobby?

A. Yes, sir.

Q. If and when did you ever get a signed copy from Miss Gibson?

A. I'm still not sure if I ever got a signed copy.

Q. Would that be unusual?

A. Not completely. A commitment letter typically lays out the structure and all the parts and particulars of the loan. Sometimes commitment letters aren't signed before they go to final loan docs and closing.

Q. And the actual closing happened November 7th?

MR. STEPP: That's a 2.

Q. (Continued) To your knowledge had Mr. Bogan ever met Rolando prior to going on the site with him?

A. No, sir.

Q. But you told me you had talked to Mr. Bogan about Miss Gibson and Rolando; is that correct?

A. That's correct. Before that meeting, yes, sir.

Q. And you talked with them about your experience that you had with him with the shopping center?

A. Right.

Q. Have you handled any loan package of this magnitude with this much money -- have you ever handled one like this before in that such short of a time?

A. Again, this is a unique situation. The way the package was -- so much of the work was already complete.

In terms of the loan approval for that dollar amount, it's not unheard of. No, sir.

Q. I get that from Mr. Zerbst. I'm asking you if you've ever done one like that.

A. Outside of this, your Honor, no, sir. This was a unique case.

Q. That's all I want to know. I get all this inference. I understand the caveat that everybody wants to throw in there, but I want to know about you.

A. Not for this size dollar amount, no, sir.

Q. So most of your commitment letters and based on the package that Rolando -- that Zerbst handed to Rolando and Rolando gave to you --

A. No, sir. Not necessarily.

Q. Where did you get any other information

aside from that package? Where did that come from?

A. We knew the purchase price was going to be 2.8. When we were talking to Rolando we knew it was going to be a rehab. They were going to put 700 of their own cash into it, Miss Gibson, that is. So initially the loan amount was going to be 2.1, but the draw-up was 2.8.

A typical construction loan is going to have a 12-month interest on the period for a rehab. The rate at that time, five plus a quarter, was really the going rate for construction. It's actually a really good rate. 10,000 origination fee, that's fairly arbitrary. It could have been 1%; it could have been nothing.

Q. All that came from Rolando?

A. No. The purchase price we knew from Rolando, the contract and all that good stuff.

Q. What I'm trying to determine: Did you sit down with Miss Gibson or anyone else in the bank and say these are the terms. This is how we're going to do this loan?

A. That's what is laid out in the commitment letter.

Q. I'm asking where did that information come from? Did you gather that from somebody other

than Rolando?

A. No, sir. I structured that myself just from -- a construction loan is typically 12 months. That is usually the going term on construction loans. The going rate at that time, prime plus a quarter for construction, that was -- I said that was a fair rate. That's probably why the origination rate is tacked on, because it's a fairly low rate for a construction loan. A construction loan is typically five plus one, five plus two.

The idea was 12 months to complete the project and then a five year term, which would be 12 months interest only and then four years principal and interest. A five year term is very standard in commercial banking. A five year balloon period.

Q. What happened to this package that you got from Zerbst to Rolando to you? Does it exist now in the package, or what happened to it?

A. I can't say where it exists now. At the time when I closed the loan and during my tenure at Ameris it was in my loan file.

THE COURT: Thank you. Do you have any questions from the plaintiff or the defendant?

MR. EPTING: Your Honor, I am reading from what is now moved into evidence Exhibit 41, Page 3. The section is entitled "Concluding Observations."

A: Ameris operates as the bank holding company for Ameris Bank which has offices in Georgia, Alabama, Florida and South Carolina.

B, at the end of March 2002 Ameris Bank had three --

MR. STEPP: 12.

MR. EPTING: 2012. Ameris Bank had $3 billion in assets and 297.7 million in stockholders equity.

C: In fiscal year end 2011 Ameris had 113 million in net interest income and 31.6 million in income before income taxes.

D: In fiscal year end 2011 Ameris had 46.2 million in net cash provided by operating activities. This was an average of $887,808 per week and $126,482 per day. At the close of 2011 Ameris had 65.5 million in cash and due from banks.

F: Based on this preliminary evaluation of Ameris's financial information and data Ameris has a financial ability to pay punitive damages for --

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BERKELEY

LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL GIBSON FAMILY TRUST, and HERITAGE SEVEN, LLC,

Plaintiffs,

vs. NO. 2010-CP-08-2134

AMERIS BANK,

Defendant.

MASTER-IN-EQUITY HEARING
VOLUME III

BEFORE: The Honorable Robert E. Watson

DATE: August 14, 2012

TIME: 9:34 A.M.

LOCATION: Berkeley County Courthouse
300-B California Avenue
Moncks Corner, SC

REPORTED BY: SUSAN KENNEDY CRAWFORD,
Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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ALSO PRESENT:

Kim Woodworth
Linda Gibson
Steve Melton

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twice. That would make a little more sense to me. Okay?

MR. JORDAN: Thank you, Your Honor.

MR. WEST: At this time, the plaintiff would call Mr. Geoffrey Southard.

THE COURT: Please give me your full name.

MR. Southard: Geoffrey Laurence, L-A-U-R-E-N-C-E, Geoffrey with a G, Southard, S-O-U-T-H-A-R-D.

GEOFFREY LAURENCE SOUTHARD

being first duly sworn, testified as follows:

THE COURT: Thank you. You may be seated.

DIRECT EXAMINATION (QUALIFICATIONS)

BY MR. WEST:

Q. Good morning, Mr. Southard.

A. Good morning, Mr. West.

Q. How old are you, sir?

A. I am 53 years old.

Q. And what is your educational background?

A. I was raised in Charleston, went to First Baptist from -- First Baptist Church School from kindergarten all the way through graduation,

went to Furman University, did not finish at Furman University, and have been in the real estate business for the last 26 years.

Q. Let's talk about your work experience starting from the time you left Furman University. If you will, please, sir, just walk us through your work history.

A. Left school, went to work in the hotel business as front desk and that sort of thing for three years, went through that, decided that I wanted to be in the real estate business, went to work for Read & Read in, I believe it was, 1986, worked for Read & Read for approximately two and a half years.

Q. Let me stop you right there. What is Read & Read?

A. Read & Read is a real estate brokerage firm. It's located at 37 Broad Street, Downtown Charleston.

Q. What was your position at Read & Read?

A. I started out selling residential properties, and six months from that point, I started on the commercial side of the business.

Q. All right, sir. Continue.

A. Worked for Read & Read, left their

employ, went to work for a company called The Linpro Company. That was a development company. They were in the process of building the Quarterdeck Apartments which was a 230-unit, first-phase-construction apartment complex on James Island. I was in their employ as director of operations for the Charleston office. My position was to find other projects and to complete that project.

THE COURT: Could I have the name of that company again?

THE WITNESS: Linpro, L-I-N-P-R-O.

THE COURT: Thank you.

BY MR. WEST:

Q. Did you leave the employ of Linpro at some point?

A. I did. In -- sometime in 1989, I want to say mid-1989, went to work with another brokerage firm, Batten & Tarrant. Subsequently went to work -- in a commercial capacity once again. Subsequently went to work with Tommy Baker and Gene Reed selling luxury cars.

Got back in the real estate business in, I want to say it was, about late '91, '92, and at that point went to work for Atlantic

International which became Atlantic International Caldwell Banker Commercial. I was with them for 15 years selling commercial real estate, managing commercial real estate and leasing commercial real estate and investment properties.

After that, I went to work with Jesco Homes as their land acquisitions manager.

Q. And after your employment with Jesco Homes?

A. After Jesco Homes, Carolina One, as they were going to build a commercial division, which they did not do, and after that, Agent Owned right here in Moncks Corner.

Q. And is that where you're currently employed?

A. That is.

Q. And what kind of work are you doing with Agent Owned?

A. I am doing commercial real estate.

Q. So it's fair to say --

A. Investment real estate.

Q. It's fair to say that the majority of your career, you have been involved in commercial real estate sales?

A. Yes, it is.

Q. All right, sir. And over the course of your career, have you had occasion to be involved in the purchase and sale of apartment complexes?

A. I have.

Q. All right, sir. Do you hold any licenses?

A. I do.

Q. What licenses do you hold?

A. South Carolina real estate license.

Q. How long have you had that license?

A. For 26 years.

Q. Have you had any continuing education courses related to real estate sales?

A. I have. I've done the continuing education that's necessary for the state to keep up your license. I've done a program called the CCIM program. I've done the first class of that which is CCIM-101 which is all about the financial functions of a real estate -- of investment in real estate property.

Q. What does CCIM stand for?

A. Certified commercial investment member.

Q. All right. Have you testified as an

expert before in this court?

A. Yes, sir, I have.

Q. Do you remember the context and occasion that you testified as an expert in this court?

A. Yes, sir. I've testified with Galt Valley after -- in conjunction with this very same property.

Q. Okay, sir.

MR. WEST: Your Honor, at this time, we would offer Mr. Southard as an expert in commercial real estate sales.

THE COURT: Go ahead.

MR. JORDAN: Let me ask a few questions.

CROSS-EXAMINATION (QUALIFICATIONS)

BY MR. JORDAN:

Q. Mr. Southard, do you hold a -- you mentioned that you had some of the training for the CCIM. You do not hold that designation, though, do you?

A. I do not.

Q. And you are not a licensed real estate broker, are you?

A. I am not a broker, no.

Q. Have you ever been a licensed real estate broker?

A. No, I have not.

Q. Are you a licensed real estate appraiser?

A. No, I'm not.

Q. Have you ever been a licensed real estate appraiser?

A. No, I've not.

MR. JORDAN: Your Honor, we don't object to Mr. Southard's qualifications as a real estate agent. Our concern, which we've noted in our motion in limine, is that they intend for Mr. Southard to testify regarding his opinions of the problems with Mr. Moore's appraisal of this property, and to the extent that he's being offered for that purpose, we don't believe that he's qualified to critique an appraiser's appraisal when he himself is not licensed as an appraiser or a broker.

MR. WEST: Your Honor, if I may, he really doesn't know what we're going to offer him to testify concerning because he hasn't testified yet, and I would represent to the Court that by the time Mr. Southard finishes today, that will be

become a moot question.

THE COURT: All right. I'm going to qualify him as an expert in commercial real estate sales, is what I've been asked to qualify him as. I'm going to do that and let's see where the testimony takes us.

MR. WEST: Indulge me just a minute, Your Honor. I'm fighting some allergies.

DIRECT EXAMINATION

BY MR. WEST:

Q. Mr. Southard, have you been compensated for your time in this matter?

A. I have been.

Q. And do you anticipate that you will be compensated for your time in connection with your participation in this case today?

A. Yes, sir.

Q. Are you familiar with the Northwoods Garden Apartments?

A. Yes, sir, I am.

Q. Tell the Court, if you will, when you first became familiar with the Northwoods Garden Apartments.

A. The very first time was when the owners before the people that owned the property,

Lenny Silverman and Tom Finnegan, owned the property. They lost it in 2003 and -- to the people that sold the property to Miss Gibson.

Q. All right. Well, let's take it chronologically, if we can. After your familiarity that you just described, did you have occasion while employed with Jesco Homes to become professionally connected in any way with Northwoods Garden Apartments?

A. Yes, sir.

Q. Tell the Court about that, please.

A. Miss Gibson's daughter, Elizabeth, was at one time an employee of Jesco Homes. She had left Jesco Homes, and she called us in, I believe it was, late 2007, early 2008 to see if we would be interested in coming and buying -- and looking at the apartments and buying them from Miss Gibson.

Q. When you say we, you're talking about Jesco Homes?

A. Jesco Homes, correct.

Q. Go ahead.

A. I went over there, went over to the apartments, met with Elizabeth. I had seen the income and expense statements for the property.

She told me what they would need to sell the property for, and I said we wouldn't have any interest because we felt like -- I felt like it was too expensive and was not a property that we would be interested in; we wanted to make money. We didn't feel it would make money.

Q. And so Jesco Homes declined to purchase the property?

A. That's correct.

Q. Do you remember approximately when it was that that conversation took place with Miss Gibson's daughter?

A. Late 2008.

Q. All right, sir. And did you do anything other than examine the income and expense statements? Did you physically inspect the property then?

A. Yes.

Q. And what did you -- generally speaking, what did you find when you were inquiring for Jesco Homes about the viability of a potential sale?

A. I found the property that for the amount of debt that they had on it, we couldn't buy, rehabilitate, invest more money in it and

sell and make money.

Q. All right, sir. And did you have a subsequent occasion to become professionally associated with the apartment complex properties?

A. I did.

Q. When and under what circumstances did you have that occasion?

A. Miss Gibson or her daughter contacted us, Carolina One, Christina Ellis and myself, asked us to come look at the property and see what we felt the value would be and put a value on it and then market the property for sale.

Q. All right. Let's put this in a little context now, if we can. Your earlier testimony was at some point, you left Jesco Homes and went to work for Carolina One --

A. That's right.

Q. -- is that correct?

So the second contact you had with the property was in your capacity as an agent for Carolina One; is that correct?

A. Yes.

Q. All right, sir. And tell us what you did insofar as any due diligence was concerned in regard to a potential listing of the property

while you were employed with Carolina One.

A. We -- once again, we got the income and expense, we got a rent roll, we inspected the property, physically inspected the property, learned about the property and its components and the nature of the property. We then came back to Miss Gibson with a value that we felt like the property could sell for.

Q. And did you, in fact, take a listing on the property?

A. We did.

Q. Do you remember when that was?

A. It was in December of 2009. I believe that's correct.

Q. All right, sir. And what did you recommend to -- if you did, make a recommendation to Miss Gibson on behalf of Heritage Seven to list the property for in December/January time frame?

A. We made a -- we suggested a price of a million 5, $1,500,000. I believe that's correct.

Q. Excuse me?

A. $1,500,000.

Q. All right, sir. And is that what the property was listed for?

A. Yes.

Q. And did you market the property?
A. We did.
Q. Describe, if you will, in your own words whether it was an aggressive marketing or some other form, passive marketing. You tell us what kind of marketing took place.
A. We felt like it was aggressive. We actively called people, looked for -- we called apartment owners that were right there in the neighborhood, Todd Abedon from -- that owns a property right down the street. We called MCS. We brought all three -- and we called -- oh, gosh -- Anita Zucker's company. We brought all of them out to the property. They inspected the property and none of them made offers.
Q. Did anyone ever make an offer during the period of your listing agreement?
A. No, sir.
Q. All right. Now, let me backtrack just a little bit to the practice of making a recommendation to your client with regard to value. Is that normal?
A. Yes, it is.
Q. In your world, clients rely on you to make recommendations with respect to an asking

price?

A. They don't always listen, but, yes, it is.

Q. All right. So it wouldn't be uncommon for you in your professional capacity to make a recommendation to a client?

A. No, sir, it would not be.

Q. And, in fact, in this case, you made a recommendation?

A. That's correct.

Q. And tell us, if you will, just by way of reminder, how it is that you arrived at a recommendation of $1.5 million to Heritage Seven when you listed the property.

A. We received from Miss Gibson a rent roll. That rent roll has who's in the property, what they pay and the terms of their lease. We also received an income and expense statement, that being how much money is coming in, what they're paying out, and at the bottom, there is a bottom line number which is called the net operating income we arrive at.

That net operating income is then given an application to a capitalization rate. That capitalization rate is divided -- the net

income is divided by the capitalization rate and a value is arrived -- arrived.

Q. And that was the primary basis upon which you recommended the 1.5 million?

A. That's correct. And that's because practice -- the practice is that if you're selling an income property, then you analyze the income.

Q. Did you --

A. That's the heaviest -- for an investor, that's the heaviest qualifier.

Q. All right, sir. And that's your standard practice in regard to recommendations with regard to an asking price --

A. Yes, sir.

Q. -- on an income-producing property?

A. Yes, sir.

Q. All right, sir. Now, let me ask you if you recall what Miss Gibson paid for the property.

A. Miss Gibson paid 2.8 million for the property.

Q. All right. Now, what is a short sale?

A. A short sale is when a property has lost enough value that it no longer meets the debt requirement of the sale.

Q. And did you on behalf of Carolina One and Heritage Seven market the property for a potential short sale?

A. Yes, we did.

Q. And did you get any inquiries in regard to a short sale?

A. We received no offers.

Q. Did you have regular contact with Miss Gibson during the period that you had the property listed?

A. Yes, we did.

Q. Generally, if you will, describe your interaction with Miss Gibson during the listing period.

A. Miss Gibson was under a lot of stress and really needed to sell the property. She was -- she had health issues. Our interchanges were pleasant, but you could tell, you could see that Miss Gibson was very, very desirous of not being obligated to this property any longer.

Q. All right, sir. Did she express that to you?

A. Absolutely.

Q. Did the listing agreement ultimately expire with Carolina One?

A. Yes, sir, it did.
Q. Was there any discussion or effort to renew or extend that?
A. No, sir, there wasn't.
Q. Do you understand why?
A. Yes, sir, I do.
Q. Why?
A. We didn't -- on Carolina One side of it, we didn't feel that we were in a position to sell the property or that the property was in a position to sell. The market wasn't coming to the property nor was the property going to the market.
Q. All right, sir. And did that effectively end your relationship with Miss Gibson and Heritage Seven?
A. Yes.
Q. All right. Now, let's move forward in time. Did you have any other professional connection with respect to the apartment complex?
A. Yes.
Q. Tell the Court about that.
A. In August/September of '10, a gentleman named Michael Danhour contacted us. Michael Danhour was the COO, I believe it is, of a company called Griffin Capital. They were in the

process -- which is Galt Valley, and they were in the process of acquiring the note from the bank, whoever that bank may be. I believe it's Ameris.

So they asked me to go do a broker --

MR. JORDAN: Objection. Hearsay.

THE COURT: Tell me what you did as a result of your conversation with this man from Galt Valley.

THE WITNESS: I went out and did a broker price opinion, sir.

BY MR. WEST:

Q. All right. And why did you do a broker price opinion as far as you understand it?

A. To help him value the property as he was going through his negotiations with the bank.

Q. Do you recall approximately when you were asked to do a broker price opinion for Galt Valley?

A. I think it was late August/September. That's the date on the -- that's the date on the BPO.

Q. Do you recall the value that you opined to your client?

A. I gave them a value of $750,000 as is, 1,800,000 renovated.

Q. All right, sir. Now, is that the context in which you later testified in court?

A. Yes, it is.

Q. And you testified essentially to the same opinions that you just shared with the Court?

A. Yes, sir.

Q. All right. And did you have any other involvement in connection with the apartment complex other than the three that you've testified to: the Jesco Homes' situation, Carolina One and then lastly the BPO?

A. No, sir.

Q. All right. Now, you indicated in your earlier testimony, Mr. Southard, that you regularly offer recommendations to clients with respect to asking prices and that sort of thing; is that right?

A. Correct. Yes, sir.

Q. If Linda Gibson had come to you in the fall of 2007 and asked you whether or not it was a good buy to buy the apartment complex for $2.8 million, what would you have said?

A. I would have said no.

Q. And why would you have said that?

A. The property -- based on the

information that I've seen and been given, the property would not support -- wouldn't support a debt of 2.8 million if that was with 100 percent financing.

Q. Have you ever shared in writing as far as you recall to anyone your opinions about what you just testified to regarding the $2.8 million purchase price in any E-mail transmissions?

A. Yes, sir, I have.

MR. STEPP: Is this something new?

MR. WEST: No. This was 10 and 11 to his deposition.

MR. JORDAN: Your Honor, we have an objection for the record. This is an E-mail dated August 27th of 2009. The time frame that we're talking about is in the fall of 2007, so we would object to this document as not being relevant.

THE COURT: Yes, Mr. West.

MR. WEST: If Your Honor please, we, of course, would like to have Mr. Southard identify the document and explain the context in which he wrote these and its relation back to the very question that he has been asked to offer an opinion concerning; so I think it's highly relevant and confirmatory of what his testimony

is.

THE COURT: Well, was that document admitted earlier in the case?

MR. WEST: Yes, sir. I believe it's Plaintiffs' 37.

MR. JORDAN: We don't believe it's been admitted, Your Honor.

MR. WEST: It's Plaintiffs' 37. If it's not admitted, we are getting ready to offer it.

It has not yet been admitted.

THE COURT: All right. I'm allowing -- I'll allow it to come in.

BY MR. WEST:

Q. Mr. Southard, I'm going to hand you a couple of E-mails and ask you if -- starting with the first one in time, a 4:05 p.m. E-mail on Thursday, August 27, 2009. That's been premarked Plaintiffs' Exhibit 37 (tendering) and ask you if you can identify that document, please, sir.

A. Yes, sir. That is --

Q. Can you tell the Court under what circumstances you authored that document, if that is, in fact, your E-mail?

A. William Lewis had asked me my opinion

of -- he was -- I believe he was working for Galt Valley. No, no, no. No, no, no. I'm sorry. He was -- he's a counselor here in Charleston at The Richter Firm. They were working for Linda at the time, I believe. And he asked me what my opinion of that particular transaction was, and this is my opinion of that transaction.

Q. Summarize what you say in that document, and then if it will help you to read any portions of it, if you would, tell the Court what you said to Mr. Lewis.

A. The first statement that I made was it was -- it seemed incredible that Linda paid almost -- well, paid exactly two times the price that the people she bought it from paid in 2003 and the price doubled, but the rents didn't. That was the first observation I made.

Q. Well, let's just read -- it's very brief. Read the second --

A. Okay. I'm --

Q. Please. Excuse me. Just read the second full paragraph. It's just two lines.

A. Again, there is no way that this property in this location in its condition at any time was worth anything near the price paid. A

look at the income and expense statements will reveal this.

MR. WEST: All right. At this time, I would offer Page 1 of Plaintiffs' Exhibit 37 into evidence.

THE COURT: All right. Over objection, it's admitted.

(PLF. EX. 37, Page 1, was admitted into evidence.)

BY MR. WEST:

Q. All right, sir. There is a second page to Plaintiffs' Exhibit 11 (tendering) and I'm going to hand you -- excuse me -- 37, and I'm going to hand you that and ask you if you can identify that document. And did you author that document?

A. I did.

Q. And what was the purpose of that second E-mail which appears to be just a few minutes later that same day?

A. As I recall, I wanted to verify what I had said in the earlier E-mail, so I went back and double-checked the rent numbers and looked at those -- looked at those issues again.

I'll read: Just looked at the rent

numbers Elizabeth sent to me in September of 2008. I ran them assuming that the maximum rents were obtained, $750 for a two-bedroom and $650 for a one-bedroom -- that's per month -- as shown on the September spread sheet for all units. I took a 10 percent vacancy factor, 35 percent for expenses, yielding a 9.3 cap rate if at $2.8 million. In other words, no renovations which would prohibit the high rents projected.

Q. All right. And then the document, of course, will speak for itself as to the next two paragraphs. But if you will, go to the final full paragraph starting with the words: My opinion.

A. My opinion, a 100 percent bad buy at the price paid. No recovery would help this property. The only thing that would sustain it is throwing more money -- more equity at it given it -- and giving it value over time/years (tendering).

MR. WEST: Your Honor, at this time, I would offer this second page of Plaintiffs' Exhibit 37 into evidence (tendering).

THE COURT: It's admitted over objection.

(PLF. EX. 37, Page 2, was admitted into evidence.)

MR. WEST: Indulge me just a moment, Judge.

No further questions, Your Honor.

THE COURT: You may cross-examine.

MR. JORDAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JORDAN:

Q. Good morning, Mr. Southard.

A. Good morning.

Q. I want to make sure, first of all, that we have our time frame down. I understood you to say that sometime prior to or around 2003, you had seen this property when someone else owned it; is that correct?

A. Yes.

Q. Okay. Now, the first time that you went out to this property in connection with Heritage Seven or Miss Gibson was when Jesco, your company, was considering purchasing it, correct?

A. It's when we were asked to look at it, yes.

Q. Okay. And that, in fact, was late 2008 or early 2009, correct?

A. That's what I recall, yes.
Q. Okay.
A. I remember it being cold.
Q. The next time that you went out to the property, that would have been early 2009 when you were asked to consider listing it for Heritage Seven and Miss Gibson; is that correct?
A. Yes.
Q. And in your opinion, when you went out there in connection with considering listing it for Miss Gibson and Heritage Seven, it's your opinion that the property was in worse condition then than when you went out to look at it in connection to whether Jesco wanted to purchase it; is that correct?
A. It was going -- yes, it was getting less serviceable.
Q. All right. So from the end of 2008 into early 2009, in your opinion, the property was in worse condition?
A. Correct.
Q. And then it was the fall of 2010 that you completed your broker's price opinion, correct?
A. Correct.

Q. And when you went to do your broker's price opinion, in your opinion at that point, the value of the property had gone down from what it would have been when you went out and looked at it in late 2008 and early 2009, correct?

A. Correct.

Q. So from late '08 into the fall of 2010, in your opinion, the property's value continued to decline?

A. Correct.

Q. You talked about when Carolina One, your company, listed the property, it listed it for one year; is that correct?

A. Correct.

Q. And Mr. West asked you some questions about why Carolina One didn't renew that listing. Do you remember that question?

A. Yes, I do.

Q. Now, in fact, when the listing expired, you were no longer with Carolina One, were you?

A. No, I was not.

Q. Okay. So it wasn't -- you weren't even working for the company that would decide whether or not it wanted to renew the listing,

correct?

A. I was still -- to explain it, I was still a licensed agent, and Christina Ellis and I were still working together to sell the property even though we were at different companies.

Q. Okay. Was there a joint listing with your new company?

A. No. Nothing in writing.

Q. You talked about the information that you obtained from Heritage Seven and Mrs. Gibson in order to list the property. Everything that you had concerning the rents and all of the information about the property, you obtained that from Miss Gibson, correct?

A. From Miss Gibson or her daughter, yes.

Q. You testified that if Miss Gibson had asked you whether or not she should purchase this property in the fall of 2007 for $2.8 million, that you would not have recommended that, correct?

A. That's correct.

Q. But in the fall of 2007, you had never gone out to the property and done any inspections to determine its value, correct?

A. Correct.

Q. Let me ask you, Mr. Southard, do you

know whether Miss Gibson asked for rent rolls when she was purchasing the property?

A. I don't know that she did. May I?

I do know that there was a rent roll in the appraisal. I don't know if Miss Gibson ever viewed that rent roll.

Q. You don't know whether she did or not?

A. No.

Q. Okay. Do you know who set the purchase price of $2.8 million?

A. No, I do not.

MR. JORDAN: Nothing further, Your Honor.

MR. WEST: Nothing on redirect, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

MR. WEST: If Your Honor please, may this witness be excused?

MR. STEPP: No objection.

THE COURT: You may be excused.

MR. KEFALOS: Your Honor, that concludes the plaintiffs' case.

THE COURT: Thank you. Mr. Stepp. Yes?

sufficient to support a prima facie case for punitive damages. To the extent there's any liability that the Court may perceive here, which, of course, we would deny, it's simply a case of negligence at best, not gross negligence or anything else, and so we would seek dismissal of the claim for punitive damages at this point.

As I said, Your Honor, I'm happy to talk about these some more. I'm sure you probably want to hear the rest of the evidence. I just want to protect my record.

THE COURT: Yeah. Okay. I'll deny your motion at this time.

MR. STEPP: Thank you, Your Honor. If we're ready for the defense case at this time?

THE COURT: Yes.

MR. STEPP: Your Honor, Ameris Bank would call Bill Barksdale, please.

THE COURT: State your full name.

MR. BARKSDALE: My name is William Collyar, C-O-L-L-Y-A-R, Barksdale, Jr.

THE COURT: Thank you. You may be seated.

WILLIAM COLLYAR BARKSDALE, JR., being first duly sworn, testified as follows:

DIRECT EXAMINATION (QUALIFICATIONS)

BY MR. STEPP:

Q. Good morning, Mr. Barksdale. You've just given us your name. Tell me a little bit about what you do, please. Where are you currently employed?

A. Barksdale & Associates. I'm a consultant with attorneys and commercial transactions and litigation.

Q. Okay. Relating to banking issues?

A. Yes.

Q. Tell me a little bit about your education, please.

A. Graduate of Laurens High School, attended The Citadel briefly, went to the University of South Carolina, received an AB degree in English in 1964, went into banking, decided I could read pretty well, but I needed to learn how to count better, so I got a master's degree in business administration.

Went to work for South Carolina National Bank, took a number of American Institute of Banking courses and have taken all four of their certificates: basic, standard, advanced to graduate. I got a certificate from the Stonier

Graduate School of Banking at Rutgers University and then primarily got into teaching in the banking arena through trade associations.

Q. Okay. Let me get some exhibits in front of you.

MR. STEPP: Excuse me, Your Honor.

BY MR. STEPP:

Q. You've got two notebooks of exhibits in front of you. Sort of the thicker one are the defendant's exhibits, and I'd ask you to turn to Exhibit 19 in that notebook, please, which, I believe, if I've got it right, is a copy of your resume.

A. Yes. I see it.

Q. Okay. And is this -- is Exhibit 19 an accurate depiction of your education and experience in the world of banking and banking-related issues?

A. It is.

MR. STEPP: We'd offer that into evidence as Defendant's Exhibit 19, Your Honor.

THE COURT: Any objection?

MR. WEST: No objection, Your Honor.

THE COURT: It's admitted.

(DFT. EX. 19 was admitted into evidence.)

BY MR. STEPP:

Q. Now, I want to go back to your education a little bit. You talked about, you got an MBA in finance from USC; was that right?

A. Yes, sir. That's correct.

Q. Now, what other banking education have you received over the course of your career?

A. Well, as I said earlier, I took a number of AIB courses, American Institute of Banking.

Q. Okay. Tell me what that is. Tell the Court what that is.

A. Okay. American Institute of Banking is the education arm of the American Bankers Association. It's evolved over time. When I was an AIB instructor and was taking those courses, they were taught locally in classrooms. Now, it's an international on-line, instructor-led and some self-paced-instruction educational organization.

Q. Okay. And have you attended the Stonier Graduate School of Banking?

A. Yes, sir. That's correct.

Q. Tell me what that is.

A. Stonier Graduate School of Banking is one of a number of three-year, three-summer banking schools, graduate -- at the graduate level in the United States. This one is run by the American Bankers Association and has been since 1935.

Q. Okay. What about, you've been at the University of Wisconsin at Madison Graduate School?

A. I've taught at GSB Madison for about 12 years previously.

Q. Well, I sort of jumped ahead. I was trying to get your own educational experience. You've been to --

A. I've taught there.

Q. Okay. Let's hold that for a moment. Have you attended or received any formal education in banking besides USC and the Stonier Graduate School of Banking?

A. Other than the AIB certificates, yes. That's correct.

Q. Now, over the course of your career, have you taught courses in banking? And, if so, tell me where and what you've done.

A. Yes, sir. I started teaching AIB

courses, the American Institute of Banking courses, in the Columbia -- the Columbia Chapter, and I did that for probably 15 or more years.

My next teaching experience was at the South Carolina Bankers School. I taught there for 32 years in the commercial lending curriculum, and then I was, of course, coordinator for them.

The next would have been Graduate School -- excuse me -- the Stonier Graduate School of Banking. I taught there for 19 years in commercial lending and loan portfolio management. I taught at the GSB Madison, University of Wisconsin, for about 12 years.

Then I most recently taught at the Barret School of Banking at Christian Brothers University in Memphis problem loans and workouts for three or four years. I've done work for the Colorado Graduate School of Banking and support work in reading papers on analyzing bank financial performance and did the like work for the Pacific Coast Banking School at University of Washington.

Q. Okay. I'm looking down here and I see --

A. I've also taught at the Risk Management Associates, RMA, Commercial Lending

Workshop at East Carolina University. I did that for about 13 years.

Q. Over what period of time, Mr. Barksdale, have you been teaching courses, advanced courses in banking-related issues?

A. Probably I started in 1970 or so.

Q. Okay.

A. Also, the Risk Management Association and the International Association of Risk Managers of which I was involved in chapter work and also a national director. I taught for them for a number of years UCA Cash Flow, problems and workouts and analyzing financial statements around the country.

Q. Okay. Let's talk about your employment in the banking industry. Where have you been employed and what have you done, please?

A. I started with State Bank & Trust Company in 1965. That was pre going back to graduate school, but I got a good, strong foundation in bank operations and understanding how banks operate. Finished the MBA program, went to work for South Carolina National Bank and moved into their commercial lending area as a credit analyst, worked in the credit analysis area, then was named the manager of the credit department for

the Columbia operation of the bank at the time.

Then subsequent to that, I moved up as a special executive assistant to the director of banking for credit matters, then was subsequently promoted to the manager of the central credit department and then as the chief credit officer of the South Carolina National Bank.

Q. Okay. And over what period of time were you actively employed in the banking industry?

A. Until 1997 when I got an early retirement.

Q. Okay. And you've been employed as a consultant with respect to banking issues since 1997?

A. In addition to the educational part, yes. I have been doing consulting for three years. I worked the Business Development Corporation of South Carolina that specializes in making small business administration guaranteed loans and 504 debentures.

Q. Okay. Have you served as an expert witness anywhere in South Carolina previously?

A. Yes, sir, I have.

Q. And have you been qualified as an

expert with respect to banking-related issues?

A. I have.

MR. STEPP: All right. Your Honor, at this time, we would proffer Mr. Barksdale as an expert in banking and lending.

THE COURT: Any objections?

MR. KEFALOS: No objection.

THE COURT: All right. He's qualified.

MR. STEPP: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. STEPP:

Q. All right. Mr. Barksdale, what all have you looked at in connection with your engagement in this case?

A. I looked at the lending documents, the note, mortgage, all the agreements that were involved with this transaction. I looked at all the internal correspondence among the parties, looked at the appraisal that was involved in this transaction. Of course, I've reviewed the transcript to date of this action.

Q. From when we were here in May?

A. When you were here in May.

Also have reviewed, of course, my own

deposition transcript. I attended Mr. Hartnett's deposition, did not get a transcript of his. Read Mrs. Gibson's deposition, the depositions of Mr. Zerbst and Mr. Lanier, the deposition of Mr. Rolando Villavicencio and one deposition of Mr. Finn who, I believe, was with Re/Max Realty.

Q. All right. Have you read the pleadings, the --

A. I have read the pleadings and the responses and the discovery documents and all of that.

Q. Okay. Based upon the work that you have done in this case, Mr. Barksdale, have you formed any opinions about any of the issues in this case?

A. I have.

Q. Can you tell Judge Watson what opinions you formed, please, generally? And we'll come back to them.

A. Generally, in 2007 when this loan was approved and made, it was in my opinion made in accordance with the general, standard banking practices and procedures and they followed their internal procedures as far as approving loans are concerned. It was documented appropriately, funds

were dispersed appropriately and the loan was made properly.

Q. All right. Have you had an opportunity to form any opinion about whether this loan as structured constituted 100 percent financing for this project?

A. Yes.

Q. And what opinion did you form about that?

A. Not 100 percent financing.

Q. Okay. Have you formed an opinion -- and you may have just said this, but let me make sure I understand -- whether anything concerning the structure of this loan or the collateral or repayment terms is in any way unusual or out of the ordinary from normal banking standards?

A. Not out of the ordinary at all.

Q. Okay. Have you had an occasion to examine the internal policies of Ameris Bank with respect to commercial lending and real estate lending specifically?

A. Yes, a limited -- limited information about them.

Q. All right. And have you formed any opinion and are prepared to offer any opinion

today about the reason that those policies exist and for whose benefits they are put in place?

A. Well, banks have policies and procedures because they are required by regulation to have policies and procedures, but they're required to have policies and procedures so that they can operate in a proper way, and those policies and procedures are designed to control the lending of the bank. They're designed to be established to protect the bank.

Q. Okay. We may come to a couple more as we go through, but is that generally the opinions that you formed and you want to talk about this morning?

A. Generally, yes.

Q. All right. Let's talk about commercial lending and the commercial loan process generally first.

How does a commercial loan -- how does it originate? How does it start? Who calls who?

A. Generally, the person who wants to borrow the money comes to the bank with a proposition.

Q. Okay. And is that person always the borrower?

A. Not necessarily.

Q. Well, who else might it be?

A. It might be someone that they've hired to find loans. There are brokers out there that broker credits. There are also advisors to people and that could vary from an attorney to an accountant, to a realtor, to a real estate broker, to any number of people that could be advising people on investments.

Q. Is there anything wrong with the bank dealing with somebody that they understand to be the agent of a prospective borrower?

A. No.

Q. Okay. Now, is there such a thing as a standard commercial loan application?

A. Not a standard loan application. Banks may have various forms of checklists of information that they ask for in order to underwrite a loan.

Q. Well, what information does a bank usually require the borrower to provide in order to consider a loan request?

A. A description of the purpose of the loan, what the money would be used for. Then they would provide the typical financial information on

the project or on the guarantors which would include financial statements. Also tax returns, things of that nature.

Q. Okay. When a loan -- commercial loan request is made, is it generally made for a specific amount of money?

A. Yes.

Q. And if it's to finance the acquisition of property, is the price of the property generally already established?

A. Yes.

Q. Does the borrower generally come and propose repayment terms as a part of the request?

A. Yes.

Q. And is generally certain collateral offered to the bank?

A. Yes.

Q. Now, when the bank takes all that information, what is the bank's job? What does the bank then undertake to do in considering a loan request?

A. To entertain the loan request, to analyze it, determine that it would be within their policies and procedures and normal underwriting practices. They would analyze the

financial information. They'd analyze the information relating to the project itself with respect to income, because the bank is interested in finding out if they lend the money, if they're going to be repaid.

Q. Well, what sources of repayment does the bank usually consider?

A. Well, there are three ways to repay a loan. One is you can deposit more in your checking account and write checks for it. That's the operating cash flow of the entity. Another is to borrow from another source, and the other would be to sell an asset that you own.

Q. Okay.

A. But the bank's not looking to recover -- to be repaid back from the -- from the last two, but they're looking to be repaid from the cash flow of the project.

Q. And so to that extent, is the bank interested in trying to determine if it thinks the project's going to be a success?

A. Yes.

Q. If the project's not a success, though, does the bank have some other source of repayment as well?

A. Well, it depends on how the loan's structured. It could be going against collateral, it could be going against a guarantor --

Q. Okay.

A. -- or getting additional collateral or restructuring the loan.

Q. Okay. Well, I guess my question is, Mr. Barksdale, is the bank solely looking to the success of the project as a means of repayment when it's considering whether to approve a loan?

A. No.

Q. What other source of repayment?

A. They would be looking at other -- secondary sources of repayment which could be the sale of collateral. They could be looking to the guarantor and the wherewithal of the guarantor and further assets that the guarantor may own or possess that could be liquidated or turned into cash to repay. That's the overall -- the overall evaluation of the repayment of the loan.

Q. When the bank is looking to determine if it thinks the project's going to be a success, now, for whose benefit is the bank acting in that situation?

A. Obviously, for the benefit of the

bank.

Q. Well, what about the borrower?

A. Well, the borrower has come to borrow the money and they feel that it's going to be successful by virtue of their expertise and their handling of the entity that's going to generate the income.

Q. If a bank approves a commercial loan request, does that mean the bank thinks that the project is a good deal?

A. Well, they think that there's a very high probability they're going to be repaid.

Q. Would a bank typically in your experience ever approve a loan that it thought was not a good deal or whether the project was going to fail?

A. The answer to that would be obvious. No, they wouldn't, because they're not in the business of making loans to projects they think are going to fail.

Q. Well, if the bank determines that it thinks the project is a good deal and it approves the loan, what risk is the bank taking at that point?

A. Change in circumstances or the loan --

I mean, the source of repayment does not materialize.

Q. Is the bank -- in approving a loan request, is the bank guaranteeing that the assumptions made by the borrower are going to come true?

A. No.

Q. Is the bank guaranteeing that all of the information provided by the borrower is accurate and correct?

A. Well, you would hope it would be.

Q. But is the bank guaranteeing that?

A. It's not guaranteeing it at all, no.

Q. Is the bank guaranteeing that the project's going to perform in the way the borrower thinks the project is going to --

A. No.

Q. Now, if a bank approves a commercial loan request, what is the borrower's risk? Does that mean the borrower has no risk at that point if the bank approves the loan?

A. The borrower has invested their equity and they are at risk if the project is going to fail.

Q. And how might the project fail?

A. Projects can fail in many ways. It could be because of mismanagement. It could be because markets don't develop. It could be an apartment complex they don't get the rent rolls or a contractor goes broke. I mean, any number of things that are unanticipated could happen.

Q. And if those unanticipated things come to pass, does that mean the bank's not entitled to get repaid?

A. The bank is entitled to be repaid on the note, yes.

Q. Okay. And are those risks that the borrower has taken in undertaking the project?

A. They have.

Q. Look at, in the big notebook, Exhibit 34, if you would, please.

A. Promissory note?

Q. Yes. Now, that's the note that Heritage Seven signed in the present case; is that correct?

A. It appears to be.

Q. Now, you've read that before, haven't you?

A. Yes.

Q. Take a look at it if you need to.

You've reviewed that?

A. Yes.

Q. Is -- well, let's get real -- so let's get real basic. What is a promissory note?

A. It's a promise to pay a sum certain at a certain point in time given the terms of the note.

Q. Is the promise to pay in Exhibit 34 conditioned upon the success of the project?

A. No.

Q. Is it conditioned upon any of the assumptions that were made during the time the loan was being underwritten?

A. No; it's a promissory note. It's a no-closed note. They got the money. They got to pay it back no matter what happens after that.

Q. Okay. Well, if the borrower signs a promissory note, something happens and the project's not a success, what is the borrower supposed to do?

A. Repay the money.

Q. Well, how can you do that if the project's not successful?

A. From another source of cash.

Q. I think I asked you this, but do banks

make loans for projects they think are not going to succeed?

A. They shouldn't. But, no, typically, they don't.

Q. Well, why not?

A. Because they would not get repaid or they'd have to foreclose. They would have to go against the guarantors. They'd have to get into some sort of collection process that they wouldn't -- they certainly would want to avoid.

Q. Well, what about, you know, we hear banks charge fees for making loans. Don't banks just make any old loan so they can get a fee?

A. Absolutely not.

Q. Well, why not?

A. That's not -- fees -- fees don't drive it. Fees are part of it. I mean, you make a loan to get to interest in -- let's put it this way. Interest income is the largest single source of income for any bank.

Q. Okay. Well, what about to get to collateral? If the borrower -- if there's a guarantor that's got a lot of other collateral, do banks make loans so they can get to the guarantor's other collateral?

A. They don't want to.
Q. Well, why not?
A. Well, the transaction should stand on its own. But if you get into a situation where they're in default, they have not paid the loan in accordance with the terms of the note, and then you may be looking to other collateral to see if they can shore it up, make additional investment of whatever is a part of the workout process.
Q. Does it cost the bank more to try to pursue these other remedies than it does just to get repaid if the project's a success?
A. Oh, absolutely.
Q. Does it take more time?
A. Absolutely.
Q. Do the banks generally come out ahead if one is going to default?
A. They do not.
Q. Is that why banks try to not make loans they think won't succeed?
A. That is exactly correct.
Q. Now, let's talk a little bit about the underwriting process and the borrower's due diligence. What -- when a loan request comes to the bank, does the bank expect that the borrower

will have thoroughly investigated whatever the transaction is that the bank's being asked to finance?

A. Yes.

Q. And is that a reasonable assumption and belief?

A. Yes. They're making an independent investment decision that they are going to need to -- based on their analysis, they're going to need to leverage with borrowed funds.

Q. Well, is it the bank's job to do the same due diligence as the borrower would do?

A. No. They would review the due diligence that the borrower had done.

Q. Is the bank capable of doing the same due diligence that the borrower would do?

A. No.

Q. Why not?

A. Well, I mean, they're not in the real estate investment business. They may know something about real estate transactions and they can analyze the information that's brought to them, but they're not experts in lots of different things. You're not experts in widget manufacturing. If you find somebody that has had

a track record as a widget manufacturer and they want to expand their widget manufacturing company, then you will rely on the expertise of the widget manufacturer.

Q. Okay. Are banks contractors?

A. No.

Q. Do they understand as well as a contractor would what it would cost to build or rehabilitate a property?

A. No.

Q. Are they real estate brokers or agents?

A. No.

Q. Are they appraisers?

A. No.

Q. Are they property managers?

A. No.

Q. Are they apartment owners?

A. No.

Q. Well, how does the bank then look to the borrower, the borrower's due diligence, to help the bank make its decision whether to make the loan?

A. Well, that's an important part of the decision-making process.

Q. What is?

A. The due diligence that's done by the prospective borrower.

Q. And, in fact, does the bank rely on that borrower's due diligence in making a decision whether to approve a loan?

A. It does.

Q. Now, does the bank have some duty to keep the borrower from making a bad deal?

A. No.

Q. Why not?

A. Because the bank is making a loan to make interest income in the anticipation it is going to be paid back. If the bank decides that there's too much risk involved with there's not enough collateral or enough cash flow, conditions aren't right, whatever, they can just turn it down --

Q. Okay.

A. -- to avoid risk.

Q. And if they don't turn it down, what does that mean?

A. That means that they think it's an acceptable and bankable risk.

Q. And if they think it's an acceptable

and bankable risk, is there any problem in your experience with telling that to the borrower?

A. No.

Q. Is that a guarantee of a project?

A. No.

But if you give them a commitment letter, you've affirmed that you think it's an acceptable risk to the bank.

Q. Okay. And is a commitment letter a guarantee that the project's going to be a success?

A. Absolutely not. It's an offer to lend them the money, and then if the project's not a success, that's happened after the decision has been made.

Q. Let's talk about appraisals a little bit. As a part of a real estate connected loan, at least, would an appraisal be sort of a standard part of the underwriting that a bank does?

A. It would be.

Q. The bank doesn't do its own appraisal, does it?

A. No. They will review them when they come in.

Q. Okay. Well, I mean, why does a bank

get an appraisal from a third party?

A. You want an independent evaluation of the property. And it's an opinion based on assumptions.

Q. Right. Is the bank qualified to make its own appraisal?

A. No.

Q. Is it reasonable for a bank to rely on the -- an appraisal supplied by a third party appraiser?

A. No. I mean, it is reasonable. That's not prohibited.

Q. Yeah. Okay. And if the appraiser is reputable and approved by the bank, is there any reason that the bank should not be able to rely on what that appraisal says?

A. No. That was stated in their loan policy, that appraisals from third parties could be an accepted --

Q. Now, as a part of a borrower doing due diligence for a project, can a borrower go out and get his or her own appraisal?

A. Of course.

Q. Any prohibition against that?

A. No.

Q. Now, if the borrower has not done adequate due diligence with respect to a project and the project fails because the borrower has misjudged the risk and the bank misjudged the risk, is that the bank's fault?

A. No.

Q. Does it mean the loan doesn't have to get repaid?

A. No. The loan -- the note needs to be repaid. It's the evidence of debt. It's the promise to pay.

Q. Let's talk about this particular loan. In your deposition, you talked about the five Cs of credit. Are you familiar with that?

A. Yes.

Q. And can you tell Judge Watson what the five Cs of credit are, please?

A. Your Honor, they are character, capacity, conditions, capital and collateral, although Ameris's loan policy said cash flow rather than capital. But those are the standard five Cs that I just recited.

Q. All right. Well, let's talk about those with respect to this project based upon the information that you've seen. Okay?

What about the character of the borrower: Heritage Seven, LLC, and Mrs. Gibson?

A. Well, the character is established by how well an entity has performed in its business dealings and its financial obligations. How have they paid their bills in the past? Have they been able to perform in the economic pursuits that they've been involved with? Do they -- can they do that?

Q. Okay. And in this case, with respect to the information you've reviewed, was there anything about the character of Heritage Seven, LLC, or Mrs. Gibson that was a negative factor at all?

A. Not that I saw.

Q. And, in fact, Mrs. Gibson had done prior commercial investments in a shopping center, correct?

A. She had. She had done 1031 tax-oriented transactions, owned a substantial amount of real estate, some of which was income properties, including resort properties, shopping center, et cetera.

Q. All right. Is there anything then about the character of the borrowers that would

suggest to you that this loan should not have been made?

A. No.

Q. All right. Let's talk about capacity. That's the second C, right?

A. Yes.

Q. Tell me what capacity means.

A. Well, capacity obviously is the ability to make widgets professionally or the ability to repay.

Q. Okay.

A. And based on character, you look at their capacity to retire debt and you evaluate the things that they have been involved with and how well they performed and they had the capacity to repay it after she demonstrated that she did.

Q. Well, let's talk about that. Look in your defendant's notebook at Exhibit 11, please.

A. All right, sir.

Q. And you see the financial statement of Linda Avigner Gibson, correct?

A. I do.

MR. STEPP: I believe this is already in evidence. It's in evidence, Your Honor.

BY MR. STEPP:

Q. Now, you've looked at this previously, right, Mr. Barksdale?

A. Yes.

Q. And this shows a substantial amount of real estate assets; is that correct?

A. It does.

Q. And does this financial statement suggest to you that Mrs. Gibson had the capacity to perform with respect to the loan that she received?

A. She certainly had the purported assets that she could leverage, if need be, and she shows that the -- she shows the wherewithal to have a lot of equity.

Q. Well, what about the notes of these real estate assets; are they diverse or are they all the same?

A. I'd say they were pretty much diverse. A lot of it is land reportedly on Daniel Island. I have not gone out and investigated it, but the -- she had other income properties, had a TV tower -- or a cell tower of some sort that was up for lease. She had the shopping center. She had -- she had some land lease of substantial purport.

Q. Okay. Well, looking at this financial

statement, is there anything here that would tell you that Mrs. Gibson and, by extension, Heritage Seven did not have the capacity to perform if this loan were approved?

A. No.

Q. Is there anything, any information that you were aware of, based on everything you've looked at that tells you that there's anything about the capacity to perform that was a negative factor?

A. No.

Q. Was there any reason based on capacity that this loan should have been rejected?

A. No.

Q. Okay. Let's talk about conditions. That's your third C. Tell me what that means, please.

A. Well, what are the conditions surrounding the project in the general market for a typical project such as this? And at that point in time -- it's a real estate transaction. In 2007, real estate was brisk to say the least. There was a lot of activity in the real estate market. Those are the general economic conditions.

Q. The economic conditions -- how would you describe the economic conditions in 2007 in general?

A. I'd say they were very favorable. Real estate was appreciating in value. The economy was moving along very nicely.

Q. A lot of residential sales?

A. A lot of residential sales.

Q. All right. Anything about market conditions in 2007 that tells you now, based on everything you know, that this loan should not have been made?

A. When this loan was applied for and approved, no.

Q. Okay. Now, the market is different today, isn't it?

A. Well, at the time in 2007, this was a prospective analysis and not a retrospective analysis. If we could all -- if we could all project the future, it would be wonderful and we wouldn't be sitting here. We would be in New York making a lot of money.

Q. All right. Well, anything about conditions, market conditions or any other conditions in 2007 that tells you in your

professional opinion that this loan should not have been made?

A. No, sir.

Q. All right. The fourth C that you've mentioned is capital. Tell me what that is, please. Or I think you said the bank said cash flow; is that right?

A. Well, the bank did. They said cash flow. I guess that's another way of saying capital, because you get income, you're going to increase your capital because of that work -- I mean, because of retained earnings. Capital is how much skin you got in the game. Because you don't generally do 100 percent financing on anything.

So, yes, she contributed capital by investing $700,000 as part of the purchase price, and then a requisite on the loan was to take the cell phone tower piece of property that had cash flow coming from it as a buffer or protection for -- it's going to be a lease-up period. If you start to rehab something, you're going to have downtime in the units.

Q. Okay.

A. So that was definitely capital that

was brought to the game, and I think it had an appraised value or carrying value of somewhere in the neighborhood of a half million dollars.

Q. Okay. The $700,000 -- we're going to come back to this, but did you understand there was a $700,000 equity requirement in this loan?

A. Yes.

Q. Is that standard?

A. I think that was a good equity investment.

Q. Okay. Plus the cell tower, right?

A. Yes.

Q. So was there anything about the capital component of credit underwriting in this loan that tells you this loan shouldn't have been made?

A. No.

Q. And based upon Exhibit 11, Mrs. Gibson's financial statement, do you see anything there that suggests that she generally didn't have the capital to perform -- to repay this loan?

A. She certainly had capital assets that she could leverage or sell.

Q. All right. The final C that you

mentioned is collateral?

A. Yes.

Q. Let's talk about this collateral. How would you evaluate that factor for this loan?

A. Well, collateral is anything that arises out of the transaction. You finance a car, you take a lien on it. If you finance a real estate property, you take a mortgage on it, or the mortgage on additional collateral, if that's part of the transaction, also.

But collateral is a secondary source of repayment, with emphasis on secondary. You don't want to get into the primary source of repaying the collateral. That means that you had foreclosed and now you own it and now you have to get rid of it.

Q. All right. Well, in this -- in this loan, the collateral was the apartment project itself, correct?

A. Yes.

Q. As well as the cell tower site, correct?

A. Yes. And the guaranty.

Q. And the guaranty. So was that adequate collateral?

A. In my opinion, it was.

Q. All right. And did Mrs. Gibson have the capacity to put up even more collateral had the bank required it?

A. It appeared that she would be able to.

Q. All right. Is there anything then, Mr. Barksdale, about the collateral that was available that was used to secure this loan that tells you today that this loan shouldn't have been made?

A. At the time?

Q. Yes, sir, at the time.

A. No, at the time, it fit all -- it fit all the underwriting standards of the bank and they made the decision to make it.

Q. Well, we've heard in this case some testimony that Mrs. Gibson was inexperienced, that she never had done an apartment conversion or never done a project exactly like this. What difference does that make?

A. Well, apparently, she had the -- Mr. Villavicencio as her managing agent on the apartment complex. She had experience with him and he was the person that was advising her about the conversion and the form that it would take and

he was working with contractors and architects; so, in essence, she had the experience via her apparently proven advisor.

Q. Is there anything unusual about the borrower having some -- relying on somebody else, some third party, to provide expertise in connection with the project?

A. No.

Q. Does that mean the bank shouldn't make the loan if the borrower, his or herself, has not done exactly the kind of project before?

A. No. By virtue of signing a commitment letter and executing the note, she obligated herself for the transaction.

Q. Are you aware that there was a written management agreement between Rolando and Heritage Seven with respect to this project?

A. I've seen that.

Q. And you are aware that was part of the closing documents, correct?

A. Yes.

Q. And was it reasonable to -- for Ameris to rely on Mr. Villavicencio to perform his duties under that management agreement?

A. Yes. He was managing other

properties.

Q. Right. Okay. Well, based on all the these factors then, was there any reason of which you are aware, any factor that would tell you that in November of 2007, this loan should not have been made?

A. Not that I could determine after my review of the materials.

Q. All right. Have you seen anything that suggests to you based upon the information that was available and presented to the bank that this project was going to fail?

A. No, sir.

Q. All right. Let's talk about the approval process for this loan a little bit. We've had some testimony about that.

Have you reviewed the sort of loan approval process as reflected in the documents that Ameris has produced in this case?

A. Yes, sir, I have.

Q. Anything out of the ordinary about it, anything unusual?

A. Not that I could determine. They followed their procedures.

Q. In this case, there was a loan package

presented, correct?

A. Correct.

Q. And an application that was presented and signed?

A. Yes.

Q. Is that all standard?

A. Yes.

Q. Was the loan request written up by a loan officer and sent up to the loan committee?

A. It was, by the loan -- the credit analyst of the loan office -- the appropriate steps were taken to get it up to the appropriate approval level. Let's put it that way.

Q. Okay. Anything unusual about the way that was handled?

A. No.

Q. Now, are you aware that some of the hierarchs at Ameris raised some questions about Mrs. Gibson's financial statement?

A. Yes, they did.

Q. Is that normal?

A. Sure.

Q. What does that tell you?

A. Well, that tells you that they're doing their analysis and want to make sure that

it's underwritten correctly and they've structured the loan in a way that they feel comfortable with.

Q. And is it your understanding that they got answers to the questions that they asked?

A. Yes, sir.

Q. Was it reasonable for them to rely on the responses that they received in making a decision about whether to approve the loan?

A. In my opinion, yes.

Q. Okay. Now, you know, we've heard that this was mighty quick. Do you think this loan approval process was quick?

A. It may have been faster than some. There had been a lot of groundwork done on this package that came over from First Reliance, but the information was there. Once the information is there, then you just go through the steps and move it on up the chain of command.

Q. Well, in an ordinary commercial loan application and underwriting process, what usually takes the most time?

A. Gathering the information and then doing the necessary analysis, doing the write-up, moving it -- moving it through the process.

Q. Is getting an appraisal part of that?

A. Getting an appraisal would be part of it, of course. The appraisal's a big part of it. It could be 30 to 60 days before you get an appraisal.

Q. Well, if you've got all the information necessary to make the decision, then how long does it generally take for a loan committee or anybody else with approval authority to actually decide yes or no on a loan application?

A. Fast. You can do it in a matter of days. It just depends on if you have -- if everything's complete and in accordance with your underwriting procedures, you can move it up the track pretty rapidly.

Q. Is there any reason for a bank not to make a quick decision on a loan request if it has the information it needs?

A. No.

Q. Is the borrower prejudiced in any way by a quick decision on a loan request?

A. No. If the borrower wants to borrow the money, they want to close.

Q. All right. Is there any information -- you've looked at what Ameris saw. Was there

anything that you think that they should have looked at that they didn't look at?

A. No.

THE COURT: Why don't we take a ten-minute break. Let's take five. That will be good.

You may step down, Mr. Barksdale. Just don't talk about your testimony.

THE WITNESS: Thank you, sir.

(A recess transpired.)

THE COURT: All right. Go ahead.

MR. STEPP: Thank you, Your Honor.

BY MR. STEPP:

Q. Mr. Barksdale, we were talking about the underwriting of this loan before we took a break, and let me just conclude by asking you, is there anything that you have seen about the loan approval process for this loan, either the information or the process or the procedures, that tells you that this loan should not have been approved?

A. No, sir.

Q. All right. I want to talk a little bit about the equity requirement. We mentioned this. I want to come back to it. We talk about

equity. Banks talk about equity. What does that term mean?

A. It's assets less liability equals net worth. The net worth is your equity; how much of your money do you have that's financing your assets.

Q. And if we talk about an equity requirement as a part of a loan commitment, what does that mean?

A. That means the investment of the investor.

Q. Okay. Why does it matter? Why is it important? Why do banks require it?

A. Well, the obvious reason. If a bank, heaven forbid, has to foreclose against collateral, they're not going to get 100 cents on the dollar. I assure you that.

Q. Okay. Well, what about as an incentive to the borrower; is that a --

A. It's also an incentive to the borrower. If the borrower's got no equity in the game (indicating) or no guaranty without recourse, there's not much incentive for them to make it work.

Q. Okay. Well, what was the equity

requirement in this loan to your understanding?

A. Well, $700,000 was put in as part of the purchase price. Now, that was going to be advanced as for the upfit. Then you have an appraisal as built of like 3 million 7, plus the additional pledge of the TV tower -- or the cell phone tower and its stream of income.

Q. Okay.

A. Then you had -- once you got to the 3 million 7 appraised value, when you got a 2 million 8 -- well, excuse me -- yeah, 2 million 8 loan outstanding, you got a 3 million 7 value and you got $500,000 in a cell phone tower.

Q. All right. So what would the total equity in this deal have been?

A. The total equity as built, if everything worked out fine, would be 700,000 plus 500,000; it would be a million 2 on a 2 million 8 project.

Q. Okay. Is that adequate equity?

A. I would say so.

Q. Well, was this loan 100 percent financed?

A. No.

Q. Was this project 100 percent financed,

I should say?

A. No.

Q. Well, we know that Mrs. Gibson borrowed the $700,000 against her beach house. Doesn't that make this 100 percent financed?

A. No.

Q. Why not?

A. That was her option. She exercised that option to generate the $700,000 in cash. For best reasons best known to her, she decided to leverage that asset. It was by another lending institution. That was her choice. Another lending institution and they had to underwrite it on the basis that that beach house, plus other collateral, if she gave it -- I don't know the structure of that loan -- would have been adequate to retire that loan. That was an entirely different transaction.

Q. Well, we looked at -- and I think you may still have your exhibit notebook open to Exhibit 11 -- Mrs. Gibson's financial statements showing a net worth of something in excess of $50 million. Under those circumstances, would it be a problem for her to leverage an asset instead of --

A. Apparently, it would not have been.

Q. When we say leverage an asset, let's just be clear. What do we mean by that?

A. That means you borrow rather than sell. You would do that on the basis of I don't want to pay capital gains tax, I don't want to sell this stock because I've got too much capital gains in it, if you use that as collateral.

Q. Well, if you don't want to leverage an asset and you got to come up with $700,000, what is your other choice?

A. Well, you could sell an asset.

Q. Okay. And is that generally up to borrower to decide?

A. That would be up to the borrower to decide.

Q. Now, in this instance, when Mrs. Gibson refinanced her beach house to put the $700,000 in, did that satisfy or does that meet the reasons that banks require equity in commercial loans?

A. Repeat the question.

Q. Yes, sir. That's a bad question.

We talked about there are two reasons to require equity; do you remember that?

A. Yes.

Q. And does the fact that Mrs. Gibson's $700,000 was borrowed against her beach house, does that -- are the reasons to require equity still satisfied in this field?

A. Yes.

Q. Well, tell me why. What skin does she have in the game if she borrowed the money?

A. Because they are entirely two different transactions.

Q. If this loan didn't perform, did she put her beach house at risk?

A. No. The beach house is not pledged to this.

Q. Okay.

A. They're two entirely different transactions.

Q. All right. Does the equity in this deal provide a sufficient cushion to the bank between the loan amount and the collateral?

A. As structured, it appeared it would.

Q. Okay. In 2007, was there any regulation that would limit the -- or any minimum amount of equity that a bank had to require as a condition of a commercial loan approval?

A. Not to my knowledge.

Q. If a borrower wanted to borrow 100 percent of the cost of a project and the bank was willing to do it, was there any regulatory reason why the bank could not do that?

A. Not to my knowledge. I mean, that would be -- the bank's policy would govern that, what percentage they advanced.

Q. Well, if in this instance there's a $700,000 equity requirement and the borrower doesn't want to leverage anything or doesn't want to sell anything, it doesn't have $700,000 in cash, then what is the borrower supposed to do?

A. Say I don't want to do it.

Q. Now, we're talking about equity. Is that somehow related to loan-to-value ratio, that term? Do you know that term?

A. Well, loan-to-value ratio is the loan amount vis-a-vis the value of the underlying property or the underlying collateral.

Q. All right. Give me an example of that.

A. Well, if you have a $2 million asset and you want to borrow -- if you want to borrow 800 -- if you want to borrow a million dollars, that would be a 50 percent loan-to-value ratio.

Q. Okay. Was there some minimum loan-to-value ratio that banks generally required in 2007?

A. Banks varied all over the place as far as loan-to-value ratio. I would look at it as a percentage advance against value and I would say somewhere in the 80 to 90 percent.

Q. Okay. Let's look at this loan on the day it closed. Okay?

A. Yes, sir.

Q. At that point, the purported value of the property was $2.8 million according to the appraisal?

A. Yes.

Q. And the amount advanced to closing was how much?

A. 2 million 1 approximately.

Q. All right. Well, what is the loan-to-value ratio if the value is 2.8 and the loan amount's 2 million 1?

A. 60 percent.

Q. Well, wouldn't that be more like 75?

A. Well, I'm sorry. 75.

Q. Now, I want you to add in the cell tower value, 500; assume it's worth 500.

A. Then you moved on up the ladder.
Q. Well, is there anything unusual or out of the ordinary about a 75 percent loan-to-value ratio as structured in this deal?
A. No. As a matter of fact, their policy, I think, said 80 percent.
Q. Okay. If there is any limit -- if there were any limit in a bank's internal policies, can they be waived?
A. Yes, they can.
Q. Okay. In underwriting a loan in which the equity was provided as it was in this case, by leveraging another asset, does Ameris have to take into account whether this project is going to generate enough money to service the other debt?
A. No. Two mutually exclusive events.
Q. Well, why not?
A. Because that loan was underwritten on its own bottom by another financial institution and they're looking to that source of cash for repayment, not -- maybe her guaranty. But, no, they're two entirely different transactions.
Q. Well, what if the beach house loan gets in trouble and the borrower there, Mrs. Gibson or whoever that was, has trouble

making the payments, what's she supposed to do?

A. Well, she's got to come up with the cash from somewhere and she would rely on her other sources of cash or leveraging another asset or selling something.

Q. Like the beach house, right?

A. Like selling the beach house.

Q. Okay.

A. Or acreage or whatever is purportedly on her financial statement.

Q. All right. Talk to me a little bit about something called debt service coverage ratio. Do you know what that is?

A. Yes.

Q. Tell me what it is.

A. Well, debt service coverage ratio of more than one. You want it to be in the 1.25, 1.3, wherever.

Q. And what is the ratio of?

A. It's the ratio of, if you got $1.30 coming in, free cash, for every dollar that you owe in debt obligation.

Q. All right. Did Ameris do a debt service coverage ratio for this transaction?

A. They did. It was on a prospective

basis, based on the upfit and prospective rents in the future.

Q. Assuming the conversion is done, correct?

A. Conversion is done. Everything is successful.

Q. And assuming that the units are leased thereafter, correct?

A. That's correct. Based on their business plan.

Q. Right. Based upon the model that the borrower presented?

A. Correct.

Q. And what was that debt service coverage ratio?

A. If I recall, it was 1.37.

Q. Now, we've heard some testimony that, of course, during the conversion process, the rents are not going to come in as regularly, correct?

A. That's the reason why they took the cell phone tower and got an assignment of leases and rents.

Q. And what were the repayment terms of this loan?

A. Interest only for 12 months, and then you begin a term-out with 20-year amortization, but you have a balloon at the end of an additional four years.

Q. All right. And that 12-months' interest only was designed to do what?

A. To not require the cash flow of a complete amortization, to allow them a construction period, which is pretty typical of when you're doing -- when you're doing an upfit or construction.

Q. And was that a reasonable way to structure the loan terms in light of the anticipated cash flow?

A. Yes.

Q. Okay. Is the debt service coverage ratio of 1.37 normal and reasonable?

A. I'd say it would be normal and reasonable. In fact, as their policy said, they wanted 1.3 on this kind, more than one to four family --

Q. Would there be any reason --

A. -- parts.

Q. I'm sorry. Would there be any reason in underwriting a loan with an anticipated debt

service coverage ratio of 1.37 not to approve the loan?

A. It met that underwriting criteria. Let's put it that way.

Q. Okay. You've looked at the loan documents that -- connected with this loan?

A. Yes.

Q. Anything unusual or out of the ordinary in those loan documents?

A. Not that I saw.

Q. Anything unusually onerous?

A. No, sir. Pretty much standard.

Q. Standard loan terms and conditions?

A. Yes.

Q. Under any of the loan documents, was the borrower's obligation to repay the debt conditioned upon the success of the project?

A. No.

Q. Okay. Under any of the loan documents, did Ameris guarantee the success of the project?

A. No.

Q. We've talked about the repayment terms. Anything unusual or inappropriate about that?

A. No, sir.

Q. Were those repayment terms appropriate for the transaction as proposed to the bank by the borrower?

A. I would say it would be typical for an upfit of an apartment complex and some sort of permanent relationship after that with a balloon through five years.

Q. Well, if the borrower doesn't like the repayment terms in the commitment letter, what's the borrower supposed to do?

A. Well, the option is renegotiate something else and bring something, I guess, to the table or just say I'm not going to do it.

Q. Okay. We've mentioned bank internal policies and procedures. I want to go back to that a little bit.

You said all banks are required by regulation to have internal policies and procedures?

A. Yes.

Q. In whose interest do those policies and procedures serve?

A. They serve the bank's interests.

Q. Are they made available to the public?

A. No.
Q. Are they shared with borrowers?
A. No.
Q. Are they regarded as proprietary?
A. Yes.
Q. Are they waivable by the bank?
A. You can have exceptions to policy.
Q. Okay. So is a bank free to depart from its own policies if it chooses to do so?
A. It is.
Q. Okay. And if it does depart from those policies, does that have any effect upon the enforceability of the loan documents?
A. No. There are exceptions to policies all the time.
Q. Okay.
A. But it's not the normal course of events.
Q. Are those policies put in place for the benefit of the borrowers or the bank?
A. The benefit of the bank.
Q. I want to talk about financial statements. You mentioned these in your deposition briefly.
A bank's always going to require a

financial statement in connection with a commercial loan application, correct?

A. Yes.

Q. Whose responsibility is it to see that the information on the financial statement is accurate?

A. The presenter of the financial statement.

Q. The borrower, in other words?

A. Yes.

Q. And is it prudent for a bank to sort of do some investigation behind that statement?

A. Yes.

Q. Did that happen in this case?

A. I would say that it did, yes.

Q. Okay. Does the bank owe any duty to the borrower to make sure that the borrower's financial statement is accurate?

A. No.

Q. Well, what's the risk if the statement is inaccurate? Who's taking what risk? The bank or the borrower?

A. Well, the bank is taking the risk if it's inaccurate.

Q. Okay. And if the bank doesn't check

something out and it turns out to be wrong, does that mean that the bank's not entitled to get repaid?

A. No; the bank's entitled to get repaid on the note. None of that -- none of that modifies the note in any way.

Q. All right. You said in your deposition -- I was interested -- you said the banks should never trust a personal financial statement.

A. Well, I have to qualify that. They're all estimates. They're not prepared in the course of generally accepted accounting principles. They don't show tax liabilities. They're estimates.

Q. Does that mean they're irrelevant?

A. No.

Q. Does that mean that a borrower's free to submit any information that he or she chooses to submit?

A. Yes, they can do that.

Q. And is the bank entitled to rely on that information in making a credit decision?

A. Yes.

Q. I want to talk a little bit about the bank's relationship with its borrowers and

customers.

You said in your deposition that a loan officer should be honest. Is that your opinion?

A. In all business transactions, people should be honest.

Q. All right. Well, does that mean that a loan officer or anybody else at a bank is required to put aside the interests of the bank and act only in the interest of the borrower?

A. They should not do that.

Q. Well, can they even do that? Is that even possible?

A. They shouldn't do that.

Q. Well, if they do that, then they can't enforce the loan, can they?

A. That's probably correct.

Q. Okay. If a bank officer expresses an opinion about a deal, does that make the bank a guarantor of the deal in your view?

A. No.

Q. Do banks in your experience generally offer a service to prospective borrowers to advise them about the feasibility or advisability of the projects that they're undertaking?

A. No.
Q. Well, why not?
A. Because they're -- you don't want to get into this is how you have to do it or how to do it another way. Banks don't hold themselves out in that fiduciary capacity of taking control over or advising and telling them how they need to do things.
Q. Now, assume that a loan package comes to a bank and there's a request for a certain amount of money and certain repayment terms and the bank ultimately makes a commitment on different terms, different loan amount, different repayment terms, different equity requirements --
A. Yes.
Q. -- let's assume that; does that mean that the bank is structuring the underlying project for the borrower?
A. No. It's a counterproposal.
Q. Well, and for what? Counterproposal for what?
A. Counterproposal to benefit the bank in the way the loan is structured with additional collateral or different terms or different conditions.

Q. Is there anything unusual about that? Isn't that what banks do all the time?

A. All the time.

Q. They specify the conditions under which they're willing to make the loan?

A. Correct.

Q. Does that mean they're structuring the deal for the borrower?

A. No.

Q. I want to talk a little bit about the disbursements in this case. You've looked at the documents relating to the disbursements of the construction portion of the loan, correct?

A. Yes.

Q. Do you have an opinion about how that was handled?

A. Yes, sir. I think it was handled appropriately.

Q. Well, Mr. Lanier got written up. Why was that?

A. I'm not quite sure, because at the beginning when Mrs. Gibson was not available for a period of three or four months, Mr. Villavicencio was her agent and he was handling the construction and he was making draws, draw requests, by

submitting invoices, and the checks that were paying those invoices were made payable to the vendor.

Q. Is the bank entitled to disburse a loan in accordance with the request of the borrower?

A. Yes.

Q. Or what about the borrower's agent?

A. Or the borrower's agent, whoever has the authority to make the draw requests.

Q. Okay. Whose job is it to see that the project is done properly and on time?

A. The borrower.

Q. Are loan officers architects?

A. No.

Q. Are they trained to be appraisers or contractors?

A. No.

Q. Are they developers?

A. No.

Q. Is a loan officer capable generally of determining the value of work in place on a construction project?

A. Most probably not.

Q. What about percentage of completion?

A. In an upfit like this, I would say probably no, but they may be -- they can probably do it on the basis of, say, a single family residence. Those kinds of things can be internal, inspections and draw approvals.

Q. Well, is the --

A. But in larger construction projects, no, or in an upfit like this, no.

Q. Okay. Well, is the bank undertaking the role -- in dispersing construction loans, is the bank undertaking the role of construction supervisor?

A. No.

Q. Is the bank guaranteeing the work done by the contractor?

A. No.

Q. Or that the work is done timely or the value of the work?

A. No.

Q. What about whether the right materials are in place or not?

A. No.

Q. Or whether the work is done competently or not?

A. No.

Q. Well, who does guarantee that?
A. Well, the borrower.
Q. All right. Mr. Barksdale, I want to return to your opinions to make sure that we've got them all covered.
Do you have an opinion about the manner in which the loan to Heritage Seven, LLC, and Linda Gibson was underwritten and structured?
A. Yes.
Q. And what is that opinion?
A. It was done properly.
Q. Do you have an opinion about whether the loan to Heritage Seven and Linda Gibson was a loan that should not have been made in 2007?
A. At the time, it appeared to be normal course of business.
Q. All right. Do you have an opinion about whether there was any reason for Ameris Bank to believe in November of 2007 that this project would not succeed or the loan not be repaid?
A. No.
Q. Do you have an opinion about whether Ameris Bank stepped out of its role as lender and assumed fiduciary duties to Heritage Seven and Linda Gibson?

A. I saw no evidence of that.

Q. Do you have an opinion about whether the disbursements were properly handled?

A. I think they were.

Q. And, in general, Mr. Barksdale, has Ameris done anything or omitted to do anything that in your opinion has caused this project to fail or caused any other injury to Heritage Seven or Linda Gibson?

A. Not to my knowledge.

MR. STEPP: Beg the Court's pardon just a moment.

That's all I've got. Please answer any questions Mr. Kefalos may have.

CROSS-EXAMINATION

BY MR. KEFALOS:

Q. Hello, Mr. Barksdale.

A. Hello, Mr. Kefalos.

Q. How are you?

A. I'm fine, thanks.

Q. You've told us about your qualifications, and you've taught banking for many years, haven't you?

A. Yes, sir.

Q. You teach upcoming bankers about the

way they should act, the way they should behave and the way they should deal with their customers?

A. Yes.

Q. And is it true that you tell your students that they should not advise their customers about the wisdom of an investment?

A. Yes.

Q. All right. And you believe and you teach your students that bank officers should not act as financial advisors?

A. They are not financial advisors.

Q. That's correct. And you believe that bank officers should not be in the business of telling their customers how to run their affairs?

A. That's correct.

Q. But you do agree that if a bank officer undertakes to give advice to a customer, he should be honest?

A. A bank officer should always be honest with their customer.

Q. And if a bank officer undertakes to give advice to a customer --

A. If he chooses to take advice, but then you only slip your slope about what advice you're giving.

Q. Sure. But if the bank officer undertakes to give advice to a customer, that advice ought to be accurate?

A. Any advice should be accurate.

Q. And if a bank officer --

A. If -- if it is accurate.

Q. And if a bank officer undertakes to give advice to a customer, he should be thorough?

A. Yes.

Q. And certainly, a bank officer should never lie to its customer?

A. That's correct.

Q. And there's a good reason why bank officers should not be advising customers how to run their affairs?

A. Correct.

Q. It might create liability on the part of the bank?

A. Possible.

MR. STEPP: Objection. Your Honor, that would call for a conclusion.

THE COURT: I will allow it.

BY MR. KEFALOS:

Q. It might create liability on the part of the bank if the advice is wrong?

A. It's possible.
Q. And, in fact, I think you testified earlier, it might make the loan unenforceable?
MR. STEPP: Same objection.
THE WITNESS: I don't recall that. If you can show it to me, I'll be glad to ...
BY MR. KEFALOS:
Q. I wrote it down on direct, but I might have written it down --
A. I don't think I testified that it would be unenforceable.
Q. Okay. Would you agree that a loan officer who learns that one of his customers is being taken advantage of by one of the customer's employees, that loan officer has the responsibility to alert the customer of the problem?
A. If, in fact, that is correct.
Q. If, in fact, during the course of the relationship, the loan officer comes to have reason to believe that one of the customer's employees is taking advantage of them, then you believe that the loan officer ought to alert the customer of that problem?
A. You might mention it, yes.

Q. Okay. Good. Would you -- and you've reviewed this entire file and you learned about Rolando Villavicencio's involvement in the case?

A. Yes.

Q. And you concluded that Mr. Villavicencio was a con artist?

A. I would say that he probably was in the final analysis in a respective examination of the situation.

Q. Good. Would you look at Exhibit Number 39? I think --

A. In the big book?

Q. In the big book. And it's the third page. Well, wait a minute. I'm sorry. 39 is not in the big book. 31.

31 is an E-mail from Don Snipes to John Edwards dated --

A. In my book, it's ...

Q. I'm sorry. It is Plaintiffs' 31. I think we had the big book.

A. All right. I got it.

Q. Thank you. Plaintiffs' Exhibit 31 is the E-mail from Don Snipes to John Edwards?

A. Yes.

Q. You saw that when you were reviewing

this file?

A. Yes.

Q. All right. Now, this E-mail in the second paragraph says: As you may remember, we have some culpability in her problems -- her is Linda Gibson, right?

A. Yes.

Q. -- as we did not manage the construction loan as we should and have potentially aided in her former property manager at Re/Max may have siphoned off some of the loan proceeds. You saw that?

A. Yes.

Q. Now, did your investigation reveal when it was that Ameris first had reason to believe that the property manager may have siphoned off some of these loan proceeds?

A. I did not see any documentation that said this is what, if any, was siphoned off, but I believe when Ms. Gibson came in and took over the project, that's when she started questioning things that were going on.

Q. Good. Now, do you have -- was there anything in the file that you found where Ameris ever gave Miss Gibson notice that they had reason

to believe that the former property manager at Re/Max may have siphoned off some of the loan proceeds?

A. I don't recall seeing anything.

MR. KEFALOS: That's all the questions I have.

MR. STEPP: Redirect or would Your Honor like to ask --

THE COURT: You can redirect.

MR. STEPP: All right. Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STEPP:

Q. Mr. Barksdale, are you aware of any investment advice that anybody at Ameris Bank gave to Mrs. Gibson in this transaction?

A. No, sir.

Q. Are you aware of any investment advice that Karl Zerbst gave Mrs. Gibson in this transaction?

A. No, sir.

Q. Well, what about this statement, gosh, I think it's a good deal; is that investment advice?

A. No.

Q. Okay. Have you seen any evidence --
A. I think he was saying we have reviewed it, we've underwritten it, it looks like a bankable transaction.
MR. KEFALOS: Objection, Your Honor. This is speculation.
THE COURT: Hold on. Ask your question again, sir.
BY MR. STEPP:
Q. Is what he said, it's a good deal, is that investment advice?
A. No.
Q. Have you seen any evidence that Mr. Villavicencio absconded with any money?
A. Not to my knowledge.
Q. Have you looked at the disbursement checks in this case?
A. Yes.
Q. To whom were they made?
A. They were made payable to the vendors.
Q. Every one of them?
A. The ones that I saw, the checks that were made payable to the vendors, yes.
Q. Okay.
A. And as far as I know, there were never

any liens placed on the property.

Q. So do you have any other information that Mr. Villavicencio stole any money or did anything else wrong?

A. No.

MR. STEPP: That's all I have.

MR. KEFALOS: Nothing from the plaintiff, Your Honor.

THE COURT: All right. Just give me a moment, please.

Mr. Barksdale, does the bank officer ever have responsibility to tell a potential borrower that the project that they are borrowing money on would not support the loan?

THE WITNESS: They may very well do that when they feel that it would not support the loan.

THE COURT: I'm asking you, should they tell someone who is borrowing money on a project their opinion that the project would not support the loan; should they tell the borrower that?

THE WITNESS: Yes, they should tell the borrower that; that as a follow-on on that, they may suggest a different type of restructuring

of the transaction, we could do it another way.

THE COURT: Yes.

I don't have any further questions. Anything?

MR. STEPP: Nothing further.

MR. KEFALOS: No, Your Honor.

THE COURT: Thank you. You may step down.

MR. STEPP: May Mr. Barksdale be excused, Your Honor?

MR. KEFALOS: No objection, Your Honor.

MR. STEPP: Thank you, Mr. Barksdale.

Your Honor, at this time, we have submitted some deposition designations from Mr. Villavicencio's deposition and from the deposition of another former Ameris employee named Marc Bogan, and so I think we have filed with the Court designations and the plaintiffs' counter-designations. So we're not going to publish all of that. I'm sure Your Honor will read it.

There are just a few excerpts, though, just as the plaintiffs did, that we'd like to publish, if Your Honor would permit us to do that

at this time.

THE COURT: That would be fine.

MR. STEPP: Thank you.

MR. JORDAN: Your Honor, I'm going to hand to the court reporter the defendant's deposition designations for Marc Bogan as well as the original transcripts which I believe we've been using as -- or marking as Court exhibits, and I believe we're on Number 8.

(COURT EX. 8, Defendant's Deposition Designations of Marc Bogan, with attached transcript, was marked for identification.)

MR. JORDAN: This is the deposition of Marc Bogan from August 7th, 2012.

Question: And the lawsuit that we're here about today relates back to the end --

MR. STEPP: I'm sorry. Give the page and line.

MR. JORDAN: I'm sorry. We're beginning on Page 5 at Line Number 18: Question: And the lawsuit that we're here about today relates back to the end of 2007 and period -- 2008 period. What was your position with Ameris in the fall of 2007 and into 2008?

Answer: I was a market executive for the eastern half of South Carolina and also the sales executive retail banking manager, marketing director and several other titles.

Question: How long did you work for Ameris?

Answer: From September 2006 until June 2011.

Question: Mr. Bogan, when you were employed at Ameris, did you have the opportunity to interview Karl Zerbst for employment with Ameris?

Answer: Yes.

Skipping over to Page 7, beginning at line 17: Question: I'm going to show you a document that has previously been marked as Defendant's Trial Exhibit Number 40. First thing I'm going to ask you is, do you recognize this document as a letter that you sent to Mr. Zerbst in January of 2008?

Answer: Yes.

Question: Will you kind of explain to the Court what this letter is?

On Page 8, Line 4: Answer: This is an offer of employment.

Question: If you flip to the last page of this letter, Mr. Bogan, does it appear that Mr. Zerbst signed it on the 11th day of January in 2008?

Answer: Yes.

Question: Okay. And does it appear that that signature indicates his acceptance of Ameris's offer of employment?

Answer: Yes.

Question: And did you also sign the document at that time indicating your approval of his hire as an employee of Ameris Bank?

Answer: Signed as acceptance on behalf of Ameris Bank.

Question: As we've seen, this letter is dated January the 10th of 2008. Did Ameris Bank ever authorize Karl Zerbst to do anything on its behalf prior to January the 10th of 2008?

Answer: No.

Over to Page 9, beginning at Line 5: Did Ameris Bank ever encourage Karl Zerbst to refer customers to Ameris Bank before he accepted this formal offer of employment?

Answer: No.

Question: Did you or anyone else at

Ameris Bank have any ability or right to control what Mr. Zerbst was doing prior to the time that he formally accepted his offer of employment with Ameris Bank?

Answer: No.

Question: Mr. Bogan, do you know whether, in fact, Mr. Zerbst ever referred any business to Ameris Bank before he became an employee of Ameris?

Answer: Not to my knowledge.

Page 10, beginning at Line 15: Mr. Bogan, did you specifically instruct Mr. Zerbst that he should be careful to avoid any activities that would potentially violate his noncompete with First Reliance?

Answer: Yes.

Question: To your knowledge, did Mr. Zerbst voluntarily do anything on Ameris's behalf prior to his acceptance of formal employment with Ameris Bank in January of 2008?

Answer: Not to my knowledge.

Pick up on Page 20 at Line 17: Question: Okay. Mr. Bogan, ultimately, obviously, this loan was approved and funded. To your knowledge, was there anything unusual or out

of the ordinary about the approval of this loan?

Answer: No.

Question: If a loan by a bank is approved in a quick fashion, is there anything detrimental to the borrower about that?

Answer: No. Shouldn't be.

Question: In fact, most borrowers want a fast decision on a loan request, don't they?

Answer: Yes.

Question: Are you aware of any complaint by the borrowers in this case, at the time of the loan, that the approval was too fast?

Answer: No, no complaints I would -- no, I don't recall that at all.

Question: Okay. Mr. Bogan, to your knowledge, was this loan request treated just like every other loan request that Ameris Bank receives?

Answer: Yes, to my knowledge, it was.

Question: Okay. To your knowledge, did this loan request go through all the normal channels for approval for a loan request of this size?

Answer: Yes, to my knowledge.

We've made additional designations that we filed with the Court and that's the extent of what we wish to publish at trial, sir.

THE COURT: Thank you.

MR. KEFALOS: Your Honor, we've made designations in the deposition. I don't see any need to read them at this point.

THE COURT: Do I have those?

MR. KEFALOS: Yes. We passed them up in response to the defendant's designations.

Did we send them -- did you receive them?

MR. JORDAN: We received them yesterday.

THE COURT: Yeah, I don't know that I received those. Now, I may have missed them on the computer.

MR. STEPP: Well, we -- they can supplement the record, Judge, by giving them to you at their convenience.

THE COURT: Okay.

MR. STEPP: On that subject -- and maybe this is the way to do it. When I handed up at the close of the plaintiffs' case that motion for directed verdict, we hadn't actually filed

that. I want to make sure it is somewhere. Can I ask that that be made a Court's exhibit as well so it will be part of the record here?

THE COURT: Yes, you can do that.

MR. STEPP: Thank you. So the motion for directed -- directed verdict at the close of the plaintiffs' case would be Court Exhibit Number 9. This is a copy.

Thank you.

(COURT EX. 9, Motion for Directed Verdict at the Close of Plaintiffs' Case, Linda A. Gibson v. Ameris Bank, was marked for identification.)

MR. KEFALOS: For the record, Your Honor, the plaintiffs' designations for Mr. Bogan on the deposition -- and we're E-mailing these to you -- begin at Page 23, Line 15, and conclude on Page 41, Line 12.

THE COURT: Thank you.

So Mr. Bogan, he doesn't work for Ameris anymore?

MR. STEPP: No; he's in Charlotte. He works for a bank in Charlotte, Your Honor.

THE COURT: Yes.

MR. JORDAN: Your Honor, I would now

hand up to the court reporter the deposition designations for Rolando Villavicencio as well as a copy of his deposition. This will be Court's Exhibit Number 10.

THE COURT: Okay. Are you going to publish any of that?

MR. JORDAN: We're going to publish a few portions of it, Your Honor.

(COURT EX. 10, Defendant's Deposition Designations of Rolando Villavicencio, with attached transcript, was marked for identification.)

MR. JORDAN: Okay. This is beginning on Page 14 at Line 1: Question: Tell me about how you first met Linda Gibson.

Answer: It was in 2005, I believe, that we first met. I had seen her -- we go to the same church, Northwoods Church. I have seen her many times and I have seen the husband as well many times and I believe that she was one of the original members of the church and I did see her, but I didn't personally or officially with meet her until sometime 2005.

Question: Could you tell me how your relationship developed? You first met her in

2005. Did you socialize with her?

Answer: Only through church at that time. Every Sunday we would meet and say hello to each other.

Question: So there came a time when her husband passed away?

Answer: Yes. It must have been about that same time that we met that we found out that the husband had passed away.

Question: Did you socialize with her outside the church after her husband passed away?

Answer: I do not recall.

Question: Did you like her?

Answer: She was a churchgoer that -- we would always see her all by herself walking around the church. I think she must have been one of the greeters or -- and she had a -- you know, a nice demeanor.

Question: Did you become her personal friend?

Answer: Yes, through time, we started, you know, getting to know each other. And when I say we, my wife and myself and the family and her family, we got to know each other more.

Question: And did you socialize outside the church after you became friends?
Answer: Yes.
Question: And did you come to like her as an individual?
Answer: Yes.
Question: Do you think she liked you?
Answer: Yes.
Question: Did you eventually come to provide real estate service for her?
Answer: At some point in time.
Question: And did you give her advice on real estate matters?
Answer: We discussed about real estate matters.
Question: Does that mean that you gave her advice?
Answer: I would give my opinion.
Question: Do you think she trusted you?
Answer: I believe so.
Question: Do you think she was justified in trusting you?
Answer: I believe so.
Question: Do you think she relied

upon you?

Answer: In some manner, yes.

Question: And do you think she was justified in relying on you?

Answer: I believe so.

Page 25, beginning at Line 8: Now, the contract contains a 2.8 million dollar offer. Did you tell Miss Gibson that the seller wanted 2.8 million dollars for the property?

Answer: I -- I had put on the purchase agreement specifically 2.8 million.

Question: Did you tell Linda Gibson that that is what ABESPRO was demanding for the property?

Answer: This was what we had -- Linda Gibson had agreed to make the purchase of 2.8 million dollars.

Question: Where did that figure come from?

Answer: That would have been generated from analysis, comparables. That would have come from the market valuation, what the --

Question: Who obtained that figure?

Answer: We collect those information from sources we deem reliable.

Question: When you say we, who are you referring to?

Answer: I would say I would have collected that information from sources I would deem reliable such as multiple listing information, asking around with other property owners, asking around with other property managers.

Question: So you came up with that figure?

Answer: Yes, sir.

Question: Linda Gibson did not?

Answer: Oh, I believe through time we were in discussion about the -- the value, but she ultimately had the final decision to agree to purchase the property based on information I provided to her.

Question: Certainly. You told her that you think that this property is worth 2.8 million dollars, you ought to buy it?

Answer: Based on analysis, yes, sir.

Beginning on Page 38 at Line 5: Now -- Question: Now, sometimes you research the property for a prospective buyer before you make an offer?

Answer: Yes, sir.

Question. And that's part of what being a good realtor is?

Answer: Yes, sir.

Question: And sometimes you research the property in order to help the buyer make an intelligent decision about what to offer?

Answer: Yes, sir.

Question: Sometimes you find out what the seller paid for the property?

Answer: Yes, sir.

Question: In this case, you knew what the seller paid for the property?

Answer: Yes, sir.

Question: Did you tell Miss Gibson what the seller had paid for the property?

Answer: I do not recall.

Question: Did you tell Linda Gibson that you thought this purchase was a good investment?

Answer: I believe so.

Question: Did you talk to her about whether this was a wise investment for her?

Answer: Yes, sir.

Question: And did you tell her you

thought it was a wise investment for her?

Answer: Yes, sir.

Now, beginning on Page 115 at Line 12: Question: Would you look at Plaintiffs' Exhibit Number 7. Do you recognize this?

Answer: Yes, sir.

Question: Is this a copy of your residential management agreement with Miss Gibson?

Answer: Yes, sir.

Question: Would you look at Page 2, Number 5F. Were you being paid 10 percent of the cost of all new construction to supervise the restoration and improvement?

There's an objection.

Question: It's a Re/Max form. Were you being paid 10 percent?

Answer: It's an agreement made by and between Re/Max Professional, Heritage Seven, Re/Max.

Question: Okay. And who was the person that was supposed to supervise the restoration on behalf of Re/Max?

Answer: That would be me, sir.

Question: So you were supposed to supervise construction?

Answer: I have my signature on it.

Beginning on Page 180, Line 10:

Question: Okay. If you will pull out what's been marked as Exhibit Number 11.

Question: And if you'll flip to the fifth page.

And down to Line 20: Question: It should be the page where her personal financial statement begins.

Answer: Yes, sir. Oh.

Question: Do you see that? Okay.

Answer: Yes, sir.

Question: And I believe you testified earlier that -- that you prepared this document, correct?

Answer: Yes, sir.

Question: Okay. And you testified a few minutes ago that you were -- I think you described it as the -- the go-between between Linda and the bank; is that correct?

Answer: That's correct, sir.

Beginning on Page 187 at Line 21: I want to ask you a little bit about 35. The -- if you look at the page that's marked 1216, should be the fifth page in your stack.

Answer -- if you skip over to Page 188, Line 2: at the top of the page, it says, total of items. Do you see that?

Answer: Yes, sir.

And what figure does it provide there?

Total of items, $688,814.18.

Question: And is that an estimate of what it would -- what it would cost to complete the project, the renovation project?

Answer: It says, total of items. I -- I would suppose so.

Question: If you flip back to the first page, the second item says, licensed contractor/structural engineer/architecture fees, allowance up to blank percent of total project costs or cost-plus basis or consultation fee or as-used basis, and it provides -- there's a bank there and it says TBD.

Answer: Yes, sir.

Question: At the time that you created this estimate, why was that left blank?

Answer: We did not have the licensed contractor identified yet, structural engineer, architectural fees.

Question: Do you know -- at that

time, did you know whether you would need a licensed contractor?

Answer: I had put on this specification cost estimates if we did have a bid that that line item would be there.

Question: Did you know whether you would need an architect for the project at the point you -- when you created this?

Answer: At some point in time, I found out we needed an architect.

Question: And if you look at the page where it provides the 688,000-and-some-odd-dollar estimate, would you agree that that number could substantially change if you added in an item for a licensed contractor or engineer or architecture fees?

Answer: I'm sorry, could you repeat that?

Question: Sure. The estimate that is provided, the 688,000 --

Answer: Yes.

Question: -- roughly number, does not include a fee for a contractor or an architect or an engineer, correct?

Answer: I believe so, sir.

Question: So would you agree with me that the number -- the estimate to complete the project could change drastically if you added in fees for those professionals?

Answer: It would change, sir. I don't know if it's drastic or not.

Question: Okay. And do you recall what the construction fund amount was to complete this project?

Answer: The -- you're asking me about the -- recalling the construction amount?

Question: How much did Heritage Seven or Linda Gibson have in a construction loan to complete this project?

Answer: I believe it was 700,000.

Question: Okay. And the estimate of 688,000-some-odd dollars does not include potential fees for an architect or a licensed contractor, correct?

Answer: Based on this exhibit, yes, sir.

That's all, Your Honor.

THE COURT: Okay. Anything else?

MR. KEFALOS: We have designated counter-portions of Mr. Villavicencio's deposition

and they're in the trial brief in the Court's exhibits.

THE COURT: Thank you.

MR. STEPP: Your Honor, at this time, the defense would call Richard Sturm to the stand, please.

THE COURT: Come forward, please.

Good afternoon, sir. Please give your full name.

MR. STURM: Richard Sturm.

RICHARD STURM

being first duly sworn, testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. STEPP:

Q. Mr. Sturm, tell us -- tell us where you live, please.

A. I live at 1711 Bannockburn Drive, Columbia, South Carolina.

Q. Speak up just a little bit, if you would. You sound a little froggy this morning.

A. Sorry about that. Bannockburn, B-A-N-N-O-C-K-B-U-R-N.

Q. And that's in Columbia?

A. Columbia, South Carolina.

Q. All right. Are you married, Mr. Sturm?
A. Yes.
Q. Do you have children?
A. Two.
Q. Okay. Do they live with you or have they flown the coupe?
A. No; they're with me.
Q. Okay.
A. So on the payroll.
Q. Tell us where you are employed.
A. I'm employed with Ameris Bank.
Q. And what is your position with Ameris Bank?
A. President of Ameris Bank, South Carolina.
Q. And you're currently employed by Ameris?
A. Still employed.
Q. And were you employed by Ameris Bank in 2007?
A. I was.
Q. How long have you been with Ameris?
A. Six years.
Q. And how long have you been the

president in South Carolina?

A. Roughly four years.

Q. As president of South Carolina Ameris, tell the Court a little bit about your duties and responsibilities, please.

A. Responsible for any operations that go on in the State of South Carolina, including problem loans, unfortunately, the loan approvals, hiring, firing, any kind of HR thing we might have, deposit operations.

Q. All right. Tell me a little bit about Ameris. What kind of bank is Ameris?

A. Ameris Bank is a 41-year-old bank. It is a community bank, definitely run on a community bank model.

Q. Let me just stop you. When you say community bank, tell us what you mean by that.

A. The exact opposite of what a Bank of America or Wells Fargo or one of the giants are. We focus in on -- on smaller commercial loans, taking deposits, consumer transactions, those type things.

Q. Where are the headquarters of Ameris?

A. Moultrie, Georgia.

Q. How many states does it operate in?

A. Four states.
Q. Okay. Tell me what they are.
A. We're in the State of Florida, we're in the State of Alabama, Georgia and then South Carolina.
Q. How long has Ameris been in South Carolina?
A. For six years.
Q. Okay. Now, I want to talk a little bit about what kind of services Ameris offers. Okay? Are you familiar with that?
A. Yes.
Q. Well, what -- you give me a description of the kind of banking services that Ameris provides.
A. Description of what we --
Q. The services.
A. What we -- the services?
Q. Yeah.
A. You can make deposits with us. We will lend you money on your home, on a car, equity line on your house, commercial transactions, very similar to what we're talking about today, lines of credit for your business.
Q. Residential mortgages?

A. Residential mortgages. Just the boiler plate kind of thing. Depository services, your business operating accounts, those type things.

Q. Okay. Does Ameris have a trust department?

A. We do not.

Q. Okay. Does it offer investment advice?

A. No. No.

Q. Does it have a brokerage department for stocks and bonds?

A. We do. If you wanted to sell some stock or buy a specific stock or something along that line, we can facilitate that.

Q. Where are those people located?

A. In Georgia and Florida.

Q. Okay. Do you got any of those people in South Carolina?

A. No.

Q. Does Ameris offer investment advice through its loan officers?

A. No.

Q. All right. Does it offer to provide investment advice for a fee with regard to real

estate transactions?

A. No.

Q. Does the bank act as a real estate broker for properties owned by other people?

A. No.

Q. Does it ever list properties for sale?

A. No.

Q. Does it ever advise owners how much to pay for property or how much to sell property for?

A. No.

Q. Do you do appraisals? Does the bank do appraisals?

A. No.

Q. Does it have any appraisal department whatsoever?

A. No.

Q. Does it do any real estate development?

A. No.

Q. Does it buy properties or hold them in hope to resell them at a profit?

A. No.

Q. Has the bank to your knowledge ever bought any apartments and converted them to condominiums?

A. No.
Q. Has the bank owned and operated any apartment projects?
A. No.
Q. It doesn't own any apartments that it rents out as far as you know?
A. No.
Q. Okay. Does it offer rental management services?
A. It does not.
Q. Does it manage construction projects?
A. No.
Q. Does it act as a contractor?
A. No.
Q. Does it own and operate any shopping centers?
A. No.
Q. Does it manage shopping centers for third parties?
A. No.
Q. Well, how's the bank make money, Mr. Sturm?
A. Very simply, we -- we take a depositor's money and we lend it to someone else.
Q. Okay. Now, when a bank makes a loan

-- you said that you -- you described a variety of loans that the bank would make. Whose money is the bank lending?

A. Depositor's.

Q. And when a bank makes a loan, what is the bank's goal?

A. Number 1, to get the principal back, and then if we're successful at that, then it's to get a fair return.

Q. Well, what about making a loan to get fees; is this something that the bank does?

A. It's not, no.

Q. Why not?

A. It is not a profitable margin just to make fees.

Q. What about to try to get to a borrower's assets; is that a reason that the bank makes a loan?

A. Never.

Q. Okay. Does Ameris ever want to make a loan that it thinks is going to go into default?

A. Never.

Q. Why not?

A. I tell you, I've been in banking 24 years and I've run through a few recessions and

had some problem loans in my career. I cannot give you a single instance when we have actually broken even on a loan that has gone bad, much less make a profit; so it -- it's just not going to do us a favor.

Q. Okay. Does the bank try to only make loans that it thinks are going to get repaid?

A. Yes.

Q. Does it try to only make loans for projects it thinks are going to succeed?

A. That's correct.

Q. Now, where a bank makes a loan in connection with a piece of real estate where the value is important, how does the bank determine what the value of the property is?

A. We rely on an appraisal.

Q. You don't do the appraisal yourself?

A. We do not.

Q. Are the appraisals that you rely on always accurate?

A. We hope they are, but -- but they make errors.

Q. Okay. Does the bank ever guarantee the success of a project?

A. No.

Q. Okay. Now, if the bank thinks that a project was not going to support the debt service on the loan, what would the bank do?

A. Decline the loan.

Q. Okay. Would the bank knowingly make a loan that it thinks the debt service won't support -- that the project won't support the debt service?

A. No.

Q. Now, if a bank does agree -- if not a bank, I'm talking about Ameris. If Ameris agrees to provide a loan, makes a commercial loan commitment, does that mean that Ameris thinks the project is a good deal?

A. Yes.

Q. Is there any reason why Ameris wouldn't tell that to the borrower?

A. No.

Q. When you provide a loan commitment, is that what you're telling the borrower?

A. That is.

Q. Now, in your experience, who knows more about a project that's being financed by a commercial loan; the bank or the borrower?

A. Always the borrower.

Q. Well, why is it that the borrower knows more than the bank?

A. Well, hopefully, they've done the due diligence that they should have done especially for a loan of this size, looking into it, checking the values, done the contract. Usually they put in months of research in deciding whether they want to do it. By the time it gets to us, they've decided they want to do it, have the terms they want, and it's just up to us to see if we think it's reasonable or not.

Q. Does the bank --

A. If it's reasonable, we do the loan.

Q. All right. In making that decision, does Ameris rely on the borrower to have done the basic due diligence on the project?

A. Yes.

Q. Okay. Well, what is the impact on Ameris if a loan goes into default?

A. We typically lose a lot of money.

Q. What about time?

A. We lose time and money, resources.

Q. Have to hire fellows like me?

A. Yeah. Attorneys.

Q. God bless you.

So am I correct to say that banks are not looking for loans that are going to go into default; Ameris is not?

A. That is accurate.

Q. All right. Well, when there is a default -- sometimes happens, right?

A. That is true.

Q. Some percentage of loans go into default, correct?

A. That is true.

Q. Well, is Ameris concerned about the borrower if a loan goes into default?

A. Oh, sure we are.

Q. Well, why?

A. You know, just general principle. No one wants anything bad to happen to anyone. If something bad is happening to a borrower, it's going to reverberate to us. It's just a losing proposition all the way around.

Q. Well, if Ameris is confronted with a defaulted loan, does it try to help the borrower generally?

A. Yes.

Q. Tell me how it might try to help.

A. Well, let's talk about this case in

particular. We -- we worked with this case roughly two years, if memory serves, from November of '08 to August of 2010 before we had to proceed with foreclosure. We extended the maturity dates. We reduced the interest rates. We even proposed writing down $200,000 on the loan. We offered to restructure the loan, take the debt off of this particular project.

You know, once we realized it wasn't going to work at the level it was, we suggested, you know, let's reduce the debt on this one, put this debt on another project that can support that debt and then, you know, this project should support the remaining debt.

Unfortunately, Heritage Seven decided not to -- not to take any of those options and we were forced to start foreclosure procedures.

Q. When did this loan go into default?

A. August 2010.

Q. I think that's when the foreclosure was filed.

A. Yeah, that's when the foreclosure was filed.

Q. When was the default, though?

A. November 2008. I'd have to look at

the notes to see specifically.

Q. Well, in November 2008, if that was the date of default, why didn't you foreclose right then?

A. Well, it's always best if we can work it out. I mean, always best.

Q. Is foreclosure a good option for Ameris?

A. It is not a good option.

Q. For the reasons you've already just talked about?

A. Yes.

Q. Okay. Now, were you with the bank in October 2007?

A. I was.

Q. Did you have anything to do with this loan application, processing this loan application?

A. I did not.

Q. Okay. During the time -- and I guess this is clear, but let me just say this. During the -- from November 2008 until this foreclosure in August of 2010, did the conversion work on the project get finished?

A. You know, to the best of my knowledge,

it did. I -- my understanding is all the work was done. I hadn't heard anything to the contrary.

Q. Okay. Was the property sold? The property wasn't sold?

A. In 2008, it had not been.

Q. What about at the time the foreclosure was brought, the property had not been sold?

A. The property had not been sold.

Q. Okay. Obviously, the debt had not been refinanced; is that correct?

A. That is true.

Q. Okay. What was the total amount of money that Ameris advanced for this project?

A. Round numbers, $2.8 million.

Q. Was any of that principal -- that's the principal amount?

A. That is the principal amount.

Q. Did any of that principal ever get repaid?

A. Not by the borrower.

Q. Okay. Well, I'm going to come to what happened, but did Heritage Seven or Mrs. Gibson ever repay any of that principal?

A. No.

Q. And was that money actually disbursed

by Ameris?

A. That was hard cash that Ameris put out, yeah.

Q. Okay. At any time prior to the foreclosure being filed, did Mrs. Gibson ever tell the bank to your knowledge that she didn't think she ought to have to repay the loan?

A. Never.

Q. What ultimately happened to the loan? Ameris doesn't own it today. We've heard about Galt Valley. What happened?

A. We had the opportunity to sell the loan to Galt Valley, so we sold it for $975,000.

Q. And why?

A. You know, there's been a lot of regulatory pressure on banks lately, and one of the pressures is, is you move your problem loans out of the bank so you don't have to deal with them, almost -- it doesn't matter what the cost is, and this was a pretty significant cost.

Q. In -- you've reviewed -- and in your capacity as president of the bank, you've reviewed the underwriting on this loan --

A. Yes, I have.

Q. -- correct?

Is there any reason based upon what was known in November of 2007, in your view, that this loan should not have been made?

A. No. It was -- it is a loan that should have been made based on the circumstances at the time.

Q. Well, knowing what you know sitting here today, do you wish it had not been made?

A. God, I wish it had not been made.

Q. All right. Are you aware, Mr. Sturm, of any information at any point along the line that Ameris Bank was privy to that Heritage Seven or Mrs. Gibson was not privy to?

A. I am not aware of any.

Q. Was the bank in any respect in a superior position to evaluate this project than the borrower was at any time?

A. No.

Q. As we sit here today in 2012, what kind of loss has Ameris taken on this loan?

A. Strictly in terms of just principal, round numbers is, let's say, $1.8 million.

Q. Okay. You loaned 2.8, you got 975 back?

A. Right.

Q. Is that it?
A. Right.
Q. Any other source of recovery at this point?
A. No.
Q. Mrs. Gibson's been released by the bank?
A. Yes.
MR. STEPP: Okay. Just a moment, Your Honor.
That's all the questions I have. Please answer any questions that Mr. Kefalos has.
THE COURT: Mr. Kefalos.
MR. KEFALOS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KEFALOS:

Q. Mr. Sturm, did you know that Ameris was going to contact Karl Zerbst about coming to work for Ameris before the contact was made?
A. I'm not sure I understand that question. I mean, obviously, I was told that they were considering hiring him, but other than that -- is that what you mean?
Q. That's what I mean.
A. Okay. So yes.

Q. So you knew that somebody was considering hiring Mr. Zerbst. Did you know that Marc Bogan was the one who made the contact with Mr. Zerbst initially?

A. Yes.

Q. And were you aware at the time that Mr. Bogan made contact with Mr. Zerbst while Mr. Zerbst was still employed by First Reliance?

A. No, I didn't know that.

Q. All right. Did you know that Mr. Bogan talked with Mr. Zerbst about coming to work for Ameris a couple of times during the summer of 2007 while he was still at First Reliance?

A. No, I did not, although it wouldn't surprise me. I mean, that doesn't sound abnormal.

Q. Now, you did learn that Mr. Zerbst left First Reliance in October of 2007?

A. I knew that he left First Reliance. I couldn't tell you the time.

Q. In the time he left First Reliance, you knew that Mr. Zerbst was talking with Ameris about his efforts to get out of the covenant not to compete that he had with First Reliance?

A. I wasn't aware that he was trying to

get out of that covenant, no.

Q. Were you aware that Mr. Zerbst was talking with Ameris, your bank --

A. I was.

Q. -- in October of 2007 about trying to get out of the covenant not to compete with Reliance so that he could come to work for Ameris?

A. I did not know that Mr. Zerbst was trying to get out of any covenant that he had. I knew that he had a covenant to not compete, but I didn't know he was trying to get out of one.

Q. Would you take a look at Exhibit 39 in the plaintiffs' exhibits? I think it's the small one there.

Exhibit 39 consists of a couple of E-mails, a letter from The Richter Law Firm. Do you see that?

A. I must be looking at the wrong one now.

Q. Plaintiffs' Exhibit 39. At the bottom, it says Plaintiffs' Exhibit 39.

A. Oh, there we go. My apologies. Response to Art Justice's letter?

Q. Yeah. Well, the first -- let me ask you first, have you seen these E-mails before?

A. I have not.

Q. You have not. So you weren't aware in October of 2007 that Mr. Zerbst was sending correspondence from his lawyer, Larry Richter, to your bank to share with your bank's lawyers about the covenant not to compete?

A. At that time, I had no idea it was Larry Richter's, but none of this surprises me.

Q. Did you have any input into the decision of hiring Mr. Zerbst?

A. Just input as relative to opinion on whether I thought it was a good idea or not, but the ultimate decision was Marc's.

Q. And did you think it was a good idea?

A. Yes.

Q. You knew that Mr. Zerbst had been in the banking business in the Charleston area for quite a long time?

A. I think it was about ten years.

Q. And yet did you think that he had a lot of contacts in the banking business in Charleston?

A. Yes.

Q. And did you think that Ameris could benefit from the banking contacts that Mr. Zerbst

had if he joined Ameris?

A. Yeah. Just like everyone we hire, hopefully.

Q. Yeah. And is it true that Mr. Zerbst brought a lot of customers from First Reliance to Ameris when he came over to Ameris?

A. I don't know of -- I don't know where all the customers came from. He didn't do bad. There are others that did better, but he did okay.

Q. Yeah. And Linda Gibson wasn't the only customer Mr. Zerbst brought from First Reliance over to Ameris, was she?

A. You know, I hate to disagree with you, but I don't think Karl brought Linda over. If I'm not mistaken, it was Benjie Lanier.

Q. Okay. Is it true that Mr. Zerbst brought so many customers from First Reliance to Ameris, that First Reliance actually sued Ameris for collaborating with Mr. Zerbst to take customers from First Reliance?

A. No, I would say that is a false statement.

Q. Well, take a look at Exhibit 68.

68 in the plaintiffs' book, the one that you have on the table.

A. The one that I just sat down? I see 66.

Q. There's not a tab for 68, so you'll just have to page through it.

THE COURT: 68 is the one you just gave this morning?

MR. KEFALOS: Yes.

BY MR. KEFALOS:

Q. You've seen this complaint before, haven't you?

A. Yes. Yes.

Q. So you --

A. It's been a while since I've read it, but yes.

Q. So it is true that First Reliance sued Ameris for collaborating with Mr. Zerbst in taking Ameris -- taking First Reliance's customers?

A. I don't know that -- I'm not sure of the technical part of it, but they thought he was taking their customers, yeah. Yeah. I don't agree with what they thought, but nevertheless.

Q. Now, you know today in this litigation that Linda Gibson has alleged that Mr. Zerbst arranged this loan before he formally joined Ameris?

A. Yes.
Q. And I understand today that you claim that Mr. Zerbst had nothing to do with arranging this loan between Linda Gibson and Ameris Bank?
A. That would be a true statement, yes.
Q. All right. But that's not always been Ameris's position, has it?
A. I don't know what you're talking about on there, but --
Q. Well, take a look at Exhibit Number -- I'm sorry. I didn't mean to interrupt you.
A. That's okay.
Q. Take a look at Exhibit 71.
MR. STEPP: Your Honor, let me renew my objection at this point. That's the interrogatory answer that was supplemented and amended.
THE COURT: All right. Your objection is?
MR. STEPP: Well, my objection is that it's not probative of the position of the bank when it was clearly corrected as an error, and I don't know that this witness would have -- I don't think he signed it. I don't have it in front of me, but I doubt that he did. So if it was a

position, it was a position of counsel that was subsequently corrected, and so it's not -- it's not an admission and, therefore, it's not relevant.

THE COURT: I will allow it to come in on cross-examination and you can give me the updated, corrected --

BY MR. KEFALOS:

Q. Look at Page 7 of Plaintiffs' Exhibit 71 at the bottom, Number 11. Now, these are interrogatories that Linda Gibson sent to Ameris Bank, and read along with me.

Item 11 says: Identify all documents and information defendant considered in processing all applications for loans for Linda Gibson or Heritage Seven, including, but not limited to, correspondence, notes, memos, requests for appraisals and any other information defendant obtained from any source.

Now, read the answer that Ameris filed at that time to that question.

A. Karl Zerbst handled the processing of the loan applications relevant to this case. Mr. Zerbst is no longer an employee of Ameris Bank, and Ameris therefore cannot ascertain what

documents he may have reviewed. Additionally, Ameris transferred the relevant loans to Galt Valley. Thus, Ameris Bank does not know what documents were considered in processing the loan applications for Gibson or Heritage Seven.

Q. I'm interested in the first part of that answer that says Ameris -- or it says: Karl Zerbst handled the processing of the loan applications relevant to this case. Do you know who at Ameris provided that information for your lawyers to file?

A. No, I don't, but it's -- I -- I'm embarrassed to say that's inaccurate.

Q. All right. Now, there was a change made in that interrogatory, wasn't there?

MR. KEFALOS: And, Bobby, you've designated this one?

MR. STEPP: Yes. But I certainly don't object if you want to put it --

MR. KEFALOS: Well, I don't have it numbered, but did you number it?

THE COURT: I don't think so.

MR. KEFALOS: We'll number this 72.

(PLF. EX. 72, Defendant Ameris Bank's

Amended Answers to Plaintiffs' Interrogatories, Galt Valley, LLC, v. Linda Gibson, et al., was marked for identification.)

THE COURT: Thank you.

THE COURT REPORTER: You're welcome.

BY MR. KEFALOS:

Q. Now, on 72 -- I'm sorry. You don't have a copy of 72?

A. That's right.

THE COURT: Here, you can look at this (tendering).

THE WITNESS: Thank you.

BY MR. KEFALOS:

Q. 72, the answer changes. Do you see that on Page Number 2 in the answer to Number 11?

A. That's correct.

Q. Who provided this changed -- this new information?

A. I'm sorry. I don't know who provided that information. It doesn't surprise me how it happened, but -- but I don't know who provided the information. Karl was Benjie's superior when all this took place. I'm sure they just got confused as to who was actually handling the money.

Q. Now, it's interesting. This answer says that the reason the first answer was incorrect is because Mr. Zerbst did not begin working for Ameris until more than two months after the purchase.

A. Yeah, that -- you know, that's an accurate statement as it is in itself. The reality is, is Karl was in Myrtle Beach working for a year when he first started working for us; so, I mean, I guess I could see what you're trying to get at.

Now, you know, I wasn't intricately involved with this case. This is just a travesty that this even happened to Karl, why this was here. It was so out of bounds that what they accused him of. They just should be embarrassed they even brought that case. I'm sorry, but Karl had absolutely nothing to do with what was going on with First Reliance Bank. I'm 100 percent confident of that.

Q. Did you read the testimony of Mr. Lanier?

A. In this particular case?

Q. In this case.

A. I did not read it. I listened to his

testimony.

Q. You listened to it. Did you listen to the part where he described how Mr. Zerbst brought the package from First Reliance over to Rolando and him, Mr. Lanier?

A. I did.

Q. And you heard about the charade that went on, that Mr. --

MR. STEPP: Objection, Your Honor.

THE COURT: What's the objection?

MR. STEPP: To the term charade. It's a prejorative term and inconsistent with the evidence.

THE COURT: Do you want to change that?

BY MR. KEFALOS:

Q. It was the theater where Mr. Zerbst --

MR. STEPP: Same objection.

BY MR. KEFALOS:

Q. -- made a production about saying I am now giving this to Rolando?

A. Who knows why he did that. I have no idea.

Q. Yeah. Okay. So you read that and you still claim that Mr. Zerbst had nothing to do with

bringing the loan over?

A. I don't think he had anything to do with anything about moving those over. I mean, I have -- I think Benjie did an excellent job. I mean, Kim Racine did an excellent job of moving all those loans over. Heritage Seven was just one of many that those two brought over.

We're talking about millions of dollars of loans before Karl even came to the bank. Once he was in Myrtle Beach, yeah, those things kind of happen. When you bring good employees over from other banks, they have a tendency to bring those loans with them.

Q. Oh. So your testimony is that they brought Benjie and Mr. Zerbst brought millions of dollars of loans from First Reliance?

A. No; my testimony was that Kim Racine and Benjie Lanier did an excellent job of bringing millions of dollars of loans from First Reliance.

MR. KEFALOS: That's all the questions I have. Thank you.

THE COURT: Redirect?

MR. STEPP: A few on redirect, if I may, Your Honor.

REDIRECT EXAMINATION

BY MR. STEPP:

Q. Mr. Sturm, I want to be real clear about this, if I can. Did Ameris Bank control the activities of Karl Zerbst at any time prior to January of 2008?

A. Never.

Q. Did Ameris Bank every instruct Karl Zerbst to act for the benefit of Ameris Bank at any time prior to January of 2008?

A. Absolutely never.

Q. Did Ameris Bank at any time ever tell Linda Gibson that Karl Zerbst was acting for Ameris Bank prior to January of 2008?

A. Never.

Q. Now, Mr. Kefalos asked you about some contact between Mr. Zerbst and Ameris while he was still employed at First Reliance. Do you think there's anything wrong with that?

A. It's normal.

Q. So if you're going to hire somebody, typically, they might already be employed, right?

A. Usually the better ones are employed when you hire them.

Q. Now -- and if you're going to hire somebody that has a noncompete, that would be an

issue, wouldn't it?

A. It is.

Q. And if you were going to think about hiring somebody with a noncompete, you would need to consider the noncompete, would you not?

A. Absolutely.

Q. Okay. Now, Mr. Kefalos showed you the complaint that First Reliance filed. Did Ameris Bank defend that suit?

A. Yes. Yes.

Q. And can you identify that as a copy (tendering) of the answer that was filed on behalf of Ameris Bank in that suit?

A. That is.

Q. And did Ameris Bank deny any wrongdoing in connection with the allegations made by First Reliance?

A. Yes.

Q. And did any of this to your knowledge have anything to do with anything that Karl Zerbst did prior to January of 2008?

A. Nothing.

MR. STEPP: I'd offer this as Defendant's Exhibit 126, Your Honor. It's the answer of Ameris in that case.

THE COURT: It's admitted.
MR. STEPP: Thank you.
(DFT. EX. 126, Answer, First Reliance Bank v. Karl H. Zerbst, Jr., and Ameris Bank, was marked for identification.)
(DFT. EX. 126 was admitted into evidence.)
MR. STEPP: No further questions of this witness, Your Honor.
MR. KEFALOS: No other questions, Your Honor.
THE COURT: All right. Just give me a moment, please.
Mr. Sturm, in 2007, towards the end of 2007, Amy Bigham worked with Ameris. Is she still employed with Ameris?
THE WITNESS: She is.
THE COURT: What was her capacity in 2007 -- end of 2007, November 2007 and January of 2008?
THE WITNESS: I'm going to apologize, but I don't know when her job change actually took place. At one point, she was administrative assistant to John Hipp who was the president of

the bank at that time. Subsequent to that, she took on a role of human resources in the State of South Carolina, and I just don't know when the change took place.

THE COURT: I see. So in the end of 2007, early 2008, Mr. Hipp was the president of Ameris Bank; is that correct?

THE WITNESS: Yes, president of Ameris Bank, the corporation --

THE COURT: Okay.

THE WITNESS: -- versus mine which is the state.

THE COURT: Yours is the state?

THE WITNESS: Yes, sir. There are four folks that operate our bank and I'm one of those four folks, and we report to the president of the corporation.

THE COURT: I'm just trying, you know -- all these folks have been fighting this case for a long time and I'm trying to understand all of the issues that are involved, and a lot of the issues surround Mr. Zerbst, as you know.

THE WITNESS: Yes.

THE COURT: And if Joe Jones would have come to Ameris Bank in October of 2007, how

would he have applied for a job at that time?

THE WITNESS: In October of 2 -- if he just came in and wanted to apply for a job?

THE COURT: Um-hum.

THE WITNESS: He would have filled out a loan application.

MR. STEPP: Loan application?

THE COURT: Employment?

THE WITNESS: Excuse me. Employment application. My apologies. We don't force them to borrow money from us.

THE COURT: Let me say that -- go ahead.

THE WITNESS: I think what you're asking me is, is it normal for us to recruit someone; is that what you're getting at or --

THE COURT: No.

THE WITNESS: Okay. I apologize.

THE COURT: How about if someone would have come in in January, wanted a job on January the 9th of 2008 and filled out an application; how would that have been processed normally in a bank?

THE WITNESS: In a bank?

THE COURT: In your bank.

THE WITNESS: In our bank?

THE COURT: Yes.

THE WITNESS: The interviewee would go through a series of interviews with various folks. If the determination was that we wanted to hire them, then we would have them fill out an employment application, at which time we would pull their credit report, we'd do drug screening and we'd do a law investigation, make sure there's no criminal activities. Once that's done, then we would issue a formal letter asking them to join us.

The interview process is obviously the longest of the --

THE COURT: So did Mr. Zerbst ever come in to Ameris Bank and interview for a job?

THE WITNESS: Yes.

THE COURT: Do you know when that happened?

THE WITNESS: I'm sorry.

THE COURT: Do you know who that would have been with?

THE WITNESS: It would have been with Marc Bogan. I would have been surprised if John Hipp didn't speak to him at that point.

THE COURT: So in the normal course of

business in your bank of hiring employees, they would fill out an application and then you would have had interviews; is that correct?

THE WITNESS: No, sir. Usually the interviews come first.

THE COURT: The interviews come before the application?

THE WITNESS: Yes, sir. The application and the drug screening and those type of things, that could take hours or it could take a day. That part of it's not long and drawn out. Once we go to hire somebody, we move rapidly once the decision has been made.

THE COURT: So what you're telling me now is, the decision is normally made at Ameris Bank that someone would be hired before they fill out an application?

THE WITNESS: Yes.

THE COURT: Then do you have any information or is anybody at Ameris Bank -- would they have any information that they could share with me as to when Karl Zerbst interviewed with Marc Bogan?

THE WITNESS: The first time?

THE COURT: First or subsequently,

whenever.

THE WITNESS: I would have to rely on Marc for that. I apologize.

MR. STEPP: Your Honor, some of that -- I don't know about that specific date, but some of that is covered in Mr. Bogan's deposition.

THE COURT: Oh, it is?

MR. STEPP: The process is addressed, and although it's probably not -- perhaps not as specific as you're asking, but it is at least addressed.

THE COURT: Okay. Good. Well, that's what I didn't have.

MR. STEPP: Yes.

THE COURT: Because what I have in front of me in the notes so far is that Amy Bigham on Wednesday, January the 9th, 2008, at 3:07 p.m. E-mailed Marc Bogan and said: Karl is good to go. I'm working on the benefits summary sheet and I'll send the offer, and I can include when I send the offer letter some of the benefits outlined.

And then Bogan responds at 3:25 p.m.: Will you please prepare an offer immediately? And then he applies on 1/9/08.

So there's obviously something going

on before all of this; would that be accurate?

THE WITNESS: Yes, sir. Very normal.

THE COURT: All right. And then maybe I'll find that out in Mr. Bogan's deposition.

All right. Any questions as a result of mine?

MR. KEFALOS: Nothing from plaintiff.

MR. STEPP: Nothing for the defendant, Your Honor.

THE COURT: All right. Thank you. And you may step down.

MR. STEPP: Your Honor, at this time, we would proffer a few additional exhibits. They are exhibits to the deposition of Mr. Villavicencio. And just so we'll have them in this record, they're referred to in the deposition, but we want to give them exhibit numbers for this case so they wouldn't be confusing; so we would proffer Exhibits 114 through 125, all of which are -- I'm sorry. The first -- wait. Let me do this again. I'm sorry.

We offer Exhibit 114 which is an E-mail from Benjie Lanier to Rolando dated October 23rd, 2007, and apparently has not previously been put into evidence.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BERKELEY
LINDA A. GIBSON, FORMERLY KNOWN AS
LINDA ANN AVIGNER, INDIVIDUALLY AND AS
TRUSTEE OF THE PAUL GIBSON FAMILY TRUST
AND HERITAGE SEVEN, LLC,

Plaintiff,

vs. CASE NO. 10-CP-08-2134

AMERIS BANK,

Defendant.

DEPOSITION OF: LINDA A. GIBSON
DATE: June 1, 2011
TIME: 9:51 a.m.

LOCATION: Law Offices of George J. Kefalos
3 State Street
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: LAUREN A. BALOGH,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Jackson and Hill in Mt. Pleasant, did he do any work on this case for you?

A. No.

Q. Has any accountant done any work on this case for you? That could be a bookkeeper, an accountant or a CPA.

A. Well, I also had retained Larry Richter's firm. I believe he had a forensic accountant, I cannot remember his name, take a look at some of the papers. I don't even know what all he took a look at, and gave his opinion on some things.

Q. Okay. And that opinion was it put into writing?

A. I believe it was. They gave it to Mr. Richter.

Q. Okay. And have you seen that document which was produced apparently to Mr. Richter's firm?

A. I believe I did read over it, yes.

Q. Do you remember, generally speaking, what it said? Or specifically, obviously.

A. Well, sort of like --

MR. EPTING: Let me make an observation, Max? Can we continue with the questioning about this was an informally consulted expert which this is the first I've heard of him if he's an informal.

Q. That was my next question. Did he ever give you any advice?

A. No.

Q. Okay. Have you sued the Verdi Company based upon this contract and their failure, in your opinion, or somebody else's, to comply with the contract which was signed between you and them?

A. No. No, I haven't. I don't know why we needed an architect. I don't know why. I don't know why he ... No.

Q. At some point was there, I don't know whether to call it a ground breaking, ribbon cutting, or something, was there something that you attended at the apartments to kind of do a PR push and say here's what we're doing?

A. No.

MR. MAHAFFEE: Okay. Why don't I get that marked No. 4.

(Defendants' Exhibit No. 4, letter dated 9/12/07, was marked for identification.)

Q. What's been marked as Exhibit 4, have you ever seen that document before?

A. No. No, I've never seen this.

Q. Okay. And in the third paragraph it says, and I'll just read it, "We intend to help you spend the money

you've got in the most cost-effective way possible to meet your goals. First, we've assumed an approximate 600 K, $600,000 budget ceiling." Was there ever a budget ceiling that you know of that the architect either had or -- let me talk about that. Were you aware that there was a budget ceiling?

A. No. I wasn't aware of any of this. The only thing I know about the Verdi Group was that they were going to get information on how to do a green building. That's all. I really don't even know what the Verdi Group does. I mean all I knew is that they helped you, you know, about the green building. And that's all that Rolando ever told me. I never met this guy until the following year.

MR. WILKES: This guy who?

MR. MAHAFFEE: Mr. Hill.

Q. David Anthony Hill?

A. Mr. Hill, yeah.

Q. Okay.

A. And then the only reason I met him at that time is that they were having problems with the contractor Mark.

Q. Okay. What sort of problems, at least to your knowledge, were they having with the contractor?

A. Well, he and Rolando had some problems. I

wasn't aware of that either. And so I just discovered a lot of things when I went, initially went down there that day. As I started to ask questions one thing kind of unfolded to another problem to another problem. I mean the very first day that I went down there the guys that Rolando had hired, the Honey Do It team, to renovate, the guy there told me that because I asked where the contractor was, and he said I don't know. He said he rarely comes by and he and Mark -- I mean he and Rolando don't usually like to be in the same area together. And so I wasn't quite sure what was going on there. But I mean that's when I discovered there was a problem between him and Mark.

Q. And do you recall when it was that you went by and the Honey Do It guy was in?

A. It was the latter part of March.

Q. Okay. And did you speak with Rolando sometime after late March of 2008 about what sort of problems he was having with the contractor on your property?

A. I didn't really confront Rolando directly about any of this, because I wasn't sure what was going on. My friend John Holt, you know, he says Linda, I think you need to go down and check on things, and I will go with you. And we discovered, like I said, as we talked to these individuals, they talked -- I would ask a

A. Well, he lived in Laurens and he would come down from Laurens. He would stay at the apartments, once I got started -- took over, you know, he stayed at the apartments.

Q. And did Mr. Holt have any construction background to your knowledge?

A. No. I think he had a general idea of some things but, no, he never told me that he was in construction.

Q. What kind of work did he do up there in Laurens?

A. Well, he was retired at the time. But he had done -- I think he had some real estate himself and some horses. He kind of dealt with horses, bought and sold horses. So I'm not quite sure of what all his background was.

Q. I'm assuming, with a name like Horse Trail Road, that you own some horses.

A. Yes, I do.

Q. And do the horses stay there on the property or are they elsewhere?

A. No, they stay there.

Q. Okay. Have you built a horse barn there?

A. My husband had one constructed on it.

Q. How many horses do you have currently?

A. I have, let's see, I think I have like six. My husband had several of them when he died. I've been trying to sell them. The horse market is as bad as the real estate market.

Q. Yes, ma'am. And I was thinking about asking this so I hope it's not a repeat. Did you ever pay Mr. Holt for doing any work for you?

A. No.

Q. When he would come down and stay at the apartments was he overseeing the construction, assisting you on that side of it?

A. No. He wasn't overseeing it. I mean he was there mainly just -- he saw that I was under a lot of stress. And he was there to encourage me so that I could get through this and whatever help he could be he was glad to do it. But he was in his sixties. I mean he couldn't do a lot of manual labor or anything, so ... He would give me his opinion on things, like if he thought that this might be a good idea or this might not. I tried to talk with several people that could give me some advice.

Q. And in what general areas did you seek or get advice from Mr. Holt and these other people?

A. Well, from Mr. Holt I got -- tried to figure out, you know, who to hire to do some of this work. And

what questions I should ask. I talked to some different realtors at the time because I wanted to find out what their perspective was on this property and how I could sell it.

Q. And when you say this property you're speaking still about the apartments.

A. The apartments yes.

Q. And who are the different realtors that you spoke with?

A. Let's see. I spoke with Dexter Rumsey with the Vanguard who is here in Charleston.

Q. You said Rumsey?

A. Rumsey.

Q. R-u-m-s-e-y, I guess?

A. Uh-huh, Rumsey.

Q. Okay.

A. And I spoke with Christina Ellis. I think she's with Carolina One.

Q. Okay.

A. And Geoff, that's with a G, G-e-o-f-f, Geoff Southard. I beleive he was with Carolina One at the same time as Christina. And there was another realtor, I cannot -- I don't recall his name. But he was with a commercial group here in Charleston.

Q. Okay. Did you ever enter into an agreement

with Dexter Rumsey, Christina Ellis, or Geoff Southard or with their companies?

A. I've had Geoff in the past year list the property for sale.

Q. And have you gotten any offers on those apartments?

A. Yes. I had several offers.

Q. What's the highest offer you received?

A. 1.2 million.

Q. And you say the real estate market is kind of tough right now. Did you ever have the apartments appraised to see what they were worth?

A. No.

Q. Do you know what they're worth in the current market?

A. Not really. I mean I've heard other realtors give me their opinions, but I don't know what it's really worth.

Q. Okay. It's my understanding that you're in litigation with Ameris right now.

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. As part of that have they done an appraisal on the apartments?

A. I believe they did do an appraisal.
Q. Okay. Do you know the amount of that appraisal?
A. I knew you were going to ask me that. I was trying to think what the appraisal was. I think -- I believe it was 1.8 million. I think that's what they told me, Ellis, or somebody, told me the appraisal was.
Q. When you listed it through Mr. Southard and Carolina One what amount did he say would be a good amount to put it or list it for out there on the market?
A. Well, Mr. Southard said that he thought it was worth maybe about $750,000. But he said -- I told him, I said we had an offer of 1.2. These people really wanted it. But I was trying to sell it for as much as I could, and I asked him to list it for 1.5.
Q. And the offer of 1.2 million was something you got before Mr. Southard?
A. Uh-huh.
Q. And was it listed with someone or someone just called you up and said hey, I'll buy it from you for X number of dollars?
A. No. Ameris, the bank officer there at Ameris, I don't know whether he knew the people that wanted it, or they had done business before with Ameris Bank, but he knew they had a partner. So he asked them, and they were

familiar with the apartments, and they came over and talked with me and gave me that offer. Well, they gave me an offer of 1.1. But I asked for a little higher than that. So they said they would be willing to do 1.2. And that ...

Q. You paid how much for the apartments?

A. 2.8.

Q. And when you purchased them in November of 2007, of course that was before the real estate market essentially crashed, correct?

A. If you say. I don't remember when it -- yes, I think so. I'm not sure when it all went kind of south.

Q. And let me ask you about this. These are some documents which were obtained from Ameris Bank. What I'll do is when we take a break I'll make copies for everybody.

(Off-the-record conference.)

MR. KEFALOS: What's the date of that, Max?

MR. MAHAFFEE: The date of the appraisal is March 9, 2010. Just for the record these are Ameris 00024, I'll leave off the zeros, 25, 36, 79, 80, 83 and 116. I'm going to get those all marked as Exhibit 5.

(Defendants' Exhibit No. 5, executive summary, was marked for identification.)

MR. MAHAFFEE: We've been going for an hour

and a half. Why don't we take five minutes so I can make a copy of these.

(Recess taken.)

MR. MAHAFFEE: Back on the record.

Q. Take your time and look at that document.

A. (Witness complies.) Okay.

MR. KEFALOS: Linda, there's no reason to read every line.

THE WITNESS: I haven't seen this before.

Q. The Exhibit 5, which you have got in front of you, you said to your knowledge you've never seen this?

A. No.

Q. Okay. On the second page, which is Ameris 00025.

A. Yes.

Q. Did Ameris ever inform you that the market value "as is" of the property at the time of this March 2010 appraisal was worth $1,850,000?

A. Ameris didn't. I believe my attorney told me.

Q. Were you ever informed that the prospective value of the property, as they say, "stabilized" was $2,250,000?

A. No.

Q. When Mr. Southard said it was worth 700, and you said that you had already got an offer for 1.2, did

he suggest at that time that it might be a good thing to do to get the apartments appraised? Since his valuation was at least $500,000 off.

A. No. Yeah. I don't recall him suggesting that, no.

Q. And did Mr. Southard tell you why he thought that it was worth $700,000?

A. He asked me about the rent rolls, the condition of the apartments. Of course he came over and looked at them. And what my expenses were. And then he could see what needed to be done to bring that one building, the third building, to completion. And the condition of the other buildings, and what it was going to take to do that. And the rents as they currently were. And the area, I guess, the area. I'm not quite sure what all he took into consideration but that's some of the things we talked about.

Q. When he was talking about what it would take to complete the third building did he also talk about buildings four, five, and six?

A. Yes. Well, I had already started the building. So we both concluded that if I had the money or whoever would take over would probably not -- would either try to just cosmetically fix them up, try to use whatever was usable in there, like some of the bathtubs,

if they were still good, the bathroom with the tile. It was an older, I think from the '70s, just try to use whatever was in there. You know he was just trying to get a figure of what, I guess, the cost would be to a potential buyer, going forward, what they would have to spend based on what I had already spent.

Q. And how much had you already spent at that point?

A. Well, I mean, I borrowed -- had that line of credit of $700,000, and Rolando had already spent about half of that, a little less than half of that.

Q. So roughly 300- to $350,000?

A. Well, I think it was 200-and-some-thousand, close to 300. So it took the rest of, when I got down there and went forward to fill in those two buildings, plus half of the third, it took the rest of the money to do that.

Q. Okay. So it was close to $300,000 and it took $400,000 to complete just the third building.

A. No, no. I'm not sure what all, you know, he did. But 200 to pretty close to 300,000 was already gone.

Q. Okay.

A. So what I had left, I hired a new crew of people to go in and finish. Some of the stuff they had

there with the apartments?

A. Well, they never admitted it to me. I don't know if they admitted it to anybody else.

MR. MAHAFFEE: Let's mark that as No. 9, please, sir.

(Defendants' Exhibit No. 9, e-mail dated 7/3/09, was marked for identification.)

Q. Have you ever seen that particular document dated July 3, 2009, apparently an internal e-mail of Ameris Bank from Don Snipes, the regional credit office?

A. Let me see.

MR. KEFALOS: May I look on?

THE WITNESS: Uh-huh. No, I've never seen this.

Q. Okay. It talks about in the first paragraph of having the possibility of interest rate reduction from 6 percent to 4.25. Did that ever happen?

A. They had me on interest only for the first year. And I think I talked with the bank officer, at the time, when that year was up, and told them what my rent rolls were and I couldn't do principal and interest. So I asked them would they be able to help me, you know, to extend this interest only? And they did. I can't remember what the rate, you know, whether it went from 6 to 4.5. I don't remember that. I just remember they

kept me on the interest only for several more months.

Q. They reduced your interest rate at least partially.

A. I believe Carl told me they were going to try to do that. Whatever it was it was, you know, it helped me to be able to continue to make those payments, because I was getting in about the same amount of rents that I had been, nothing had changed. I had to sometimes put in personal money, though, to make those payments, because the rents -- sometimes I couldn't collect all the rents due me.

Q. And what was the problem with collection of the rent?

A. People just wouldn't pay me.

Q. Were tenants living in the apartments and just not paying you?

A. Yes. Some of them had lost their jobs. Some their hours had been cut back. So they were struggling, you know, and I was trying to work with them to see if they could pay something, because I didn't have another tenant to put in there at the time. I thought some rent was better than nothing, because I had to make these payments. I mean I was trying to work with them and, you know, wasn't really getting any new tenants in there at the time.

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF BERKELEY

LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL GIBSON FAMILY TRUST AND HERITAGE SEVEN, LLC,
Plaintiff,
vs. NO. 2010-CP-08-2134
AMERIS BANK,
Defendant.

LINDA A. GIBSON, HERITAGE SEVEN, LLC, and SEVEN OAKS APARTMENTS, LLC,
Plaintiffs,
vs. NO. 2008-CP-10-4282
ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, LLC, and DPS OF CHARLESTON, INC., A/B/A RE/MAX PROFESSIONAL, and PAUL K. MOORE ASSOCIATES, INC.,
Defendants.

VIDEOTAPE
DEPOSITION OF: BENJAMIN R. LANIER, JR.

DATE: September 20, 2011
TIME: 9:43 A.M.
LOCATION: Law Offices of Grimball & Cabaniss, LLC
473 Savannah Highway
Charleston, SC
TAKEN BY: Counsel for the Plaintiffs Linda A. Gibson, Heritage Seven, LLC, and Seven Oaks Apartments, LLC
REPORTED BY: SUSAN KENNEDY CRAWFORD, Registered Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
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Charlotte, NC (704) 573-3919

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MR. JORDAN: Object to the form.

BY MR. KEFALOS:

Q. Murrells Inlet. Did Karl Zerbst, once he started working at Ameris, have an office that he sometimes used in Charleston?

A. Before the Murrells Inlet office was opened, he worked out of an office on the second floor that was away from everyone else, but it was brief. It was to come in, check E-mails, that kind of thing, and then back out.

Q. So he had a computer set up in the Charleston office that he could go to?

A. To my knowledge, yes.

MR. KEFALOS: Okay. That's all the questions I have. Thanks.

EXAMINATION

BY MR. JORDAN:

Q. Benjie, can I follow up on one of those real quickly?

A. Sure.

Q. The question about the second floor office in the Charleston office, can you tell me the time frame that Karl would have -- well, I guess the easier question is, would that have been before or after Karl officially started working

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY

LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL GIBSON FAMILY TRUST AND HERITAGE SEVEN, LLC,
Plaintiff,
vs. CASE NO. 2010-CP-08-2134
AMERIS BANK,
Defendant.
(CAPTION CONTINUED ON PAGE 2)

VIDEOTAPE
DEPOSITION OF: ROLANDO VILLAVICENCIO
DATE: April 25, 2011
TIME: 10:10 AM
LOCATION: Law Offices of
Wilkes Bowers Law Firm
171 Church Street, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TERRI L. BRUSSEAU,
Registered Professional
Reporter, CP, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly
Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

(CAPTION CONTINUED FROM PAGE 1)
STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON

LINDA A. GIBSON, HERITAGE SEVEN, LLC and SEVEN OAKS APARTMENTS, LLC,
Plaintiffs,
vs. CASE NO. 2008-CP-10-4282
ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, LLC and DPS of CHARLESTON, INC. a/b/a RE/MAX PROFESSIONAL, and PAUL K. MOORE ASSOCIATES, INC.
Defendants.

****

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFFS:
GEORGE J. KEFALOS
3 State Street
Charleston, SC 29401
(843) 722-6612
george@kefaloslaw.com

ATTORNEYS FOR THE DEFENDANT AMERIS BANK:
SOWELL, GRAY, STEPP & LAFFITTE, LLC
BY: WILLIAM H. JORDAN
1310 Gadsden Street
Columbia, SC 29201
(803) 929-1400
wjordan@sowellgray.com

ATTORNEYS FOR THE DEFENDANT ROLANDO V. VILLAVICENCIO:
WILKES BOWERS LAW FIRM
BY: MICHAEL B. WILKES
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mwilkes@wilkesbowers.com

ATTORNEYS FOR THE DEFENDANT
ROLANDO V. VILLAVICENCIO AND RPV INVESTMENTS, LLC:
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BY: MAX G. MAHAFFEE
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843-722-0311
max@grimcab.com

ATTORNEYS FOR THE DEFENDANT
PAUL K. MOORE ASSOCIATES, INC.:
RICHARDSON PLOWDEN
BY: DAVID A. ANDERSON
1900 Barnwell Street
Columbia, SC 29201
(803) 771-4400
Danderson@RichardsonPlowden.com

ALSO PRESENT:

Linda A. Gibson
Paul K. Moore
Kendall Moore
Robin Moore
Michael Andersen, Video Technician

(INDEX AT REAR OF TRANSCRIPT)

A. Correct.
Q. Do they still live in Greenville?
A. Dr. Sarmiento moved to another suburb outside of Greenville, I don't know exactly the name, but I believe Dr. Bruce lives -- still resides in Greenville.
Q. What sort of practice do they have?
A. I'm sorry?
Q. What sort of practice do they have?
A. They have allergy and asthma practice.
Q. Were you a member at all of ABESPRO?
A. Was I a member?
Q. Yes.
A. No. Never.
Q. Now, you represented ABESPRO in the sale of the Otranto apartments to Linda Gibson?
A. Correct.
Q. And you also represented Linda Gibson in that sale?
A. Correct.
Q. And of course that made you a dual agent?
A. Correct.
Q. And you understand that a dual agent represents both sides of the transaction?

A. Yes, sir.
Q. And a dual agent exists because there is a conflict of interest?
MR. MAHAFFEE: Objection.
MR. WILKES: Join.
THE WITNESS: I'm sorry?
MR. WILKES: Go ahead and answer the question if you can.
THE WITNESS: When you say conflict of interest, can you expound or be more specific?
BY MR. KEFALOS:
Q. Well, do you understand that a dual agency exists because there is a conflict in the interests of the seller and the buyer?
THE WITNESS: We --
MR. MAHAFFEE: Objection.
THE WITNESS: I'm sorry?
MR. MAHAFFEE: Go ahead.
THE WITNESS: Oh. We try to draw the line to avoid conflict of interest.
BY MR. KEFALOS:
Q. Well, do you understand that a dual agent cannot tell the buyer why the seller wants to sell?
A. I understand.

A. That's correct.
Q. And would you agree that that's part of what being a good realtor is?
A. Yes, sir.
Q. Now, sometimes you research the property for a prospective buyer before you make an offer?
A. Yes, sir.
Q. And that's part of what being a good realtor is?
A. Yes, sir.
Q. And sometimes you research the property in order to help the buyer make an intelligent decision about what to offer?
A. Yes, sir.
Q. Sometimes you find out what the seller paid for the property?
A. Yes, sir.
Q. In this case you knew what the seller paid for the property?
A. Yes, sir.
Q. Did you tell Miss Gibson what the seller had paid for the property?
A. I do not recall.
Q. Did you tell Linda Gibson that you

thought this purchase was a good investment?
A. I believe so.
Q. Did you talk to her about whether this was a wise investment for her?
A. Yes, sir.
Q. And did you tell her you thought it was a wise investment for her?
A. Yes, sir.
Q. Do you think that it was a suitable investment for a 60-year-old widow?
A. It would have been suitable investment for anyone that had information -- rightful information to make an ultimate final decision regardless of age.
Q. Do you know what ABESPRO paid for the property?
A. I do not recall the specific. I have an idea.
Q. About 1.4 million dollars?
A. 1.4, 1.6 I believe.
Q. And did you disclose that to Linda Gibson?
A. If I didn't and she wanted to get that information, she would have just gone into public records.

you --

A. I don't --

Q. -- about Linda changing to Ameris Bank?

A. I don't recall, sir.

Q. Did Benji Lanier tell you he could make the loan through Ameris?

A. I don't recall, sir.

Q. Did you talk with Linda about changing the loan?

A. I don't recall, sir.

Q. Do you know whether you helped assemble the documents necessary for the loan at Ameris?

A. When you say assemble the documents, what documents are you referring to, sir?

Q. Well, their financial statements, for example.

A. Financial statements of who, sir?

Q. Linda Gibson.

A. Yes, I -- I helped in that.

Q. Did you help Linda Gibson prepare the financial statement?

A. Yes, sir.

Q. You had helped her prepare the financial statement when she purchased the --

A. I'm sorry, sir. It was Linda Gibson

that helped me to prepare the financial statements. She, you know, discussed with me and informed me which properties were what, yes.

Q. And she told you what properties she owned --

A. Yes, sir.

Q. -- and you told her what value the properties had?

A. I -- after research, yes, sir --

Q. Okay.

A. -- and listening to her and what she had to say about what she felt the value was?

Q. Well, you didn't rely on her opinion --

A. I did, sir.

Q. -- of the value?

A. I did rely to her to an extent, yes, sir.

Q. In '05 you had helped her assemble a financial statement for the purchase of the shopping center?

A. You're referring to a document, sir?

Q. No, I'm asking you.

MR. WILKES: Could you restate the question, please?

BY MR. KEFALOS:

Q. So your job was to identify subcontractors?

MR. WILKES: Objection. Go ahead.

THE WITNESS: No, sir.

BY MR. KEFALOS:

Q. Have you ever managed construction before?

A. No, sir.

Q. This was the first project you were managing?

MR. WILKES: Objection.

BY MR. KEFALOS:

Q. Was this the first project that you were managing the construction for?

MR. WILKES: Objection. Go ahead and answer the question even after anybody objects.

THE WITNESS: Yes. Not really.

BY MR. KEFALOS:

Q. All right, not really. What --

A. What I would say is I was also involved in construction management on a limited scale with another complex. It's a townhouse complex in North Charleston.

Q. When was that?

A. 2002, 2003.

Q. And what were your responsibilities there?

A. My primary responsibility was to be the broker on sales -- on-site sales but at the same time the owner/developer had involved me in certain aspects of the construction management.

Q. And you said that that was a limited construction --

A. Yes, sir.

Q. -- management?

A. Yes, sir.

Q. So this was the first time you took on a full construction management project?

A. I would say that --

MR. WILKES: Objection. Go ahead.

THE WITNESS: -- this is not a full-fledged construction management.

BY MR. KEFALOS:

Q. Did you charge a full fee for construction management?

A. I only charged what was agreed upon, sir.

Q. You also paid for a licensed contractor, didn't you?

A. Yes, sir.

Q. Who was that?
A. The contractor at that time was Triton.
Q. Why did you need a contractor if you were doing the construction management?
A. I --
MR. WILKES: Objection. Go ahead.
THE WITNESS: I -- when we consulted with the City of North Charleston, they required that a contractor be identified as well as an architect because of the -- the size of the project.
BY MR. KEFALOS:
Q. The scope of the project? The scope of the project?
A. The scope of the project, yes, sir.
Q. Um-hum. So you needed to have somebody who was a licensed contractor to supervise?
A. Yes, sir.
Q. Well, what role did you have then if there was a licensed contractor supervising?
A. Yes, there was many roles that I had put into play prior to finding out the City of North Charleston and that was mainly to try to do a certain type of due diligence or costing, identifying best resources, best suppliers, far and

beyond what a typical agent would be doing. But I never claimed to be a construction -- licensed construction manager or anything of that sort.

Q. Nevertheless you did charge a fee for managing the construction?

MR. MAHAFFEE: Objection.

THE WITNESS: I'm sorry?

BY MR. KEFALOS:

Q. Nevertheless you did charge a fee for managing the construction?

MR. MAHAFFEE: Same objection.

THE WITNESS: I need to see how the -- the description of that fee was put into place. Are you referring to a contract or some sort of provision or clause?

BY MR. KEFALOS:

Q. Did you charge a fee for construction management?

A. I charged a fee. I don't know specifically if it was for the construction management.

(PLF. EXH. 15, E-mail chain dated 11/20/07 to Benjamin Lanier and Rolando Villavicencio, was marked for identification.)

BY MR. KEFALOS:

percent. So you see if there was anything that we overlooked and there's a likely chance we may have overlooked that, any issue such as a 30,000 bill from Triton that we still had an allowance of an estimate of 10 percent.

Q. But you would agree with me that going from estimating the project with no architect and no general contractor to adding in those fees would drastically change the amount of the project?

A. It would change. I don't know the -- you know, the level or, you know...

Q. All right. If you'll flip back to Exhibit 7 that Mr. Kefalos introduced. Exhibit 7.

A. Oh.

Q. If you'll flip back to Page 2 of 4. Page 2 of 4.

A. Exhibit 7?

Q. Exhibit 7, Page 2.

A. Page 2, oh. Yes, sir.

Q. And we -- we've talked already about Paragraph 5, Provision F which talks about supervision of restoration and improvements at the Otranto properties. Do you recall that?

A. Yes, sir.

Q. And you would agree that based on this

document, you had some obligation to supervise the work that was going on out there, is that correct?

A. Based --

MR. WILKES: Objection. Go ahead.

THE WITNESS: Based on the supervision of restoration and improvements paragraph.

BY MR. JORDAN:

Q. And when I say you, of course I understand that it was entered into on behalf of Re/Max Professional Realty with you as the individual who was going to perform that work, correct?

A. Yes, sir.

(Off-the-record conference.)

(PLF. EXH. 37, Verdi Agreement Between Architect and Owner, was marked for identification.)

(PLF. EXH. 38, Letter dated 9/12/07 to Mr. Rolando V. Villavicencio from David Anthony Hill, AIA LEED, was marked for identification.)

BY MR. JORDAN:

Q. Do you have Exhibit 37 in front of you?

A. Yes, sir.

Q. Do you recognize that document?

A. Yes, sir.

BY MR. JORDAN:

Q. Okay. They were -- but your testimony is that to your knowledge they didn't do any of the work themselves?

A. You mean like physically?

Q. Like an employee of Triton Construction doing any of the actual work on the project.

A. I don't recall that I would see -- maybe, you know, for -- just to initiate how it should be done, maybe Mark had shown -- picked a hammer and let's knock this part of the Sheetrock and see what's inside and when they discover, you know, whatever they needed to discover, then that's the -- the physical action that I would see. Other than that I don't recall.

Q. When you were at the job site, was a representative of Triton Construction -- Construction typically there?

A. I don't recall if you're referring to a frequency. I was there almost every day because that's where I, you know, go by to get to my office so I -- you know, I don't recall the frequency of Triton presence at the site.

Q. I might have asked you this but I don't remember. Whose decision was it to hire Triton?

STATE OF SOUTH CAROLINA)
) FORBEARANCE AGREEMENT
COUNTY OF CHARLESTON)

THIS FORBEARANCE AGREEMENT (this "Agreement"), dated as of November 17, 2010, is made and entered into by and among **3205 Palm Boulevard, LLC**, a South Carolina limited liability company ("*Borrower*"), **Linda A. Gibson a/k/a Linda Ann Avinger Gibson** ("*Guarantor*"), and **First Citizens Bank and Trust Company, Inc.**, a South Carolina banking corporation, together with its successors, endorsees and assigns ("*Lender*"). Borrower, Guarantor and Lender are sometimes collectively referred to as the "parties" or singularly as a "party."

WITNESSETH:

WHEREAS, Lender and Borrower entered into a certain financing transaction ("*Loan*") evidenced by a Commercial Note dated August 28, 2007 from Borrower to Lender in the original principal amount of One Million Five Hundred Thousand and 00/100 Dollars ($1,500,000.00) ("*Note*") and each of the other instruments and agreements executed and/or delivered by Borrower and Guarantor to Lender in connection with the Loan including, but not limited to, the below referenced Mortgage and Guaranty (individually and collectively, including the Note, the "*Loan Documents*"); and

WHEREAS, the Note is secured by a Mortgage of Real Estate ("*Mortgage*") dated August 28, 2007 and recorded August 31, 2007 in the RMC Office for Charleston County, SC, in Book L-637, Page 687 encumbering the property located at 3205 Palm Boulevard, Isle of Palms, South Carolina and more particularly described in the Mortgage (the "*Property*"); and

WHEREAS, payment of all indebtedness and performance of all obligations of Borrower has been unconditionally guaranteed by Guarantor pursuant to an Unlimited Guaranty Agreement executed and delivered by Guarantor to Lender on August 28, 2007 (the "*Guaranty*"); and

WHEREAS, Borrower has defaulted in the fulfillment of its obligations pursuant to the Loan Documents and is currently unable to make payments as required by the Note; and

WHEREAS, Lender has the right under the Loan Documents to proceed with any or all of its remedies under the Loan Documents, including, without limitation, (i) foreclosure of the Mortgage, (ii) obtaining an order appointing a receiver, an order sequestering the rents (if applicable), and/or a temporary restraining order and/or temporary and permanent injunction depending upon applicable law, and (iii) exercising any and all other rights and remedies available to Lender under the Loan Documents or under applicable law (all of the foregoing being hereinafter referred to as "*Lender's Remedies*"); and

WHEREAS, Lender filed in Charleston County and served upon Borrower and Guarantor a foreclosure action (Case Number 2009-CP-10-7702) ("*Charleston Foreclosure Action*") seeking, inter alia, public sale of the Property with the application of proceeds to the debt owed pursuant to the Note, and

WHEREAS, Judge Mikell R. Scarborough, by Master's Report and Order for Foreclosure and Sale filed August 25, 2010, found the outstanding indebtedness due Lender pursuant to the Note to be $1,579,181 26 as of August 25, 2010 and ordered a public sale of the Property, with application of the proceeds to the indebtedness owed Lender and provision for a deficiency judgment against Borrower and Guarantor for the remaining balance; and

WHEREAS, Lender placed the high bid of $950,000 for the Property at the opening of the public sale on October 19, 2010 and the public sale of the property is scheduled to close on November 18, 2010; and

PLAINTIFF'S EXHIBIT 2

WHEREAS, notwithstanding the fact that the Loan is currently in default, Borrower and Guarantor have requested that Lender temporarily forestall or postpone the public sale of the Property while Borrower completes a private sale of the Property and Lender is willing to do so upon the terms and subject to the conditions set forth in this Agreement. Lender is therefore entering into this agreement as an accommodation to Borrower and Guarantor, and Borrower and Guarantor remain bound to perform their obligations under the Loan Documents.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and in reliance upon the representations and warranties of Borrower and Guarantor set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct, and are hereby incorporated into and made a part of this Agreement.

2. Forbearance by Lender. Lender agrees to request the Master-in-Equity postpone the public sale of the Property and to forbear from seeking public sale of the Property and deficiency judgment against Borrower and Guarantor, if warranted based upon the amount of proceeds from the public sale, for a period of forty five (45) days from the date of this Agreement ("***Forbearance Period***"), provided Borrower and Guarantor fully comply with all of the requirements set forth in this Agreement. If at any time Borrower or Guarantor or any one of them fails to comply with any of the requirements set forth herein, Lender may immediately commence, proceed or otherwise continue with any or all of Lender's Remedies without demand or notice to Borrower, Guarantor or any other third party.

NOTWITHSTANDING THE FOREGOING, LENDER DOES NOT COMMIT ITSELF TO ENTER INTO ANY ADDITIONAL AGREEMENTS OF ANY KIND WITH BORROWER OR GUARANTOR INCLUDING, BUT NOT LIMITED TO, ANY AMENDMENTS, REINSTATEMENTS, ADDITIONAL FORBEARANCE AGREEMENTS, OR ANY OTHER ACCOMODATION.

3. Representation and Warranties. To induce Lender to enter into this Agreement, Borrower and Guarantor hereby represent and warrant to Lender that:

a. Borrower has entered into an Agreement to Buy and Sell Real Estate Residential dated July 22, 2010 as amended by addendum dated October 19, 2010 ("***Sales Contract***") pursuant to which Borrower has agreed to sell the Property to Robert Murphy and Julia Murphy (individually and collectively, the "***Purchaser***") for a price of $$1,025,000 ("***Purchase Price***"). A true and complete copy of the Sales Contract, including all amendments and modifications, is attached to this Agreement as Schedule A and incorporated herein by this reference;

b. The Sales Contract evidences an arms-length transaction between Borrower and Purchaser and sets forth the entire agreement between Borrower and Purchaser with respect to the Property, the deed of conveyance of the Property to be delivered by Borrower to Purchaser pursuant to the Sales Contract shall, upon delivery, constitute an absolute conveyance of all of Borrower's right, title and interest in and to the Property, and the Purchase Price represents the current fair market value of the Property;

c. The Sales Contract constitutes a valid, binding and enforceable agreement of each party thereto, no party thereto is in default thereunder and all covenants, conditions and agreements have been performed as required therein, and to Borrower's knowledge, will be performed as required therein and Borrower shall not modify or amend the Sales Contract without the prior written consent of Lender;

d. Guarantor is the sole owner and holder of fee simple title to the real properties and all improvements thereon located in Berkeley County and listed in the Berkeley County tax map system as TMS # 271-00-01-037, TMS # 271-00-01-040, TMS # 271-00-01-084, and TMS # 271-00-01-185

PLAINTIFF'S EXHIBIT 2

("*Berkeley Properties*") and the real properties and all improvements thereon located in Dorchester County and listed in the Dorchester County tax map system as TMS # 034-00-00-075.000 (113 Horse Trail Road, St. George; 10.34 acres) and TMS # 034-00-00-064.000 (133 Horse Trail Road, St. George; 73.72 acres) ("*Dorchester Properties*"). The Berkeley Properties include all of the property leased by Guarantor to: (1) Bargib, Inc. pursuant to a fifty (50) year term lease entered in January, 2001, and (2) Hidden Cove Boat and Yacht Sales pursuant to a fifty (50) year term lease entered in April, 1999 ("*Berkeley Leases*"), and

e. The current outstanding balance of Guarantor's Home Equity Line of Credit from JPMorgan Chase Bank, N.A. does not exceed the sum of $77,000.00 and Guarantor shall seek no further advances thereunder; and

f. All taxes, governmental assessments and user fees assessed against the Berkeley Properties and Dorchester Properties have been paid, and there are no judgments, state or federal tax liens, lis pendens or other liens or encumbrances thereon other than the Berkeley Leases, a mortgage in favor of Lender and a mortgage securing payment of Guarantor's Home Equity Line of Credit to JPMorgan Chase Bank, N.A..

4. Covenants of Borrower and Guarantor. Borrower and Guarantor hereby covenant and agree with Lender:

a. Borrower shall complete the sale of the Property pursuant to the Sales Contract for the Purchase Price, without offset or reduction, and shall remit all proceeds from the sale to Lender within thirty (30) days following the date of this Agreement. In the event the sale does not close within thirty (30) days from the date hereof, Borrower shall execute and deliver to Lender a deed in lieu of foreclosure conveying the Property to Lender free and clear of any intervening judgments, liens or other encumbrances.

b. Guarantor shall execute and deliver to Lender a promissory note ("*New Note*") in the original principal sum of $450,000.00, together with interest thereon at the rate of 3.0% per annum, payable in monthly installments of interest only until December 1, 2012, at which time the entire principal and any accrued but unpaid interest and fees shall become immediately due and payable.

c. As security for the New Note, Guarantor shall execute and deliver to Lender mortgages and collateral assignments of all leases, rents and profits of the Berkeley Properties and the Dorchester Properties. The mortgage(s) of the Berkeley Properties shall be subordinate only to a first mortgage to be granted to Guarantor's attorneys to secure payment of reasonable legal fees for the representation of Guarantor in Dorchester County Circuit Court Case of Ameris Bank v. Linda A. Gibson, et al.; Case # 2010-CP-08-2134, in an amount not to exceed $800,000. The Mortgages of the Dorchester Properties shall be subordinate only to a first mortgage previously granted to Lender and, in the case of TMS # 034-00-00-064.000, a Home Equity Line of Credit Mortgage ("*HELOC Mortgage*") in favor of JPMorgan Chase Bank, N.A. ("*JPMorgan*") in the amount of $220,000, dated July 6, 2007 and recorded July 13, 2007 in the Dorchester County RMC/ROD at Book 6137, Page 28. Guarantor shall deliver to JPMorgan, with copy to Lender's counsel, a notice to close the account secured by the HELOC Mortgage to any and all further draws upon execution of this Agreement. .

d. The New Note and the mortgages and assignments securing the New Note shall in form and content satisfactory to Lender. Guarantor shall secure any and all required consents to the mortgages and assignments from the lessees of the Berkeley Properties together with estoppel certificates, subordination non-disturbance and attornment agreements, and such further documentation as Lender may reasonable require. Borrower and Guarantor hereby agree to execute such further documents Lender deems necessary to secure the New Note as set forth in this Agreement. Guarantor shall purchase policies of title insurance in favor of Lender insuring the lien of the mortgages and assignments of leases, rents and profits of the Berkeley Properties and the Dorchester Properties. Lender shall be entitled under the New

PLAINTIFF'S EXHIBIT 2

Note and mortgages to collect all reasonable legal fees, costs and expenses incurred by Lender to enforce the obligations therein.

e. **The New Note, mortgages, assignments of leases, rents and profits, commitments for title insurance and premiums, and all other agreements and documentation required of Borrower and Guarantor pursuant to this Agreement shall be executed and delivered to Lender's counsel, Young Clement Rivers, LLP, within ten (10) business days following the date of this Agreement, to be held in escrow pending the sale of the Property pursuant to the Sales Contract. Closing on the sale of the Property shall not occur unless and until Lender's counsel confirms in writing to counsel for the private purchaser of the Property that all required agreements and documentation have been received and that closing may proceed.**

4. Lender Right to Pursue Lender Remedies. The agreement by Lender to forbear from pursuing Lender's Remedies is without prejudice to Lender's rights and remedies under the Loan Documents and the Charleston Foreclosure Case. In the event of any failure by Borrower or Guarantor to fulfill any of their obligations hereunder, Lender shall be entitled to immediately pursue any and all Lender Remedies, including the public sale of the Property and deficiency judgment for any and all remaining indebtedness or Borrower and Guarantor to Lender.

5. Bankruptcy. Borrower and Guarantor hereby acknowledge, agree and represent that the filing of any voluntary petition for bankruptcy under the United States Bankruptcy Code by Borrower or Guarantor would be in bad faith and solely for the purpose of delaying, inhibiting or otherwise impeding the exercise by Lender of Lender's Remedies. Borrower and Guarantor agree that in the event a voluntary or involuntary bankruptcy proceeding is initiated by or against Borrower or Guarantor after the date of this Agreement, Borrower and Guarantor shall cooperate with Lender and shall not oppose any motion by Lender for dismissal or for relief from any automatic stay filed in such proceeding.

6. Negotiations. Borrower and Guarantor hereby agree that negotiations, if any, between Borrower, Guarantor and Lender shall not constitute a waiver of Lender's right to exercise Lender's Remedies. To be effective, any waiver must be set forth in writing and duly executed by an authorized representative of Lender. Neither Borrower nor Guarantor nor any representative of Borrower or Guarantor shall be entitled to rely upon any verbal statements made or purported to be made by or on behalf of Lender in connection with any alleged agreement by Lender to refrain from exercising any of Lender's Remedies except as expressly set forth in a fully executed counterpart of this Agreement.

7. Construction of Ambiguity. Neither this Agreement nor any of the Loan Documents, nor any uncertainty or ambiguity herein or therein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement and the Loan Documents have been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties hereto, and not against the party who drafted or had its counsel draft all or any portion of this Agreement or the Loan Documents

8. Interpretation. This Agreement and the Loan Documents constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection herewith. No interpretation, modification, termination or waiver of any provision of, or default pursuant to, this Agreement shall be binding upon a party unless in writing and signed by the party against whom enforcement is sought. No waiver of any power, right or remedy arising hereunder shall be deemed to be a waiver of any such power, right or remedy upon the later occurrence or reoccurrence of events giving rise to such power, right or remedy. The invalidity, illegality or unenforceability of any provision hereof shall not render invalid, illegal or unenforceable any other provision hereof. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their heirs, successors and assigns.

PLAINTIFF'S EXHIBIT 2

9. Signature by Representatives. Any individual executing this Agreement on behalf of Borrower or Guarantor represents and warrants that he or she has been duly authorized to execute and deliver this Agreement as a representative of Borrower or Guarantor, and that Borrower and/or Guarantor has the power and authority to enter into and perform its obligations pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or caused their authorized representatives to execute, this Forbearance Agreement at Charleston, South Carolina as of the date first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Vicki Shen Tom
Rhonda Burk

Vicki Shen Tom
Rhonda Burk

3205 Palm Boulevard, LLC

By: Linda A. Gibson
Linda A. Gibson a/k/a Linda Ann Avinger Gibson, its member and authorized signatory

Linda A. Gibson

Linda A. Gibson a/k/a Linda Ann Avinger Gibson, individually as a Guarantor

First Citizens Bank and Trust Company, Inc.

By: _____
Print Name:
Title:

PLAINTIFF'S EXHIBIT 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 17 day of November, 2010 by 3205 Palm Boulevard, LLC, a South Carolina limited liability company, acting herein by Linda A. Gibson a/k/a Linda Ann Avinger Gibson, its member and authorized signatory, on behalf of the said company.

(SEAL)
Notary Public for South Carolina
My Commission Expires: _____
[Affix official notarial seal or stamp]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 17 day of November, 2010 by Linda A. Gibson a/k/a Linda Ann Avinger Gibson.

(SEAL)
Notary Public for South Carolina
My Commission Expires: _____
[Affix official notarial seal or stamp]

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this ____ day of November, 2010 by First Citizens Bank and Trust Company, Inc., South Carolina banking corporation, acting herein by _____, its _____, on behalf of the said banking corporation.

(SEAL)
Notary Public for South Carolina
My Commission Expires: _____
[Affix official notarial seal or stamp]

PLAINTIFF'S EXHIBIT 2

AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL

1. PARTIES: This legally binding Agreement entered into on July 28, 2010 between, Buyer(s) Robert Murphy, Julie Murphy (hereinafter called "BUYER"), and Seller(s) 3065 Palm Boulevard Ltd (hereinafter called "SELLER"). The property shall be deeded in the name(s) of Same.

THE ☐BUYER ☐SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot ____ Block ____ Section ____ Subdivision Isle of Palms

Address 3065 Palm Blvd

Tax Map # 571-13-00-140 City Isle of Palms Zip 29451

County of Charleston, State of South Carolina.

Seller represents that the property is connected to ☒public sewer system or to ☐septic tank or to ☒public water or to ☐well system or to ☐other

No personal property will convey as a part of this sale, except as described: All appliances, furniture, linens, kitchen items, beach gear, bar, etc -- Even Kay as per MLS listing

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before September 3, 2010, not later than 5:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be $ 1,025,000.00
One Million, Twenty-Five Thousand dollars.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☒Cash; or ☐Subject to Financing. Financing to be obtained by ☐Conventional ☐Seller ☐VA ☐FHA ☐Other terms:

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of $ 5,000.00 Buyer and Seller authorize Carolina One as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐Cash, ☒Check, or ☐Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

BUYER BUYER SELLER SELLER HAVE READ THIS PAGE
7-27-10 7-27-10
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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum ___NA___ % loan (loan-to-value ratio) within ___NA___ consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within ___NA___ consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 18.
FHA Mortgage Insurance ☐will ☒will not be added to the mortgage. VA funding fee ☐will ☒will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:
(a) SELLER shall provide or pay for preparation of deed, any recording charges based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty plan ☐will ☒will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐Buyer or ☐Seller not to exceed $ _____.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at ___5___ o'clock ___P___ M. on ___July 23, 2010___, unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed ___10___ consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. The ☐ Buyer or the ☒ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

[illegible] BUYER [illegible] BUYER [ ] SELLER [LG] SELLER HAVE READ THIS PAGE

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16. DEFAULT: If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. ACTUAL COST INCURRED shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for the sale.

18. SURVEY, TITLE EXAMINATION, AND INSURANCE: The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. CONDITION OF PROPERTY:

(A) Seller's Property Condition Disclosure Statement: (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) Inspection: Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by per addendum. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 45 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) Maintenance: After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) Wood Infestation Report: If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report [GL100] from a licensed and bonded pest control operator, on or before 7 days prior to close. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by the date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall

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remedy such deficiencies, subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.
If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead In Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system therein, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.
Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising according to the lenders appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of

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proceeding with the consummation of the Agreement without regard to these matters this agreement without penalty.

21. DISCLAIMER BY BROKERS AND AGENTS: The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which will be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. COASTAL TIDELANDS & WETLANDS ACT: In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction contemplated in this agreement. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Broker will retain all interest earned in said account.

PAM BUYER [illegible] BUYER [ ] SELLER [illegible] SELLER HAVE READ THIS PAGE

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28. NON-RELIANCE CLAUSE: Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

29. CONTINGENCIES: These stipulations shall preempt printed matter herein;(attach and reference addendum if necessary)If after 30 days sellers lien holder hasnt agreed to sale, buyer reserves the right to declare contract null and void and receive all earnest money back.See addendum.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Robert Murphy Robert Murphy Date 7/21/10 Time 8:00 PM

WITNESS: _____ Date _____ Time _____

BUYER: Julie Murphy Julie Murphy Date 7-21-10 Time 8:05 pm

WITNESS: _____ Date _____ Time _____

SELLER: 3205 Palm Blvd. LLC 3205 Palm Boulevard LLC Date 7-27-10 Time 4:30 p.m.

WITNESS: _____ Date _____ Time _____

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY _____

SELLING AGENT AND COMPANY Bob Brenneman The Charleston Group

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER

ESCROW AGENT ACKNOWLEDGMENT Carolina One

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Robert Hills

2010 JUL 27 2010 12:38PM

PLAINTIFF'S EXHIBIT 2

10/19/2010

Addendum to contract for purchase of 3205 Palm Blvd. dated July 22nd, 2010

This addendum takes the place of all previous addendums and supersedes any contrary information in the sales contract.

This contract is contingent upon a satisfactory home inspection and cl-100 letter. If the results of the home inspection or cl-100 are not satisfactory to buyer at their sole discretion, buyer reserves the right to declare this contract null and void and all earnest money returned. Both of these inspections to be paid for by the buyer. The home inspection and cl-100 letter to be completed within 7 days of written approval from bank and written approval from seller to terms of the short sale.

Seller agrees to provide buyer with past and future rental contact information, and any deposits for future rentals held by seller will be transferred to buyer at closing.

Property to be sold in "as is" condition with seller doing no repairs. However, buyer still has the right as stipulated above to have a home inspection.

The house to convey fully furnished as seen on July 22nd 2010 with the following exceptions: Rug rolled up in closet, a few paintings on the wall, white wooden desk in mbr, upstairs flat screen tv, and any items purchased after July 22nd 2010.

This contract is contingent on third party approval in writing from the bank and contingent on seller accepting in writing the terms of the bank. Should the bank and seller not be able to provide written consent to sell within 10 days of receipt of this contract, then buyer reserves the right to void the contract. RMM 10/19/10

This addendum extends the closing date to within 21 ~~18~~ days of written acceptance by the bank and seller. JSM 10-19-10

Buyer Robert W. Murphy

Buyer

Seller

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07

Form **8825** (Rev December 2006)

Department of the Treasury Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation

► See instructions.
► Attach to Form 1065, Form 1065-B, or Form 1120S.

OMB No. 1545-1186

Name: HERITAGE SEVEN, LLC

Employer identification number: 02-0612112

1 Show the kind and location of each property. See page 2 to list additional properties.

A MONCKS CORNER PLAZA

B OTRANTO ROAD APTS

C

D

Rental Real Estate Income		Properties A	Properties B	Properties C	Properties D
2 Gross rents	2	211,168.	22,264.		
Rental Real Estate Expenses					
3 Advertising	3	1,480.			
4 Auto and travel	4				
5 Cleaning and maintenance	5	650.	2,580.		
6 Commissions	6	25,611.	2,443.		
7 Insurance	7	7,195.	6,280.		
8 Legal and other professional fees	8				
9 Interest	9	137,541.	38,304.		
10 Repairs	10	6,681.	0.		
11 Taxes	11	16,315.	5,496.		
12 Utilities	12	1,357.	6,306.		
13 Wages and salaries	13				
14 Depreciation (see instructions)	14	39,953.	9,000.		
15 Other (list) ► Amortization	15	529.	16.		
TRASH COLLECTION		860.	270.		
BANK SERVICE CHARGES		2.			
* STMT		16,567.	1,260.		
16 Total expenses for each property. Add lines 3 through 15	16	254,741.	71,955.		

17 Total gross rents. Add gross rents from line 2, columns A through H	17	233,432.
18 Total expenses. Add total expenses from line 16, columns A through H	18	-326,696.
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19	
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a	
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed. (1) Name / (2) Employer identification number		
21 Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on: • Form 1065 or 1120S: Schedule K, line 2, or • Form 1065-B: Part I, line 4	21	-93,264.

BAA For Paperwork Reduction Act Notice, see the separate instructions.

Form 8825 (12-2006)

SPS20101 12/15/06

PLAINTIFF'S EXHIBIT 8

Form **8825** (Rev December 2006)

Department of the Treasury Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation

► See instructions.
► Attach to Form 1065, Form 1065-B, or Form 1120S.

OMB No 1545-1186

Name: HERITAGE SEVEN, LLC

Employer identification number: 02-0612112

1 Show the kind and location of each property. See page 2 to list additional properties.

A MONCKS CORNER PLAZA

B OTRANTO ROAD APARTMENTS

C

D

Rental Real Estate Income		Properties A	B	C	D
2 Gross rents	2	176,574.	127,302.		
Rental Real Estate Expenses					
3 Advertising	3	364.	3,700.		
4 Auto and travel	4		3,650.		
5 Cleaning and maintenance	5				
6 Commissions	6		2,114.		
7 Insurance	7	841.	14,018.		
8 Legal and other professional fees	8	2,543.	120.		
9 Interest	9	86,764.	149,430.		
10 Repairs	10	25,304.			
11 Taxes	11	17,698.	274.		
12 Utilities	12	1,870.	20,868.		
13 Wages and salaries	13				
14 Depreciation (see instructions)	14	39,953.	85,877.		
15 Other (list) ► TRASH COLLECTION	15	1,660.	6,541.		
OFFICE SUPPLIES		40.	543.		
MANAGEMENT FEES		13,171.			
* STMT		1,529.	49,732.		
16 Total expenses for each property. Add lines 3 through 15	16	191,737.	336,867.		

17 Total gross rents. Add gross rents from line 2, columns A through H	17	303,876.
18 Total expenses. Add total expenses from line 16, columns A through H	18	-528,604.
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19	
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a	
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed: (1) Name (2) Employer identification number		
21 Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on: • **Form 1065 or 1120S:** Schedule K, line 2, or • Form 1065-B Part I, line 4	21	-224,728.

BAA For Paperwork Reduction Act Notice, see the separate instructions.

Form 8825 (12-2006)

SPSZ0101 12/15/06

PLAINTIFF'S EXHIBIT 8

09

Form **8825** (Rev December 2006)

Department of the Treasury Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation

► See instructions.
► Attach to Form 1065, Form 1065-B, or Form 1120S.

OMB No 1545-1186

Name: HERITAGE SEVEN, LLC

Employer identification number: 02-0612112

1 Show the kind and location of each property. See page 2 to list additional properties.

A MONCKS CORNER PLAZA

B OTRANTO RD APTS

C

D

Rental Real Estate Income		Properties A	Properties B	Properties C	Properties D
2 Gross rents	2	210,569.	94,132.		
Rental Real Estate Expenses					
3 Advertising	3		209.		
4 Auto and travel	4		2,664.		
5 Cleaning and maintenance	5		6,006.		
6 Commissions	6	350.			
7 Insurance	7	3,324.	16,775.		
8 Legal and other professional fees	8				
9 Interest	9	87,299.	106,818.		
10 Repairs	10	4,700.			
11 Taxes	11	18,215.	46,970.		
12 Utilities	12	2,138.	22,863.		
13 Wages and salaries	13				
14 Depreciation (see instructions)	14	39,953.	100,502		
15 Other (list) ► TRASH COLLECTION	15	1,063.	1,122.		
GROUNDS MAINTENANCE	15	1,600.			
MANAGEMENT FEES	15	4,200.			
* STMT	15	529.	3,635.		
16 Total expenses for each property. Add lines 3 through 15	16	163,371.	307,564		

17 Total gross rents. Add gross rents from line 2, columns A through H	17	304,701.
18 Total expenses. Add total expenses from line 16, columns A through H	18	-470,935.
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19	
20 a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20 a	

b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed.

(1) Name	(2) Employer identification number

21 Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on: • Form 1065 or 1120S: Schedule K, line 2, or • Form 1065-B: Part I, line 4	21	-166,234.

BAA For Paperwork Reduction Act Notice, see the separate instructions.

Form 8825 (12-2006)

SPS20101 12/15/06

PLAINTIFF'S EXHIBIT 8

10

Form **8825** (Rev December 2010)

Department of the Treasury
Internal Revenue Service

Rental Real Estate Income and Expenses of a Partnership or an S Corporation

► See instructions.
► Attach to Form 1065, Form 1065-B, or Form 1120S

OMB No 1545 1186

Name: HERITAGE SEVEN, LLC

Employer identification number: 02-0612112

1 Show the type and address of each property For each rental real estate property listed, report the number of days rented at fair rental value and days with personal use. See instructions See page 2 to list additional properties.

	Physical address of each property – street, city, state, ZIP code	Type – Enter code 1-8; see page 2 for list	Fair Rental Days	Personal Use Days
A	109-111 S. HIGHWAY 52 MONCKS CORNER, SC 29461	4		
B	2625 OTRANTO ROAD NORTH CHARLESTON, SC 29406	2		
C				
D				

Rental Real Estate Income		Properties A	B	C	D
2 Gross rents	2	191,082.	75,245.		
Rental Real Estate Expenses					
3 Advertising	3				
4 Auto and travel	4				
5 Cleaning and maintenance	5				
6 Commissions	6				
7 Insurance	7	4,900.	20,584.		
8 Legal and other professional fees	8	250.	13,176.		
9 Interest	9	83,413.			
10 Repairs	10	5,461.	4,279.		
11 Taxes	11	15,370.	336.		
12 Utilities	12	1,846.	8,939.		
13 Wages and salaries	13				
14 Depreciation (see instructions)	14	39,953.	98,724.		
15 Other (list) ► TRASH COLLECTION	15	1,201.			
GROUNDS MAINTENANCE		1,025.			
MANAGEMENT FEES		4,200.			
STMT		8,870.	859.		
16 Total expenses for each property. Add lines 3 through 15	16	166,489.	146,897.		
17 Income or (Loss) from each property Subtract line 16 from line 2	17	24,593.	-71,652.		

18a Total gross rents. Add gross rents from line 2, columns A through H	18a	266,327.
18b Total expenses. Add total expenses from line 16, columns A through H	18b	-313,386.
19 Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities	19	
20a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)	20a	
b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed: (1) Name (2) Employer identification number		
21 Net rental real estate income (loss) Combine lines 18a through 20a Enter the result here and on. • Form 1065 or 1120S: Schedule K, line 2, or • Form 1065-B: Part I, line 4	21	-47,059.

BAA For Paperwork Reduction Act Notice, see the separate instructions. SPS20101 01/06/11 Form 8825 (12-2010)

PLAINTIFF'S EXHIBIT 8

From: Lanier, Benjamin
Sent: Monday, April 28, 2008 2:31 PM
To: eglbson777@yahoo.com
Subject: Heritage Seven Transactions
Attachments: Heritage Seven LLC

Elizabeth,

I have attached a list of transactions in regards to this loan since its inception for your records. Currently, the remaining balance left to draw from is $187,499.22. Your mom called and was asking about this balance and the transactions. Please let me know if you have any further questions in regards to this.

Thanks,

Benjamin R. Lanier Jr.

Vice President/Business Banker

Ameris Bank

49 Archdale Street

Charleston, SC 29401

Direct: 843-534-2939

Cell: 843-345-3507

Fax: 843-534-2944

benjamin.lanier@amerisbank.com

www.amerisbank.com

PLINTIFF'S EXHIBIT 22

5/12/08

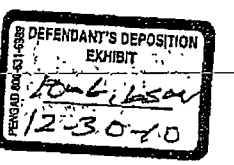
Re: 109-111 S Hwy 52 Moncks Corner, SC
: 2625 Otranto, N. Charleston, SC

Until further notice, no disbursements are to be made from the funds allocated to the above-referenced properties without written permission from me.

Heritage Seven +
Verdana Apartments

by Linda Gibson
Linda Gibson

Witness



PLAINTIFF'S EXHIBIT 23

Benjamin Lanier
Business Banker
Mt. Pleasant – 973

Friday – May 22, 2009

Discussion took place between Benjie and Karl Zerbst, supervisor in the Mt. Pleasant office about several decisions by Benjie that have put the bank at jeopardy and more importantly his ability to continue as a Business Banker. Therefore, this is a counseling statement and Benjie will be placed on probation for 90 days and at that time his file will be updated. Benjie has the ability to be a fine Business Banker, however certain actions have fallen short of giving the customer an exceptional experience while banking at Ameris.

LACK IN JUDGEMENT
The loan in the name of Heritage Seven, LLC was closed on November 2, 2007 for $2,800,000. by Benjie Lanier. The construction phase and amount for construction was $700,000. Although disbursements were made from invoices presented to Benjie in the amount of $378,000 the owner was never made aware of the advances. The project manager requested the advances however this individual had no ownership in the project/property. The owner, Linda Gibson, should have agreed to the advances by signing off on the request or Benjie requesting her approval before each advance was made.

When owner took project over from project manager in March 2008, advances were then made by Linda Gibson calling into office and requesting deposits be placed into her account. Although a personal banker made the advances Benjie failed to inspect project to ensure improvements were consistent with project costs. To date, there is $290,000 of advances that are not supported by invoices, AIA document or any other information in support of work being completed. Benjie has knowledge that he must inspect the property when an advance is made and request support by invoice or other information that work has been performed. It becomes very difficult to know how much work is left to complete when there is no Progress Report indicating balance to complete project. To date, 3 buildings still must have the interior completed and all funds have been advanced.

Currently, owner is questioning where the funds have been used prior to her taking over the project. Furthermore, no one knows of the amount that is needed to complete the project and thus the bank is over exposed on the collateral and subject to a large loss.

Benjie has the knowledge to know what must be done in circumstances like these or at a minimum he knows to ask a more experienced banker. It is obvious that Benjie has not taken ownership for this construction project to ensure the bank's interest is protected.

PLAINTIFF'S EXHIBIT 30

Other weaknesses observed is there is no signed contract, assignment of contract or due diligence by the loan officer to verify the validity of the contractor.

MATERIAL REDACTED

GOING FORWARD
Supervisor believes Benjie has the ability to be a Business Banker. However, Benjie must remember not to risk the bank during construction projects certainly when there is someone he can seek for advice.

It is recommended that Benjie learn to communicate better with customers/prospects so he can always deliver an exceptional experience while speaking on behalf of the bank. Furthermore, Benjie should do a much better job of keeping supervisor informed on his customer development efforts as well as internal processes. Furthermore, he should take a more active role in cross selling existing customers.

Karl H. Zerbst, Jr.
Supervisor

Benjie Lanier
Business Banker

This statement will be placed in employee's personnel file.

Ameris Bancorp

PLAINTIFF'S EXHIBIT 30

From: Snipes, Don
To: Edwards, Jon
Sent: 7/3/2009 8:21:45 PM
Subject: Heritage Seven

In efiles is a brief LCA package we need to look at to reduce the interest rate on the $2,796M loan from 6 0% to 4.25% for payment relief until she can finish the renovation of Building 3. A March 2009 rent roll indicates over $15M in monthly rental income, which would be more than enough to service the debt at the revised rate, but anecdotal evidence indicates the rental stream has slowed as she is having more collection problems. She is past due on her 2 other large real estate properties so things are not going so well for her. We have made a couple of suggestions to her but she has not responded as yet, to include carving a piece of this debt off and securing it with another piece of income producing property she has.

As you may remember, we have some culpability in her problems as we did not manage the construction loan as we should and have potentially aided in her former property manager at REMAX may have siphoned off some of the loan proceeds. She is currently in litigation with REMAX over this as the agent was representing them when this occurred, but we are a long way from any settlement

I support this short term action until we can perform a complete analysis of her situation. Let me know if you need anything else.

Don Snipes
Ameris Bank | SVP, Regional Credit Officer
1301 Main Street, Suite 700 | Columbia, SC 29201
(D) 803.733 3684 | (C) 803.319.9595 | (F) 803.733.2692
Email: don snipes@amerisbank.com

PLAINTIFF'S EXHIBIT 31

AMERIS-EMAILS-001152

FIRST RELIANCE BANK

Credit Memo

Date: 11/29/2005

Loan Officer: Karl H. Zerbst Jr.

Analyst: Benjie Lanier

Borrower Name: Linda A. Gibson

Current Borrower Exposure: $0

Amount Requested: 1) $1,280,000- Commercial Loan
2) $ 400,000- 2nd mortgage on Beach House

Total Exposure: $1,680,000
(Including new requests)

Loan Background/ Purpose:
The borrower has requested FRB to provide financing for the purchase of a retail strip center in Moncks Corner, SC. The retail strip center consists of the following tenants: Advanced Auto, Blockbuster Video, Check Into Cash, Papa Johns Pizza, Phone Smart. The purchase price for the property is $2,425,000.00. There will be a cash injection of $775,000. These funds are from a previous sale and is a 1031 exchange.

The structure of this financing is to allow a certain portion of debt be placed on the center and the remaining be placed on another asset and in this case we have recommended a 2nd mortgage on an investment home in Isle of Palms and the borrower has agreed. Therefore, the center will have a loan balance of $1,280,000 and the 2nd mortgage is recommended at $400,000. The money used on the 2nd mortgage is $370,000 which is the balance on the purchase and $30,000 which pays off an existing equity line and a small secured loan with First Citizens. The terms of both facilities is outlined below:

Loan 1- Commercial Loan

- Loan amount- $1,280,000
- Term- 15 year amortization/ 5 year call
- Rate- Prime +1/4%
- Fee- $6000

PLAINTIFF'S EXHIBIT 32

- Collateral- 1st mortgage on the land and improvements known as 109-111 South Hwy 52 Moncks Corner, SC.

** The payment shall be fixed at a rate of 8.25% to avoid negative amortization.*
***An appraisal has been ordered. The loan amount shall be $1.280 cost or 80% of appraised value, whichever is less.*

Loan 2- 2nd mortgage on Isle of Palms Investment Property

- Loan amount- $400,000
- Term- 12 months I/O
- Rate- Prime +0%
- Collateral- 2nd mortgage on the land and improvements known as 3205 Palm Blvd. Loan to value should be approximately 58% based on tax value.

**A tax value shall be used in determining the value of the property.*

Borrower's Background:
Linda A. Gibson has recently sold a property on the Isle of Palms and realized a capital gain of $800,000 (per the HUD). This $800,000 has been placed in a Q.I. account for the purposes of a 1031 Exchange. The personal statement reflects many parcels of land with very little debt. She inherited a large portion of this land from her parents and has some rental income coming in from different sources. One source, is Joe Bartone as he rents from her as she will not sell land on Daniel Island. Joe actually referred her to our bank.

Collateral Analysis:
The following collateral analysis was conducted on the investment property. The data used was from the recap sheet provided by the listing agent (Lauren Scott of Clement, Crawford and Thornhill). The following rent roll shows the tenants in the center as well as their monthly rental rates and the square footage they consume.

The property is centrally located on a major highway in Moncks Corner. The closest intersection is considered center of town and is adjacent to Berkeley County Administrative and Library Buildings. The center was built in 1994 and actually consists of two buildings as Advance Auto Parts is there separate building.

PLAINTIFF'S EXHIBIT 32

Tenant Description / Lease Term	Number of Units	Rent per Unit	Total Monthly Rent	Total Sq. Ft.
Advanced Auto	1	$ 4,958	$ 4,958	7000
Bryant Security- To Be Vacated in early 2006	1	$ 2,000	$ 2,000	2000
Blockbuster	1	$ 4,666	$ 4,666	4800
Check Into Cash	1	$ 1,600	$ 1,600	1200
Papa Johns	1	$ 1,400	$ 1,400	1200
Phone Smart	1	$ 1,350	$ 1,350	1200
Total Rental Income from All Properties			$ 15,974	17400

Cash flow analysis was conducted using the following assumptions:

Loan Amount		$ 1,280,000
Amortization Period (In Years)		15
Interest Rate		8.25%

The sources of repayment/vacancies/expenses are illustrated below:

Total Rental Income (Monthly)		$ 15,974
Annualized + Add'l CAM Charge		$ 230,477
Vacancy (%)	10.41%	$ 24,000
Income (Net of Vacancy)		$ 206,477
Expenses (%)	16.83%	$ 38,789
Net Operating Income		$ 167,688

The vacancy rate of 10.41% consists of the void that shall exist once Bryant Risk Management vacates the space. The 16.83% expense consists of the CAM charges paid by the tenants but it then netted out to pay Management, Taxes, Insurance, etc. Thus the property is triple net (NNN) for the most part.

Debt Payments (Current)	$ 11,590	
Annualized		$ 139,078
Debt Coverage(Current)		1.21
Excess Cash Flow		$ 28,610

PLAINTIFF'S EXHIBIT 32

The Cash Flow/Debt ratio above represents a 1.21 to 1 CF based on an 15 year amortization at an 8.25% interest rate. This is based on a pure cash injection of $1.075MM and the financing of $1.280MM.

The tenants and their lease terms are listed below. The lease terms are per the leases submitted and from listing agent information.

Tenant	Lease Begins	Lease Ends
Advanced Auto	12/1/2003	12/31/2008
Blockbuster	9/1/2004	8/31/2009
Check Into Cash	11/1/2004	10/31/2009
Papa Johns	10/1/2004	9/30/2009
Phone Smart	4/1/2004	6/30/2006

Guarantor One Comments:
The following highlights should be noted about Linda Gibson:

- Net Worth of $15,519,175- The majority of Linda's net worth consists of RE holdings on Daniel Island/Clements Ferry Rd as well as a rental home on the Isle of Palms. Many of these land holdings are owned free and clear by Linda. The rental home in IOP is currently on the market for $2.2MM with a mortgage balance of $467M.
- CBI of 729- After paying off several debts with the IOP 2nd mortgage proceeds the only remaining personal debt Linda shall have is her primary residence ($195M) and two credit cards with small balances.
- Personal debt percentage of 34% and excess personal cash flow of over $100M per 2004 Tax Returns.
- Current customer with the following accounts: Mature Living, Money Market and 6 month certificate of deposit.

According to the personal financial statement submitted; Linda derives the majority of her income from the following sources:

Running Track for Race Horses (14 horses @ $150 per month per horse)	$25,200
Cell Tower Lease (@1300 per month)	$15,600
Hidden Cove Boat and Yacht Sales Lease	$84,375
BARGIG 669 Marina Lease	$90,000

This equates to a total of $215,175 per year.
The IOP rental home income was not calculated in due to the fact that it is on the market to be sold.

PLAINTIFF'S EXHIBIT 32

Strengths of the Credit:

- Strong cash injection into the property (over $1MM). This shows a true desire that the borrower wants the property and is committed to it.
- Solid net worth of over $15MM consisting of RE in the highly desirable location of Clements Ferry Rd and Daniel Island.
- The house on Isle of Palms is on the market for $2.2MM with a mortgage balance of approximately $467M. Thus Linda shall realize a gain of over $1.7MM once that property is sold. That excess cash can be used to reduce the proposed debt or be invested into another cash flowing property.
- Personal Debt to Income of 34% which includes the proposed $400,000 2nd mortgage on the IOP property.

Weaknesses of the Credit:

- Cash flow of the property is 1.21 to 1 after major cash injections ($1MM+). This ratio shall eventually be increased once the vacant space is rented to a new tenant. Bryant Risk Management is vacating the space due to the fact that they are building a new facility.
- The center has experience quite a bit of tenant turnover since its 1994 inception. Past tenants have included Hollywood Video, Jackson Davenport, Subway and American General Finance. This shall be negated by the fact that the center is close to a Walmart and Bi-Lo. The proximity to these major anchors provides exposure to the tenants of this retail center.

Credit Summary/Recommendations:

Linda Gibson is seeking financing for a retail strip center located in Moncks Corner. As discussed earlier, Gibson is injecting $775M of 1031 exchange money into this $2.425MM investment property. First Reliance shall provide 2 (two) loans to assist with this request.

- The first loan shall be a commercial loan in the amount of $1,280,000 priced at Prime +1/4% with a term of 15 year amortization with a 5 year call. An origination fee of $6000 shall be collected on this transaction.

- The second loan shall be a 2nd mortgage on the 3205 Palm Blvd. in the amount of $400,000 priced at Prime +0% with a term of 12 months of interest only.

It shall be noted that the lender and the analyst acknowledge that the center is priced at a premium. This acknowledgement is based on the sales price vs. the current rental income analysis conducted during the underwriting process. The borrower is aware of this fact but has the cash injection and is willing to inject a total of $1.075MM in the center which indicates her commitment to the transaction. It is suggested that the use of the 2nd mortgage on the IOP Beach

PLAINTIFF'S EXHIBIT 32

House by which limits the amount of debt on the strip center and thus spreads exposure over two properties.

The borrower shall have a personal Debt to Income of 34% including the $400M HELOC The Investment property shall have a CF/DS ratio of 1.21 to 1 with excess cash of $28M. This excess cash can serve funds to make any necessary repairs or any miscellaneous costs that may be incurred with the center.

An appraisal has been ordered on the commercial property. FRB will finance $1.280MM or 80% appraised value, whichever is less. A tax assessed value shall be used to derive the LTV on the Palm Blvd beach house for the purposes of financing the 2nd mortgage. FRB will have an LTV of approximately 58% on the property per tax value.

The center has the cash flow ratio of 1.21 to 1 given the current tenants and the proposed financing. A new tenant in the soon to be vacated space will increase this ratio even further. Rolando Villavicencio of REMAX Commercial will represent the Borrower in the transaction. Villavicencio will also manage the property for the borrower and will have task of acquiring a tenant for the vacant space. Rolando's resume is included in the package for review.

Given the net worth, credit score, personal debt percentage and cash injections made by Linda Gibson I recommend this loan be approved as presented at a credit grade of 3. The commitment shown by Gibson displays her desire to acquire this center for investment/tax purposes.

PLAINTIFF'S EXHIBIT 32

From: zzzDisabled - Zerbst, Karl
Sent: Tuesday, November 17, 2009 5:41 PM
To: Charpia, David; Snipes, Don; Sturm, Richard
Subject: FW: Linda Gibson

I met with Linda and her new attorney, Robert Papa last Monday. He was to get back with me last week but did not although I did receive this email today. Larry Richter confirmed today that his firm no longer represents Linda. I wish he did for our benefit but I understand why he no longer does. With respect to the below email, I'm not sure what Robert is asking for in the way of more help from Ameris. It seems they need to offer something that works for both of us. Linda did call me today and asked for a little more time. I do and will remain hopeful that we can resolve the issues we face but I don't think we can or should wait for 1st Citizens. I have selected two parcels of land that is income producing to Linda that would be used on the residual loan if Linda and Robert want to work for a win-win. David - I got your voice mail and can meet with you at 4:30 tomorrow and I will know more then.

Karl H. Zerbst, Jr.

Ameris Bank | Market President

966-C Houston Northcutt | Mt. Pleasant, SC 29464

(D) 843-849-5488 (F) 843-881-8350

(C) 843-452-3838 (O) 843-375-4969

karl.zerbst@amerisbank.com

From: Robert Papa [mailto:papa@btitelecom.net]
Sent: Tuesday, November 17, 2009 4:20 PM
To: Zerbst, Karl
Subject: RE: Linda Gibson

Hi Karl,

I have been spending quite a bit of time with Linda trying to sort out things to be able to advise her on what is in her best interest. As you know, Linda has no earned income from a 9-5 job. Her subsistence is based on the real estate income. What Ameris is offering re the deferment of the $300K is appreciated. The numbers for Linda are close but we need more help from Ameris. The attorney for First Citizens is in NYC and returns this Thursday or Friday so I do not have a concession package with them yet. I have court tomorrow in Chas in the morning and Walterboro in the afternoon but will check emails early and mid-day.

Rob

PLAINTIFF'S EXHIBIT 35

TE487

Michelle Stith

From: Geoff Southard [gsouthard@carolinaone.com]
Sent: Thursday, August 27, 2009 4:05 PM
To: 'Will Lewis'
Cc: gsouthard@carolinaone.com
Subject: RE: Linda Gibson

Will,

I'm sorry for the delay. It seems incredible that Linda paid twice as much as the people she bought the property from. They paid $1.4million and she $2.8million. I'm certain that the rents didn't double. I am also certain that t was represented that if she did the rehab she could sell the units as condos. That is truly ridiculous. Seasoned real estate people do more market studies and due diligence than I'm sure Linda did as a "seasoned" rookie.

Again, there is NO WAY that this property, in this location, in it's condition at the time was worth anything near the price paid. A look at the income/expense statements will reveal this.

I think the closest condo sales of like property are Otranto Club Villas and they are much nicer in a better location and well, just better. I am sending you a following email of all the Otranto Club Villas sold since June, 2006. There are not many. Call me when I'm at my office an we can discuss this more.

Geoff

From: Will Lewis [mailto:WilliamLewis@RichterFirm.com]
Sent: Tuesday, August 18, 2009 5:03 PM
To: gsouthard@carolinaone.com
Subject: Linda Gibson

Mr. Southard, It was a pleasure talking with you today. The address of the property at issue is 2625 Otranto Road, North Charleston, South Carolina 29406.
I look forward to hearing back from you.

Best regards,
Will

William Bee Ravenel Lewis
Attorney at Law
The Richter Firm, LLC
Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
Post Office Drawer 1089
Mount Pleasant, South Carolina 29465
Phone: 843 849 6000
Fax: 843 881 1400

Confidentiality Notice

EXHIBIT
RE 08/14/12
10
Southard

9/4/2009

PLAINTIFF'S EXHIBIT 37

TTEX37

Michelle Stith

From: Geoff Southard [gsouthard@carolinaone.com]
Sent: Thursday, August 27, 2009 4:56 PM
To: 'Will Lewis'
Cc: gsouthard@carolinaone.com
Subject: Seven Oaks/Linda Gibson Values

Will:

Just looked at the rent numbers Elizabeth sent to me in September, 2008. I ran them assuming that the MAX rents were obtained ($750 for 2bd and $650 for 1bd as shown on the September spread sheet) for *ALL* units. I took a 10% vacancy factor and 35% for expenses yielding a 9.3% cap rate if at $2,800,000. In other words, no renovations which would prohibit the high rents projected.

The second scenario provides for the same rents but, adds the $800,000 for renovations or a $3,600,000 price tag. All other assumptions are the same. This yields a 7.5% cap rate, ***TOTALLY*** unrealistic for this property. At that time, this would have been a 10-11% cap property ***RENOVATED***. In other words, I would have valued it $2,617,750-$2,379,772, ***RENOVATED***.

So, I am adding the $800,000 for renovations to the values here meaning, a purchase price in the $1,500,000-$1,800,000 would seem to me to be inline. That is based solely on income. Also, note that I do not have the benefit of seeing the income and expenses from the two years (three years is better) prior to the purchase. Nor, do I have the benefit of the current income and expenses. I am thumb nailing this for our purposes now. I don't see that knowing details will help improve the purchase price. I expect un-renovated the expenses would be higher thus lowering the expected value.

My opinion, a 100% ***BAD BUY!*** At the price paid. No recovery would help this property. The only thing that would sustain it is throwing more equity at it and giving it value over time/years.

Let me know if I may help you further.

Sincerely,

Geoffrey L. Southard.
CAROLINA ONE COMMERCIAL
567 Crowfield Blvd.
Goose Creek, SC
29445

843-908-6309

RE EXHIBIT 6/14/12
11
Southard

9/4/2009

PLAINTIFF'S EXHIBIT 37

From: Karl Zerbst
Sent: Thursday, October 04, 2007 11:42 AM
To: Rick Saunders
Subject: Karl Zerbst

Rick,

At your request I am detailing some of the pertinent points discussed yesterday of which I respect our time. My desire was to share with you in person why I have to leave the bank. More importantly, for us to handle the departure as gentlemen and for a win –win to occur. As I stated yesterday, the bank's interest would be the current portfolio that I maintain: I would be in favor of a new agreement that states I will not solicit existing customers from the bank. That will allow lenders in Charleston to call on these customers and provide the same level of service that First Reliance Bank offers. In return, the current agreement that was signed in April of this year is null and void. This will allow me to provide a livelihood for my family and do what I do best as a banker in Charleston. I know you understand this. I must also re-establish my credibility with customers and banking peers. As it stands now, I have lost all credibility with the banking community by what was done to me. Therefore, my dignity is at an all time low. I have to re-establish myself in banking outside of First Reliance as I can not do this while I'm here I am in an unhealthy state.

I am hopeful that we can resolve this issue for the benefit of the bank and me. I have the deepest respect for First Reliance. I am suggesting the new agreement be signed no later than Wednesday and my last day be Friday, 12th. This will allow time for me to close several loans on behalf of First Reliance. This would also be healthy for our customers, in my opinion.

I look forward to a genuine interest in response from the bank and we both move forward.

Karl H. Zerbst Jr.
Senior Vice President Business Banking
First Reliance Bank
25 Cumberland St.
Charleston, SC 29401
(843) 789-1414 Direct
(843) 789-1ASK ACCESS*Live* Customer Care Center
(843) 789-1329 Fax
(843) 452-3838 Mobile
kzerbst@firstreliance.com

Check out our Web Site: www.firstreliance.com

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10/25/2007

PLAINTIFF'S EXHIBIT 38

Linda Bule

From: Linda Bule
Sent: Friday, October 05, 2007 7:58 AM
To: Adrienne Carter; Darlene P. McCall; Doris J. Gerrald; Jennifer K. Coburn; Mindy A. Osborne; Nancy Watts; Pam Richardson; Pamela Rhoads
Subject: Termination-Karl Zerbst
Attachments: Zerbst, Karl.doc

Good morning,

Karl Zerbst is no longer employed with FRB. See attached termination packet for details.

Thanks

FRB0090
Confidential

10/5/2007

662

PLAINTIFF'S EXHIBIT 38

Associate Name: Karl Zabst

Loan Operations

Please initial indicating that the following has been completed...	Initials	Date Completed	Date Forwarded to HR
Pull loan files	N/A		
Review loan for rate change	N/A		
Review for proper disclosure	N/A		
Change class code	New		
Turn off employee flag	New		
Terminate Credit Bureau	New		
Terminate First American	N/A		
Notify Vendors, as needed	New		

Comments:

No loans

10/5/07

FRB0092
Confidential

663

PLAINTIFF'S EXHIBIT 38

From: Bogan, Marc
To: john.moore@nelsonmullins.com
Sent: 10/31/2007 3.41:26 PM
Subject: FW: Response to Art Justice's letter
Attachments: Redacted

Redacted

From: Karl Zerbst [mailto:karl.zerbst@comcast.net]
Sent: Wednesday, October 31, 2007 10:41 AM
To: Bogan, Marc
Subject: FW: Response to Art Justice's letter

Hope all is well. I thought you might want to share this letter with John, bank counsel, as it offers where Larry is in settling this matter quickly. Take care.

-----Original Message-----
From: Larkin Hegler [mailto:larkin@richterfirm.com]
Sent: Wednesday, October 31, 2007 8:59 AM
To: karl.zerbst@comcast.net
Subject: Response to Art Justice's letter

Mr. Zerbst,
Attached please find a copy of Mr. Richter's letter to Art Justice which we faxed out late yesterday.
Thank you,
Larkin

Larkin W. Hegler
Administrative Assistant
The Richter Firm, LLC
Post Office Drawer 1089
Mt. Pleasant, SC 29465
843-849-6000
843-881-1400 fax

AM_00001

PLAINTIFF'S EXHIBIT 39

From: Bogan, Marc
To: john.moore@nelsonmullins.com
Sent: 11/1/2007 11:31:40 AM
Subject: Re: Redacted

Redacted

-----Original Message-----
From: John Moore <john.moore@nelsonmullins.com>
To: Bogan, Marc
Sent: Wed Oct 31 18:33:21 2007
Subject: RE Redacted

Redacted

From: Bogan, Marc [mailto:Marc.Bogan@amerisbank.com]
Sent: Wednesday, October 31, 2007 11:41 AM
To: John Moore
Subject: FW: Redacted

Redacted

From: Karl Zerbst [mailto:karl.zerbst@comcast.net]
Sent: Wednesday, October 31, 2007 10:41 AM
To: Bogan, Marc
Subject: FW: Response to Art Justice's letter

Hope all is well. I thought you might want to share this letter with John, bank counsel, as it offers where Larry is in settling this matter quickly. Take care.

-----Original Message-----
From: Larkin Hegler [mailto:larkin@richterfirm.com]
Sent: Wednesday, October 31, 2007 8:59 AM
To: karl.zerbst@comcast.net
Subject: Response to Art Justice's letter

Mr. Zerbst,

Attached please find a copy of Mr. Richter's letter to Art Justice which we faxed out late yesterday.

AM_00198

PLAINTIFF'S EXHIBIT 39

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law

622 Johnnie Dodds Boulevard
P. O. Drawer 1089
Mount Pleasant, South Carolina 29465

Lawrence E. Richter, Jr.
Alice Anne Richter
William H. Waring, III
Harper L. Todd*

*Admitted only in GA

Telephone: (843) 849-6000
Telefax: (843) 881-1400

October 30, 2007

VIA FACSIMILE 843-413-5819
Arthur E. Justice, Jr.
Turner Padget
P.O. Box 5478
Florence, SC 29502

In Re: Karl Zerbst/First Reliance Bank

Dear Art:

I am in receipt of your letter dated October 25, 2007 concerning the above referenced matter. I am sorry to say that, having searched for a conciliatory tone therein, I found none. Still, I thought it appropriate that I write you to make sure that we have exhausted all possibilities before either side undertakes litigation.

Art, I am not certain that your client has given you all of the facts. Please accept my representation that we have looked into this matter in some factual detail. I am confident that we can establish that representations were made to Mr. Zerbst, by your client, which were untrue. Not only did these representations fraudulently induce Mr. Zerbst into the contractual arrangement you reference in your letter, but he was also fraudulently retained in that relationship. These, along with several other acts by the bank, can be shown by independent testimony, and this corroborates the factual account Mr. Zerbst has given me

I tell you this in all good faith and urge you to please explore with your principals the representations they made. Also, let me know whether you think it makes any sense to try to have some sort of pre-litigation mediation and hopefully thereby avoid the necessity of the involvement of the court. If we do that, we need to do it very soon and to use a strong and experienced mediator. Please let me hear back from you at your earliest possible opportunity.

With best personal regards, I am

Very truly yours,

Lawrence E. Richter, Jr.

LER/lwh

cc: Karl Zerbst

AM_00002

PLAINTIFF'S EXHIBIT 39

REVISED PRELIMINARY EVALUATION

OF

AMERIS BANCORP'S

FINANCIAL ABILITY

TO PAY A POTENTIAL PUNITIVE DAMAGES AWARD

Prepared

for

Mr. George A. Kefalos
Mr. Andrew K. Epting, Jr.

Attorneys at Law

Prepared

by

Dr. Oliver G. Wood, Jr.

May 16, 2012

PLAINTIFF'S EXHIBIT 41

This revised preliminary report contains an evaluation of Ameris Bancorp's (Ameris) financial ability to pay a potential punitive damages award.

Business

According to Ameris' 2011 10K, " We are a financial holding company whose business is conducted primarily through our wholly-owned banking subsidiary, Ameris Bank ("the Bank"), which provides a full range of banking services to its retail and commercial customers who are primarily concentrated in select markets in Georgia, Alabama, Florida and South Carolina. Ameris was incorporated on December 18, 1980 as a Georgia Corporation. . . . We operated 62 domestic banking offices with no foreign activities. . . . Our primary business as a bank holding company is to manage the business and affairs of the Bank. As a bank holding company, we perform certain shareholder and investor relations functions and seek to provide financial support, if necessary, to our subsidiary. . . . Our principal subsidiary is the Bank, which is headquartered in Moultrie, Georgia and operates branches primarily concentrated in select markets in Georgia, Alabama, Florida and South Carolina. These branches serve distinct communities in our business areas with autonomy but do so as one bank, leveraging our favorable geographic footprints in an effort to acquire more customers "

PLAINTIFF'S EXHIBIT 41

Assets, Liabilities, and Stockholders' Equity, FYE December 31, 2005-2011 and March 31, 2012

Exhibit 1 contains Ameris' assets, liabilities, and stockholders' equity, FYE December 31, 2005-2011 and March 31, 2012. Between FYE 2005-March 31, 2012 Ameris' assets increased from $1.7 billion to $3.0 billion, while stockholders' equity rose from $148.7 million to $297.7 million.

Net Interest Income and Income (Loss) Before Taxes, FYE December 31, 2005-2011

Exhibit 2 contains Ameris' net interest income and income (loss) before taxes, December 31, 2005-2011. Net interest income is defined as total interest income minus total interest expense. In essence, net interest income represents the bank's net gain on funds that it had to purchase. As shown in Exhibit 2, between FYE 2005-2011, Ameris' net interest income increased from $52.6 million to $113.5 million. With respect to income (loss) before income taxes, between FYE 2005-2007, Ameris had positive income. However, between FYE 2008 and 2010, Ameris had negative income before taxes as the bank felt the effects of credit losses that were pervasive in the economy. In FYE 2011, Ameris' income (loss) before taxes turned positive to $31.6 million.

Net Cash Provided by Operating Activities, Per Year, Per Week, and Per Day, FYE December 31, 2007-2011

Exhibit 3 contains Ameris' net cash provided by operating activities, per year, per week, and per day, FYE December 31, 2007-2011. Net cash provided

PLAINTIFF'S EXHIBIT 41

by operating activities is defined as net income plus depreciation plus/minus certain balance sheet and income statement adjustments. In FYE 2011, Ameris had $46.2 million in net cash provided by operating activities. This was an average of $887,808 per week and $126,482 per day.

Condensed Balance Sheet, December 31, 2011

Exhibit 4 contains Ameris' condensed balance sheet, December 31, 2011. On that date, Ameris had $65.5 million in cash and due from banks, $229.0 million in Federal funds sold and interest bearing balances, and $340.0 million in investment securities.

Concluding Observations

A. Ameris operates as the bank holding company for Ameris Bank which has offices in Georgia, Alabama, Florida, and South Carolina.

B. At the end of March 2012, Ameris bank had $3.0 billion in assets and $297.7 million in stockholders' equity.

C. In FYE 2011, Ameris had $113.5 million in net interest income and $31.6 million in income (loss) before income taxes.

D. In FYE 2011, Ameris had $46.2 million in net cash provided by operating activities. This was an average of $887,808 per week and $126,482 per day.

PLAINTIFF'S EXHIBIT 41

E. At the close of 2011, Ameris had $65.5 million in cash and due from banks.

F. Based on this preliminary evaluation of Ameris' financial information and data, Ameris has the financial ability to pay a potential punitive damages award.

* * * * *

If new information and data becomes available, it may be necessary to revise this preliminary report.

Oliver S. Wood Jr.
5/16/12

PLAINTIFF'S EXHIBIT 41

Exhibit 1
Ameris Bancorp
Assets, Liabilities, and Stockholders' Equity
FYE December 31, 2005-2011 and March 31, 2012

FYE December	Assets	-	Liabilities	=	Stockholders' Equity
2005	$1,697,209,000	-	$1,548,506,000	=	$148,703,000
2006	2,047,542,000	-	1,868,810,000	=	178,732,000
2007	2,112,063,000	-	1,920,814,000	=	191,249,000
2008	2,407,090,000	-	2,167,731,000	=	239,359,000
2009	2,423,970,000	-	2,229,006,000	=	194,964,000
2010	2,972,168,000	-	2,698,761,000	=	273,407,000
2011	2,994,308,000	-	2,700,538,000	=	293,770,000
Mar 31, 2012	3,043,234,000	-	2,745,537,000	=	297,697,000

Source: Ameris Bancorp.

PLAINTIFF'S EXHIBIT 41

Exhibit 2
Ameris Bancorp
Net Interest Income and Income Before Taxes
FYE December 31, 2005-2011

FYE December	Net Interest Income	Income (Loss) Before Income Taxes
2005	$52,605,000	$20,877,000
2006	69,961,000	33,257,000
2007	75,078,000	22,453,000
2008	72,665,000	(5,969,000)
2009	74,023,000	(34,492,000)
2010	89,277,000	(7,184,000)
2011	113,524,000	31,649,000

Source: Ameris Bancorp.

PLAINTIFF'S EXHIBIT 41

Exhibit 3
Ameris Bancorp
Net Cash Provided by Operating Activities,
Per Year, Per Week, and Per Day,
FYE December 31, 2007-2011

	Net Cash Provided by Operating Activities		
FYE December	Per Year	Per Week	Per Day
2007	$23,025,000	$442,788	$63,082
2008	25,601,000	492,327	69,948
2009	23,948,000	460,538	65,611
2010	45,010,000	865,577	123,315
2011	46,166,000	887,808	126,482

Source: Ameris Bancorp.

PLAINTIFF'S EXHIBIT 41

Exhibit 4
Ameris Bancorp
December 31, 2011

Assets	
Cash and due from banks	$65,528,000
Federal funds sold and interest-bearing balances	229,042,000
Investment securities	339,967,000
Net loans	1,868,419,000
Other assets	491,351,000
Total Assets	$2,994,307,000
Liabilities and stockholders' equity	
Deposits	$2,591,566,000
Other liabilities	108,971,000
Total liabilities	$2,700,537,000
Stockholders' equity	293,770,000
Total liabilities and stockholders equity	$2,994,307,000

Source: Bank of America Corporation, 2011 10K.

PLAINTIFF'S EXHIBIT 41

Status Memo

Date: 06/02/2009

Borrower's Name: Heritage Seven, LLC

Loan Officer: Benjie Lanier

Customer Meeting 6/2/2009

On 6/2/2009, Karl and I met with the guarantor Linda Gibson at the Seven Oaks apartment complex. During the meeting several discussions were had to include the current rent rolls, collection of rents, status of contingent debts and the bringing the loan payments due to Ameris Bank current.

According to Linda the property is currently 56% occupied. The vacant units include the 8 units in building 3 that are to come on line shortly and be available for rent. Linda has had many challenges as of late due to the fact that several of her tenants have either lost their income or have not had the money to pay their rents as agreed. This has forced her hand on several occasions to evict tenant and then go on the hunt for new tenants that will pay as agreed.

Linda is emotionally drained from the financial strains she has experienced on three of her properties. These properties include the subject apartment complex, a retail strip mall in Moncks Corner and the family beach house on Isle of Palms. The beach house is currently for sale and has been for the past year. She has not rented the property for this would hurt the potential sale of the property. Linda feels she was put in this financial predicament due to the misuse of funds by her ex property manager/real estate agent. Linda has stated that his misuse of funds has put her a month behind on her shopping center loan, behind on her beach house payment and due to the lack of tenants from this project being complete she is behind on the apartment loan.

Linda is currently suing her former property/project manager who was also her real estate agent. The case is being handled by the Richter Law Firm and is in the discovery phase of the process.

We presented a solution to extend her a loan roughly in the amount of $28,000 to catch her payments that are due on the apartments up to date at a rate of 4.5% At the time of the memo she had not responded that she is interested in this idea. We also move to decrease her interest rate to 4.5% to allow her have breathing room while he occupancy level increases and the remaining units in building 3 are completed.

Action Plan

It is the opinion of the loan officer that several plans of action take place. The plan of action is as follows:

- Change the risk rating from 25 to a 30 since this project is still not 100% completed.
- This loan was price at Prime +1/4% with no floor (3.25%) but when the loan was modified/renewed in December due to the fact that it was to begin amortizing the rate had

Bindertek #CLEX 50

to be increased to 6% due to the bank wide mandate on 6% floors. The Lender requests that the interest rate be lowered to 4.5% in order to assist with the Cash Flow issues that are being experienced during the completion/lease up term. This will not only assist the borrower while the repairs are undergoing it will also provide additional cash flow for the repairs to be paid for. This will also show good faith on our part to help Linda get through this difficult phase and to get this project completed faster. Getting the project completed is paramount to the success of this loan performing. Linda has been working with a contractor that will perform the necessary work at a very reasonable price.

- It is Linda's intention to remain dedicated to this project until it is completely finished. Linda is fully involved in the project and has stayed on site to make sure the project is completed. Once this complex is finished she wishes to sell the complex and move forward.
- Loss prevention- It has been suggested we finance another piece of property in her portfolio to provide payment relief for this project and others that are creating a major financial strain on Linda to avoid late payments and past due carries. As of the time of this memo Linda is considering this proposal and the alternatives.

PORTFOLIO TRANSFER REQUEST

Date: 10/14/09

The below referenced loan officer is hereby authorizing you to transfer the following loans from his/her loan portfolio to the portfolio of SAD.

	CUSTOMER	LOAN#	NON-ACCRUAL Current / Proposal	RISK RATING Current / Proposed
10/13/09	Heritage Seven LLC	7970000179-102	30 / 40	A / N
12/14/09	" "	7970000179-103	30 / 40	A / N
			/	/
			/	/
			/	/

A) Reason(s) for Transfer

Apartment building has incurred high vacancy & renovation work has not been completed, which has affected the cash flow of the project. Borrower has depleted liquidity but has realestate assets w/ significant equity that could be accessed through a restructure. property value has declined & insufficient to cover loan balance.

B) If Being Transferred to Special Assets Department, Provide Details As to Current Status of Loan Problems, Collection Efforts, Instructions to SAD Officer, Etc. Include extra page if necessary.

Loan officer has worked closely w/ Borrower in trying to identify a buyer for property, & also restructure loan for the balance of the deficiency if sold. Borrower has declined all proposals & engaged legal counsel for her interests.

from Loan Officer Signature

to SAD Officer

REVIEW AND APPROVAL BY: _____
BANK PRESIDENT

(Completed 2/1/10)

51 Binderek #CLEX

From: zzzDisabled - Zerbst, Karl
Sent: Monday, November 09, 2009 6:10 PM
To: Charpia, David; Snipes, Don
Subject: Linda Gibson

I met with her and her lawyer, Robert Papa, today. He is helping her to work out her issue with the banks, particularly with First Citizens but he came with her today to get an understanding of where we are. Meeting went well and they plan to visit with First Citizens tomorrow. They will get back to me very soon with a plan to resolve the current status. I'll let you know.

Karl H. Zerbst, Jr.

Ameris Bank | Market President

966-C Houston Northcutt | Mt. Pleasant, SC 29464

(D) 843-849-5488 (F) 843-881-8350

(C) 843-452-3838 (O) 843-375-4969

karl.zerbst@amerisbank.com

60

Bluedenik #OLEX

From: Zerbst, Karl [mailto:Karl.Zerbst@amerisbank.com]
Sent: Friday, November 13, 2009 5:39 PM
To: papa@btitelecom.net
Subject: Re: Linda Gibson

He represents me personally but not the bank. That would be his coflict in my opinion. I thank you for your immediate attention. We need to meet Monday and decide if Linda is in favor of the residual loan to include 2 parcels that she owns that will secure the loan. I can not stress the importance of that structure being put in place. I will be available Monday afternoon if that makes sense with you and Linda. Thank you

---

From: Robert Papa
To: Zerbst, Karl
Sent: Fri Nov 13 16:16:29 2009
Subject: Linda Gibson

Good afternoon Karl,

I just finished meeting with Linda. I was out yesterday all day and into the evening on a mediation so I essentially lost a day this week.
I was unable to speak to Larry Richter this week by phone but I wrote to him. He wrote back and indicated that he did in fact have a conflict of interest as to Ameris Bank. He did not elaborate in his response other than to say he had such a conflict. You tell me he has no conflict. Is there any light you can shed on that? Did he or is he representing you personally or in some venture?

In any event, I also just got a response yesterday from Richter about First Citizens. I am trying to meet with not First Citizens but their attorney. I am waiting at this time to see if that can happen on Monday.
Please get back to me re the above. I look forward to moving this forward on a positive note next week.

Thank you

Rob Papa

Papa, Ungaro, and Falkiewicz

Attorneys at Law

6 Carriage Lane

Charleston, SC 29407

61

Blinderink #GLEX

From: zzzDisabled - Zerbst, Karl
Sent: Tuesday, November 17, 2009 5:50 PM
To: Robert Papa
Subject: RE: Linda Gibson

Rob - I appreciate your email. It appears you have a lot on your calendar. The problem is we don't have time as I shared with you we have attempted on many occasions to offer to Linda something that works for both. We certainly are not going to wait for 1st Citizens to arrange their schedule. Our offer is good and stays the same. If Linda can not or will not agree to what at least we offer Ameris will move forward to protect their interest. Surely you understand. It would be in the interest of all to move forward. Having said that, if Linda does not want to sell the apartments then she should seek financing for the loan amount in our offer and then simply close on the residual balance with the 2 parcels. Look forward to hearing from you tomorrow morning. You can call or email, thanks.

Karl H. Zerbst, Jr.

Ameris Bank | Market President

966-C Houston Northcutt | Mt. Pleasant, SC 29464

(D) 843-849-5488 (F) 843-881-8350

(C) 843-452-3838 (O) 843-375-4969

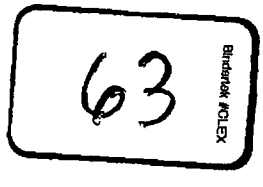
karl.zerbst@amerisbank.com

From: Robert Papa [mailto:papa@btitelecom.net]
Sent: Tuesday, November 17, 2009 4:20 PM
To: Zerbst, Karl
Subject: RE: Linda Gibson

Hi Karl,

I have been spending quite a bit of time with Linda trying to sort out things to be able to advise her on what is in her best interest. As you know, Linda has no earned income from a 9-5 job. Her subsistence is based on the real estate income. What Ameris is offering re the deferment of the $300K is appreciated. The numbers for Linda are close but we need more help from Ameris. The attorney for First Citizens is in NYC and returns this Thursday or Friday so I do not have a concession package with them yet. I have court tomorrow in Chas in the morning and Walterboro in the afternoon but will check emails early and mid-day.

Rob



Jess Nance

From: Karl Zerbst
Sent: Thursday, September 06, 2007 3:58 PM
To: Jess Nance; Tom Ewart
Subject: Several Proposals

I have several proposals and before I spend more time on them I would like your opinion on the deal(s).

1.) Guy Tarrant would like a $250,000 unsecured line instead of a $75,000 line He is in the mountains now and will probably make an offer for a home in North Carolina. He wants to act on it quick thus the line. The house he and Teresa looked at 2 weeks ago was for sale for $500,000. He plans to put the difference in as cash and will ultimately get a normal mortgage of around $250,000 and thus pay off the line.

2.) Linda Gibson has paid off her beach house loan with us ($400,000). Refinanced with First Citizens Bank. She also cashed out $667,000. This money will be used to purchase an apartment complex that she wants us to do. Loan amount of $2,800,000, $2,100,000 at closing but then we advance back up to $2,800,000 based on A/V of $3,500,000.

3.) Larry Brooks and Dan Hoffler, I'll send personal statement. Essentially, purchasing 2 business. Will be guarantor support.

21/2.8 = .75

2.8/3.5 = .80

2.8/3.7 = .76

3.7 / 2.8 = .9 ↑

3.5 / 2.8 = .7 ↑

Karl H. Zerbst Jr.
Senior Vice President Business Banking
First Reliance Bank
25 Cumberland St.
Charleston, SC 29401
(843) 789-1414 Direct
(843) 789-1ASK **ACCESS***Live* Customer Care Center
(843) 789-1329 Fax
(843) 452-3838 Mobile
kzerbst@firstreliance.com

Check out our Web Site: www.firstreliance.com

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PLAINTIFF'S EXHIBIT 67

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) Civil Action No. _____

FILED
2008 APR 17 AM 10:47
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

2008 CP 21 785

FIRST RELIANCE BANK,

Plaintiff,

vs.

KARL H. ZERBST, JR. and AMERIS BANK,

Defendants.

COMPLAINT
(JURY TRIAL)

BREACH OF CONTRACT
INTERFERENCE WITH CONTRACT
TRADE SECRETS
INJUNCTION

The Plaintiff alleges the following.

1. The Plaintiff is a banking organization with its principal offices in Florence County, South Carolina.

2. Defendant Karl H. Zerbst, Jr. ("Zerbst") is an individual who lives in Charleston County.

3. Ameris Bank is a banking organization which does business in South Carolina and maintains offices in Charleston County.

4. Venue is properly set in Florence County according to the contractual agreement between Plaintiff and Defendant Zerbst.

5. Plaintiff and Defendant Zerbst entered into an Employment Agreement on April 20, 2007. That agreement was amended by agreement dated January 1, 2008. Those agreements are incorporated by reference but not attached or made public because of the confidential nature of the agreements.

6. Defendant Zerbst ceased his employment with Plaintiff on October 4, 2007. Since then, he has been employed by Defendant Ameris Bank working in the

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P-68

PLAINTIFF'S EXHIBIT 68

Charleston, South Carolina area helping Ameris Bank compete against Plaintiff for banking business.

7. Defendant Zerbst has disclosed to Defendant Ameris Bank the terms of his agreements with Plaintiff. Defendant Ameris Bank, while aware of the restrictions on competition and solicitation in his agreements with Plaintiff, has encouraged and paid Defendant Zerbst to assist Ameris Bank in directly competing against Plaintiff in the Charleston area.

8. Defendant Zerbst is now working with Defendant Ameris Bank in direct competition with Plaintiff in the Charleston area.

FOR A FIRST CAUSE OF ACTION
Breach of Contract
(as to Defendant Zerbst)

9. All matters set forth above are reasserted.

10. Defendant Zerbst has breached and continues to breach on a regular basis, the terms of the contract identified in Paragraph 5. He has helped Ameris Bank solicit and draw away from Plaintiff both customers and employees. He has also revealed the terms of the agreement. He has also failed to pay the sum specified in the agreement which is owed to Plaintiff because of his breach of the agreement.

11. Plaintiff is entitled to recover money damages as stipulated, and as will be proved at trial, along with prejudgment interest and attorney fees. Plaintiff is also entitled to a declaration that the period of non-competition by Defendant Zerbst is extended according to the terms of the contractual agreement.

PLAINTIFF'S EXHIBIT 68

FOR A SECOND CAUSE OF ACTION
Inducement and Interference With Contract
(as to Defendant Ameris Bank)

12. All matters set forth in Paragraphs 1 through 11 are re-asserted.

13. Defendant Ameris Bank has knowingly and intentionally induced Defendant Zerbst to breach his contract with Plaintiff. It has paid Defendant Zerbst to undertake actions which it knows that Defendant Zerbst has promised not to do, all for the benefit of Defendant Ameris Bank.

14. Plaintiff has been damaged by the wrongful actions of Defendant Ameris Bank in amounts which will be proven at trial. Plaintiff is also entitled to the recovery of punitive damages against Defendant Ameris Bank.

FOR A THIRD CAUSE OF ACTION
Trade Secrets
(as to Defendant Zerbst and Defendant Ameris Bank)

15. All matters set forth above in Paragraphs 1 through 6 are reasserted.

16. Defendant Zerbst, while a high-ranking employee of Plaintiff, became aware of numerous trade secrets of Plaintiff as that term is defined in S. C. Code Ann. §39-8-20(5).

17. Defendant Zerbst had and still has an obligation not to reveal that information to anyone. But, at the urging of Defendant Ameris Bank, and while being paid thereby, Defendant Zerbst has shared that confidential information with Defendant Ameris Bank who is using the information for its own benefit.

18. Both Defendant Zerbst and Defendant Ameris Bank are willfully and wantonly violating the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10, et

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PLAINTIFF'S EXHIBIT 68

seq. As a consequence, Plaintiff is entitled to recover actual and punitive damages and attorneys fees.

FOR A FOURTH CAUSE OF ACTION
Injunction
(as to Defendant Zerbst and Defendant Ameris Bank)

19. All matters set forth above are reasserted.

20. In light of Defendant Zerbst's continued willful violation of the terms of his Employment Agreement and in light of the willful violation by both Defendants of the South Carolina Trade Secrets Act, the Plaintiff is entitled to both temporary and permanent injunctions against both Defendants from continuing their improper actions or gaining any benefit from their wrongful activities.

THEREFORE, Plaintiff demands judgment against both Defendants for actual and punitive damages, for attorneys fees, for pre-judgment interest, for a declaration extending the restrictions against Defendant Zerbst, and for temporary and permanent injunctions against both Defendants to stop their wrongdoing, and for such other relief as is just.

TURNER PADGET GRAHAM & LANEY P.A.

By: W. Duvall Spruill

W. Duvall Spruill, 5295
DSpruill@TurnerPadget.com
P.O. Box 1473
Columbia, South Carolina 29202
Telephone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR FIRST RELIANCE BANK

April 16, 2008

Cola 894227v1

PLAINTIFF'S EXHIBIT 68

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
GALT VALLEY, LLC, Plaintiff, vs. LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST, HERITAGE SEVEN, LLC AND ACCESS PORTABLE TOILETS, INC., Defendants.	Civil Action No. 10-CP-08-2134 **DEFENDANT AMERIS BANK'S ANSWERS TO PLAINTIFFS' INTERRGOGATORIES**
LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST AND HERITAGE SEVEN, LLC , Plaintiffs, vs. AMERIS BANK, Counterclaim Defendant.	

TO: GEORGE J. KEFALOS, ESQUIRE AND ANDREW K. EPTING, JR., ESQUIRE, ATTORNEYS FOR PLAINTIFFS:

Defendant Ameris Bank, ("Ameris") by and through its undersigned attorneys, hereby responds to Plaintiffs' First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure. In setting forth responses thereto, Ameris does not waive the attorney-client, work product, or any other privilege or immunity from disclosure that may attach to

PLAINTIFF'S EXHIBIT 71

information called for herein or responsive to the Interrogatories. Ameris does not concede the relevance or materiality of the Interrogatories, or the subject matters to which the Interrogatories refer. These responses are submitted by Ameris subject to and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the Interrogatories to which are herein responded; and

C. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

The Interrogatories are as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel, to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

a. **Karl Zerbst, 1256 Palmetto Peninsula Drive, Mt. Pleasant, SC 29464**

Mr. Zerbst was formerly employed by Ameris Bank as Market President and is familiar with the loans at issue in this case.

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b. Don Snipes, Ameris Bank

Mr. Snipes is Senior Vice President, Regional Credit Officer at Ameris Bank and is familiar with the loans at issue in this case.

c. Benjamin R. Lanier, Jr., Ameris Bank

Mr. Lanier was formerly employed by Ameris Bank as Vice President, Business Banker and is familiar with the loans at issue in this case.

d. Robert W. Mullins, Ameris Bank

Mr. Mullins is Senior Vice President of Ameris Bank and is familiar with the loans at issue in this case.

e. David Charpia, Ameris Bank

Mr. Charpia is Senior Vice President of Ameris Bank and is familiar with the loans at issue in this case.

f. Richard Sturm, Ameris Bank

Mr. Sturm is the South Carolina President of Ameris Bank and is familiar with the loans at issue in this case.

g. Jon S. Edwards, Ameris Bank

Mr. Edwards is EVP & Senior Vice President of Ameris Bank and is familiar with the loans at issue in this case.

h. Ms. Wilkins, Ameris Bank

Ms. Wilkins is South Carolina Regional Executive of Ameris Bank and is familiar with the loans at issue in this case.

i. John Hipp, Ameris Bank

Mr. Hipp was formerly employed by Ameris Bank and is familiar with the loans at issue in this case.

j. Christian Kapa, Ameris Bank

Mr. Kapa is familiar with the loans at issue in this case.

k. Charles Hudgens, Ameris Bank

PLAINTIFF'S EXHIBIT 71

Mr. Hudgens is City President for Ameris Bank in Charleston, SC and is familiar with the loans at issue in this case.

l. Triton Construction

Triton Construction performed renovation work on the apartment complex at issue in this case.

m. David Finn, ReMax

Mr. Finn is the broker-in-charge for Re/Max Professional Realty in North Charleston, SC and oversaw Rolando Villavicencio.

n. Linda Gibson

o. Heritage Seven, LLC

p. Elizabeth Gibson

q. Rolando Villavicencio, ReMax

Mr. Villavicencio acted as the Plaintiff's broker/agent for the purchase and renovation of the apartment complex at issue and managed the property.

r. Portia Villavicencio

Mrs. Villavicencio is Rolando Villavicencio's wife and has knowledge of Plaintiff's purchase and renovation of the apartment complex at issue in this case.

s. Galt Valley, LLC

Galt Valley, LLC purchased the subject mortgages from Ameris Bank.

t. Verdi Group Architects

Verdi Group Architects served as architects for the renovation of the apartment complex at issue.

u. Honey Do It (Robert Katz)

Mr. Katz/Honey Do It worked on the renovation of the apartment complex at issue.

PLAINTIFF'S EXHIBIT 71

v. **RPV Investments**

w. **Paul K. Moore**

Mr. Moore performed an appraisal on the subject property.

x. **First Citizens Bank**

Upon information and belief, Plaintiff applied to First Citizens Bank for a loan for the apartment renovations at issue in this case.

y. **Wells Fargo**

Upon information and belief, Plaintiff applied to Wells Fargo for a loan for the apartment renovations at issue in this case.

z. **SunTrust Bank**

Upon information and belief, Plaintiff applied to SunTrust Bank for a loan for the apartment renovations at issue in this case.

Ameris specifically reserves the right to supplement this response.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense of the case.

ANSWER: **None.**

3. The Interrogatories contain no Interrogatory No. 3.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform this party of the important facts know to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: **See response to Interrogatory No. 1 above.**

PLAINTIFF'S EXHIBIT 71

5. Identify any written communication between you and Plaintiff, Plaintiff's agents, Paul Moore and Associates or its employees, Remax or any Remax employees or agents, regarding the approval of the loans obtained by Plaintiffs.

ANSWER: **See documents produced in response to Plaintiffs' First Requests for Production.**

6. Describe in detail all laws, acts having the force and effect of law, codes, regulations and legal principles, standards, and customs or usages, which you contend are applicable to this action.

ANSWER: **Ameris objects to this interrogatory on the basis that it calls for information that is protected by the attorney work product doctrine.**

7. Identify and produce all articles or learned treatises the Defendant intends to introduce or publish at trial or use in cross examination.

ANSWER: **Ameris objects to this interrogatory on the basis that it calls for information that is protected by the attorney work product doctrine.**

8. If you contend that some other person or legal entity is, in whole or in part, liable to the Plaintiff or Defendant in this matter, state their full name, address, and telephone number and describe in detail the basis of said liability.

ANSWER:

a. **Rolando Villavicencio**

b. **RPV Investments, LLC**

c. **DPS of Charleston, Inc. d/b/a Re/Max Professional Realty**

d. **Paul K. Moore Associates**

PLAINTIFF'S EXHIBIT 71

The basis of liability for the above-named individual and entities is set forth in Plaintiffs' Second Amended Complaint filed in Civil Action No. 2008-CP-10-4282. Ameris specifically reserves the right to supplement this response.

9. Identify and produce all information of which you are aware, that is inconsistent with, contradictory of, or otherwise capable of being used for impeachment of the testimony of position of any witnesses in this case.

ANSWER: **Ameris objects to this interrogatory on the basis that it calls for information protected by the attorney work product doctrine. Subject to and without waiving this objection, Ameris asserts that discovery is ongoing and any such materials are unknown at this time.**

10. List the names, addresses and telephone numbers of any expert witnesses whom the party proposes to use as a witness at the trial of the case and outline in detail the following:

a. His or her qualifications to testify;

b. A description of the subject matter on which each expert is expected to testify;

c. A description of the facts on which each expert is expected to rely in testify; and

d. Set forth the opinions and conclusions to which each expert is expected to testify.

ANSWER: **Ameris has not retained an expert witness at this time. Ameris reserves the right to supplement this response.**

11. Identify all documents and information Defendant considered in processing all applications for loans for Linda Gibson or Heritage Seven, including, but not limited to

PLAINTIFF'S EXHIBIT 71

correspondence, notes, memos, requests for appraisals and any other information Defendant obtained from any source.

ANSWER: **Karl Zerbst handled the processing of the loan applications relevant to this case. Mr. Zerbst is no longer an employee of Ameris Bank, and Ameris therefore cannot ascertain what documents he may have reviewed. Additionally, Ameris transferred the relevant loans to Galt Valley, LLC. Thus, Ameris Bank does not know what documents were considered in processing loan applications for Gibson or Heritage Seven.**

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

By: _____

Robert E. Stepp
William S. Jordan
Bess J. DuRant
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Ameris Bank

Columbia, South Carolina

March 11, 2011

PLAINTIFF'S EXHIBIT 71

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
GALT VALLEY, LLC, Plaintiff, vs. LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST, HERITAGE SEVEN, LLC AND ACCESS PORTABLE TOILETS, INC., Defendants.	Civil Action No. 10-CP-08-2134 **CERTIFICATE OF SERVICE**
LINDA A. GIBSON, FORMERLY KNOWN AS LINDA ANN AVIGNER, INDIVIDUALLY AND AS TRUSTEE OF THE PAUL WILLIAM GIBSON FAMILY TRUST AND HERITAGE SEVEN, LLC , Plaintiffs, vs. AMERIS BANK, Counterclaim Defendant.	

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendant Ameris Bank, do hereby certify that I have served all counsel in this action with a copy of the pleading specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleadings: Defendant Ameris Bank's Answers to Plaintiffs' Interrogatories

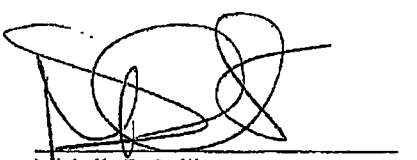
PLAINTIFF'S EXHIBIT 71

Counsel Served: George J. Kefalos, Esquire
George J. Kefalos, P.A.
3 State Street
Charleston, SC 29401

Andrew K. Epting, Jr., Esquire
Andrew K. Epting, Jr., LLC
3 State Street
Charleston, SC 29401

Gedney Howe, III, Esquire
Gedney M. Howe, III, P.A.
Post Office Box 1034
Charleston, South Carolina 29402

John S. West, Esquire
John S. West, LLC
Post Office Box 1869
Moncks Corner, South Carolina 29461



Michelle D. Laliberte

March 11, 2011
Columbia, South Carolina

PLAINTIFF'S EXHIBIT 71

FIRST RELIANCE BANK

December 2, 2005

Linda A. Gibson
Heritage Seven, LLC
133 Horse Trail Road
St. George, S.C. 29477

Dear Linda:

First Reliance Bank ("Bank") has considered your request for financing and is pleased to inform you that the Bank has agreed (the "Commitment") to make available to Borrower two loans (the "Loan") upon the terms and subject to the conditions hereinafter set forth.

Borrower:	Linda A. Gibson & Heritage Seven, LLC
Amount:	**Loan # 1** The amount of the Loan will be One Million Two Hundred Eighty Thousand and 00/100 ($1,280,000.00), provided however, that in no event shall the maximum principal amount of the Loan exceed (75%) of the market value of the property as determined by the Bank ordered appraisal described below.
	Loan # 2 The amount of the Loan will be Four Hundred Thousand and 00/100 ($400,000.00).
Guarantor:	Repayment of the Loan and all other obligations of Borrower to Bank set forth in the Loan documents will be fully guaranteed by Linda A. Gibson.
Purpose:	To purchase real estate known as 109-111 South Highway 52, Moncks Corner, S.C.
Covenants:	In addition to such affirmative and negative covenants as are typically required by Bank, the Loan documents will contain the following additional covenants: (a) Deposit Account. In consideration of the interest rate outlined below, Borrower and or Guarantor shall maintain depository accounts during the life of Loan.

Term: **Loan # 1** The term of the Loan shall be sixty (60) months of principal and interest based on a fifteen (15) year amortization. $12,000 of fixed payments will be offered with a floating interest rate.
Loan # 2 The loan will be interest only for 12 months.

Interest Rate: The rate of interest on **Loan # 1** will be First Reliance Bank Prime Rate +.25%, floating. Currently, Prime Rate is 7.00% and subject to change on a daily basis. Interest rate on **Loan # 2** will be Prime Rate, floating, currently 7.00%.

Origination Fee: The Bank will charge an origination fee of $6,000.00.

Collateral: Borrower's obligations to repay the Loan will be secured by the following real and personal property (collectively, the Collateral"):

(a) A first lien mortgage on the property known as 109-111 South Highway 52, Moncks Corner, S.C.
(b) An assignment of leases, rents and profits on subject property. Borrower to provide all leases relating to property now and hereinafter acquired.
(c) A second lien mortgage on the property known as 3205 Palm Boulevard, Isle of Palms, S.C.

Reporting Requirements: Borrower and Guarantor shall furnish to Bank the following financial information, in each instance prepared in accordance with generally accepted accounting principles consistently applied and otherwise in form and substance satisfactory to Bank:

(a) In consideration of this commitment, Borrower and Guarantor agree to submit financial information acceptable to the Bank. Financial information must be in the form of fiscal year end financial statements/tax returns on Borrower and Guarantor.

(b) Such other information as Bank may from time to time reasonably request.

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. BORROWER

AND ANY GUARANTOR WILL BE REQUIRED TO WAIVE THEIR APPRAISAL RIGHTS UNDER THE LAWS OF SOUTH CAROLINA IN THIS TRANSACTION.

Conditions Precedent:

The provisions of this Commitment are subject to and conditioned upon Bank's receipt of the following, in each instance in form and substance satisfactory to Bank:

(a) Appraisal. Bank will require an independent appraisal be performed showing the market value of the property to be not less than $1,710,000.00. The appraisal will be ordered by Bank from an appraiser acceptable to Bank. Appraisal quote from Jody Bishop has been confirmed of $3,500.00

(b) Title Insurance. A title commitment issued by a title insurance Company ("Title Insurer") reasonably acceptable to Bank, together with copies of all documents identified therein, and pursuant to which the Title Insurer agrees to issue to Bank an ALTA form of Loan Policy acceptable to Bank insuring the Bank's mortgage as a valid first lien for the full amount of the Loan, free and clear of all liens (including mechanics' liens) and encumbrances, and subject only to such exclusions from coverage and such exceptions to title as may be approved by Bank, and containing such endorsements as Bank may require (and, if required by Bank, with co-insurance or reinsurance with direct access agreements issued by such title insurance companies as are acceptable to Bank). The title commitment shall name Bank, its successors and/or assigns, as the insured under the Loan Policy. Title to the Property shall be good and marketable.

(c) Environmental Assessment. A "Regulatory Database Report" environmental assessment of the Property, ordered by Bank at Borrower's expense, assessing the environmental condition of the Property. Bank shall have the right to require additional environmental investigations, including a "Phase I" assessment if further work shall warrant. Bank shall have the right to withdraw the Commitment Letter in the event that the environmental assessment discloses significant environmental concerns associated with the Property, as determined by Bank in its sole discretion. No environmental assessment will be ordered at this time.

(d) Survey. A current survey of the Properties prepared for Bank,

certified to Title Insurer and Bank, its successors and assigns, and insurable by Title Insurer, by a land surveyor licensed in the state where the Property is located and acceptable to Bank. The survey shall comply with Bank's minimum standards for surveys and shall include, without limitation: (i) the boundaries of the Property by courses and distances (ii) location of all improvements (iii) location and width of all easements, utility lines, rights-of-way and building set-back lines (iv) location of all encroachments and restrictions, if any, affecting the Property, and (v) such other matters as reasonably requested by Bank or its counsel.

(e) Insurance Original policies of insurance, or evidence of Insurance on an ACORD 27 (in case of property insurance) or ACORD 25 (in the case of liability insurance) form of certificate, each in effect for a period of not less than one year following the Load closing date, as follows: (1) builders' all-risk extended coverage insurance (non- reporting Completed Value with Special Cause of Loss form) in amounts based upon the completed replacement value of the improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements), endorsed to provided that occupancy by any person shall not void such coverage and naming Bank, its successors and assigns as their interest may appear, as the fist mortgagee under a standard mortgagee clause.

(f) Flood Zone Certification. Satisfactory evidence that the Property is not located within an area that has been identified as "special flood hazard area" as that term is used in the National Flood Insurance Reform Act of 1994, unless flood insurance will be provided. The flood search shall be ordered by Bank at Borrower's expense.

(g) Organizational Documents. Copies of the organizational documents of Borrower, as amended to the Loan closing date, including, without limitation, the articles of organization, the operating agreement, and, if applicable, good standing certificates.

(h) Opinion of Counsel. An opinion of Borrower's and any Guarantor's independent counsel, who shall be reasonably satisfactory to Bank, as to such matters as Bank may reasonably request.

(i) Other Documents. Such other documents, instruments and

certificates including, with out limitation, proofs, opinions and other assurances, as Bank or Bank's Counsel may reasonably require.

Loan Documents: This Commitment is subject to the execution of Bank's standard Loan documents containing such representations, warranties, affirmative and negative covenants, indemnities, waivers, closing conditions, defaults, events of default and remedies as are typically required by Bank and/or are customary in this type of transaction, including without limitations, waivers of jury trial. Borrower acknowledges that not every provision imposing duties, burdens or limitations on Borrower has been set forth in this Commitment Letter. The failure of the Borrower and Bank to reach agreement on such provisions shall not be deemed a breach by Bank of this Commitment.

Closing: The closing of the Loan will take place at the offices of Borrower's attorney on a date, which shall be on or before December 23, 2005. If the Loan is not closed by such date (unless extended in writing by Bank), Bank shall have no further obligations under this Commitment.

Costs: On or before the closing, Borrower shall pay all costs, expenses and fees (including, without limitation, any appraisal, survey, title, insurance, environmental assessment, tax service, engineering, inspections, searches, recording and attorney's fees) associated with this transaction, whether or not the Loan closing occurs, except where noted.

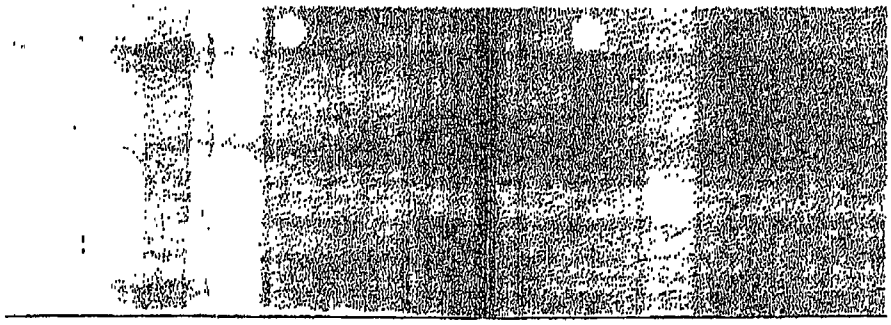
Acceptance: Please indicate your acceptance of this Commitment by signing below and returning one executed copy of this Commitment to the undersigned. This Commitment shall expire and be void unless the acceptance is received by Bank on or before December 9, 2005. Thank you for allowing First Reliance Bank to be of service and if I can be of further assistance please do not hesitate to call me at (843) 789-1414.

Sincerely,
First Reliance Bank

Karl H. Zerbst, Jr.
Market President

AGREED TO AND ACCEPTED BY:

By: _____ Date: 12/9/05
Linda A. Gibson



FIRST RELIANCE BANK

CERTIFICATION AND AUTHORIZATION

Applicant:	Linda A Gibson 133 Horse Trail Rd Saint George, SC 29477	**Lender:**	First Reliance Bank Charleston 61 State Street Charleston, SC 29401

CERTIFICATION

To First Reliance Bank ("Lender"):

1. Applicant (and co-applicant if applicable), Linda A Gibson, has applied for a loan from Lender. In applying for the loan, Applicant provided to Lender various information about Applicant and the requested loan, such as the amount and source of any downpayment, income information, and assets and liabilities. Applicant certifies that all of the information is true and complete. Applicant made no misrepresentations to Lender, nor did Applicant omit any important information.

2. Applicant understands and agrees that Lender may verify any information provided to Lender concerning Applicant's application, including, but without limitation, verifications from financial institutions of the information provided.

3. Applicant fully understands that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements when applying for this loan, as applicable under the provisions of Title 18, United States Code, Section 1014.

AUTHORIZATION TO RELEASE INFORMATION

To Whom It May Concern:

1. Applicant has applied for a loan from First Reliance Bank ("Lender"). As part of the application process, Lender, any insurer of the loan and any collateral title insurer may verify information Applicant provided to Lender either before or after the loan is closed.

2. Applicant authorizes you to provide to Lender, to any investor to whom Lender may sell Applicant's loan, and to any insurer of the loan any and all information and documentation that they may request. Such information may include, but is not limited to, income; bank, money market, and similar account balances; credit history; and copies of income tax returns.

3. Lender, any investor that purchases the loan, and any insurer of the loan may address and send this authorization to any person or company named in the loan application.

4. A copy of this authorization may be accepted as an original.

5. Your prompt reply to First Reliance Bank, to any investor that purchases the loan, and to any insurer of the loan is appreciated.

APPLICANT:

X _____ 3/27/2006
Linda A Gibson — Date

(4/01 First Reliance, Inc. ALL RIGHTS RESERVED. First Reliance Bank is a trademark of First Reliance, Inc. 1992, 2001. All Rights Reserved. - SC LICENSED MORTGAGE LENDER 10 1207 704

DEFENDANT'S EXHIBIT 2

OMB NO. 2502-0265

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

SETTLEMENT STATEMENT

B. TYPE OF LOAN: 1. ☐ FHA 2. ☒ FmHA 3. ☐ CONV UNINS. 4. ☐ VA 5. ☐ CONV. INS.

6. FILE NUMBER: 05-2687(A) 7. LOAN NUMBER:

8. MORTGAGE INS CASE NUMBER:

This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
M. J ADDRESS OF BORROWER. AOE SEVEN, LLC A. GIBSON ıree Trail Road ırge, SC 29477	GREAT SCOTT PROPERTIES LIMITED PARTNERSHIP 490 Old Dock Road Kiawah Island, SC 29455	FIRST RELIANCE BANK 51 Stale Street, Ste 101 Charleston, SC 29401

PERTY LOCATION:	H. SETTLEMENT AGENT 57-0989164	I. SETTLEMENT DATE:
1 S. Highway 52 ; Corner, SC 29461 ıy County, South Carolina .82 Ac. & Tract B	J Stanley Claypoole, P.A. PLACE OF SETTLEMENT 2155 Northpark Lane North Charleston, SC 29405	December 15, 2005

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
ıpiract Sales Price	2,400,000.00	401. Contract Sales Price	2,400,000.00
ırsonal Property		402. Personal Property	
ttlement Charges to Borrower (Line 1400)	16,694.25	403.	
y to Operating Reserve Acct to RE/MAX PROFESSIO	120,401.42	404.	
		405.	
Adjustments For Items Paid By Seller in advance		Adjustments For Items Paid By Seller in advance	
y/Town Taxes to		406. City/Town Taxes to	
unty Taxes to		407. County Taxes to	
o-rata Rent Dec to 12/31/05		408. Pro-rata Rent Dec to	
		409.	
		410.	
		411.	
		412.	
ROSS AMOUNT DUE FROM BORROWER	2,536,995.67	420. GROSS AMOUNT DUE TO SELLER	2,400,000.00
OUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
posit/earnest money $5,000.00 RETURNED		501. Excess Deposit (See Instructions)	
incipal Amount of New Loan(s)	1,280,000.00	502. Settlement Charges to Seller (Line 1400)	185,563.88
oan(s) taken subject to		503. Existing loan(s) taken subject to	
ıge Proceeds	386,328.64	504. Payoff of first Mortgage	
ance Credit	857,865.12	505. Payoff of second Mortgage	
		506.	
		507.	
ınsfer Security Deposits	4,350.00	508. Transfer Security Deposits	4,350.00
		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
y/Town Taxes to		510. City/Town Taxes to	
unty Taxes to		511. County Taxes to	
o-rata Rent Dec 12/16/05 to 12/31/05	8,352.01	512. Pro-rata Rent Dec 12/16/05 to 12/31/05	8,352.01
		513.	
		514.	
		515.	
		516.	
		517. Defeasance Fees/Costs to COMMERCIAL DEFEASANC	2,203,000.00
		518.	
		519.	
TAL PAID BY/FOR BORROWER	2,536,995.67	520. TOTAL REDUCTION AMOUNT DUE SELLER	2,401,265.80
SH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
ıss Amount Due From Borrower (Line 120)	2,536,995.67	601. Gross Amount Due To Seller (Line 420)	2,400,000.00
ıs Amount Paid By/For Borrower (Line 220)	(2,536,995.67)	602. Less Reductions Due Seller (Line 520)	(2,401,265.80)
SH (FROM) (TO) BORROWER	0.00	603. CASH (TO) (X FROM) SELLER	1,265.80

dersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.
CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND
LATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY
HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT

Borrower HERITAGE SEVEN, LLC

BY: Linda A. Gibson, Authorized Signatory

LINDA GIBSON, Individually

Seller GREAT SCOTT PROPERTIES LIMITED PARTNERSHIP

BY: Michael L. Scott, General Partner

BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE
WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS
ACTION.

J. Stanley Claypoole, P.A.
Settlement Agent

IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON
CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE, TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

P-1578

DEFENDANT'S EXHIBIT 3

DEFENDANT'S EXHIBIT 20 Gibson

L. SETTLEMENT CHARGES

		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
TOTAL COMMISSION Based on Price $ 2,400,000.00 @ 6.0000 %	144,000.00		
Division of Commission (line 700) as Follows			
60,000.00 to CLEMENT, CRAWFORD & THORNHILL			
84,000.00 to RE/MAX PROFESSIONAL REALTY			
Commission Paid at Settlement			
to			144,000.00
ITEMS PAYABLE IN CONNECTION WITH LOAN			
Origination Fee 1.0000 % to FIRST RELIANCE BANK			
Discount % to			
Appl Fee to JODY BISHOP		8,000.00	
Credit Report to Equifax POC $9,600.00			
Document Prep to FIRST RELIANCE BANK POC $10.00			
Payment Processing Fee to FIRST RELIANCE BANK		125.00	
Flood Cert. to FIRST AMERICAN FLOOD		60.00	
Tax Service Fee		60.00	
Flood Certification Fee			
ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
Interest From 12/15/06 to 01/01/07 @ $ /day (17 days @ %)			
Mortgage Insurance Premium for months to			
Hazard Insurance Premium for 1.0 years to			
RESERVES DEPOSITED WITH LENDER			
Hazard Insurance months @ $ per month			
Mortgage Insurance months @ $ per month			
City/Town Taxes months @ $ per month			
County Taxes months @ $ per month			
Pro-rata Rent Dec months @ $ per month			
months @ $ per month			
months @ $ per month			
Aggregate Escrow Adj months @ $ per month			
TITLE CHARGES			
Settlement or Closing Fee to			
Abstract or Title Search to LOWCOUNTRY TITLE & ABSTRACT, INC			
Title Examination to J Stanley Claypoole, PA		234.50	
Title Insurance Binder to Cooper River Title Agency			
Document Preparation to Lynn Crooks			
Notary Fees to			
Attorney's Fees to J. Stanley Claypoole, P.A.			6,800.00
(includes above item numbers:			
Title Insurance to Cooper River Title Agency		4,860.00	
(includes above item numbers: 104			
Lender's Coverage $ 1,200,000.00		2,220.00	
Owner's Coverage $			
Lender Charges (package) J Stanley Claypoole			
Courier/Overnight Fee (payoff)			
	J Stanley Claypoole, P.A.		
Mortgage Bal. Processing Fee to J Stanley Claypoole, P.A.			
Owner's Title Insurance to COOPER RIVER TITLE			26.00
		1,806.00	
GOVERNMENT RECORDING AND TRANSFER CHARGES			
Recording Fees: Deed $ 10.00; Mortgage $ 28.00; Releases $			
City/County Tax/Stamps: Deed		38.00	
State Tax/Stamps: Revenue Stamps 2,200.00; Mortgage			
Record Assignment of Leases to Berkeley County Register of Deeds Office			8,800.00
Record Releases/Terminations to Berkeley County Register of Deeds Office		30.00	
ADDITIONAL SETTLEMENT CHARGES			38.00
Survey to			
Pest Inspection to			
County Taxes/142-12-02-056/-01 to BERKELEY CO TREASURER			
		1,193.76	25,920.50
TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)		16,594.26	185,663.50

page 1 of this statement, the undersigned acknowledge receipt of a completed copy of page 2 of this two page statement

J. Stanley Claypoole, P.A.
Settlement Agent

P-1579-

EXHIBIT "A"
EXISTING LEASES

1. Lease Agreement dated October 6, 2005 between Great Scott Properties, LP and Bryant Risk Management, Inc

2. Lease Agreement dated as of January 1, 1993 between Great Scott Properties Limited Partnership and Blockbuster, Inc

3. Lease Agreement dated October 1, 2001 between Great Scott Properties, LP and Check into Cash of SC, Inc

4. Lease Agreement dated July 18, 1997 between Great Scott Properties, LP successor in interest to Jimmy S Lovell and Mary J Lovell as assignee from Jacob E Thomas d/b/a/ Thomas Investments and RoHoHo, Inc

5. Lease Agreement dated October 1, 2001 between Great Scott Properties, LP and Phone Smart, Inc.

6 Lease Agreement dated February 24, 1993 between Great Scott Properties, LP successor in interest to Jimmy S Lovell and Mary J. Lovell as assignee from Jacob E. Thomas d/b/a/ Thomas Investments and Advance Stores Company, Inc

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2 $ 75,750.00	to Harbortowne Real Estate		10,000.00	FUNDS AT SETTLEMENT	FUNDS AT SETTLEMENT
3 Commission Paid at Settlement					21,000.00
4	to				
0. ITEMS PAYABLE IN CONNECTION WITH LOAN					
1 Loan Origination Fee %	to American Home Mortgage Acceptance, Inc				
2. Loan Discount %	to American Home Mortgage Acceptance, Inc.				
3 Appraisal Fee	to American Home Mortgage Acceptance, Inc				
4 Credit Report	to American Home Mortgage Acceptance, Inc.			650.00	
Prep Fee	to American Home Mortgage Acceptance, Inc.			18.50	
der Processing Fee	to American Home Mortgage Acceptance, Inc.			75.00	
Tarvice Fee	to American Home Mortgage Acceptance, Inc.			850.00	
Certification Fee	to American Home Mortgage Acceptance, Inc			74.00	
ivery Fee	to American Home Mortgage Acceptance, Inc.			15.00	
9 Underwriting Fee	to American Home Mortgage Acceptance, Inc.			41.00	
1 Yield Spread Premium				350.00	
1 ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
1. Interest From 08/22/06 to 07/01/05 @ $ 124.0000000/day (0 days @ 6.9750%)				1,003.33	
2 Mortgage Insurance Premium for months to					
3 Hazard Insurance Premium for 10 years to C. T. Lowndes & Co				4,016.16	
Flood Insurance Premium 10 years to C. T. Lowndes & Co.				356.00	
5 Wind/Hail Insurance Premium					
0. RESERVES DEPOSITED WITH LENDER					
1. Hazard Insurance					
2. Mortgage Insurance	3.000 months @ $ 334.87 per month			1,004.61	
3 City/Town Taxes	months @ $ per month				
4. County Taxes	9.000 months @ $ 384.63 per month			3,460.77	
5. Personal Prop. Tax	months @ $ per month				
6 Flood Insurance Premium	3.000 months @ $ 29.67 per month			88.51	
7.	months @ $ per month				
8 Aggregate Accounting Adjustmen	months @ $ per month			-2,187.21	
0. TITLE CHARGES					
1 Settlement or Closing Fee	to Davidson, Bennett & Wigger, Attorneys at Law			150.00	
2. Abstract or Title Search	to Davidson, Bennett & Wigger, Attorneys at Law			150.00	
3. Title Examination	to Davidson, Bennett & Wigger, Attorneys at Law				
4. Title Commitment Fee	to Davidson, Bennett & Wigger, Attorneys at Law			75.00	
5 Deed/Document Preparation	to Davidson, Bennett & Wigger, Attorneys at Law			175.00	175.00
6. 1031 Doc Prep	to The Woodby Law Firm				750.00
7. G.I. Fees	to CDX, Inc				300.00
(Includes above item numbers:					
8. Title Insurance	to Lowcountry Title			2,286.00	
(Includes above item numbers:					
9. Lender's Coverage	$ 840,000.00	1,762.00 Binder			
0. Owner's Coverage	$ 1,050,000.00	463.00			
1.	Lowcountry Title				
2. Power of Attorney Preparation	to Davidson, Bennett & Wigger, Attorneys at Law				
3. Courier/Express Mail Fees	to Davidson, Bennett & Wigger, Attorneys at Law			50.00	
0. GOVERNMENT RECORDING AND TRANSFER CHARGES				25.00	25.00
1. Recording Fees: Deed $ 10.00; Mortgage $	Releases $				
2. County Tax/Stamps: Deed	Mortgage			10.00	
3. Tax/Stamps: Revenue Stamps	3,885.00; Mortgage				
4. State Fee(s)	to Davidson, Bennett & Wigger, Attorneys at Law				3,885.00
5. Power of Attorney Recording	to Charleston County RMC Office				6.00
0. ADDITIONAL SETTLEMENT CHARGES				16.00	
1. Survey	to				
2. Pest Inspection	to Isle of Palms Pest Control	DECLINED			
3. Deed Recording	to Charleston County RMC				150.00
4.				11.00	
5.					
6.					
7. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)				12,412.47	26,790.00

Signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Filed to be a true copy.

Davidson, Bennett & Wigger, Attorneys at Law
Settlement Agent

(HP05-0158.BFF / HP05-0159.BFF (10)

P-1581-

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

ASSIGNMENT OF LEASES AND ASSUMPTION OF OBLIGATIONS

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Great Scott Properties Limited Partnership ("Scott") hereby transfers, conveys, and assigns (to the extent assignable) to Heritage Seven, LLC ("Heritage") all of Scott's right, title, and interest in and to those certain Lease Agreements currently in effect on the real property and improvements, known as 109-111 S. Highway 52, Moncks Corner, Berkeley County, South Carolina-TMS #142-12-02-010 and TMS #142-12-02-010 ("Property"), and more particularly set forth on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "Existing Leases"), retaining, however, the right to collect from the tenants under the Existing Leases all overages for real property taxes, insurance premiums and common area maintenance charges for the year 2005.

As of the date of transfer of title to the Property from Scott to Heritage ("Closing Date"), Heritage hereby specifically assumes and will pay, perform and discharge all of the obligations of Scott existing on and arising after the Closing Date under the Existing Leases, as and when the same become due or are required to be performed or discharged

The parties acknowledge and agree that any security deposits collected by Scott from any of the tenants of the Existing Leases have been transferred to Heritage as of the Closing Date and Heritage shall be fully responsible to the tenants for the return of the security deposits in accordance with the terms of the leases

The effective date of this Assignment of Leases and Assumption of Obligations is December 15 2005.

WITNESSES:

GREAT SCOTT PROPERTIES LIMITED PARTNERSHIP

BY _____
Michael Scott, General Partner

BY _____
Nancy J. Scott, General Partner

HERITAGE SEVEN, LLC

BY _____
Linda A. Gibson

ITS: _____

CHAS 190710v1

P-1582-

Borrower:	Nathanael A Brown
Seller:	600 Carolina Boulevard, LLC
Lender:	American Home Mortgage Acceptance, Inc.
Settlement Agent:	Davidson, Bennett & Wigger, Attorneys at Law (843)881-8400
Place of Settlement:	317 Wingo Way, Suite 305 Mt Pleasant, SC 29464
Settlement Date:	June 23, 2005
Property Location:	600 Carolina Boulevard Isle of Palms, SC 29451 Charleston County, South Carolina Lot 01, Block 10, Section A, Isle of Palms TMS#568-10-00-140

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement

Nathanael A. Brown, by Daniel A. Brown his Attorney-In-Fact

CDX, Inc, Qualified Intermediary for600 Carolina Boulevard, LLC

By, Robert Dodds
Its. President

Approved By.

600 Carolina Boulevard, LLC

By: Linda A. Gibson, Member

By: Linda A. Gibson, Trustee of the Family Trust u/w Paul William Gibson dtd 5/22/2002

he best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of unds which were received and have been or will be disbursed by the undersigned as part of the settlement of this action

Davidson, Bennett & Wigger, Attorneys at Law
Settlement Agent

WARNING It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

HUD-1 (3/86) RESPA, HUD1.WPS

P-1583-

EXCLUSIVE RIGHT TO LEASE LISTING AGREEMENT (COMMERCIAL)

DEFENDANT'S EXHIBIT 12-6-12 SW 12-20-12

In consideration of the covenants herein contained, Heritage Seven, LLC, Sole Property Owner(s) (hereinafter called "OWNER") and RE/MAX Professional Realty, Real Estate Company (hereinafter called "BROKER"), agree as follows:

For the period of time beginning on December 15, 2005, and ending at midnight on December 15, 2015, Owner hereby grants to Broker the sole and exclusive right to lease the real property known as:

Lot A & B Block _____ Section _____ Subdivision Town of Moncks Corner

Address 109-111 South Highway 52

Tax Map # 142-12-02-055 and 02-010 City Moncks Corner Zip 29461

County of Berkeley, State of South Carolina.

1. **EMPLOYMENT:** In consideration of the services and facilities of your office and of your agreement to enter the within described property in the Multiple Listing Service of which BROKER is a member, the undersigned Owner does hereby employ the above named BROKER as the sole and exclusive agent, and give said BROKER the exclusive right and authority to lease the herein described property, From December 15, 2005, To December 15, 2015, inclusive, subject to all the terms and conditions hereof.

2. **LEASE RATE:** Said property is, hereby, listed to lease at a rate of $ to be determine

3. **TERMS:** Said property may be leased subject to the following terms: 109-111 South Highway 52, Moncks Corner, South Carolina 29461, also known as Moncks Corner Shopping Plaza. Said premises containing one (1) building at 7,000 square feet, currently occupied by Advance Auto Parts, and another one (1) building at 10,400 square feet, currently occupied and anchored by Blockbuster Video, and 4 smaller units, including, but not limited to Phone Smart, Check Into Cash, Papa Johns, and 1st Franklin Financial.

4. **POSSESSION** of property shall be relinquished by the Owner to the Tenant in accordance with the terms of the rental agreement.

5. **DEFECTS:** Owner represents that the property is not subject to any defect and does not contain any hazardous or toxic substance to the best of Owner's belief after due inquiry, unless expressly disclosed herein. Owner agrees to disclose to the BROKER any defects (whether latent, affects or otherwise) of the herein described property and to hold said BROKER harmless from any liability or damages including without limit attorney's fees arising from any defects. Owner represents to the best of Owner's information and belief after due inquiry (i) that Owner has not received notice of any claimed environmental hazard or condition in connection with the property; (ii) that the property contains no hazardous or toxic wastes, asbestos or other substance dangerous or harmful to human health or the environment, and has not been used for the manufacture, storage, or transport of any such substance; and (iii) that no part of the property consists of federal jurisdictional wetlands. Any additional stipulations shall be set forth in writing in this agreement.

6. **TERMS:**
   1. Owner agrees that said BROKER has earned a commission of ten percent 10% if a tenant who is ready, willing, and able to lease the herein described property at the lease rate and on the terms aforesaid or at any price and terms acceptable to the Owner. Commission to be paid by Owner as follows: at and upon execution of tenant lease agreement, lump sum equivalent to no more than ten percent (10%) of the total gross rents for the entire term of the lease and thereafter, ten percent (10%) of gross operating income collected each and every month

12, BCT

OWNER, [ ] OWNER, AND [ ] BROKER HAVE READ THIS PAGE.

RE/MAX Professional Realty 311 Johnnie Dodds Blvd, Ste 181Mt Pleasant, SC 29464 Rolando Villavicencio
Phone. Fax

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DEFENDANT'S EXHIBIT 4

for the initial term and any renewals, extensions or modifications of this lease and for any expansions of, or additions to, the space covered by any lease entered into pursuant to this listing agreement.

2. Owner understands that Broker shall pay cooperating agents a fee of $ _____ or a commission of 10,000 % of gross lease price. Owner and Broker agree that there shall be no variation or exception in the amount of the fee or commission to be paid, unless otherwise specified in this agreement

3. Said commission to be paid to BROKER whether said Tenant is found by BROKER, by another Broker, by the undersigned Owner or by any other person.

4. If within 180 consecutive days after the termination of this agreement, a lease of the herein described property is made or effected by the undersigned Owner, directly or through any other person to a prospective tenant to whom any agent of the Listing BROKER, any Cooperating Broker, or the Owner has shown or offered said property during this exclusive listing period, the Owner shall pay the aforementioned commission to the Listing BROKER, provided that the names of the prospective tenants to whom the property was shown by the Listing BROKER or any Cooperating Broker are furnished to the Owner by the Listing BROKER in writing within ten (10) days after termination of this exclusive listing period.
This protection period shall end at 11:59 p.m. on December 15, 2015.

5. In the event that property is sold during the term of this agreement, owner agrees that any outstanding commissions owed to Listing BROKER will be payable at closing.

7. **MULTIPLE LISTING SERVICE:** The property [X] shall be [ ] shall not be entered into the Multiple Listing Services of which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. Owner agrees that Broker may compensate an agent representing the buyer from the fee described above.

8. **LEAD-BASED PAINT:** For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4582(d), as amended.

ADDITIONAL TERMS AND CONDITIONS: The following terms and conditions are a part of this Exclusive Right To Lease Listing Agreement of which other terms and conditions are set forth on the front side hereof. The, Owner and BROKER do further agree:

1. Said property to be leased subject to zoning ordinances, restrictions, easements and conditions of public record; and

2. Owner shall refer to BROKER any inquiries received by the owner and shall not deal directly with prospective tenants for this property during the continuance of this agency and shall allow the BROKER or any participating Broker to show said property at reasonable times upon reasonable notice and shall commit no act which might tend to obstruct the BROKER's performance hereunder; and

3. Owner shall cooperate with BROKER to ascertain all pertinent data concerning subject property so as to avoid error, exaggeration, misrepresentation or concealment of pertinent facts. Owner warrants the accuracy of the information furnished herein and agrees to hold the BROKER harmless from any liabilities or damages arising out of incorrect or undisclosed information. Owner agrees to notify the listing BROKER promptly of any material changes in said information; and

4. The listing BROKER is not responsible for vandalism, theft, damage or maintenance of herein described property; and

5. The Owner agrees to enter into a contract of lease with and to lease said Property to any such ready, willing and able tenant for the rent or upon such other terms and conditions as Owner may hereafter approves, said approval to specifically include Owner's review and acceptance of the credit worthiness of any such tenant; and

6. BROKER [X] shall or [ ] shall not place such "For Lease" signs on said property as BROKER may deem advisable and no other signs shall be placed on said property; and

7. Broker is granted the authority and approval to list and publish all lease data pertaining to the lease of the hereinabove described property. Owner understands and acknowledges that lease data are published for the use and information of the members of all the Boards/Associations of REALTORS® and the Multiple Listing Services (MLS) of which Broker is a member, for their use of same in marketing, leasing and selling of all properties listed in said publication; and

[ ] OWNER, [ ] OWNER, AND [ ] BROKER HAVE READ THIS PAGE,

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8. Owner shall carry at own expense public liability insurance in an amount of at least $ 1,000,000.00 to protect the interest of the parties to this Agreement, and

9. Owner hereby indemnifies Agent against and agrees to hold and save Agent, its directors, officers, partners, members, employees and agents, harmless from and against any loss, damage, or expense (including courts costs and reasonable attorneys' fees) resulting from any breach of Client's duties and obligations under this Agreement or the negligence, gross negligence, willful misconduct or fraud of Client or its employees, agents and contractors. Agent hereby indemnifies Owner against and agrees to hold and save Owner, it directors, officers, partners, members, employees and agents, harmless from and against any loss, damage, or expense (including courts costs and reasonable attorneys' fees) resulting from any breach of Agent's duties and obligations under this Agreement or the negligence, gross negligence, willful misconduct or fraud of Agent or its employees, agents and contractors.

10. RESPONSIBILITIES OF BROKER: In consideration of granting BROKER this Exclusive Right to Lease Listing, the BROKER agrees.

1. To direct concentrated efforts in bringing about a lease.
2. To advertise said property as BROKER deems advisable.
3. To encourage cooperating brokers in lease efforts of said property by furnishing information and assistance.
4. To keep the Owner/s informed as to the progress made toward finding a tenant for said property.
5. To make an earnest and continued effort to lease the property.
6. To input the listing into the MLS system within 5 work days of the effective date of listing.

11. NOTICES: All notices provided for this Listing Agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner: Linda A. Gibson, Member - Heritage Seven, LLC
133 Horse Trail Road
St. George, South Carolina 29477

If to Agent: Rolando V. Villavicencio, RE/MAX Professional Realty
9209 University Boulevard
North Charleston, South Carolina 29406

12. CONFIDENTIALITY: All financial data and other proprietary information with regard to the Property shall be treated as confidential by Agent and shall be disseminated to third parties on a "need to know" basis only. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

13. SPECIAL STIPULATIONS: The following stipulations shall, if conflicting with printed matter, control (use addendum if necessary):

14. ENFORCEMENT: The parties agree that Broker may take action to enforce this Agreement or collect any associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this Agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.

15. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF BROKERS®. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

16. NO CONTROL OF COMMISSION RATES OR FEES: The Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the board/association, the MLS, or by any persons not a party to the listing agreement.

[ ] OWNER, [ ] OWNER, AND [ ] BROKER HAVE READ THIS PAGE.

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The subagency compensation paid by the Listing Broker to a Cooperating Broker or Buyer's Broker in respect to any listing is established by the Listing Broker in Broker's offer of subagency, and is not fixed, controlled, suggested, recommended or maintained by the board/association, the MLS or by any persons other than the Listing Broker.

17. OTHER TERMS AND CONDITIONS: This lease agreement is being generated, provided, and furnished for the record, to replace lost original lease agreement of 121505. This new agreement is enforceable as if this is the same original lost agreement of 121505.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Owner: _____ Date 12/18/2007 Time _____
Heritage Seven, LLC

Email: _____ Phone: (843)563-2984 Fax: _____

Witness: _____ Date _____ Time _____

Owner: _____ Date _____ Time _____

Email: _____ Phone: _____ Fax: _____

Witness: _____ Date _____ Time _____

Owner's Mailing Address 133 Horse Trail Road
St. George, SC 29477

Real Estate Firm: RE/MAX Professional Realty Phone: (843)767-7777

By: _____ 12/18/07 Date 12/18/2007 Time _____
Rolando V. Villavicencio

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Company. *As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell.* Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

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In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency.

Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

What to Look For in Any Agreement

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

- Can I work with other Companies during the time of the Agreement?
- What will happen if I buy or sell on my own without the agent?
- When will this agreement expire?
- How will the Company be paid for its services?
- Does this Company represent both buyers and sellers as clients?
- If so, what are the choices if two clients become involved in one transaction?
- What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. **Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences.**

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As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself while the Company represents the other party.
- You can choose to hire the Company for representation through a written agreement.
- If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you—the South Carolina real estate consumer.

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12/8/07

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Agency Disclosure Brochure

Agency Relationships in Real Estate

South Carolina Department of Labor, Licensing and Regulation

South Carolina Real Estate Commission
PO Box 11847
Synergy Business Park, Kingstree Building
110 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

(Rev. 1/05)

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Agency Relationships in South Carolina

The SC Real Estate License Law, in Section 40-57-139 (A) (1) and (2), requires a real estate licensee to provide you this brochure and a meaningful explanation of agency relationships offered by the licensee's Company. This must be done at the first practical opportunity when you and the licensee have substantive contact.

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A real estate Company and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you can expect will depend upon the legal relationship you establish with the Company. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a customer or a client.

Now You Are a Customer of the Company

South Carolina license law defines customers as buyers or sellers who choose NOT to establish an agency relationship. The law requires real estate licensees to perform the following *basic duties* when dealing with *any* real estate buyer or seller as customers:

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- Present all offers in a timely manner
- Account for money or other property received on your behalf
- Provide an explanation of the scope of services to be provided
- Be fair and honest and provide accurate information
- Disclose "adverse material facts" about the property or the transaction which are within the licensee's knowledge.

Unless or until you enter into a written agreement with the Company for agency representation, you are considered a "Customer" of the Company, and the Company will not act as your agent. As a Customer, you should not expect the Company or its licensees to promote your best interest, or to keep your bargaining information confidential.

Customer service does not require a written agreement; therefore, you are not committed to the Company in any way.

You Can Become a Client

Clients receive more services than customers. If client status is offered by the real estate Company, you can become a client by entering into a written agency agreement requiring the Company and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this brochure in a timely manner.

A seller becomes a client of a real estate company by signing a formal listing agreement with the Company. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the Company which becomes the agent for the seller.

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- Obedience
- Loyalty
- Disclosure
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Client-level services also include advice, counse and assistance in negotiations.

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DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS ADDENDUM FOR RESIDENTIAL RENTAL AGREEMENT

Property Address: 109-111 South Highway 52, Moncks Corner, 29461

Lead Warning Statement
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Tenants must also receive a Federally approved pamphlet on lead poisoning prevention.

Landlord Disclosure (initial)

LC (a) Presence of lead-based paint or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

☒ Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

LC (b) Records and reports available to the landlord (check one below):

☐ Landlord has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

☒ Landlord has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Tenant's Acknowledgment (initial)

____ (c) Tenant has received copies of all information listed above.
____ (d) Tenant has received the pamphlet Protect Your Family from Lead In Your Home.

Agent's Acknowledgment (initial)

____ (e) Agent has informed the Landlord of the Landlord's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

	12/18/2007		Date
Landlord Heritage Seven, LLC	Date	Landlord	
			Date
Tenant	Date	Tenant	
			12/18/2007
Agent	Date	Agent Rolando V. Villaviscencio	Date

RE/MAX Professional Realty 311 Johnnie Dodds Blvd, Ste 181Mt. Pleasant, SC 29464 Rolando Villaviscencio
Phone Fax.
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Agency Relationships in Real Estate



South Carolina Department of Labor, Licensing and Regulation

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PO Box 11847
Synergy Business Park, Kingstree Building
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Telephone: (803) 896-4400
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www.llr.state.sc.us/POL/RealEstateCommission/

(Rev. 1/05)

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PLAINTIFF EX 5

Linda Ann Avinger Gibson

Personal Financial Statement
April 30, 2007

Assets:

Personal Assets:

Primary - 133 Horse Trail Rd – 10 Acres w/ 6 Horse Barn)	$ 690,000	
Supplemental - 171 Quarter Horse Rd – 78 Acres Cross Fencing, Running Track, 14 Stall Barn	1,380,000	
Automobiles	77,250	
Cato 2000 Trailer	60,500	
Other Personal Items	185,600	
Total Personal Assets:		**$ 2,393,350**

Investment Assets:

Gibson Enterprises	$275,000	
Total Investment Assets:		**$ 275,000**

Portfolio Assets:

Checking Account:	3205 Palm Blvd LLC	$45,484	
	Gibson Ranch	$25,343	
Total Portfolio Assets:			**$ 70,827**

DEFENDANT'S EXHIBIT 5

DEFENDANT'S EXHIBIT

Real Estate Assets:	Values	
Tract B – 17 Acres Daniel Island 248-00-02-042 – 17 Acres @ $100,000/ac	$1,700,000	
104 Family Cemetery Rd, Bryan Trc. 263-00-01-032 – 3.5 Acres @ $85k/ac	$ 297,500	
Tract 5 – Daniel Island 271-00-01-003 3.09 Acres @ $150k/ac	$ 463,500	
Klister Lane – Daniel Island 271-00-01-037 – 5.69 Acres @ $170k/ac	$ 967,300	
Clements Ferry Road – Lot A Trt A 271-00-01-040 – 2.54 Acres - Improvements	$ 3,450,000	
1006 Pinefield Dr – Lot B 271-00-01-084 – 1 Acre - 2 Bldgs - Improvements	$ 1,780,000	
637 Marina Dr – Lot C 271-00-01-085 – 1.77 Acres - 3 Bldgs - Improvements	$ 2,625,000	
Klister Lane 271-01-01-129 – 3 Acres @ $155k/ac	$ 465,000	
Daniel Island 271-00-02-029 – 55 Acres @ $500k/ac	$27,500,000	
2637 Clements Ferry Road – Tract B 271-00-02-030 – 22.5 Acres @ $375k/ac	$ 8,437,500	
Highland A – Daniel Island 271-00-02-174	$ 650,000	
3205 Palm Blvd 571-10-00-140 – Vacation Rental Home	$ 2,500,000	FRB
109-111 S. Hwy 52 Moncks Corner Plaza Blockbuster & Advance Auto Building	$ 2,500,000	FRB
TOTAL ASSETS:		$53,335,800
GRAND TOTAL ASSETS:		$56,105,727

[redacted]

Liabilities:

Primary Residence	$ 194,700	
3205 Palm Blvd Loan	455,140	1st
Equity Mortgage	400,000	FRB
109-111 S. Hwy 52, Monoke Corner	$1,200,000	FRB
Barn Loan	58,725	

TOTAL LIABILITIES: $ 2,308,565

NET WORTH: $3,797,162

Annual Income:

1. Cell Tower Lease @ $1,300 per month	$15,600
2. Hidden Cove Boat & Yatch Sales Lease	$84,375
3. BARGIB 669 Marina Lease	$90,000
4. 3205 Palm Vacation Rental	$85,935
TOTAL:	*$275,910*

M. Corner ?

[redacted]

COMMERCIAL PURCHASE AGREEMENT AND DEPOSIT RECEIPT

abow PRO, LLC, hereinafter designated as "SELLER", has received from Linda Avignon Gibson, and/or Assigns hereinafter designated as "BUYER", the amount set forth below as DEPOSIT (Item 1-A) on account of the PURCHASE PRICE of ($ 2,800,000.00) Two Million Eight Hundred Thousand Dollars, for the real property known as:

Lot _____ Block _____ Section _____ Subdivision Northwood Garden Apartments

Address 2625 Ocranto Road

Tax Map # 466-03-00-114 City North Charleston Zip 29406

County of Charleston, State of South Carolina.

1. FINANCING TERMS AND LOAN PROVISIONS.

A. $ N/A DEPOSIT evidenced by check ☐ or other ☐, payable to _____ and held uncashed until acceptance and deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations to be held in trust by _____ as Escrow Agent.

B. $ _____ ADDITIONAL CASH DEPOSIT in escrow ☐ within _____ days from acceptance ☐ upon receipt of loan commitment per Item 2; ☐ Other: _____

C. $ 2,800,000.00 BALANCE OF CASH PAYMENT at closing.

FIRST LOAN

D. $ TBD Proceeds from New First Loan: ☐ FIXED RATE ☐ Other: _____ for a term of _____ years, with interest not to exceed _____ %, payable at approximately $ _____ p/mo., ☐ including taxes and insurance, ☐ not including taxes and insurance, with the balance due not less than _____ years, ☐ Other terms: _____, Loan fee not to exceed _____ % plus $ _____, Loan fee paid by _____

E. $ _____ Existing First Loan, ☐ ASSUMPTION OF THE MORTGAGE (WITH RELEASE OF LIABILITY), ☐ ASSIGNMENT OF THE PROPERTY SUBJECT TO THE MORTGAGE (WITHOUT RELEASE OF LIABILITY), ☐ SUBJECT TO existing first loan of record: ☐ fixed rate ☐ other: _____ payable at $ _____ per month, with interest currently at _____ %, ☐ including taxes and insurance, ☐ not including taxes and insurance, with interest rate to be adjusted to: _____ %. Other terms: _____. Held by: _____. Assumption fee, if any, not to exceed _____. Charges related to assumption shall be paid by _____. Conditioned upon BUYER's approval of terms of said loan pursuant to Item 8, Existing Loans.

F. $ _____ SELLER FINANCING. First loan secured by the property, payable at $ _____ per month, or more, including _____ % interest, with the entire balance due _____ years from date of conveyance. A late charge of $ _____ shall be due on monthly payments tendered more than _____ days late. See Item 11, CREDIT APPROVAL.

JUNIOR LOANS

G. $ _____ PROCEEDS FROM NEW SECOND LOAN: ☐ Fixed Rate ☐ Other: _____ _____ Amortization _____ years, with interest not to exceed _____ %, payable at approximately $ _____ p/mo., with the balance due not less than _____ years, ☐ Other Terms: _____, Loan fee not to exceed _____ %, Loan fee paid by _____

[LG] BUYER [___] BUYER AND [LG] SELLER [___] SELLER HAVE READ THIS PAGE.

RE/MAX Professional Realty 311 Johnnie Dodds Blvd, Ste 107 Mt. Pleasant, SC 29464 Rolando Villavicencio
Phone: Fax:

2625 Ocranto Ct

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DEFENDANT'S EXHIBIT U

DEFENDANT'S EXHIBIT A GIBSON

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H. $ _____ EXISTING SECOND LOAN ☐ ASSUMPTION OF THE MORTGAGE (WITH RELEASE OF LIABILITY), ☐ ASSIGNMENT OF THE PROPERTY SUBJECT TO THE MORTGAGE (WITHOUT RELEASE OF LIABILITY), ☐ SUBJECT TO existing second loan of record: ☐ FIXED RATE, ☐ Other: _____ _____ payable at $ _____ per month, with interest currently at _____ %. Interest Rate to be adjusted to: _____ %. Other terms: _____ _____, Held by: _____, Assumption Fee, if any, not to exceed _____ %. All charges related to assumption shall be paid by _____. Conditioned upon BUYER's approval of terms of said loan pursuant to Item 8, EXISTING LOANS.

I. $ _____ SELLER FINANCING. ☐ Second, ☐ Third Loan secured by the property, payable at $ _____ per month, or more, including _____ % interest, with the entire balance due _____ years from date of conveyance. A late charge of $ _____ shall be due on monthly payments tendered more than _____ days late. See Item 11, CREDIT APPROVAL.

J. $ _____ OTHER: From Sellers proceeds at closing, Seller to pay $80,000 towards Buyer's recurring and/or non-recurring closing costs.

K. $ 2,800,000.00 TOTAL PURCHASE PRICE (not including closing costs). Any net differences between the approximate balances of encumbrances shown above are to be assumed, assigned or taken subject-to, and the actual balances at close of escrow shall be adjusted in ☐ Cash, ☐ Other: _____ _____.

2. LOAN PROCESSING AND APPLICATION. Buyer's obligation is contingent upon Buyer obtaining said loan. Buyer shall apply for said loan from To Be Determined (Lender) within 10 days from the execution of this contract. Should the Buyer fail to make loan application within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice, and retain the earnest money deposit. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action which is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating Broker(s) or Agent(s).

3. BONDS AND ASSESSMENTS. In the event there is a bond or assessment which has an outstanding principal balance and is a lien upon the property, such principal shall be ☒ paid by SELLER, or ☐ assumed by BUYER. In the event of assumption, said obligation(s) ☐ shall, ☐ shall not be deducted from the purchase price at closing. (This paragraph is not concerned with ongoing payments collected on the property tax bill assessments which are not liens upon this property).

4. CLOSING. On or before May 31, 2007, SELLER agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. SELLER agrees to pay all statutory deed recording fees, formerly known as documentary stamp taxes. At closing, BUYER agrees to have cash, cashier's check or certified funds drawn on a local bank in the amount of the balance of the purchase price plus all costs payable to the closing attorney or escrow agent.

5. EVIDENCE OF TITLE in the form of:
☒ A policy of title insurance
☐ An abstract of title from an attorney
☐ Other: _____,
Paid by: _____.

6. VESTED TITLE. The deed shall be prepared in the name(s) of To Be Determined _____ _____.

7. SURVIVAL. The omission from closing of any provision herein shall not waive the right of any party. All representations or warranties shall survive the conveyance of the property.

8. EXISTING LOANS. SELLER shall, within three (3) days of acceptance, provide BUYER with all notes and mortgages to be assumed, assigned, or taken subject to, and within five (5) days of receipt thereof, BUYER shall in writing notify SELLER of BUYER'S approval or disapproval of the terms of said documents which shall not be unreasonably withheld. Within three (3) days of acceptance, SELLER shall submit written request for a current statement of condition on the above loan or loans. SELLER warrants that all loans in the transaction will be current at closing.

( ) BUYER [ ] BUYER AND ( ) SELLER [ ] SELLER HAVE READ THIS PAGE.

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9. DUE ON SALE CLAUSE. If any note or mortgage for any existing loan contains an acceleration or DUE ON SALE clause, the Lender may demand full payment of the entire loan balance as a result of this transaction. Both parties acknowledge that they are not relying on any representation by the other party or the Broker with respect to the enforceability of such a provision in existing notes or mortgages, mortgages to be executed in accordance with this Agreement. Both parties have been advised by the Broker to seek independent legal advice with respect to these matters.

10. BALLOON PAYMENT. Both parties acknowledge they have not received or relied upon any statements or representations made to them by Broker regarding availability of funds, or rate of interest at which funds might be available, when BUYER becomes obligated to refinance or pay off remaining balance of any loan pursuant to the terms of this Agreement.

11. CREDIT APPROVAL. In the event of SELLER financing, BUYER shall furnish SELLER within three (3) days of acceptance, a customary financial statement for the sole purpose of credit approval, such approval shall not be unreasonably withheld. BUYER authorizes SELLER to engage the services of a reputable credit reporting agency for this purpose at BUYER's expense, and SELLER shall notify BUYER within ten (10) days of receipt of financial statement, of approval or disapproval of BUYER's credit.

12. DEFINITIONS. BROKER includes cooperating brokers and all salespersons. DAYS means calendar days unless otherwise specified. DATE OF ACCEPTANCE means the date the SELLER accepts the offer or the BUYER accepts the counteroffer. DELIVERED means personally delivered or mailed by certified mail in the event of mailing, delivery shall be deemed to have been made on the day following the date of mailing evidenced by the postmark on the envelope containing the delivered mail.

13. TIME IS OF THE ESSENCE. TIME IS OF THE ESSENCE FOR THIS AGREEMENT. All modifications and extensions shall be in writing and signed by all parties.

14. CONDITIONS SATISFIED/WAIVED IN WRITING. Each condition or contingency, approval and disapproval herein shall be satisfied according to its terms or waived in writing by the benefiting party within the time limits specified (or any extension thereof agreed to by the parties in writing), or this Agreement shall terminate and all deposits returned to BUYER to the date of cancellation of this transaction. This paragraph contemplates that each party shall diligently pursue the completion of this transaction.

15. INSURANCE. In the event of financing, BUYER shall obtain hazard insurance prepaid for one year in an amount satisfactory to the loan holders and covering one hundred percent replacement cost of improvements, and to name holders of the secured loans as additional loss payees. BUYER agrees further to annually increase said insurance if necessary, to equal the current replacement cost of the property during the term of the loan holder's mortgages. BUYER shall instruct the insurance carrier to deliver to SELLER before closing a certificate providing for 30 days written notice in the event of cancellation.

16. DESTRUCTION OF IMPROVEMENTS. If the improvements of the property are destroyed, materially damaged, or found to be materially defective prior to closing, BUYER shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement. In the event BUYER elects to terminate this Agreement, BUYER may terminate this transaction by written notice to SELLER'S Broker or Agent, and all deposits shall be returned to BUYER.

In the event BUYER does not elect to terminate the Agreement, BUYER shall be entitled to receive in addition to the property any insurance proceeds payable on account of the damage or destruction, the property and the insurance proceeds payable shall not exceed the value of the purchase price and in the event this happens, the Seller shall be entitled to the remainder of the insurance proceeds.

17. NOTICE OF VIOLATIONS. By acceptance hereof, SELLER warrants that SELLER has no notice of violations relating to the property from city, county, or state agencies.

18. INCOME AND EXPENSE STATEMENT. SELLER shall deliver to BUYER for BUYER'S approval a true and complete statement of rental income and expenses for BUYER's approval within seven (7) days of acceptance. BUYER's obligations are conditioned upon approval of said statement. BUYER shall be deemed to have approved said statement unless written notice to the contrary is delivered to SELLER or SELLER's agent within seven (7) days of receipt of said statement by BUYER, in which case BUYER may have deposit returned and both parties shall be relieved of all obligations hereunder.

[LG] BUYER [___] BUYER AND [JA] SELLER [___] SELLER HAVE READ THIS PAGE.

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19. EXISTING LEASES. Subject to existing leases and rights of parties in possession under month-to-month tenancies, within seven (7) days of acceptance, SELLER shall deliver to BUYER for BUYER's approval copies of all existing leases and rental agreements, as well as copies of all outstanding notices sent to tenants, and a written statement of all oral agreements with tenants, incurred defaults by SELLER or tenants, claims made by or to tenants, and a statement of all tenants' deposits held by SELLER, all of which SELLER warrants to be true and complete. BUYER's obligations are conditioned upon approval of existing leases. BUYER shall be deemed to have approved said documents unless written notice to the contrary is delivered to SELLER or SELLER's Agent within seven (7) days of receipt of said documents, in which case BUYER may have deposit returned and both parties shall be relieved of all obligations hereunder.

BUYER's obligations hereunder are conditioned upon receipt at closing of estoppel certificates executed by each tenant acknowledging that the lease or rental agreement is in effect, that no lessor default exists, and stating the amount of any prepaid rent or security deposit.

20. SERVICE CONTRACTS. SELLER shall furnish BUYER with copies of any service and/or equipment rental contracts with respect to the property, which run beyond closing.

21. "FREE LOOK PERMIT". BUYER shall have the right to inspect any and all personal property referred to in paragraph 27(N), PERSONAL PROPERTY, and the materials described in paragraphs 18 and 19 hereof. Within ten (10) days following the furnishing of such materials, BUYER, at BUYER's sole discretion, may by written notice to SELLER terminate all obligations of the parties hereunder and any deposit shall be returned. If such notice is not delivered within such time, BUYER shall be deemed to have approved the condition of the property and the materials submitted.

22. CHANGES DURING TRANSACTION. During the pendency of this transaction, SELLER agrees that no changes in the existing leases or rental agreements shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken without the written consent of the BUYER.

23. EXAMINATION OF TITLE. In addition to any encumbrances referred to herein, BUYER shall take title to the property subject to: (1) real estate taxes not yet due, and (2) covenants, conditions, restrictions, rights of way, and easements of record, if any, which do not materially affect the value or intended use of the property.

Within three (3) days from acceptance, BUYER shall order a preliminary title report. Ten (10) days from receipt thereof are allowed to BUYER to examine the title to the property and to report in writing any valid objections thereto. All exceptions to the title contained in such report (other than monetary liens) shall be deemed approved unless written objection is delivered to SELLER within said ten (10) days. If BUYER objects to any exceptions to the title, SELLER shall use due diligence to remove such exceptions at SELLER's expense before closing. But if such exceptions cannot be removed before closing, all rights and obligations hereunder may, at the election of the BUYER, terminate and the deposit shall be returned to BUYER less expenses incurred by BUYER to date of termination, unless BUYER elects to purchase the property subject to such exceptions. If SELLER concludes unwillingness or is unable to remove such objections, SELLER shall notify BUYER within ten (10) days of receipt of said objections. In that event, BUYER may terminate this Agreement and have all deposits returned less expenses incurred to date of termination.

24. PHYSICAL POSSESSION. Physical possession, with all keys and garage door openers, shall be delivered to BUYER (check either item (1) or item (2)):

☒ 1. Upon recordation of the deed.
☐ 2. After recordation, but not later than midnight of _____.

25. ACCESS TO PROPERTY. SELLER agrees to provide reasonable access to the property to BUYER and inspectors representing BUYER as provided in this Agreement and to representatives of lending institutions for appraisal purposes.

26. ADJUSTMENTS. Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

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27. PROVISIONS: The provisions initialed below by BUYER are included in this Agreement.
☐ A. Pest Control Inspection paid by ☐ BUYER, ☐ SELLER
☐ B. Existing Pest Control Report dated: _____
By: _____
☐ C. Subject to BUYER'S approval of Pest Control Report
☐ D. Waiver of Pest Control Inspection
☒ E. Inspections of Physical Condition of Property, to be approved or disapproved within _____ days of acceptance
☒ F. Roof Inspection Report to SELLER within _____ days of acceptance
☐ G. City and County Inspection Report ordered within _____ days of acceptance
☐ H. Contingency Release Clause
☐ I. Flood Hazard Zone Disclosure
☐ J. Special Studies Zone Disclosure
☐ K. Rent Control Ordinance
☐ L. Operating Permit
☐ M. Certificate of Occupancy
☒ N. Personal Property
☒ O. Smoke Detectors
☐ P. Tax Deferred Exchange

_____ A. PEST CONTROL INSPECTION. The main building and all structures on the property are to be inspected by a licensed pest control operator. If such inspector recommends repair, and/or if the inspecting pest control operator recommends further inspection of inaccessible areas, the SELLER at SELLER's option may perform recommended repairs and/or may agree to the additional costs of such inspection and if there is damage, may perform the additional repairs prior to the closing. If the SELLER does not elect to correct the damage or perform the additional inspection, the BUYER's obligation under this Agreement will terminate. If additional inspections are done and no such infestation or infection is discovered, the additional costs of inspecting such inaccessible areas and the work required to return the property to its original condition shall be paid by BUYER.

Funds for work specified in said report, to be done at SELLER's expense, shall be held in escrow and disbursed by escrow holder upon receipt of notice of work completed by a licensed pest control operator selected by ☐ SELLER ☐ BUYER certifying that the property is free of evidence of active infestation or infection. As soon as the same are available, copies of the report, and any certification or other proof of completion of the work shall be delivered to the Agents of BUYER and SELLER who are authorized to receive the same on behalf of their principals.

_____ B. EXISTING PEST CONTROL REPORT ACCEPTED BY BUYER. BUYER accepts existing pest control report on the property by the licensed structural pest control operator listed under item 27-B, SELLER'S obligations shall be as set forth in 27-A above.

_____ C. SUBJECT TO BUYER'S APPROVAL OF PEST CONTROL REPORT. Property to be purchased in its present condition with no charge to SELLER for any pest control work. However, BUYER shall have the right to have the property inspected and to obtain a report from a licensed structural pest control operator. BUYER shall be deemed to have approved said report unless written notice to the contrary is delivered to SELLER or SELLER'S Agent within 15 days of acceptance. In the event BUYER does not approve the report, BUYER may have deposit returned and both parties shall be relieved of all obligations hereunder.

BUYER acknowledges that BUYER has not received or relied upon any representations by either the Broker or the SELLER, with respect to the condition of the property.

_____ D. WAIVER OF PEST CONTROL INSPECTION. BUYER has satisfied BUYER about the condition of the property and agrees to purchase said property in present condition without the benefit of a structural pest control inspection. BUYER acknowledges that BUYER has not received or relied upon any representations by either the Broker, SELLER or SELLER'S Agent, without respect to the condition of the property.

_____ E. INSPECTION OF PHYSICAL CONDITION OF PROPERTY. BUYER shall have the privilege and responsibility, at BUYER's expense, to select licensed contractors or other qualified professionals to inspect the subject property (including land and improvements), including but not limited to matters structural, geological, plumbing, heating, air conditioning, electrical, built-in appliances, well, pool, septic tank, hazardous and toxic materials, and survey. BUYER shall, upon SELLER's written request, furnish SELLER at no cost, copies of all inspection reports obtained. BUYER shall approve or disapprove all inspection reports obtained in writing, within _____ number of days, if SELLER does not agree to correct any unacceptable conditions within three (3) days from receipt of such notice, BUYER may elect to terminate this Agreement. In the event of such termination, all deposits shall be returned less expenses incurred by BUYER to the date of cancellation.

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_____ F. ROOF INSPECTION. BUYER, at BUYER's expense, may order a roof report from a licensed general or roofing contractor. Within _____ days, copies of the report shall be delivered to the Agents of the BUYER and SELLER who are authorized to receive the same on behalf of their principals. Within three (3) days following receipt of the report, SELLER may (a) elect to pay the cost of all work recommended by the report; or (b) elect to pay none or only a portion of the cost of such work. Written notice of such election shall be delivered to BUYER or BUYER's Agent.

In the event SELLER does NOT agree to pay for all such work, BUYER may elect to pay the balance of the cost of such work or terminate all rights and obligations to the parties under this Agreement. Written notice of such election shall be delivered to SELLER or SELLER's Agent within seven (7) days following receipt of SELLER's notice. In the event of such termination, BUYER shall be entitled to a full refund of all deposits excluding the cost of the above roof inspection report. If no written election is made within seven (7) days, BUYER shall have the right to terminate this Agreement, and SELLER shall be responsible for the cost of that portion of the work which SELLER elected to pay. In the event SELLER has elected to pay cost of all such work, SELLER shall have the right to have such work performed by a licensed general or roofing contractor of SELLER's choice.

_____ G. CITY AND COUNTY INSPECTION REPORT. If local ordinance requires that the property be inspected or a report issued for compliance with local building and permit regulations, standards, and ordinances as a condition to sale or transfer, SELLER shall, within _____ days, notify the appropriate local agency to cause the property to be inspected, or to issue the required report at the earliest practicable date. If SELLER does not agree to pay for correction of any violations shown in the report, BUYER may pay the cost of the required corrections or terminate this Agreement. In the event of termination, all deposits shall be returned.

_____ H. CONTINGENCY RELEASE CLAUSE. Subject to the sale and conveyance of BUYER's property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address _____

Tax Map # _____ City _____ Zip _____

County of _____, State of South Carolina.

SELLER shall have the right to continue to offer the herein property for sale and to accept written offers subject to the rights of BUYER. Should SELLER accept such an offer, then BUYER shall be given written notice of such acceptance. In the event BUYER will not waive this condition in writing within _____ hours of receipt of such notice, then this Agreement shall be terminated and all deposits be returned to BUYER. Said notice may be personally delivered or mailed by certified mail and addressed to _____. In the event of mailing, such notice shall be deemed to have been given on the date following the date of mailing evidenced by the postmark on the envelope containing such notice. In the event BUYER waives real property sale contingency, BUYER must first satisfy SELLER or SELLER'S Agent that any financing required under this Agreement will be granted without the sale of the aforementioned property.

_____ I. FLOOD HAZARD ZONE. BUYER has been advised that the property is located in an area which the Secretary of HUD has found to have special flood hazards and that, pursuant to the National Flood Insurance Program, it will be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information, consult your lender or insurance carrier.

_____ J. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS. All reports and certifications called for by the lending agencies and any governmental body, by the BUYER concerning any special study for the area, wetlands or for any environmental protection matter shall be at the expense of the ☐ SELLER, ☐ BUYER. In the event such studies are wanted or required, the studies must be furnished by the proper parties within _____ days of complete execution of the agreement. The BUYER and SELLER must have access to all studies within five (5) days of completion thereof and upon notice by the BUYER to the SELLER within five (5) days of receipt of the studies that the BUYER is not satisfied with the result, the SELLER shall have the option of correcting the problem, if the SELLER elects not to correct the problem, the BUYER's obligations under this Agreement terminate.

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_____ K. PERMITS AND ORDINANCES. BUYER is aware that a local ordinance is in effect which regulates the rights and obligations of property owners. It may also affect the manner in which future rents can be adjusted.

_____ L. OPERATING PERMIT. SELLER warrants that an operating permit for the property is in effect.

_____ M. CERTIFICATE OF OCCUPANCY. SELLER warrants that a certificate of occupancy for the property is in effect.

_____ N. PERSONAL PROPERTY. The purchase price ☒ does, ☐ does not include all furniture and furnishings and any other personal property owned by SELLER and used in the operation of the property per attached inventory, receipt of which is hereby acknowledged.

In the event the inventory is not a part of the purchase price, the items listed at the cost referred to in the attached inventory list shall be transferred by a Bill of Sale and paid for by BUYER to SELLER at closing for the real property.

_____ O. SMOKE DETECTORS. In accordance with local ordinance and/or state statute, smoke detectors shall be installed at the expense of ☐ BUYER, ☒ SELLER. If required, said smoke detectors shall be inspected by the appropriate city, county, or state agency prior to closing and a compliance report obtained.

_____ P. TAX DEFERRED EXCHANGE. In the event the SELLER wishes to enter into a tax deferred exchange for the real property described herein, or if BUYER wishes to enter into a tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) the other party shall not be obligated to delay the closing, (b) all additional costs in connection with the exchange should be borne by the party whose property is exchanged, and (c) the other party shall not be obligated to execute any note, contract, or other document providing for any personal liability which would survive the exchange. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of their acquisition of ownership of the exchange property.

28. ADDENDA. The following addenda, signed and dated by both parties, are attached and made a part of this agreement: From Sellers proceeds at closing, Seller to pay/credit Buyer: $95,000 towards Buyer's deferred maintenance reserve account; $75,000 towards property exterior improvements on roof, windows, landscape, etc; $45,000 towards interior upgrades.

29. FIXTURES. All items permanently attached to the property, including but not limited to attached floor coverings, draperies with hardware, shades, blinds, window and door screens, storm sash, combination doors, awnings, light fixtures, television antennas, electric garage door openers with controls, outdoor plants and trees, are included in the purchase price free of liens, EXCLUDING _____

30. MAINTENANCE. SELLER covenants that the heating, air-conditioning (if any), electrical, sewer, septic system, drainage, sprinkler (if any), and plumbing systems including water heaters, as well as built-in appliances and other mechanical apparatus shall be in normal working order on the date possession is delivered. SELLER shall replace any cracked or broken glass including windows, mirrors, shower and tub enclosures. Until occupancy is delivered, SELLER shall maintain landscaping, grounds and pool (if any). The following items are specifically excluded from the above: _____

31. DISCLOSURE. The following disclosures are attached hereto:
☐ Hazardous Materials
☐ Other _____

32. DEFAULT. If the BUYER shall default under this Agreement, the SELLER shall have the option of suing for damages or specific performance, including but not limited to, reasonable attorney's fees or rescinding this Agreement. In the event the Agreement is rescinded, one-half of the earnest money shall then be paid to the Broker(s), not to exceed the commission due such Broker(s), and the remaining balance of earnest money shall be paid to the SELLER.

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Upon default by the SELLER, the BUYER shall have the option of suing for damages, specific performance, or rescinding this Agreement. Upon default by the SELLER, if the BUYER elects to rescind this Agreement, BUYER will be refunded all sums paid hereunder and in addition, shall be reimbursed by the SELLER for actual costs incurred, including but not limited to credit report, appraisal fee, survey, cost of title examination.

33. ATTORNEY FEES. In any action or proceeding involving a dispute between BUYER, SELLER and/or Broker, arising out of the execution of the agreement or the sale, or to collect commissions, the prevailing party shall be entitled to receive from the other party a reasonable attorney fee to be determined by a court of competent jurisdiction.

34. EXPIRATION OF OFFER. This offer shall expire unless acceptance is delivered to BUYER or to BS/MAX Prof_____ on or before 5:00 ☐ AM ☒ PM, May 11, 2007.

35. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument.

36. ENTIRE BINDING AGREEMENT. This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

37. MEDIATION CLAUSE. Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.
The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; or (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

38. FOREIGN INVESTMENT AND REAL PROPERTY TAX ACT (IRS SECTION 1445). The Foreign Investment and Real Property Tax Act requires a BUYER purchasing real property from a foreign person to withhold tax from the sale proceeds unless an exemption applies. SELLER agrees to provide Broker with a certification establishing that no federal income tax is required, unless it is established that the transaction is exempt and the BUYER intends to use the property as personal residence due to existing laws at time of closing.

39. S.C. CODE SECTION 12-8-580. SELLER covenants and agrees to comply with South Carolina Code Section 12-8-580 (as amended from time to time), regarding withholding requirements of SELLERS who are not residents of South Carolina as deferred in this given statute.

40. Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information obtained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

41. ADDITIONAL TERMS AND CONDITIONS. Property is being purchased "AS-IS" with no warranties, guarantees, expressed or implied. Property is being purchased then renovated, any and all renovation costs shall be at Buyer's obtaining the loan together with this purchase loan.

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42. FACSIMILE: The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Linda Arlington Elbrot, and/or A — Date 05/07/2007 — Time 2:20 p.m.

WITNESS: _____ — Date 05-07-07 — Time 2:20 PM

BUYER: _____ — Date _____ — Time _____

WITNESS: _____ — Date _____ — Time _____

SELLER: abco PRO, LLC — Date 5/8/07 — Time 3 PM

WITNESS: _____ — Date _____ — Time _____

SELLER: _____ — Date _____ — Time _____

WITNESS: _____ — Date _____ — Time _____

LISTING AGENT AND COMPANY _____ 05-07-07

SELLING AGENT AND COMPANY Rolando V. Villavicencio — RE/MAX Professional Realty

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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EXCLUSIVE RIGHT TO BUY
BUYER AGENCY CONTRACT

1. **APPOINTMENT OF BROKER:** By this contract Linda Avinger Gibson, and/or Assigns ("Buyer") appoints Broker in Charge of RE/MAX Professional Realty Company ("Broker") as Buyer's exclusive agent, subject to the terms and conditions stated in this Contract. By appointing Broker as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the types of property described in Section 2 below through Broker, and refer to Broker all inquiries made to Buyer about such properties from other brokers, salespersons, sellers and others during the term of this contract. "Negotiation" as used in this agreement shall mean property shown, negotiated, or information requested by Buyer through Broker.

2. **PURPOSE OF AGENCY:** Buyer desires to purchase or lease real property (which may include items of personal property) described as follows:
Type: ☐ Residential ☒ Commercial ☐ Industrial ☐ Vacant Land ☐ Other
General Description: Multi-Family Rental Investment Income Property
Approximate Price Range: $ 2,800,000.00
General Location: North Charleston
Preferred Terms: To Be Determined
Other:

3. **BROKER'S DUTIES:** (a) The Broker shall provide to Buyer a meaningful explanation of agency and shall use Broker's professional real estate knowledge and skills to represent the Buyer in a diligent and effective manner and to locate property which is available for purchase or lease and suitable to the Buyer; (b) If the Broker is not representing the seller, the Broker shall represent solely the interest of the Buyer in all negotiations and transactions regarding the acquisition of real property, and repudiate any agency or subagency relationship with the seller or the company representing the seller and shall not claim the subagency compensation offered to the selling broker in the Multiple Listing Service; (c) If the Broker represents the seller as well as the Buyer (i.e., disclosed dual agency), the Broker shall not disclose to the Buyer information obtained within the confidentiality and trust of the fiduciary relationship with the seller, nor disclose to the seller information similarly obtained from the Buyer, without the consent of the party adversely affected by the disclosure; (d) the Broker may represent other buyers who may be interested in the same property as the Buyer. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

Broker represents that Broker is duly licensed under the laws of the State of South Carolina as a real estate broker. Broker will use his best efforts as Buyer's agent to locate property of the type described in Section 2 of this contract and to negotiate acceptance of any offer by Buyer to purchase or lease such property. During the term of this Contract, Broker will give Buyer information describing and identifying properties that appear to Broker to substantially meet the conditions set forth in Section 2.

4. **BUYER'S DUTIES. BUYER AGREES TO:**
(A) Work exclusively with Broker and its Affiliated licensees during the term of this agreement by: (1) viewing any property (previewing, etc.) only with Broker or Broker's designated representative and not with another real estate broker, salesperson or seller; and (2) exclusively allowing Broker or Salesperson to identify property, negotiate for Buyer and otherwise to represent Buyer; and (3) referring to Broker all inquiries received in any form from any other real estate broker or affiliated licensees; and (4) holding Broker harmless from liability as a result of incomplete/inaccurate information provided to Broker by Buyer or Seller; (5) holding Broker harmless from liability as a result of Seller's failure to provide a complete Seller's Property Condition Disclosure statement; and (6) indemnifying Broker against all claims, damages, losses, expenses, or liability arising from the handling of earnest money by anyone other than Broker.
(B) Assist Broker and its Affiliated Licensees in the process of identifying, negotiating and contracting to purchase, lease or otherwise acquire by: (1) providing Broker with reliable information (including financial information and written authorization to obtain verification of funds) that Broker deems necessary for the performance of this Agreement; and (2) making himself available to meet with Broker and to see properties, in order that the Broker will be able to perform the promises of the Brokerage Engagement.
(C) Provide Broker and its Affiliated Licensees the following information: (1) general nature, location, and requirements of desired property; and (2) price range, and other terms and conditions relating to desired property.
(D) To authorize Buyer's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date.

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DEFENDANT'S EXHIBIT 7

5. COMPENSATION OF BROKER: Brokers fees will be deemed earned when Buyer is under contract to purchase any property presented by Broker or negotiated by Buyer. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due Broker will be due and payable immediately in cash from the Buyer. In consideration of the services performed by Broker under the terms of this Contract, Buyer agrees to pay Broker the following fee(s): (CHECK ALL APPLICABLE SECTIONS)

☐ a. Retainer Fee: Buyer will pay Broker a nonrefundable retainer fee of $_____ due and payable upon the signing of this contract. This fee ☐ shall or ☐ shall not be credited against the Brokerage fee.

☐ b. Service Fee: Buyer shall pay Broker a Service Fee of $_____ to be paid on _____, _____, whether or not Buyer purchases any property. (Check applicable sub-section.)

☐ This Service Fee shall be the only fee due Broker from Buyer under the terms of this Contract.
☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned.
☐ This Service Fee shall be credited against the Brokerage Fee described in subsection (c) below and shall be kept by Broker whether or not a Brokerage Fee is earned, unless Buyer enters into a purchase and sale agreement. In the event that Buyer enters into a purchase and sale agreement, Buyer and Broker agree that the above Service Fee will be credited against the Brokerage Fee as defined below.

☐ c. Brokerage Fee: Buyer shall pay Broker a Brokerage Fee which is the greater of $_____ or _____ % of the purchase or total lease price (renewal, if applicable) of any property purchased or leased by Buyer, including "For Sale by Owner" properties. If within _____ days after the expiration of this Contract Buyer purchases or leases any property which Broker has negotiated during the term of this Contract, Buyer will pay Broker the Brokerage Fee stated above. Broker shall use his best efforts to obtain payment of the Brokerage Fee out of the transaction, but Buyer shall have the obligation to pay Broker the Brokerage Fee set forth in this Contract if Broker cannot obtain payment of such fee out of the transaction. Any fees paid by the seller or seller's agent shall be credited against the Brokerage fee.

☒ d. Brokerage Fee: Broker shall obtain payment of the Brokerage Fee out of the transaction. Broker shall be paid by the cooperating broker as stated in the Multiple Listing Service or as agreed to by the Broker and cooperating broker, or as agreed to by the Broker and Seller in a "For Sale By Owner" transaction. Buyer shall not be responsible for paying Broker the Brokerage fee.

6. TERM OF AGENCY: Broker's authority to act as Buyer's exclusive agent under the terms of this Contract shall begin on May 7, 2007 and shall end at 11:59 p.m. on May 7, 2008.

7. CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)
_____ Buyer acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Buyer.
Buyer acknowledges that after entering into this written agency contract, agent might request a modification in order to act as a **dual agent** or a **designated agent** in a specific transaction. If asked:
_____ Permission to act as a dual agent will not be considered.
_____ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written **Dual Agency Agreement.**
_____ Permission to act as a designated agent will not be considered.
_____ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Buyer agrees, Buyer will execute a separate written **Designated Agency Agreement.**

8. OTHER POTENTIAL BUYERS: Buyer understands that other potential buyers have entered into similar agency contracts with Broker which may involve the purchase or lease, through Broker of the same or similar property or properties as Buyer is attempting to purchase or lease. Buyer consents to Broker's representation of such other buyers.

LG BUYER [____] BUYER [____] BROKER HAVE READ THIS PAGE

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PLAINTIFF EX 3

9. INDEMNIFICATION OF BROKER: Buyer promises to disclose to Broker whether Buyer has signed any agency agreement with any other Broker, or has been given prior information about any property that is the subject of this Contract by any other Broker or salesperson, or has previously been shown any such property by any other broker or salesperson. If Buyer fails to tell Broker about such other broker's or salesperson's involvement, and Broker incurs any loss or damage as a result of any claim being brought against him on account of such involvement, due to no fault of Broker, then Buyer shall pay Broker all such losses and damages incurred by Broker because of such claim.

10. DISCLOSURE OF BUYER'S IDENTITY/CONFIDENTIALITY: The Broker ☐ does or ☐ does not have the Buyer's permission to disclose Buyer's identity to all property owners and other third parties. The Buyer is advised of the possibility that seller or seller's agent may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by confidentiality agreement of the parties.

11. NONDISCRIMINATION: Broker and Buyer agree that all actions carried out under this contract shall be in full compliance with local, state, and federal fair housing laws against discrimination on the basis of race, creed, color, religion, national origin, sex, familial status, marital status, age or disabilities.

12. PROFESSIONAL COUNSEL: Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax and other professional service matters.

13. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Buyer or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

14. SEX OFFENDER REGISTRY INFORMATION: The Buyer and Broker agree that during the course of the agency relationship, referred to in the above mentioned agreement, the Broker and all affiliated agents shall not be responsible for obtaining or disclosing any information contained in the official South Carolina Sex Offender Registry. The Buyer understands that no course of action may be brought against the Broker or his affiliates for failing to obtain and disclose information contained in the official South Carolina Sex Offender Registry. The Buyer understands and agrees that the Buyer shall be responsible for obtaining any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local Sheriff's Department or other appropriate law enforcement officials.

15. ENTIRE BINDING AGREEMENT: This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Broker. It can be changed only by a subsequently written instrument signed by both parties.

16. CONTINGENCIES: _____

17. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

[LG] BUYER [____] BUYER [____] BROKER HAVE READ THIS PAGE

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PLAINTIFF EX 3

THIS IS A LEGALLY BINDING AGREEMENT. BUYER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BUYER AND BROKER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. BUYER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

Linda Avinger Gibson 5/7/07 - 2:30p.m.

BUYER Date Time

Linda Avinger Gibson, and/or A

Email:
Phone: (843) 563-2984
Fax:

BUYER Date Time

Email:
Phone:
Fax:

BUYER Address:

RE/MAX Professional Realty
BROKER/BUYER'S AGENT COMPANY

BY: 050707 2:35 PM
Broker/Licensee Date Time
Rolando V. Villavicencio

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PLAINTIFF EX 3

DUAL AGENCY AGREEMENT

THIS DOCUMENT IS A MODIFICATION TO THE SELLER'S LISTING AGREEMENT AND THE BUYER'S AGENCY REPRESENTATION AGREEMENT.

This Dual Agency Agreement is entered into between Linda Avinger Gibson, and/or A, Buyer, and RE/MAX Professional Realty Real Estate Company, abas PRO, LLC, Seller, and RE/MAX Professional Realty Real Estate Company for Property located at 2625 Otranto Road, North Charleston, 29406.

The term "Broker" includes the real estate firm, broker-in-charge and associated licensees.

1. DUAL AGENCY: Seller and Buyer agree that Broker shall serve as both Seller's agent and Buyer's agent in the sale of Seller's property to Buyer in accordance with Section 40-57-137(M)(1) of the South Carolina Code of Laws, which provides in part that "...in acting as a dual agent, a licensee represents clients whose interest may be adverse and that agency duties are limited." The parties agree that without permission from the party about whom the information pertains, Broker shall not disclose to the other party the following information:
   a) That a party may agree to a price, terms, or any conditions of sale other than those offered;
   b) The motivation of a party for engaging in the transaction, unless disclosure is otherwise provided by state law or regulation; and
   c) Any information about a party which that party has identified as confidential unless disclosure is otherwise required by state law or regulation.

2 BROKER'S DUAL AGENCY ROLE: Because Broker is serving as Agent for both Seller and Buyer in this transaction, Broker shall make every reasonable effort to represent Seller and Buyer in a balanced and fair manner. Broker shall also make every reasonable effort to encourage and effect communication and negotiation between Seller and Buyer. Seller and Buyer understand and acknowledge that:
   a) Prior to the time this agreement was entered into, Broker acted as the exclusive Agent of Seller and acted as exclusive Agent of Buyer.
   b) In those separate roles Broker may have obtained information which, if disclosed, could harm the bargaining position of the party providing such information to Broker.
   c) Broker is required by law to disclose to Seller and Buyer any known material facts concerning the property or the transaction. Seller and Buyer agree that Broker shall not be liable to either party for (1) disclosing known material facts concerning the property required by law to be disclosed and (2) refusing or failing to disclose other information the law does not require to be disclosed which could harm or compromise one party's bargaining position but could benefit the other party.

3. SELLER'S AND BUYER'S ROLES: Because of Broker's Dual Agency relationship, Seller and Buyer understand and acknowledge that:
   a) Seller and Buyer have determined that the advantages of entering into this Dual Agency Agreement, with Broker acting as Agent for both, outweigh the disadvantages.
   b) Seller and Buyer each have the responsibility of making their own decisions as to what terms are to be included in any agreement to buy and sell between the Seller and Buyer.
   c) Seller and Buyer are fully aware of, and understand, the implications and consequences of Broker's Dual Agency role as expressed herein to provide balanced and fair representation of Seller and Buyer and to encourage communication between Seller and Buyer rather than acting as an advocate or exclusive agent.
   d) Seller and Buyer agree to indemnify and hold Broker harmless against all claims, damages, losses, expenses, or liabilities, other than violations of the South Carolina Real Estate License Law and intentional wrongful acts, arising from Broker's role as a Dual Agent.
   e) Seller and Buyer may seek independent legal counsel to assist them with the negotiation and preparation of a buy and sell agreement or with any matter relating to the transaction which is the subject matter of a buy and sell agreement.

4. PREVIOUS AGENCY AGREEMENTS: The parties agree that this Agreement shall modify any agency agreements previously entered into by Seller and Broker or between Buyer and Broker. If those previous agency agreements contain expiration or termination dates prior to the termination date for this Agreement as set forth below, the expiration or termination dates of the previous agency agreements are hereby extended until the termination of this Agreement. If this Agreement terminates prior to the termination date of any previous agency agreement, the previous agency agreement shall remain in force and effect in accordance with its terms. In any areas where this Agreement contradicts or conflicts with those agency agreements, this Dual Agency Agreement shall control.

5. DURATION OF DUAL AGENCY: The term of this Agreement shall commence when this document is executed by Seller, Buyer and Broker, and unless extended by written agreement of all parties, shall terminate upon the closing of the sale of the property.

RE/MAX Professional Realty 311 Johnnie Dodds Blvd, Ste 121 Mt. Pleasant, SC 29464 Phone: Fax
Rolando Villavicencio
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PLAINTIFF EX 9

DEFENDANT'S EXHIBIT 8

6. FAIR HOUSING: The Broker shall conduct all brokerage activities in regard to this Agreement without regard to race, color, religion, sex, handicap, familial status, or national origin and shall conduct business in full compliance with local, state, and federal fair housing laws.

7. FACSIMILE AND OTHER ELECTRONIC MEANS: The parties agree that the execution of this dual agency agreement or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

8. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement it shall not be necessary to produce more than one such counterpart.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A SIGNED COPY OF THIS DUAL AGENCY AGREEMENT.

Seller abas PRO, LLC — Date: 5/8/07 — Time: 2:30 PM

Seller — Date — Time

Buyer Linda Avinger Gibson, and/or A — Date: 050707 — Time: 2:40 PM

Buyer — Date — Time

RE/MAX PROFESSIONAL REALTY

Real Estate Brokerage (Name of Real Estate Co.)

By: Broker/Assoc. Licensee — Date: 050707

(Rev. 10/04)

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PLAINTIFF EX 9

EXCLUSIVE RIGHT TO SELL AGREEMENT
LISTING AGREEMENT

In consideration of the covenants herein contained, Abes PRO, LLC, Sole Property Owner(s) (hereinafter called "OWNER") and RE/MAX Professional Realty, Real Estate Company (hereinafter called "BROKER"), agree as follows:

For the period of time beginning on May 7, 2007, and ending at midnight on November 7, 2007, Owner hereby grants to Broker the sole and exclusive right to sell the real property known as:

Lot _____ Block _____ Section _____ Subdivision Northwood Garden Apartments

Address 2625 Otranto Road

Tax Map # 485-03-00-114 City North Charleston Zip 29406

County of Charleston, State of South Carolina.

The real estate described herein includes all improvements, fixtures, appurtenances, and the additional property, if any, described here. _____

1. **CONSENT TO DISCLOSED DUAL AGENCY/DESIGNATED AGENCY: (INITIAL APPLICABLE CHOICES)**

AA Owner acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the Broker and Owner.

Owner acknowledges that after entering into this written agency contract, Broker might request a modification in order to act as a **dual agent** or a **designated agent** in a specific transaction.

If asked:

AA Permission to act as a dual agent will not be considered.

___ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written **Dual Agency Agreement.**

AA Permission to act as a designated agent will not be considered.

___ Permission to act as a designated agent may be considered at the time I am provided with information about the other party to a transaction. If Owner agrees, Owner will execute a separate written **Designated Agency Agreement.**

2. **COMPENSATION TO OTHER AGENTS**

Broker has advised Owner of Broker's general company policy regarding cooperating with and compensating other agents. Owner authorizes the Broker to cooperate and to compensate the following: (CHECK ALL APPLICABLE CHOICES)
☐ Subagents ☐ Buyer Agents ☐ Dual Agents ☐ Designated Agents ☐ None (If this box is checked, property cannot be placed in the multiple listing service.)

3. TERMS: As follows:

A. Broker agrees to employ Broker's best efforts to sell or to secure a contract for the sale of the property for a price of Two Million Eight Hundred Thousand Dollars ($ 2,800,000.00) and in return Owner agrees to pay Broker a fee of $ 155,000.00 or a commission of _____ % of gross sales price if Broker, Owner, another broker, or any other person or company produces a Buyer who is ready, willing, and able to purchase the property on the terms described above or on any terms acceptable to Owner. Owner understands that Broker shall pay cooperating agents a fee of $ _____ or a commission of _____ % of gross sales price. Owner and Broker agree that there shall be no variation or exception in the amount of the fee or commission to be paid, unless specified under Paragraph 25. The brokerage fee shall be earned, due and payable when an agreement to purchase, option, exchange, lease or trade is signed by Owner. However, if Owner shall fail or refuse to sell the described property for the price and terms set forth herein, or if Owner shall fail or refuse to complete the sale of such property under any written Agreement to Buy and Sell Real Estate to which Owner has agreed, Broker's full fee shall be due and payable by Owner.

AA OWNER, ___ OWNER, AND ___ BROKER HAVE READ THIS PAGE. Form 220
PAGE 1 OF 5

PLAINTIFF EX 4

DEFENDANT'S EXHIBIT 9

Owner agrees to pay all costs, including reasonable attorney's fees, which may be incurred by Broker in the collection of a fee due by Owner under this Agreement.

Broker agrees to defer the commission until the closing date or extension thereof stated in the agreement or until default by Owner. Deferral is agreed to solely as an accommodation to Owner and such deferral shall in no way be construed as a waiver of the brokerage fee. Closing Attorney is hereby irrevocably directed to deduct and pay said Broker's fee from the proceeds of the sale.

If the property is sold within 90 days of the expiration or termination of this Agreement (which shall be the "protection period") to a Buyer to whom the property was shown by Owner, Broker, another broker, or any other person or firm during the term of this Agreement, Broker's full fee shall be payable by Owner. The protection period shall be terminated if Owner enters into a listing agreement with another broker during the protection period.

B. For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in the subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of the ownership interest in any corporation, limited partnership, partnership, or other entity.

4. **EARNEST MONEY:** Owner authorizes and designates Escrow Agent, as designated by the sales agreement, to accept and hold on behalf of Owner any earnest money or escrow deposit made in accordance with the terms of any agreement to buy and sell real estate for the property. In the event of default or forfeiture by a prospective buyer, Owner will reimburse Escrow Agent any costs incurred by Escrow Agent including attorney's fees as a result of the release of payment to Owner of any of the earnest money deposited, and such reimbursement may be made by Broker from the earnest money deposit. All earnest money will be deposited in Escrow Agent's escrow account.

OWNER UNDERSTANDS THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, BROKER WILL NOT DISBURSE EARNEST MONEY TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

5. **SIGNS:** Owner grants to Broker the exclusive right to display "For Sale," "Under Contract," "Sale Pending," (or other similar) signs on the property and to remove other such signs.

6. **BROKER'S DUTY:** Broker agrees to employ the best efforts of Broker and Broker's agents and staff to secure a contract of sale for the described property upon such terms as may be agreeable to Owner. Broker's efforts shall include directing the efforts of Broker's organization to bring about the sale, advertising the described property as Broker deems advisable in those advertising media of merit customarily used in the area, furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property, and keeping Owner informed as to the progress of Broker's efforts in finding a Buyer for the described property. Owner understands the Broker makes no representation or guarantee as to the sale of the property. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

7. **OWNER'S DUTY:** Owner agrees as follows:

A. To furnish Broker with complete and reliable information concerning ownership and the operation of the property, and any encumbrances or liens affecting the property; and

B. To inform Broker of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the property; and

C. To permit inspection and showing of the property by Broker, Broker's Agents, Subagents, Buyer's Agent, and by such agents, subagents and prospective buyers as deemed reasonably necessary by Broker, and to cooperate in the scheduling and carrying out of such showings and inspections as is necessary; and

D. To permit the offering for sale of the property to prospective buyers without regard to age, sex, race, creed, color, religion, national origin, handicap or familial status; and

E. To permit Broker to incur, or pay on behalf of Owner reasonable expenses for repairs, inspection, utilities, maintenance, or similar expenses not to exceed $ _____ for each separate expense, and to reimburse Broker, as necessary, upon receipt of the statement of expenses; and

F. To allow closing attorney to pay Broker's compensation in an amount equal to the compensation provided above from Owner's proceeds at time of closing; and

G. To grant to Broker the authority and approval to list and publish all sales data pertaining to the sale and closing of the hereinabove described property. Owner understands and acknowledges that sales data are published for the use and information of the members of all the Boards/Associations of REALTORS® and the Multiple Listing Services (MLS) of which Broker is a member; for their use of same in marketing and selling of all properties listed in said publication; and

PLAINTIFF EX 4

H. To permit Broker to take photographs of the Owner's property described herein for advertising and marketing purposes in any advertising medium of the Broker's choice. Owner understands and acknowledges that all marketing materials, including but not limited to photographs, brochures, and websites, developed for the sale of the subject property shall remain the property of the Broker; and

I. To convey marketable title to the buyer in fee simple free from all liens except those stipulated herein, subject to existing zoning and government restrictions, applicable owner's association assessments and restrictive conditions and covenants of record which do not materially affect the present use of the property; and

J. To authorize Owner's attorneys and the settlement agent to furnish to Broker copies of the final HUD-1 settlement statement for the transaction prior to the closing date; and

K. Not to deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received directly and immediately to the Broker; and

L. To authorize the Broker, in response to inquiries from buyers or cooperating brokers, to divulge the existence of offers on the property; and

M. To furnish Broker with written instructions regarding the confidentiality of information upon termination or completion of this agreement which was received during the course of this agreement in accordance with South Carolina law.

8. **PROPERTY INFORMATION/SELLER'S PROPERTY DISCLOSURE STATEMENT:** Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et.seq., attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. Owner agrees to defend, indemnify, and hold harmless the Broker, Broker's agents, or subagents, including indemnification for attorney's fees and court costs, from any and all claims arising out of any information or omission of information presented to Broker by Owner. Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed, and to hold said Broker harmless for any liabilities or damages arising from such defects. Owner will not hold Broker liable for the Owner's refusal or failure to provide a prospective purchaser with a disclosure statement. Owner agrees to allow Broker to provide copies of the disclosure statement to prospective buyers. The Owner understands and agrees that Broker has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

9. **DISCLOSURE:** Owner authorizes Broker to disclose information about the property to Broker's agents, subagents, prospective buyers, and all inquiring parties. Such disclosure shall be in accordance with Broker's company policy. Owner hereby authorizes anyone having a lien against the property including the mortgage holder, to disclose complete information about the lien to Broker and Closing Attorney or Agent.

10. **TAXES:** Owner covenants and agrees to comply with the provisions of the South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of owners who are not residents of South Carolina as defined in the said statute. The payment of rollback taxes, if applicable, and past personal property taxes, if applicable, shall be negotiated between the Owner and any prospective buyer.

11. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws), an addendum will be attached to the sales agreement incorporating the required disclosures. The payment of any necessary surveys shall be negotiated between the Owner and any prospective buyer.

12. **MULTIPLE LISTING SERVICE:** The property ☐ shall be ☒ shall not be entered into the Multiple Listing Services of which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. Owner agrees that Broker may compensate an agent representing the buyer from the fee described above.

13. **LOCKBOX:** Owner ☐ agrees ☒ does not agree for a MLS lock box to be installed on the property to facilitate showing and inspection of the property. Owner acknowledges and agrees that neither Broker, nor Broker's agents, subagents, or anyone showing the property through the MLS, shall be responsible for any damage to, or loss of personal property, or to the realty, except such damage or loss as may be caused by the negligence of such party.

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PLAINTIFF EX 4

Appendix 00894

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Owner further acknowledges that neither Broker nor MLS is an insurer against the loss of personal property and agrees to release Broker and MLS from any responsibility therefore.

14. **INTERNET MARKETING:** Owner ☐ agrees ☒ does not agree that the listing may be placed in electronic marketing mediums including, but not limited to, the Internet, MLS Internet Data Exchange (IDX) program or other similar on-line computer services and to share listing data, including the property address, with other members of MLS for marketing and advertising purposes only. Owner further agrees to permit other real estate firms who belong to any listing service of which Broker is a member to advertise the listing on the Internet in accordance with the listing service rules and regulations.

15. **OTHER OFFERS:** Owner understands that the Broker's responsibility to present offers to purchase to the Owner for Owner's consideration terminates at the closing of the subject property or expiration of this agreement, whichever occurs first.

16. **MARKETING THE PROPERTY:** The Broker shall not continue marketing the property after an offer has been accepted, unless requested in writing by the Owner to do so.

17. **NO CONTROL OF COMMISSION RATES OR FEES:** The Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the board/association, the MLS, or by any persons not a party to the listing agreement. The subagency compensation paid by the Listing Broker to a Cooperating Broker or Buyer's Broker in respect to any listing is established by the Listing Broker in Broker's offer of subagency, and is not fixed, controlled, suggested, recommended or maintained by the board/association, the MLS or by any persons other than the Listing Broker.

18. **MAINTENANCE:** Owner agrees to maintain the property, including lawn, shrubbery, and grounds until the day of closing or possession, whichever occurs first. Owner also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, Owner shall deliver the premises to the Buyer with no broken panes; no torn or missing door screens or window screens; and with no missing or broken hardware, lighting, or plumbing fixtures.

19. **AGREEMENT TO SELL:** When a Buyer is found for said property, the Owner shall enter into a written sales agreement which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the prorations of taxes, rents, and applicable property expenses.

20. **LEAD-BASED PAINT:** For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4852(d), as amended.

21. **MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

22. **FAIR HOUSING:** Owner and Broker agree that this property is offered without regard to race, color, religion, sex, handicap, familial status, or national origin and is listed in full compliance with local, state, and federal fair housing laws.

23. **FACSIMILE:** The parties agree that this Agreement may be communicated by use of a fax, or other secure electronic means, including but not limited to the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

PLAINTIFF EX 4

24. ENFORCEMENT: The parties agree that Broker may take action to enforce this Agreement or collect any associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this Agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.

25. OTHER TERMS AND CONDITIONS: Dual Agency to apply for Buyer, Linda Avinger Gibson and/or Assigns. From Sellers proceeds at closing, Sellers agree to pay Rolando V. Villavicencio $8,000 for exchange investment planning consultation fee

THE UNDERSIGNED HEREBY WARRANTS THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Owner: _____ Date 5/8/07 Time 3PM
dba PRO, LLC

Email: _____ Phone: _____ Fax: _____

Witness: Jacka A. Ware Date 5-8-07 Time 3:05pm

Owner: _____ Date _____ Time _____

Email: _____ Phone: _____ Fax: _____

Witness: _____ Date _____ Time _____

Owner's Mailing Address: _____

Real Estate Firm: RE/MAX Professional Realty Phone: _____

By: _____ Date 05/07/2007 Time _____
Rolando V. Villavicencio

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®

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PLAINTIFF EX 4

First Citizens

212 East Main Street
Moncks Corner, SC 29461
843-761-8047 Branch
843-761-2574 Fax

Pam Smith
843-719-1322

Fax Transmittal Sheet

Date: 11-17-08

Please deliver the following pages to:

Name: LINDA GIBSON

Company:

Facsimile Number: 843-297-8727

Total Number of pages Sent (including cover letter): (3)

RE: 3205 Palm

Settlement Statement

THIS TRANSMITTAL IS OF A HIGHLY CONFIDENTIAL NATURE. SHOULD YOU RECEIVE THIS TRANSMISSION IN ERROR, PLEASE CALL FIRST CITIZENS AT 843-761-8047 AND RETURN THE TRANSMISSION TO US BY FIRST CLASS MAIL. WE WILL REIMBURSE YOU FOR ANY COST WHICH YOU MAY INCUR IN NOTIFYING US AND RETURNING THE MESSAGE TO US.

DEFENDANT'S EXHIBIT D

P-930-

DEFENDANT'S EXHIBIT 3 GIBSON

DEFENDANT'S EXHIBIT 4 GIBSON

L. SETTLEMENT CHARGES

			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price	@ %			
Division of Commission (line 700) as Follows:				
701. $	to			
702. $	to			
703. Commission Paid at Settlement				
704.	to			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee 1.000 %	to FIRST CITIZENS BANK AND TRUST COMPANY, INC.		16,000.00	
802. Loan Discount %	to			
803. Appraisal Fee	to			
804. Credit Report	to			
805. Lender's Inspection Fee	to			
806. Mortgage Ins. App. Fee	to			
807. Assumption Fee	to			
808.				
809. Flood Cert Fee	to FIRST CITIZENS BANK AND TRUST COMPANY, INC.		8.00	
810. Processing Fee	to FIRST CITIZENS BANK AND TRUST COMPANY, INC.		100.00	
811.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest From 08/28/07 to 09/01/07 @ $ /day (4 days @ %)				
902. Mortgage Insurance Premium for months to				
903. Hazard Insurance Premium for 0.0 years to				
904. Flood Insurance Premium 0.0 years				
905.				
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard Insurance	months @ $ per month			
1002. Mortgage Insurance	months @ $ per month			
1003. City/Town Taxes	months @ $ per month			
1004. County Taxes	months @ $ per month			
1005. Assessments	months @ $ per month			
1006. Flood Insurance Premium	months @ $ per month			
1007.	months @ $ per month			
1008. Aggregate Accounting Adjustmen	months @ $ per month			
1100. TITLE CHARGES				
1101. Settlement or Closing Fee	to Weeks, Fell, Irvine & Donaldson, LLC		300.00	
1102. Abstract or Title Search	to TERRI S. FENDER		170.00	
1103. Title Examination	to Weeks, Fell, Irvine & Donaldson, LLC		326.00	
1104. Title Insurance Binder	to Weeks, Fell, Irvine & Donaldson, LLC		100.00	
1105. Document Preparation	to			
1106. Notary Fees	to			
1107. Attorney's Fees	to			
(includes above item numbers)				
1108. Title Insurance	to Lawyerstitle of Charleston, LLC		2,476.00	
(includes above item numbers)				
1109. Lender's Coverage	$ 1,600,000.00	2,476.00		
1110. Owner's Coverage	$			
1111.				
1112. Mortgage Release Research Fee	to Weeks, Fell, Irvine & Donaldson, LLC		30.00	
1113. Courier/Express Mail Fees	to Weeks, Fell, Irvine & Donaldson, LLC		60.00	
1114.				
1115.				
1116.				
1117. File UCC-1 Financing Stmt	to SC SECRETARY OF STATE		6.00	
1118.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording Fees: Deed-$	Mortgage $ 11.00;	Releases-$	11.00	
1202. City/County Tax/Stamps: Deed		Mortgage		
1203. State Tax/Stamps: Revenue Stamps		Mortgage		
1204. Record Assignment of Leases	to Charleston County RMC Office			
1205. Record UCC-1 Financing Stmt	to Charleston County RMC Office		11.00	
1300. ADDITIONAL SETTLEMENT CHARGES			10.00	
1301. Survey	to Not Requested/Not Required			
1302. Pest Inspection	to Not Requested/Not Required			
1303				
1304.				
1305.				
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			19,600.00	

By signing page 1 of this Settlement, we hereby acknowledge receipt of a completed copy of page 2 of this purchase settlement.

Weeks, Fell, Irvine & Donaldson, LLC
Settlement Agent

Certified to be a true copy.

A.	B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.
U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT **SETTLEMENT STATEMENT**	6. FILE NUMBER: NO07-1886AK 7. LOAN NUMBER: 8. MORTGAGE INS CASE NUMBER:

C. NOTE: *This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
3205 PALM BOULEVARD, LLC 135 Horse Trail Road St. George, SC 29477		FIRST CITIZENS BANK AND TRUST COMPANY, INC 212 East Main Street Moncks Corner, SC 29461

G. PROPERTY LOCATION:	H. SETTLEMENT AGENT: 20-3390403	I. SETTLEMENT DATE:
3205 Palm Boulevard Isle of Palms, SC 29451 Charleston County, South Carolina Lot 57, Section 802, Isle of Palms TMS No: 571-10-00-140	Wacts, Fell, Irvine & Donaldson, LLC PLACE OF SETTLEMENT 8086 Rivers Avenue, Suite B N. Charleston, SC 29406	August 28, 2007

J. SUMMARY OF BORROWER'S TRANSACTION		
100. GROSS AMOUNT DUE FROM BORROWER:		
101. Contract Sales Price		
102. Personal Property		
103. Settlement Charges to Borrower (Line 1400)		16,800.50
104. Payoff First Mortgage Loan to FIRST CITIZENS BANK		414,705.04
105. Payoff Second Mortgage Loan to FIRST RELIANCE BAN		400,431.00
Adjustments For Items Paid By Seller In advance		
106. City/Town Taxes	to	
107. County Taxes	to	
108. Assessments	to	
109.		
110.		
111.		
112.		
120. GROSS AMOUNT DUE FROM BORROWER		833,936.54
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		
201. Deposit or earnest money		
202. Principal Amount of New Loan(s)		1,600,000.00
203. Existing loan(s) taken subject to		
204.		
205.		
206.		
207.		
208.		
209.		
Adjustments For Items Unpaid By Seller		
210. City/Town Taxes	to	
211. County Taxes	to	
212. Assessments	to	
213.		
214.		
215.		
216.		
217.		
218.		
219.		
220. TOTAL PAID BY/FOR BORROWER		1,600,000.00
300. CASH AT SETTLEMENT FROM/TO BORROWER:		
301. Gross Amount Due From Borrower (Line 120)		833,936.54
302. Less Amount Paid By/For Borrower (Line 220)		(1,600,000.00)
303. CASH (FROM) (X TO) BORROWER		666,184.66

K. SUMMARY OF SELLER'S TRANSACTION		
400. GROSS AMOUNT DUE TO SELLER:		
401. Contract Sales Price		
402. Personal Property		
403.		
404.		
405.		
Adjustments For Items Paid By Seller In advance		
406. City/Town Taxes	to	
407. County Taxes	to	
408. Assessments	to	
409.		
410.		
411.		
412.		
420. GROSS AMOUNT DUE TO SELLER		
500. REDUCTIONS IN AMOUNT DUE TO SELLER:		
501. Excess Deposit (See Instructions)		
502. Settlement Charges to Seller (Line 1400)		
503. Existing loan(s) taken subject to		
504. Payoff of first Mortgage		
505. Payoff of second Mortgage		
506.		
507.		
508.		
509.		
Adjustments For Items Unpaid By Seller		
510. City/Town Taxes	to	
511. County Taxes	to	
512. Assessments	to	
513.		
514.		
515.		
516.		
517.		
518.		
519.		
520. TOTAL REDUCTION AMOUNT DUE SELLER		
600. CASH AT SETTLEMENT TO/FROM SELLER:		
601. Gross Amount Due To Seller (Line 420)		
602. Less Reductions Due Seller (Line 520)		
603. CASH (TO) (FROM) SELLER		0.00

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.

Borrower 3205 PALM BOULEVARD, LLC

BY: _____
Linda A. Gibson, Member

Seller

P-932-

Linda Ann Avinger Gibson

Personal Financial Statement
August 30, 2007

Assets:

Personal Assets:

Primary - 133 Horse Trail Rd – 10 Acres w/ 6 Horse Barn)		$ 690,000	
Supplemental - 171 Quarter Horse Rd – 78 Acres Cross Fencing, Running Track, 14 Stall Barn		1,380,000	
Automobiles		77,250	
Cato 2000 Trailer		60,500	
Other Personal Items		185,600	
Total Personal Assets:			**$ 2,393,350**

Investment Assets:

Gibson Enterprises	$275,000		
Total Investment Assets:			**$ 275,000**

Portfolio Assets:

Checking Account:	3205 Palm Blvd LLC Gibson Ranch	$667,800 (A) $173,000	
Total Portfolio Assets:			**$ 840,800**

DEFENDANT'S EXHIBIT
16 Gibson
12-30-10

DEFENDANT'S EXHIBIT
11

Real Estate Assets:	Values	
Tract B – 17 Acres Daniel Island 248-00-02-042 – 17 Acres @ $100,000/ac	$1,700,000	
104 Family Cemetery Rd, Bryan Trc. 263-00-01-032 – 3.5 Acres @ $85k/ac	$ 297,500	
Tract 5 – Daniel Island 271-00-01-003 3.09 Acres @ $150k/ac	$ 463,500	
Klister Lane – Daniel Island 271-00-01-037 – 5.69 Acres @ $170k/ac	$ 967,300	
Clements Ferry Road – Lot A Trt A 271-00-01-040 – 2.54 Acres - Improvements	$ 3,450,000	
1006 Pinefield Dr – Lot B 271-00-01-084 – 1 Acre - 2 Bldgs - Improvements	$ 1,780,000	
637 Marina Dr – Lot C 271-00-01-085 – 1.77 Acres - 3 Bldgs - Improvements	$ 2,625,000	
Klister Lane (Cell Tower) 271-01-01-129 – 3 Acres @ $155k/ac	$ 465,000	
Daniel Island 271-00-02-029 – 55 Acres @ $500k/ac	$27,500,000	
2637 Clements Ferry Road – Tract B 271-00-02-030 – 22.5 Acres @ $375k/ac	$ 8,437,500	
Highland A – Daniel Island 271-00-02-174	$ 650,000	
3205 Palm Blvd 571-10-00-140 – Vacation Rental Home	$ 2,500,000	
109-111 S. Hwy 52 Moncks Corner Plaza Blockbuster & Advance Auto Building	$ 2,500,000	
Total Real Estate Assets:		$52,685,800
GRAND TOTAL ASSETS:		$56,194,950

Liabilities:

Primary Residence	$ 397,479	
3205 Palm Blvd Loan	1,500,000	
109-111 S. Hwy 52, Moncks Corner	$1,232,980	
Barn Loan	58,725	
TOTAL LIABILITIES:		$ 3,189,184
NET WORTH:		$53,005,766

Annual Income:

1. Cell Tower Lease @ $1,473 per month	$17,676
2. Hidden Cove Boat & Yatch Sales Lease	$84,375
3. BARGIB 669 Marina Lease	$90,000
4. 3205 Palm Vacation Rental	$85,935
TOTAL:	***$277,986***

Jess Nance

From: Karl Zerbst
Sent: Thursday, September 06, 2007 3:58 PM
To: Jess Nance; Tom Ewart
Subject: Several Proposals

I have several proposals and before I spend more time on them I would like your opinion on the deal(s).

1.) Guy Tarrant would like a $250,000 unsecured line instead of a $75,000 line. He is in the mountains now and will probably make an offer for a home in North Carolina. He wants to act on it quick thus the line. The house he and Terese looked at 2 weeks ago was for sale for $600,000. He plans to put the difference in as cash and will ultimately get a normal mortgage of around $250,000 and thus pay off the line.

2.) Linda Gibson has paid off her beach house loan with us ($400,000). Refinanced with First Citizens Bank. She also cashed out $667,000. This money will be used to purchase an apartment complex that she wants us to do. Loan amount of $2,800,000, $2,100,000 at closing but then we advance back up to $2,800,000 based on A/V of $3,500,000.

3.) Larry Brooks and Dan Hoffler, I'll send personal statement. Essentially, purchasing 2 business. Will be guarantor support.

2.1/2.8 = .75

2.8/3.5 = .80

2.8/3.7 = .76

3.7 − 2.8 = .9 ↑

3.5 − 2.8 = .7 ↑

Karl H. Zerbst Jr.
Senior Vice President Business Banking
First Reliance Bank
25 Cumberland St.
Charleston, SC 29401
(843) 789-1414 Direct
(843) 789-1ASK ACCESS*Live* Customer Care Center
(843) 789-1329 Fax
(843) 452-3838 Mobile
kzerbst@firstreliance.com

Check out our Web Site: www.firstreliance.com

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DEFENDANT'S EXHIBIT 12

PAUL K. MOORE & ASSOCIATES, INC.

REAL ESTATE APPRAISALS

AN APPRAISAL OF
NORTHWOOD GARDEN APARTMENTS
2625 OTRANTO ROAD
NORTH CHARLESTON, SOUTH CAROLINA 29406

DEFENDANT'S EXHIBIT 13

MOORE 124

AN APPRAISAL OF
NORTHWOOD GARDEN APARTMENTS
2625 OTRANTO ROAD
NORTH CHARLESTON, SOUTH CAROLINA 29406

DATED
SEPTEMBER 12, 2007

FILE NO. 07-235C

FOR

FIRST RELIANCE BANK
MR. KARL H. ZERBST JR.
25 CUMBERLAND STREET
CHARLESTON, SC 29401

BY
PAUL K. MOORE, MAI
P. KENDALL MOORE, JR.

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PAUL K. MOORE & ASSOCIATES, INC.
A South Carolina Corporation
528 JOHNNIE DODDS BLVD, STE 102
MT. PLEASANT, SOUTH CAROLINA 29464

MOORE 125

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PAUL K. MOORE & ASSOCIATES, INC.
REAL ESTATE APPRAISERS

PAUL K. MOORE, MAI, SRA
PRESIDENT

SC GENERAL REAL ESTATE APPRAISER #CG155

September 12, 2007

Mr. Karl H. Zerbst, Jr.
First Reliance Bank
25 Cumberland Street
Charleston, SC 29401

Re: An Appraisal of the Northwood Garden Apartments
2625 Otranto Road
North Charleston, South Carolina 29406

Dear Mr. Zerbst:

Pursuant to your request, I have inspected the above referenced property as of my date of inspection of September 12, 2007. The property is located at 2625 Otranto Road, North Charleston, South Carolina. The property consists of 48 total units on a 2.25-acre site. This is a summary appraisal report as per Standards Rule 2-2(b). This appraisal is prepared in conformance with the Uniform Standards of Professional Appraisal Practice (2006 Edition) as amended by the Appraisal Standards Board of the Appraisal Foundation. This appraisal is prepared for the intended client, the First Reliance Bank.

The appraiser has significant experience in appraising similar properties within the subject market. My experience and knowledge of current market trends supports my competence to appraise the subject.

I believe that a marketing period of one year or less would be reasonable in order to sell the property.

The property is currently under contract of sale. The buyers intend to purchase the subject property and significantly renovate it before releasing it. We have appraised the subject property under two different scenarios. First, we appraised the property as is as of the date of inspection, September 12, 2007. Next, we appraised the property as if all renovations are complete. This is expected to take 9-12 months from the date of closing. The "as complete" value has an effective date of September 12, 2008.

MOORE 126

528 JOHNNIE DODDS BLVD. • SUITE 102 • MT. PLEASANT, SC 29464
OFFICE (843) 881-0454 • FAX (843) 881-0568 • 888-607-6834
www.charlestonappraisals.com

The property is appraised as of the date of the inspection of September 12, 2007. The subject property is leased as apartments and these are generally one-year leases. Therefore, based on my inspection of the current rent roll and expenses, I have estimated the market value of the property in the *Fee Simple Estate,* in the As Is condition, as of September 12, 2007 to be:

TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS
$2,800,000

I have estimated the market value of the property in the *Fee Simple Estate,* in the As Complete condition, as of September 12, 2008 to be:

THREE MILLION SEVEN HUNDRED THOUSAND DOLLARS
$3,700,000

The compensation for this report is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

My analyses, opinions and conclusions were developed, and this report has been prepared, in accordance with the final rule by Office of the Comptroller of the Currency (12 CFR Part 34) dated June 7, 1994, as amended, the Uniform Standards of Professional Appraisal Practice and in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.

I hereby certify that I have no interest in the subject property. I further certify that this appraisal was made in conformity with the Rules of Professional Ethics of the Appraisal Institute.

Paul K. Moore & Associates, Inc. has prepared this appraisal for the exclusive use of the stated client. The information and opinions contained in this appraisal set forth the appraiser's best judgement in light of the information available at the time of the preparation of this report. Any use of this appraisal by any other person or entity, or any reliance or decisions based on this appraisal, are the sole responsibility and at the sole risk of the third party. Neither Paul K. Moore & Associates, Inc. nor the appraiser(s) accept any responsibility for damages suffered by a third party as a result of reliance on, decisions made or actions taken based on this report.

Respectfully submitted,

Paul K. Moore, MAI
State of South Carolina Certified
General Real Estate Appraiser #CG 155

P. Kendall Moore, Jr.
State of South Carolina Certified
General Real Estate Appraiser #CG 4843

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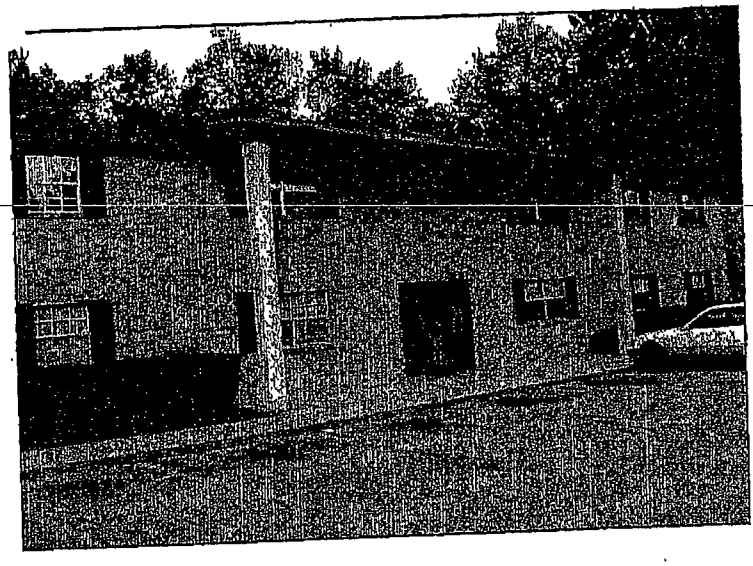
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2625 OTRANTO ROAD

Front View



2625 OTRANTO ROAD

Front View

MOORE 129



2625 OTRANTO ROAD

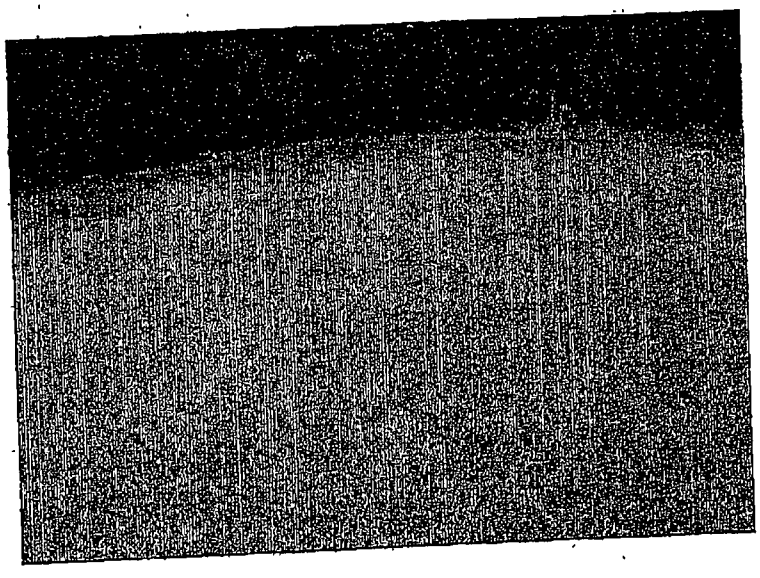
Front View



2625 OTRANTO ROAD

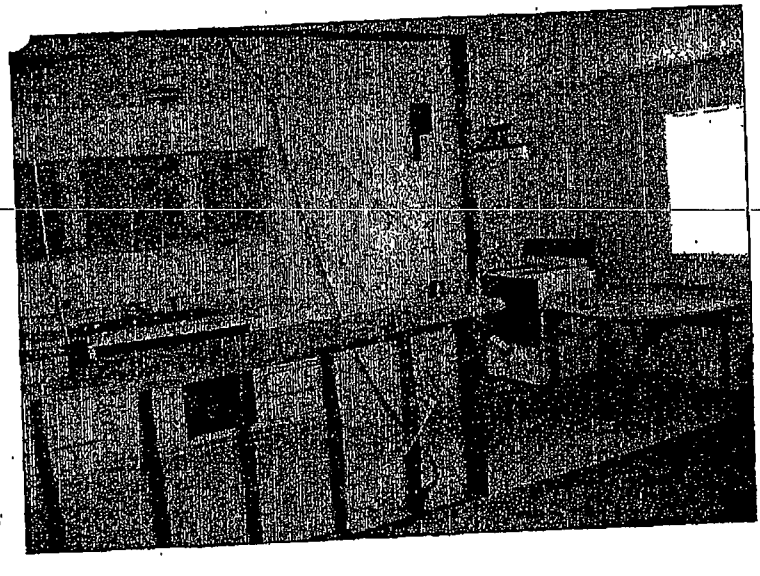
Front View

MOORE 130



2625 OTRANTO ROAD

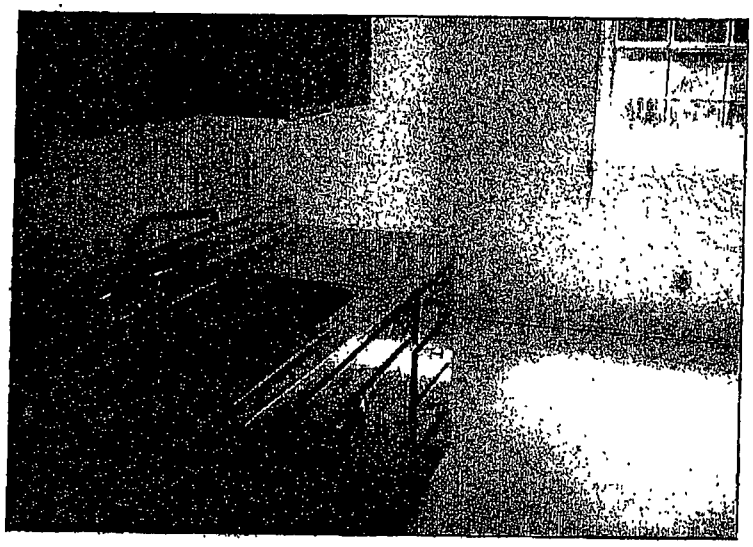
Green Space



2625 OTRANTO ROAD

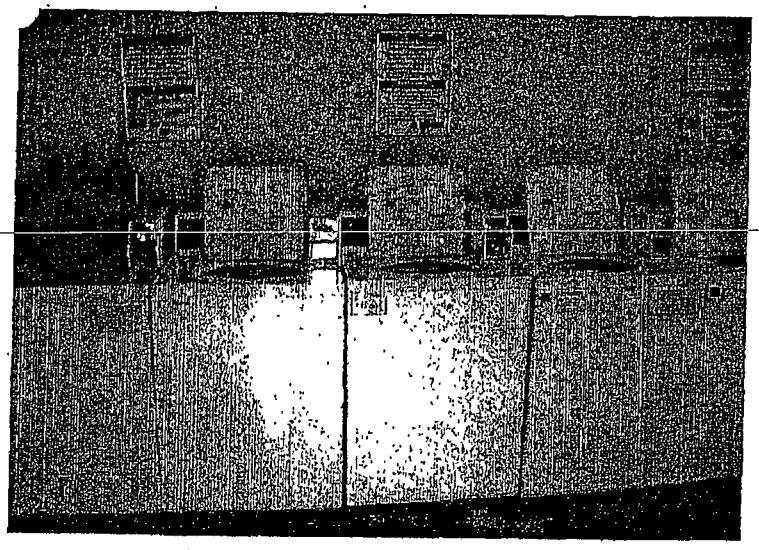
Interior

MOORE 131



2625 OTRANTO ROAD

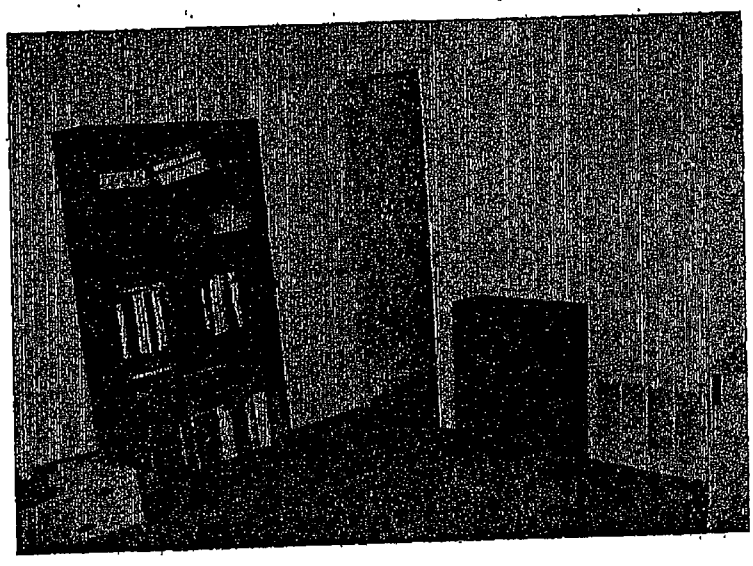
Kitchen



2625 OTRANTO ROAD

Laundry

MOORE 132



2625 OTRANTO ROAD

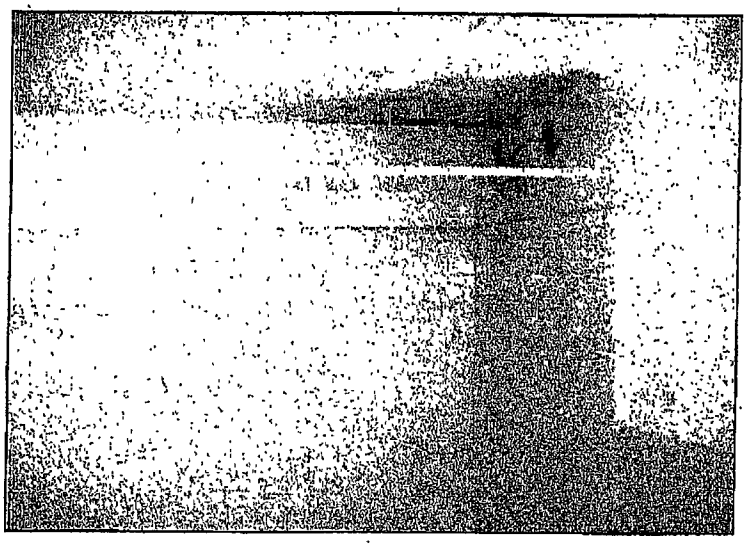
Office area



2625 OTRANTO ROAD

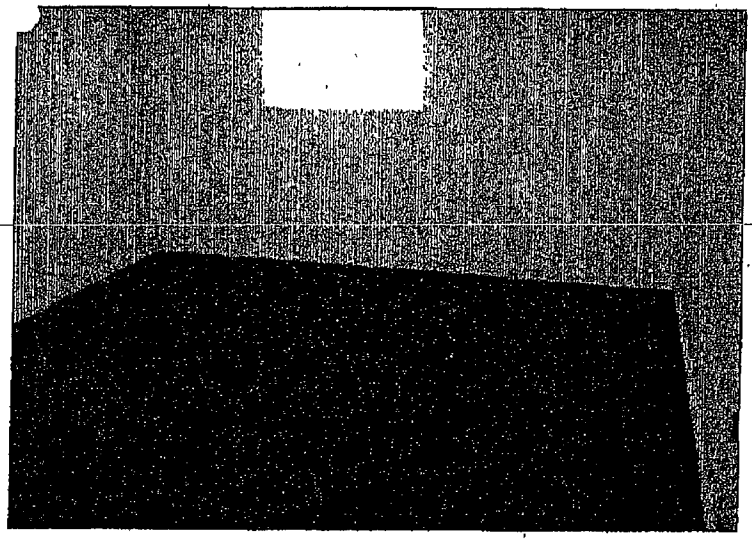
Parking Lot

MOORE 133



2625 OTRANTO ROAD

Bathroom



2625 OTRANTO ROAD

Bedroom

MOORE 134

CERTIFICATION OF THE APPRAISER

The appraiser(s) hereby certifies that Paul K. Moore & Associates, Inc. was engaged to appraise the Market Value of the *Fee Simple Estate* of the real property, as of the date of inspection, which occurred on September 12, 2007. We have also provided a value after all renovations are complete, with an effective date of completion of September 12, 2008.

Northwood Garden Apartments
2625 Otranto Road
North Charleston, South Carolina 29406

P. Kendall Moore, Jr., inspected the property on September 12, 2007. Paul K. Moore, MAI inspected the property on September 18, 2007. The statements and facts contained in this report are true and correct.

Neither Paul K. Moore & Associates, Inc. nor the signatories of this Certificate have any present or contemplated future interest in the real estate that is the subject of this report. The appraiser(s) have no present or prospective interest in the property that is the subject of this report and no personal interest or bias with respect to the parties involved; any specified interest or bias has not affected the impartiality of the opinions and conclusions. The appraiser(s) have no bias with respect to the parties involved with this agreement. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.

It is further certified that no one provided significant professional assistance to the person signing this report unless otherwise stated.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions are limited only by the reported assumptions, limiting conditions and legal instructions, and are the personal, impartial, unbiased professional analysis, opinions and conclusions of the appraiser.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with and is subject to the *Uniform Standards of Professional Appraisal Practice* of The Appraisal Foundation and to the Code of

Professional Ethics and Supplemental Standards of Professional Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Paul K. Moore, MAI and P. Kendall Moore, Jr. have completed the requirements of the continuing education program of the Appraisal Institute and the South Carolina Real Estate Appraisers Board.

The compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value opinion or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

Based on my investigation, analysis, and conclusions, an opinion has been formed that the Market Value of the *Fee Simple Estate* of the subject property, **as of the date of inspection**, September 12, 2007, subject to the Certification, General Assumptions, and General Limiting Conditions, is:

TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS

$2,800,000

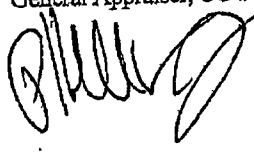
Based on my investigation, analysis, and conclusions, an opinion has been formed that the Market Value of the *Fee Simple Estate* of the subject property, **as of the date of completion**, September 12, 2008, subject to the Certification, General Assumptions, and General Limiting Conditions, is:

THREE MILLION SEVEN HUNDRED THOUSAND DOLLARS

$3,700,000

Paul K. Moore, MAI
State of South Carolina Certified
General Appraiser, CG #155

P. Kendall Moore, Jr.
State of South Carolina Certified
General Appraiser, CG #4843



MOORE 137

SUMMARY OF IMPORTANT FACTS AND CONCLUSIONS

Location:	2625 Otranto Road, North Charleston, South Carolina, 29406
Tax Map #:	485-03-00-114
Owner of Record:	abesPRO, LLC
Land Area:	2.25 Acres
Zoning:	R2-Multi-Family Residential
Improvements:	48 Apartment Units
Highest and Best Use:	Apartment Rental
Estimated Value by the Cost Approach:	N/A
"As Is"	
Income Approach	$2,700,000
Direct Sales Comparison Approach	$2,880,000
Final Estimate of Value	**$2,800,000**
"As Complete"	
Income Approach	$3,500,000
Direct Sales Comparison Approach	$3,750,000
Final Estimate of Value	$3,700,000
Date of the Inspection:	September 12, 2007
Date of the Completion:	September 12, 2007
Appraisers:	Paul K. Moore, MAI P. Kendall Moore, Jr.
Census Tract:	31.12
Flood Zone:	Zone "C", FEMA panel 5 of 18, 45019C0285J, Map Revised November 17, 2004

CLIENT

This report is for the exclusive use of the intended client, First Reliance Bank. The report is addressed to:

Mr. Karl Zerbst
First Reliance Bank
25 Cumberland Street
Charleston, SC 29401

IDENTIFICATION OF THE SUBJECT

The subject property consists of six two-story apartment buildings with a total of 48 units and a clubhouse/leasing/maintenance office. The apartment complex is referred to as the Northwood Garden Apartments. Existing improvements were completed in 1974 and are situated on a 2.25-acre site with 197 feet of frontage on Otranto Road. The address of the subject location is 2625 Otranto Road, North Charleston, South Carolina 29406.

These subject property can be further identified on Charleston County tax maps as TMS# 485-03-00-114.

INTENDED USERS

This report is intended for the use of Mr. Karl Zerbst of First Reliance Bank.

INTENDED USE

We have completed this report for use by the client and intended users in arranging financing for the prospective buyer of the subject property.

INTEREST VALUED

The property rights appraised are those of full, complete, and unencumbered ownership, subject only to the governmental rights of taxation, police power, eminent domain, and escheat. This is the greatest right and title which an individual can hold in real property. It is known as "Fee Simple Interest". abesPRO, LLC. currently owns the subject property in fee simple estate.

PURPOSE OF THE ASSIGNMENT

To develop an opinion of market value of the above-stated interest in the subject property. Market value is defined as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prucently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1) buyer and seller are typically motivated;
2) both parties are well informed or well advised, and acting in what they consider their own best interests;
3) a reasonable time is allowed for exposure in the open market;
4) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(The Dictionary of Real Estate Appraisal, 4th edition, Appraisal Institute, 2002.)

EXTRAORDINARY ASSUMPTIONS

Extraordinary assumptions presume uncertain information to be factual. If found to be false these assumptions could alter the appraiser's opinions or conclusions.
(The Appraisal of Real Estate, 12th edition, Appraisal Institute, 2001.)

There are no extraordinary assumptions in this appraisal.

HYPOTHETICAL CONDITIONS

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.
(The Dictionary of Real Estate Appraisal, 4th edition, Appraisal Institute, 2002.)

The purchaser intends to fully renovate the entire apartment complex. We have been provided with plans, specs and cost estimates for this project. We have appraised the property **"As Is"** and **"As Complete"** based on the material provided to us. We assume that this information is correct and all work will be completed in a timely and workmanlike manner.

EFFECTIVE DATE OF VALUE OPINION

The effective date of value is the date on which the opinion of value is relevant. The property is appraised **as is** and **as complete**. The as is value is as of the date of inspection, September 12, 2007. The as complete value is as of the date of completion, September 12, 2008.

DATE OF THE REPORT

The date of the report is the date on which the report is prepared. This report was completed on September 20, 2007. This is the date of the report.

SCOPE OF WORK

In preparing this appraisal, the appraiser

- Inspected the subject site by walking on and around the site and inspecting improvements
- Gathered information on comparable land sales and apartment sales
- Confirmed all comparable sales with at least one of the parties to the transaction
- Analyzed the data and applied the sales comparison approach and the income capitalization approach. The cost approach is not used as it is difficult to estimate depreciation in buildings of this age. Additionally, a significant amount of deferred maintenance was noted making it even more difficult to estimate physical depreciation.

REPORT OPTION

This report is a Summary Appraisal Report in accordance with Standards Rule 2-2(b) of the *Uniform Standards of Professional Appraisal Practice*. As such, it presents sufficient information to enable the client and other intended users, as identified, to understand it property.

OWNER OF RECORD

The owner of record is abesPRO, LLC. The property was purchased by deed of foreclosure for a sum of $1,410,000. The date of transfer was February 28, 2003. This deed is recorded in the Office of the RMC for Charleston County in Book P438 at page 634. The previous transaction occurred on November 10, 1998. The Grantor in this transaction was Leonard Silverman and G. Thomas Finnegan. The Grantee was Hutch Holdings, Inc. This deed is recorded in the Office of the RMC for Charleston County in Book N-314 at page 333.

The property is currently under contract of sale. The details of the contract are as follows:

Grantor:	abesPro, LLC
Grantee:	Linda Avinger Gibson
Purchase Price:	$2,800,000

BK P 438PG634

MASTER'S DEED

STATE OF SOUTH CAROLINA)
) (Foreclosure)
COUNTY OF CHARLESTON)

To all whom these Presents shall concern:

I, Roger M. Young, as Master in Equity for Charleston County, in the said State, send Greetings:

WHEREAS, in an action in the Court of Common Pleas in Charleston County between HUTCH HOLDINGS, INC. as plaintiff(s) and JAMES E. MacDONALD, et al. as defendant(s), Case No. 02-CP-10-1479, by an Order dated on October 15th, 2002, it was decreed that the property hereinafter described should be sold by the Master in Equity for Charleston County on the terms and for the purposes mentioned in the order(s) granted in the case as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, That I, the undersigned, as Master in Equity for Charleston County, pursuant to the foregoing and in consideration of the sum of One Million Four Hundred Ten Thousand and no/100 ($1,410,000.00) Dollars as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release unto the grantee, **abesPRO, LLC**, 7 Memorial Medical Court, Greenville, South Carolina, 29605, the following described property:

ALL that certain tract, piece or parcel of land in Northwoods Estates containing 3.633 acres, situate, lying and being in the County of Charleston, State of South Carolina, as shown and designated on a plat made by Sigma Engineers, Inc., which plat is dated April 14, 1971, and was duly recorded in the RMC Office for Charleston County on April 28, 1971, in Plat Book AA at page 37. The exact property herein conveyed is as shown on the aforesaid plat as "Tracts A & B". The said tracts having such size, shape, and dimensions as will be shown by reference to the aforesaid plat.

BEING the same property conveyed to Hutch Holdings, Inc., by Deed of Leonard Silverman and G. Thomas Finnegan dated November 10, 1998, and recorded in the Office of the RMC for Charleston County on November 12, 1998 in Book N-314 at page 333.

TMS # 485-03-00-114

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions

MOORE 143

BK P 438PG634

MASTER'S DEED

STATE OF SOUTH CAROLINA)
) (Foreclosure)
COUNTY OF CHARLESTON)

To all whom these Presents shall concern:

I, Roger M. Young, as Master in Equity for Charleston County, in the said State, send Greetings:

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TMS # 485-03-00-114

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions

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and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, his/her/its/their heirs/successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Charleston County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 28th day of February, in the year of our Lord two thousand three, and in the two hundred and twenty-sixth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED)
in the Presence of:)

Witness

Roger M. Young, Master in Equity for
Charleston County (L.S.)

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, Harriet G. Hendricks, do hereby certify that Roger M. Young, as Master in Equity for Charleston County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 28th day of February, 2003.

Notary Public for South Carolina
My commission expires: 8-10-03

MOORE 145

BK P 438PG636

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property transferred BY Roger M. Young as Master-in-Eq
TO ABES PRO, LLC ON 2/28/03

3. Check one of the following: The DEED is
(a) ✓ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c)_____ EXEMPT from the deed recording fee because (exemption #_____)
(Explanation if required) _____
(If exempt, please skip items 4-6, and go to item 7 of this affidavit)

4. Check one of the following if either item 3(a) or 3(b) above has been checked.
(a) ✓ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $ 1,410,000.00
(b)_____ The fee is computed on the fair market value of the realty which is $_____.
(c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES _____ or NO ✓ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
(a) _____ the amount listed in item 4 above
(b) _____ the amount listed in item 5 above (no amount place zero)
(c) _____ Subtract Line 6(b) from Line 6(a) and place the result

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as : attorney connected with transaction

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

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W. Barnwell Hughes
Grantor, Grantee or Legal Representative Connected with this Transaction

W. Barnwell Hughes
Print or Type Name Here

SWORN to Before Me this 3rd day of March, 2003

Notary Public for South Carolina
My Commission Expires: 12/22/07

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BK P 438PG638

RECORDER'S PAGE
This page Must remain with the original document.

YOUNG, CLEMENT, RIVERS, & TISDALE LLP

Recording Fee 10.00
State Fee 3666.00
County Fee 1551.00
Postage
TOTAL 5227.00
A

RECORDED FROM PMC
MAR 18 2003
PEGGY A. MOORE
CHARLESTON COUNTY AUDITOR

FILED
P438-634
2003 MAR -3 PM 1:33
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

PID VERIFIED BY ASSESSOR
REP LMG
DATE 3/13/03

(843) 958-4800 2 Courthouse Square Charleston, SC 29401

MOORE 148

COMMERCIAL PURCHASE AGREEMENT AND DEPOSIT RECEIPT

abes PRO, LLC, hereinafter designated as "SELLER", has received from Linda Avinger Gibson, and/or Assigns, hereinafter designated as "BUYER", the amount set forth below as DEPOSIT (Item 1-A) on account of the PURCHASE PRICE of ($ 2,800,000.00) Two Million Eight Hundred Thousand Dollars, for the real property known as:

Lot _____ Block _____ Section _____ Subdivision Northwood Garden Apartments

Address 2625 Otranto Road

Tax Map # 485-03-00-114 City North Charleston Zip 29406

County of Charleston, State of South Carolina.

1. **FINANCING TERMS AND LOAN PROVISIONS.**

A. $ N/A **DEPOSIT** evidenced by check ☐ or other ☐, payable to _____ and held uncashed until acceptance and deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations to be held in trust by _____, as Escrow Agent.

B. $ _____ **ADDITIONAL CASH DEPOSIT** in escrow ☐ within _____ days from acceptance ☐ upon receipt of loan commitment per Item 2; ☐ Other: _____

C. $ 2,800,000.00 **BALANCE OF CASH PAYMENT at closing.**

FIRST LOAN

D. $ TBD **Proceeds from New First Loan:** ☐ FIXED RATE ☐ Other: _____ for a term of _____ years, with interest not to exceed _____ %, payable at approximately $ _____ p/mo., ☐ including taxes and insurance, ☐ not including taxes and insurance, with the balance due not less than _____ years, ☐ Other terms: _____. Loan fee not to exceed _____ % plus $ _____. Loan fee paid by _____.

E. $ _____ **Existing First Loan.** ☐ ASSUMPTION OF THE MORTGAGE (WITH RELEASE OF LIABILITY), ☐ ASSIGNMENT OF THE PROPERTY SUBJECT TO THE MORTGAGE (WITHOUT RELEASE OF LIABILITY), ☐ SUBJECT TO existing first loan of record: ☐ fixed rate ☐ other: _____ payable at $ _____ per month, with interest currently at _____ %, ☐ including taxes and insurance, ☐ not including taxes and insurance, with interest rate to be adjusted to: _____ %. Other terms: _____. Held by: _____. Assumption fee, if any, not to exceed _____. Charges related to assumption shall be paid by _____. Conditioned upon BUYER's approval of terms of said loan pursuant to Item 8, Existing Loans.

F. $ _____ **SELLER FINANCING.** First loan secured by the property, payable at $ _____ per month, or more, including _____ % interest, with the entire balance due _____ years from date of conveyance. A late charge of $ _____ shall be due on monthly payments tendered more than _____ days late. See Item 11, CREDIT APPROVAL.

JUNIOR LOANS

G. $ _____ **PROCEEDS FROM NEW SECOND LOAN:** ☐ Fixed Rate ☐ Other: _____ _____ Amortization _____ years, with interest not to exceed _____ %, payable at approximately $ _____ p/mo., with the balance due not less than _____ years. ☐ Other Terms: _____. Loan fee not to exceed _____ %. Loan fee paid by _____.

[LG] BUYER [___] BUYER AND [LS] SELLER [___] SELLER HAVE READ THIS PAGE.

RE/MAX Professional Realty 311 Johnnie Dodds Blvd, Ste 181 Mt. Pleasant, SC 29464 Rolando Villavicencio
Phone: Fax:
2625 Otranto R
Produced with ZipForm™ by RE FormsNet, LLC 18025 Fifteen Mile Road, Clinton Township, Michigan 48035 www.zipform.com

MOORE 149

H. $ _____ **EXISTING SECOND LOAN** ☐ ASSUMPTION OF THE MORTGAGE (WITH RELEASE OF LIABILITY), ☐ ASSIGNMENT OF THE PROPERTY SUBJECT TO THE MORTGAGE (WITHOUT RELEASE OF LIABILITY), ☐ SUBJECT TO existing second loan of record: ☐ FIXED RATE, ☐ Other: _____ _____ payable at $ _____ per month, with interest currently at _____ %. Interest Rate to be adjusted to: _____ %. Other terms: _____ _____. Held by: _____. Assumption Fee, if any, not to exceed _____ %. All charges related to assumption shall be paid by _____. Conditioned upon BUYER's approval of terms of said loan pursuant to Item 8, EXISTING LOANS.

I. $ _____ **SELLER FINANCING.** ☐ Second, ☐ Third Loan secured by the property, payable at $ _____ per month, or more, including _____ % interest, with the entire balance due _____ years from date of conveyance. A late charge of $ _____ shall be due on monthly payments tendered more than _____ days late. See Item 11, CREDIT APPROVAL.

J. $ _____ **OTHER:** From Sellers proceeds at closing, Sellers to pay $50,000 towards Buyer's recurring and/or non-recurring closing costs.

K. $ 2,800,000.00 **TOTAL PURCHASE PRICE (not including closing costs).** Any net differences between the approximate balances of encumbrances shown above are to be assumed, assigned or taken subject to, and the actual balances at close of escrow shall be adjusted in ☐ Cash, ☐ Other: _____ _____.

2. **LOAN PROCESSING AND APPLICATION.** Buyer's obligation is contingent upon Buyer obtaining said loan. Buyer shall apply for said loan from To Be Determined (Lender) within 10 days from the execution of this contract. Should the Buyer fail to make loan application within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice, and retain the earnest money deposit. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action which is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating Broker(s) or Agent(s).

3. **BONDS AND ASSESSMENTS.** In the event there is a bond or assessment which has an outstanding principal balance and is a lien upon the property, such principal shall be ☒ paid by SELLER, or ☐ assumed by BUYER. In the event of assumption, said obligation(s) ☐ shall, ☐ shall not be deducted from the purchase price at closing. (This paragraph is not concerned with ongoing payments collected on the property tax bill assessments which are not liens upon this property).

4. **CLOSING.** On or before May 31, 2007, SELLER agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. SELLER agrees to pay all statutory deed recording fees, formerly known as documentary stamp taxes. At closing, BUYER agrees to have cash, cashier's check or certified funds drawn on a local bank in the amount of the balance of the purchase price plus all costs payable to the closing attorney or escrow agent.

5. **EVIDENCE OF TITLE** in the form of:
☒ A policy of title insurance
☐ An abstract of title from an attorney
☐ Other: _____
Paid by: _____

6. **VESTED TITLE.** The deed shall be prepared in the name(s) of To Be Determined _____ _____.

7. **SURVIVAL.** The omission from closing of any provision herein shall not waive the right of any party. All representations or warranties shall survive the conveyance of the property.

8. **EXISTING LOANS.** SELLER shall, **within three (3) days of acceptance**, provide BUYER with all notes and mortgages to be assumed, assigned, or taken subject to, and **within five (5) days of receipt thereof,** BUYER shall in writing notify SELLER of BUYER'S approval or disapproval of the terms of said documents which shall not be unreasonably withheld. **Within three (3) days of acceptance,** SELLER shall submit written request for a current statement of condition on the above loan or loans. SELLER warrants that all loans in the transaction will be current at closing.

[ ] BUYER [ ] BUYER AND [ ] SELLER [ ] SELLER HAVE READ THIS PAGE.

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9. **DUE ON SALE CLAUSE.** If the note or mortgage for any existing loan contains an acceleration or DUE ON SALE clause, the Lender may demand full payment of the entire loan balance as a result of this transaction. Both parties acknowledge that they are not relying on any representation by the other party or the Broker with respect to the enforceability of such a provision in existing notes or mortgages, mortgages to be executed in accordance with this Agreement. Both parties have been advised by the Broker to seek independent legal advice with respect to these matters.

10. **BALLOON PAYMENT.** Both parties acknowledge they have not received or relied upon any statements or representations made to them by Broker regarding availability of funds, or rate of interest at which funds might be available, when BUYER becomes obligated to refinance or pay off remaining balance of any loan pursuant to the terms of this Agreement.

11. **CREDIT APPROVAL.** In the event of SELLER financing, BUYER shall furnish SELLER **within three (3) days of acceptance,** a customary financial statement for the sole purpose of credit approval, such approval shall not be unreasonably withheld. BUYER authorizes SELLER to engage the services of a reputable credit reporting agency for this purpose at BUYER's expense, and SELLER shall notify BUYER **within ten (10) days of receipt** of financial statement, of approval or disapproval of BUYER's credit.

12. **DEFINITIONS.** BROKER includes cooperating brokers and all salespersons. DAYS means calendar days unless otherwise specified. DATE OF ACCEPTANCE means the date the SELLER accepts the offer or the BUYER accepts the counteroffer. DELIVERED means personally delivered or mailed by certified mail; in the event of mailing, delivery shall be deemed to have been made on the day following the date of mailing evidenced by the postmark on the envelope containing the delivered mail.

13. **TIME IS OF THE ESSENCE.** TIME IS OF THE ESSENCE FOR THIS AGREEMENT. All modifications and extensions shall be in writing and signed by all parties.

14. **CONDITIONS SATISFIED/WAIVED IN WRITING.** Each condition or contingency, approval and disapproval herein shall be satisfied according to its terms or waived in writing by the benefiting party **within the time limits specified** (or any extension thereof agreed to by the parties in writing), or this Agreement shall terminate and all deposits returned to BUYER to the date of cancellation of this transaction. This paragraph contemplates that each party shall diligently pursue the completion of this transaction.

15. **INSURANCE.** In the event of financing, BUYER shall obtain hazard insurance prepaid for one year in an amount satisfactory to the loan holders and covering one hundred percent replacement cost of improvements, and to name holders of the secured loans as additional loss payees. BUYER agrees further to annually increase said insurance if necessary, to equal the current replacement cost of the property during the term of the loan holder's mortgages. BUYER shall instruct the insurance carrier to deliver to SELLER before closing a certificate providing for 30 days written notice in the event of cancellation.

16. **DESTRUCTION OF IMPROVEMENTS.** If the improvements of the property are destroyed, materially damaged, or found to be materially defective prior to closing, BUYER shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement. In the event BUYER elects to terminate this Agreement, BUYER may terminate this transaction by written notice to SELLER'S Broker or Agent, and all deposits shall be returned to BUYER.

In the event BUYER does not elect to terminate the Agreement, BUYER shall be entitled to receive in addition to the property any insurance proceeds payable on account of the damage or destruction, the property and the insurance proceeds payable shall not exceed the value of the purchase price and in the event this happens, the Seller shall be entitled to the remainder of the insurance proceeds.

17. **NOTICE OF VIOLATIONS.** By acceptance hereof, SELLER warrants that SELLER has no notice of violations relating to the property from city, county, or state agencies.

18. **INCOME AND EXPENSE STATEMENT.** SELLER shall deliver to BUYER for BUYER'S approval a true and complete statement of rental income and expenses for BUYER's approval **within seven (7) days of acceptance.** BUYER's obligations are conditioned upon approval of said statement. BUYER shall be deemed to have approved said statement unless written notice to the contrary is delivered to SELLER or SELLER's agent **within seven (7) days of receipt** of said statement by BUYER, in which case BUYER may have deposit returned and both parties shall be relieved of all obligations hereunder.

[LG] BUYER [____] BUYER AND [[illegible]] SELLER [____] SELLER HAVE READ THIS PAGE.

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19. **EXISTING LEASES.** Subject to existing leases and rights of parties in possession under month-to-month tenancies, **within seven (7) days of acceptance,** SELLER shall deliver to BUYER for BUYER's approval copies of all existing leases and rental agreements, as well as copies of all outstanding notices sent to tenants, and a written statement of all oral agreements with tenants, incurred defaults by SELLER or tenants, claims made by or to tenants, and a statement of all tenants' deposits held by SELLER, all of which SELLER warrants to be true and complete. BUYER's obligations are conditioned upon approval of existing leases. BUYER shall be deemed to have approved said documents unless written notice to the contrary is delivered to SELLER or SELLER's Agent **within seven (7) days of receipt** of said documents, in which case BUYER may have deposit returned and both parties shall be relieved of all obligations hereunder.

BUYER's obligations hereunder are conditioned upon receipt at closing of estoppel certificates executed by each tenant acknowledging that the lease or rental agreement is in effect, that no lessor default exists, and stating the amount of any prepaid rent or security deposit.

20. **SERVICE CONTRACTS.** SELLER shall furnish BUYER with copies of any service and/or equipment rental contracts with respect to the property, which run beyond closing.

21. **"FREE LOOK PERMIT".** BUYER shall have the right to inspect any and all personal property referred to in paragraph 27(N), PERSONAL PROPERTY, and the materials described in paragraphs 18 and 19 hereof. Within ten (10) days following the furnishing of such materials, BUYER, at BUYER's sole discretion, may by written notice to SELLER terminate all obligations of the parties hereunder and any deposit shall be returned. If such notice is not delivered within such time, BUYER shall be deemed to have approved the condition of the property and the materials submitted.

22. **CHANGES DURING TRANSACTION.** During the pendency of this transaction, SELLER agrees that no changes in the existing leases or rental agreements shall be made, nor new leases or rental agreements entered into, nor shall any substantial alterations or repairs be made or undertaken without the written consent of the BUYER.

23. **EXAMINATION OF TITLE.** In addition to any encumbrances referred to herein, BUYER shall take title to the property subject to: (1) real estate taxes not yet due, and (2) covenants, conditions, restrictions, rights of way, and easements of record, if any, which do not materially affect the value or intended use of the property.

Within three (3) days from acceptance, BUYER shall order a preliminary title report. **Ten (10) days from receipt** thereof are allowed to BUYER to examine the title to the property and to report in writing any valid objections thereto. All exceptions to the title contained in such report (other than monetary liens) shall be deemed approved unless written objection is delivered to SELLER **within said ten (10) days.** If BUYER objects to any exceptions to the title, SELLER shall use due diligence to remove such exceptions at SELLER's expense **before closing.** But if such exceptions cannot be removed **before closing,** all rights and obligations hereunder may, at the election of the BUYER, terminate and the deposit shall be returned to BUYER less expenses incurred by BUYER to date of termination, unless BUYER elects to purchase the property subject to such exceptions if SELLER concludes unwillingness or is unable to remove such objections. SELLER shall notify BUYER **within ten (10) days of receipt of said objections.** In that event, BUYER may terminate this Agreement and have all deposits returned less expenses incurred to date of termination.

24. **PHYSICAL POSSESSION.** Physical possession, with all keys and garage door openers, shall be delivered to BUYER (check either item (1) or item (2)):

☒ 1. Upon recordation of the deed.
☐ 2. After recordation, but not later than midnight of _____.

26. **ACCESS TO PROPERTY.** SELLER agrees to provide reasonable access to the property to BUYER and inspectors representing BUYER as provided in this Agreement and to representatives of lending institutions for appraisal purposes.

28. **ADJUSTMENTS.** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days; Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

[LG] BUYER [____] BUYER AND [LG] SELLER [____] SELLER HAVE READ THIS PAGE.

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27. **PROVISIONS.** The provisions initialed below by BUYER are included in this Agreement.
☐ A. Pest Control Inspection paid by ☐ BUYER, ☐ SELLER
☐ B. Existing Pest Control Report dated: _____,
By: _____,
☐ C. Subject to BUYER'S approval of Pest Control Report
☐ D. Waiver of Pest Control Inspection
☒ E. Inspections of Physical Condition of Property, to be approved or disapproved within _____ days of acceptance
☒ F. Roof Inspection Report to SELLER within _____ days of acceptance
☐ G. City and County Inspection Report ordered within _____ days of acceptance
☐ H. Contingency Release Clause
☐ I. Flood Hazard Zone Disclosure
☐ J. Special Studies Zone Disclosure
☐ K. Rent Control Ordinance
☐ L. Operating Permit
☐ M. Certificate of Occupancy
☒ N. Personal Property
☒ O. Smoke Detectors
☐ P. Tax Deferred Exchange

_____ A. **PEST CONTROL INSPECTION.** The main building and all structures on the property are to be inspected by a licensed pest control operator. If such inspector recommends repair, and/or if the inspecting pest control operator recommends further inspection of inaccessible areas, the SELLER at SELLER's option may perform recommended repairs and/or may agree to the additional costs of such inspection and if there is damage, may perform the additional repairs prior to the closing. If the SELLER does not elect to correct the damage or perform the additional inspection, the BUYER's obligation under this Agreement will terminate. If additional inspections are done and no such infestation or infection is discovered, the additional costs of inspecting such inaccessible areas and the work required to return the property to its original condition shall be paid by BUYER.

Funds for work specified in said report, to be done at SELLER's expense, shall be held in escrow and disbursed by escrow holder upon receipt of notice of work completed by a licensed pest control operator selected by ☐ SELLER ☐ BUYER certifying that the property is free of evidence of active infestation or infection. As soon as the same are available, copies of the report, and any certification or other proof of completion of the work shall be delivered to the Agents of BUYER and SELLER who are authorized to receive the same on behalf of their principals.

_____ B. **EXISTING PEST CONTROL REPORT ACCEPTED BY BUYER.** BUYER accepts existing pest control report on the property by the licensed structural pest control operator listed under Item 27-B, SELLER'S obligations shall be as set forth in 27-A above.

_____ C. **SUBJECT TO BUYER'S APPROVAL OF PEST CONTROL REPORT.** Property to be purchased in its present condition with no charge to SELLER for any pest control work. However, BUYER shall have the right to have the property inspected and to obtain a report from a licensed structural pest control operator. BUYER shall be deemed to have approved said report unless written notice to the contrary is delivered to SELLER or SELLER'S Agent **within 15 days of acceptance.** In the event BUYER does not approve the report, BUYER may have deposit returned and both parties shall be relieved of all obligations hereunder.

BUYER acknowledges that BUYER has not received or relied upon any representations by either the Broker or the SELLER, with respect to the condition of the property.

_____ D. **WAIVERS OF PEST CONTROL INSPECTION.** BUYER has satisfied BUYER about the condition of the property and agrees to purchase said property in present condition without the benefit of a structural pest control inspection. BUYER acknowledges that BUYER has not received or relied upon any representations by either the Broker, SELLER or SELLER'S Agent, without respect to the condition of the property.

_____ E. **INSPECTION OF PHYSICAL CONDITION OF PROPERTY.** BUYER shall have the privilege and responsibility, at BUYER's expense, to select licensed contractors or other qualified professionals to inspect the subject property (including land and improvements), including but not limited to matters structural, geological, plumbing, heating, air conditioning, electrical, built-in appliances, well, pool, septic tank, hazardous and toxic materials, and survey. BUYER shall, upon SELLER's written request, furnish SELLER at no cost, copies of all inspection reports obtained. BUYER shall approve or disapprove all inspection reports obtained in writing, **within _____ number of days.** If SELLER does not agree to correct any unacceptable conditions **within three (3) days from receipt of such notice,** BUYER may elect to terminate this Agreement. In the event of such termination, all deposits shall be returned less expenses incurred by BUYER to the date of cancellation.

[LG] BUYER [___] BUYER AND [LJ] SELLER [___] SELLER HAVE READ THIS PAGE.

_____ F. **ROOF INSPECTION.** BUYER, at BUYER's expense, may order a roof report from a licensed general or roofing contractor. **Within** _____ **days,** copies of the report shall be delivered to the Agents of the BUYER and SELLER who are authorized to receive the same on behalf of their principals. **Within three (3) days following receipt** of the report, SELLER may (a) elect to pay the cost of all work recommended by the report; or (b) elect to pay none or only a portion of the cost of such work. Written notice of such election shall be delivered to BUYER or BUYER's Agent.

In the event SELLER does NOT agree to pay for all such work, BUYER may elect to pay the balance of the cost of such work or terminate all rights and obligations to the parties under this Agreement. Written notice of such election shall be delivered to SELLER or SELLER's Agent **within seven (7) days following receipt** of SELLER's notice. In the event of such termination, BUYER shall be entitled to a full refund of all deposits excluding the cost of the above roof inspection report. If no written election is made **within seven (7) days,** BUYER shall have the right to terminate this Agreement, and SELLER shall be responsible for the cost of that portion of the work which SELLER elected to pay. **In the event SELLER has elected to pay cost of all such work,** SELLER shall have the right to have such work performed by a licensed general or roofing contractor of SELLER's choice.

_____ G. **CITY AND COUNTY INSPECTION REPORT.** If local ordinance requires that the property be inspected or a report issued for compliance with local building and permit regulations, standards, and ordinances as a condition to sale or transfer, SELLER shall, within _____ days, notify the appropriate local agency to cause the property to be inspected, **or to issue the required report** at the earliest practicable date. If SELLER does not agree to pay for correction of any violations shown in the report, BUYER may pay the cost of the required corrections or terminate this Agreement. In the event of termination, all deposits shall be returned.

_____ H. **CONTINGENCY RELEASE CLAUSE.** Subject to the sale and conveyance of BUYER's property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address _____

Tax Map # _____ City _____ Zip _____

County of _____, State of South Carolina.

SELLER shall have the right to continue to offer the herein property for sale and to accept written offers subject to the rights of BUYER. Should SELLER accept such an offer, then BUYER shall be given written notice of such acceptance. In the event BUYER will not waive this condition in writing **within** _____ **hours of receipt** of such notice, then this Agreement shall be terminated and all deposits be returned to BUYER. Said notice may be personally delivered or mailed by certified mail and addressed to _____. In the event of mailing, such notice shall be deemed to have been given on the date following the date of mailing evidenced by the postmark on the envelope containing such notice. In the event BUYER waives real property sale contingency, BUYER must first satisfy SELLER or SELLER'S Agent that any financing required under this Agreement will be granted without the sale of the aforementioned property.

_____ I. **FLOOD HAZARD ZONE.** BUYER has been advised that the property is located in an area which the Secretary of HUD has found to have special flood hazards and that, pursuant to the National Flood Insurance Program, it will be necessary to purchase flood insurance in order to obtain any loan secured by the property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the U.S. Government. The purpose of the program is to provide flood insurance at reasonable cost. For further information, consult your lender or insurance carrier.

_____ J. **SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL PROTECTION MATTERS.** All reports and certifications called for by the lending agencies and any governmental body, by the BUYER concerning any special study for the area, wetlands or for any environmental protection matter shall be at the expense of the ☐ SELLER, ☐ BUYER. In the event such studies are wanted or required, the studies must be furnished by the proper parties **within** _____ **days** of complete execution of the agreement. The BUYER and SELLER must have access to all studies **within five (5) days of completion** thereof and upon notice by the BUYER to the SELLER **within five (5) days of receipt** of the studies that the BUYER is not satisfied with the result, the SELLER shall have the option of correcting the problem, if the SELLER elects not to correct the problem, the BUYER's obligations under this Agreement terminate.

LC

[___] BUYER [___] BUYER AND [✓] SELLER [___] SELLER HAVE READ THIS PAGE.

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_____ K. **PERMITS AND ORDINANCES.** BUYER is aware that a local ordinance is in effect which regulates the rights and obligations of property owners. It may also effect the manner in which future rents can be adjusted.

_____ L. **OPERATING PERMIT.** SELLER warrants that an operating permit for the property is in effect.

_____ M. **CERTIFICATE OF OCCUPANCY.** SELLER warrants that a certificate of occupancy for the property is in effect.

_____ N. **PERSONAL PROPERTY.** The purchase price ☑ does, ☐ does not include all furniture and furnishings and any other personal property owned by SELLER and used in the operation of the property per attached inventory, receipt of which is hereby acknowledged.

In the event the inventory is not a part of the purchase price, the items listed at the cost referred to in the attached inventory list shall be transferred by a Bill of Sale and paid for by BUYER to SELLER at closing for the real property.

_____ O. **SMOKE DETECTORS.** In accordance with local ordinance and/or state statute, smoke detectors shall be installed at the expense of ☐ BUYER, ☑ SELLER. If required, said smoke detectors shall be inspected by the appropriate city, county, or state agency prior to closing and a compliance report obtained.

_____ P. **TAX DEFERRED EXCHANGE.** In the event the SELLER wishes to enter into a tax deferred exchange for the real property described herein, or if BUYER wishes to enter into a tax deferred exchange with respect to property owned by him in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. Provided that: (a) the other party shall not be obligated to delay the closing, (b) all additional costs in connection with the exchange should be borne by the party whose property is exchanged, and (c) the other party shall not be obligated to execute any note, contract, or other document providing for any personal liability which would survive the exchange. The other party shall be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of their acquisition of ownership of the exchange property.

28. **ADDENDA.** The following addenda, signed and dated by both parties, are attached and made a part of this agreement: From Sellers proceeds at closing, Sellers to pay/credit Buyer: $95,000 towards Buyer's deferred maintenance reserve account; $75,000 towards property exterior improvements as roof, windows, landscape, etc; $45,000 towards interior upgrades.

29. **FIXTURES.** All items permanently attached to the property, including but not limited to attached floor coverings, draperies with hardware, shades, blinds, window and door screens, storm sash, combination doors, awnings, light fixtures, television antennas, electric garage door openers with controls, outdoor plants and trees, are included in the purchase price free of liens, **EXCLUDING** _____

30. **MAINTENANCE.** SELLER covenants that the heating, air-conditioning (if any), electrical, sewer, septic system, drainage, sprinkler (if any), and plumbing systems including water heaters, as well as built-in appliances and other mechanical apparatus shall be in normal working order on the date possession is delivered. SELLER shall replace any cracked or broken glass including windows, mirrors, shower and tub enclosures. Until occupancy is delivered, SELLER shall maintain landscaping, grounds and pool (if any). The following items are specifically excluded from the above: _____

31. **DISCLOSURE.** The following disclosures are attached hereto:
☐ Hazardous Materials
☐ Other _____

32. **DEFAULT.** If the BUYER shall default under this Agreement, the SELLER shall have the option of suing for damages or specific performance, including but not limited to, reasonable attorney's fees or rescinding this Agreement. In the event the Agreement is rescinded, one-half of the earnest money shall then be paid to the Broker(s), not to exceed the commission due such Broker(s), and the remaining balance of earnest money shall be paid to the SELLER.

[LG] BUYER [____] BUYER AND [SJ] SELLER [____] SELLER HAVE READ THIS PAGE.

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Upon default by the SELLER, the BUYER shall have the option of suing for damages or specific performance, or rescinding this Agreement. Upon default by the SELLER, if the BUYER elects to rescind this Agreement, BUYER will be refunded all sums paid hereunder and in addition, shall be reimbursed by the SELLER for actual costs incurred, including but not limited to credit report, appraisal fee, survey, cost of title examination.

33. **ATTORNEY FEES.** In any action or proceeding involving a dispute between BUYER, SELLER and/or Broker, arising out of the execution of the agreement or the sale, or to collect commissions, the prevailing party shall be entitled to receive from the other party a reasonable attorney fee to be determined by a court of competent jurisdiction.

34. **EXPIRATION OF OFFER.** This offer shall expire unless acceptance is delivered to BUYER or to RE/MAX Prof _____ on or before 5:00 ☐ AM ☒ PM, May 11, 2007.

35. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument.

36. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

37. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.
The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; or (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

38. **FOREIGN INVESTMENT AND REAL PROPERTY TAX ACT (IRS SECTION 1445).** The Foreign Investment and Real Property Tax Act requires a BUYER purchasing real property from a foreign person to withhold tax from the sale proceeds unless an exemption applies. SELLER agrees to provide Broker with a certification establishing that no federal income tax is required, unless it is established that the transaction is exempt and the BUYER intends to use the property as personal residence due to existing laws at time of closing.

39. **S.C. CODE SECTION 12-8-580.** SELLER covenants and agrees to comply with South Carolina Code Section 12-8-580 (as amended from time to time), regarding withholding requirements of SELLERS who are not residents of South Carolina as deferred in this given statute.

40. **Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

41. **ADDITIONAL TERMS AND CONDITIONS.** Property is being purchased "AS-IS" with no warranties, guarantees, expressed or implied. Property is being purchased then renovated. Any and all renovation costs shall be at Buyer's obtaining the loan together with this purchase loan.

[LG] BUYER [___] BUYER AND [G] SELLER [___] SELLER HAVE READ THIS PAGE.

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42. **FACSIMILE:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Linda Avinger Gibson, and/or A — Date 05/07/2007 — Time 2:20 p.m.

WITNESS: _____ — Date 050707 — Time 220PM

BUYER: _____ — Date _____ — Time _____

WITNESS: _____ — Date _____ — Time _____

SELLER: abas PRO, LLC — Date 5/8/07 — Time 3PM

WITNESS: _____ — Date _____ — Time _____

SELLER: _____ — Date _____ — Time _____

WITNESS: _____ — Date _____ — Time _____

LISTING AGENT AND COMPANY _____ 050707

SELLING AGENT AND COMPANY Rolando V. Villavicencio — RE/MAX Professional Realty

SELLING AGENT IS PRESENTING THIS OFFER AS A ☐ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT _____

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TYPE OF APPRAISAL

The subject appraisal is a complete appraisal of a self-contained report as per Standards Rule 2-2(a), USPAP, 2002 edition. All three approaches to value are included in the report, as they are deemed pertinent to the final opinion of value and per the requirements of the above-referenced appraisal classification.

ZONING

The subject property is zoned R-2, Multifamily residential, by the City of North Charleston. This zoning does allow for multi-family development at the subject location and the subject is a legal and conforming use. A copy of the zoning ordinance for North Charleston is attached.

R-2, Multi-family residential district is the current zoning for the Northwood Gardens Apartments. The purpose of these zoning regulations is to encourage the formation and continuance of a stable, healthy environment for single and multi-family dwellings and to discourage any encroachment of commercial, industrial or other uses capable of adversely affecting the residential character of the district.

TAX AND ASSESSMENT ANALYSIS

The taxes for the tax year 2006 for the subject property were paid in delinquency on April 12, 2007 in the amount of $28,246.80. All taxes have been satisfied and are up to date.

CHARLESTON COUNTY *Online Tax System*

- MAIN MENU
- CONTACTS
- EXIT

- Billing Information -

Account (PID):	485-03-00-114	Appraised (FMV):	1,657,000
Tax Year:	2006	Assessment:	99420
Prior Year:	NA	Mills:	x 0.2536
Status:	Delinquent		
Receipt:	2006-000136		
Previous Receipt:	NA		
Next Receipt:	NA		
Billed:	09-30-2006		
Actual Date:	NA		
Mortgage Co:	NA		
MLOD Factor:	No		

For payment information on this bill, please contact Delinquent Tax Department

- Property Information -

Legal Description:	2625 OTRANTO RD - TRACTS A AND B
Subdivision:	NORTHWOOD ESTATES
Deed:	03-03-2003 P438-634
Plat:	AA-37
Land Use:	UNITS
General Use:	APT
Parcel:	100

	Appraisal	Assessment
Buildings	1,657,000	99,420
Others (6%)		
Totals:	1,657,000	99,420

Acreage		Appraisal	
High:	3.63	Land:	230000
Marsh:	0.00	Improvements:	0
Swamp:	0.00	Buildings:	1427000
Total:	3.63	Total:	1657000

- Owner Information -

Current Owner:	ABES PRO LLC	Tax Address:	2625 OTRANTO RD
Current Co-Owner:	NA		
Tax District:	43	Mail Address:	7 MEMORIAL MEDICAL CT
Jurisdiction:	01	City State Zip:	GREENVILLE SC 29605

Selections | Tax Payment | Credits | Main Menu

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MOORE 159

ENVIRONMENTAL CONDITIONS

In this appraisal assignment, we did not observe the existence of potentially hazardous material present at the site or at adjoining or immediate properties, which may or may not have been present, nor do we have knowledge of the existence of such materials on or near the property being appraised. The appraisers are not professionally qualified to detect such substances. We suggest that, as determined by the client's environmental policy, an expert in this field be retained.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it will be in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the ADA, could reveal that the property will not be in compliance with one or more of the requirements of the act. If so, this fact could have a negative effect on the value of the property. Since we have no direct evidence relating to this issue, we did not consider possible non-compliance with the requirements of the ADA in estimating the value of the property. The extent of investigation and methodology conforms to our interpretation of USPAP requirements.

FUNCTION AND PURPOSE OF THE APPRAISAL

The purpose of the appraisal is to estimate the market value of the subject property.

Market value is defined as:

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.
>
> Implicit in its definition is the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby:
>
> 1. Buyer and Seller are typically motivated.
> 2. Both parties are well informed or sell advised, and acting in what they consider their own best interests.
> 3. A reasonable time is allowed for exposure in the open market.
> 4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
> 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Sources:

A. Department of the Treasury, Office of Thrift Supervision 12 CFR Part 564.2, dated Thursday, August 23, 1990.

B. Department of the Treasury, Office of the Comptroller of the Currency, 12 CFR Part 34.42 dated Friday, August 24, 1990.

C. Federal Deposit Insurance Corporation, 12 CFR Part 323.2, dated Monday, August 20, 1990.

MOORE 161

MARKET AREA ANALYSIS

The subject property is located on Otranto Road West of US 78 in the City of North Charleston. The area is between the upper sections of Charleston County and the lower sections of Dorchester and Berkeley Counties. The immediate subject neighborhood contains mostly older single family homes priced in the low to mid $100,000's. Beasley has recently constructed a small neighborhood off of Otranto Road in which homes are selling in the upper $100,000's. DR Horton is currently constructing a residential neighborhood across Otranto Road from the subject. This will consists of multi-family and single family homes. There are a few neighborhood commercial developments such as a daycare and convenience store along Otranto Road.

The Berkeley, Charleston, Dorchester Council of Governments published the "Planning for Change" in the Spring of 1995. The subject area is from Ladson Road in the north to CSX Railroad on the east and the Mark Clark Expressway on the south. The economic base is broad with shopping malls, a hospital, industrial parks, professional and financial services, and small businesses.

In the 2000 Census more than 66,000 people lived in the North Charleston Planning area. This is projected to be one of the prime growth areas in coming years with more than 34,000 new residents by 2015. Most of the new growth is in the City of North Charleston.

Two of the large institutions in the immediate area are the Charleston Southern University and Trident Medical Center Hospital on Hwy 78. The Charleston Southern University was established as the Baptist College of South Carolina in the mid 1960's and the hospital was built in 1975. Both these facilities have prospered over the years and continue to serve the community.

Trident Medical Center Hospital is located at 9330 Medical Plaza Drive, North Charleston. This is located at the southeast corner of Highway 78 and I-26 1/2 mile west of the subject property. The facility is licensed for 296 beds with 50 of those being Psychiatric beds. The facility has a campus of 46.25 acres and opened as a 225-bed hospital in July, 1975. The building was added on to with 56 rooms in the mid 1980's. In 1996, there were 15,384 admissions to the hospital with 152,684 out patient visits. The hospital had 2,285 births and 3,880 in house operations. Total revenue

figures were $270,204,286 with $15,332,732 in charitable care. There are 2,053 employees with an annual payroll of $48,859,000.

The hospital changed its name to Columbia Trident Medical Center in February 1996. It joined the Columbia Summerville Medical Center and Columbia Colleton Medical Center. The hospital was originally designed to serve the upper Charleston County, and lower Dorchester and Berkeley Counties. The facility has been successful in serving the communities of Summerville, North Charleston and Moncks Corner. There are 398 physicians on staff. The overall bed occupancy is 68% with average length of stay 5.3 days.

Immediately around the hospital is a medical office park to serve the hospital. This has over 200,000 S.F. of medical office space and includes a nursing home, a day care center and pharmacy. This is a complete medical hospital office facility.

Charleston Southern University is an independent comprehensive university affiliated with the South Carolina Baptist Convention. This is a suburban co-educational institution with liberal arts and professional curricular degrees. The South Carolina Baptist Convention founded the school in 1964 as the Baptist College of Charleston.

The campus is located on 300 acres of land that was purchased at the northeast intersection of Interstate 26 and Highway 78. The school has grown from 588 to 2800 students. There are now 19 major campus buildings, plus auxiliary buildings to provide for maintenance of the complex.

The North Charleston Wannamaker County Park consists of 1015 acres of beautiful woodlands (576 acres) and wetlands (439 acres). The park is mostly wooded, and although some areas show damage from Hurricane Hugo in 1989, rejuvenation of the forest is evident. The Goose Creek Reservoir, a pristine swamp with mature cypress trees and a variety of wildlife, flows through the park, and bisects the land into almost equal parts. The vast majority of the park will remain natural.

Future plans call for the development of a Programs Center, Nature Center, Large Water Feature, additional open shelter, enclosed shelters, in-house catering services, the extension of the trail

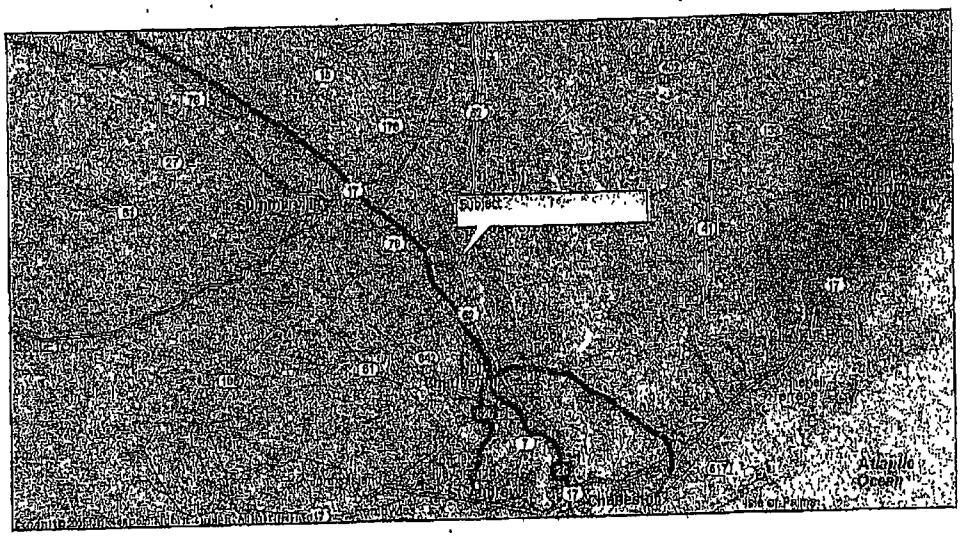
system which will include boardwalks into the swamps, additional lakes and lagoons and meadows.

The site has good access from Highway 78 and is relatively close to the interstate highway. The South Carolina Department of Public Transportation is planning to expand Highways 52 and 78 starting late 1999. The Rivers Avenue from Otranto Road will be widened from 4 lanes to 6 lanes. Highway 78 will be widened from Rivers Avenue west over I-26 to Ladson. This will be a 5-lane expansion. There are no more off ramps planned along I-26 in the metro-Charleston area. Thus the highway will be widened in front of the subject property. This will increase the traffic flow and access to the immediate area. This area is becoming increasingly more traveled. There is an increased number of doctor's office in the immediate area to the subject. This has increased the amount of cars and people in the area.

The subject neighborhood is considered to be that area bounding Rivers Avenue on the east, Otranto Road to the south, to the I-26 on the west and Hwy 78 on the north. The subject area continues to be in the growth stage of its life cycle. This area has remained one of the strongest in Charleston County. Highway 78 has recently been widened as a four-lane highway with an additional turning lane. There is an extensive amount of residential development surrounding the subject property. This is considered to be a positive influence on the subject. A new interchange highway loop was constructed at US Highway 52 and Highway 78 just north of the subject area.

The subject neighborhood has all necessary utilities available to it with power available from South Carolina Electric and Gas Company and telephone service from the Bell South. Water is available from the Commissioners of Public Works for the City of North Charleston. Sewer service is available from the North Charleston Public Service District. The impact and tap-in fees for utilities in this area are comparable to other areas in the Trident Region. The rates for utilities are comparable.

In summary, the subject neighborhood appears to be in the growth stage of its life cycle. The subject neighborhood is centrally located and should experience growth and appreciating property values in the long run. The immediate area has good access from 1-26 and Highway #52 (Rivers Avenue) and Hwy 78 (University Boulevard).



MOORE 165

SITE ANALYSIS

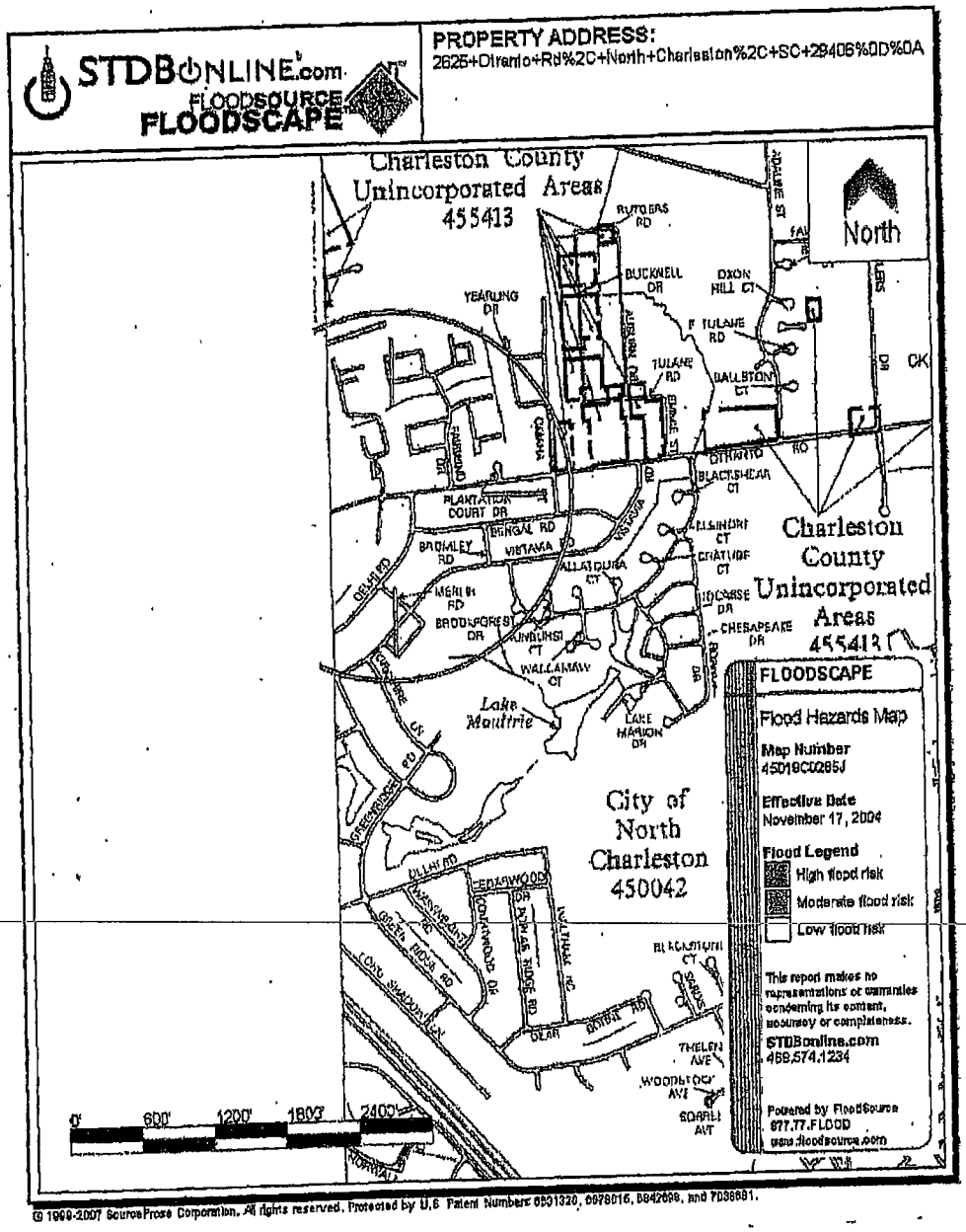
The subject site is the Northwood Garden Apartments located at 2526 Otranto Road, North Charleston, South Carolina. The apartments are situated on approximately 2.25 acres of land, which equates to about 21.33 units per acre. The property has 198 feet on frontage on Dorchester Road. The land is zoned R-2, or multifamily residential. The land area was obtained by a plat by Ashley Surveying, Inc. dated February 21, 2003. The site is identified by the Charleston County Assessor's Office as having TMS #485-03-00-114.

The 2.25-acre site is somewhat irregular, but is in no way hindered by the boundary designation, which comprises the total area of the apartment site. The inspection of the site shows that the topography is flat and level near road grade and drainage appears to be adequate. The site has 198 feet facing Otranto Road. The site has access from the entrance to the apartments along Otranto Road.

The property is located in Flood Zone "X" which is not a hazard area. Official flood information is illustrated on the enclosed FEMA Panel Flood Map, which is referenced with Community Panel Number 45019C 0285J.

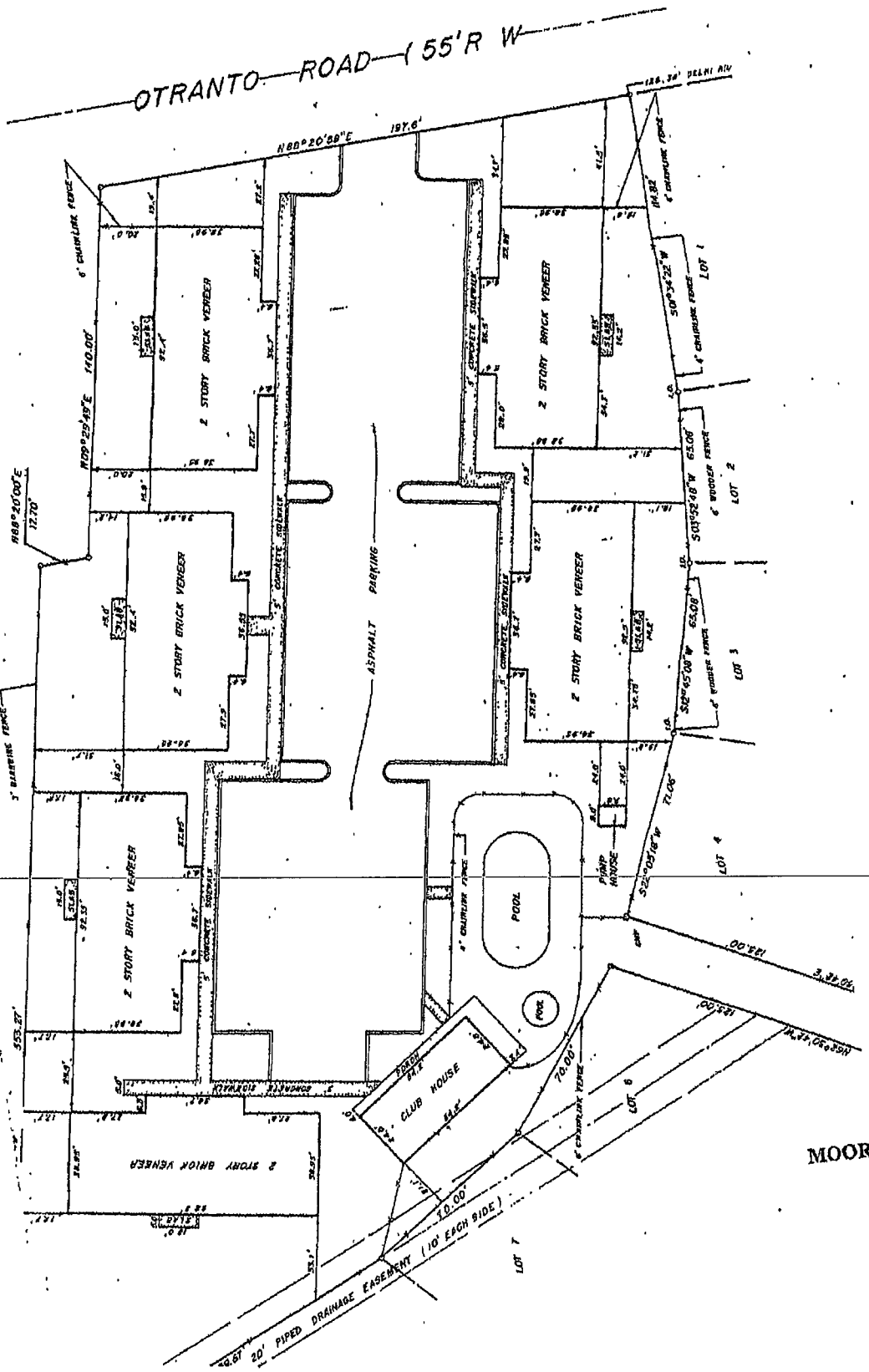
The site is cleared of mostly all trees and has little else besides the apartments and parking.

The site has all the necessary utilities including power from SCE&G, telephone service from BellSouth, water from CPW and sewer service from the North Charleston Public Sewer District.

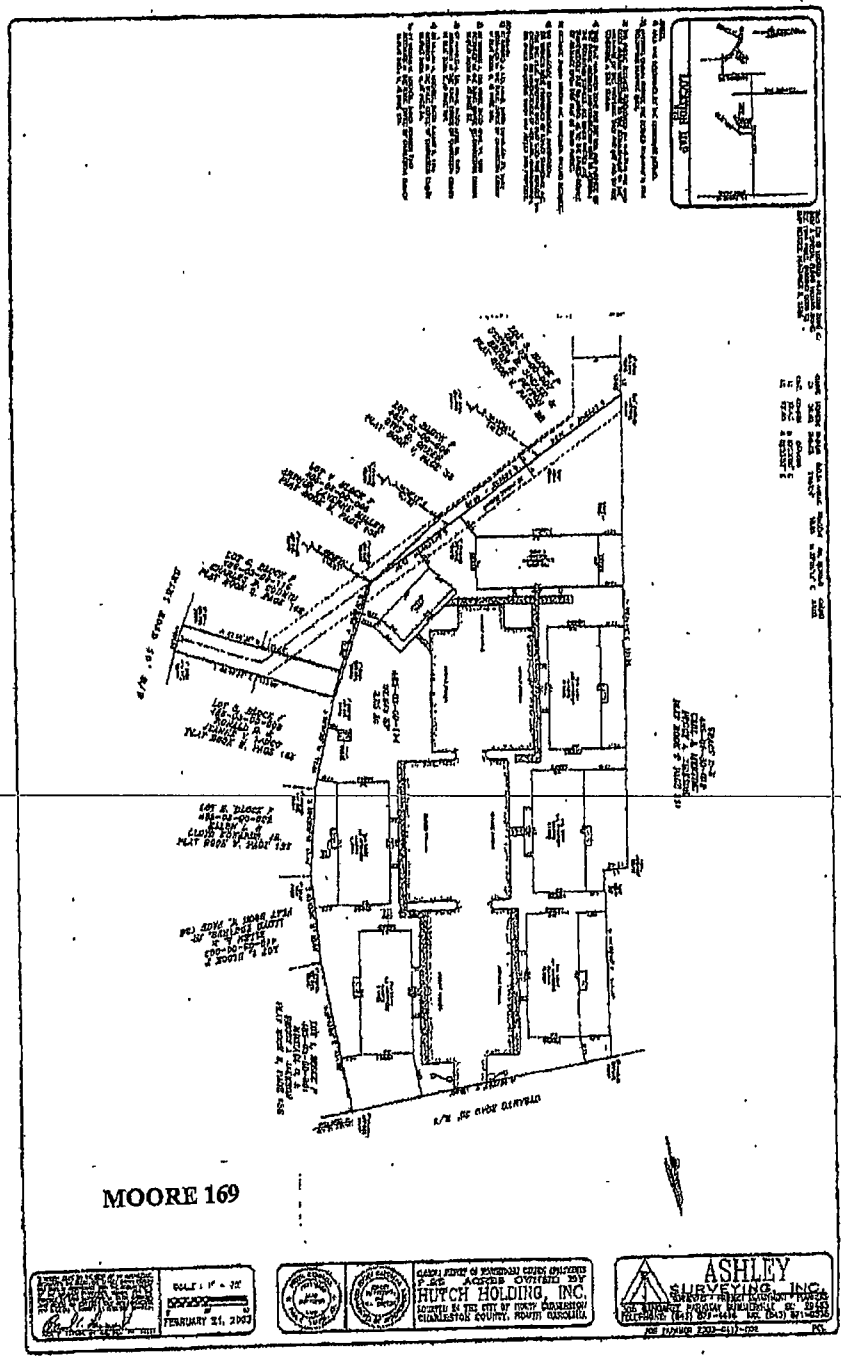


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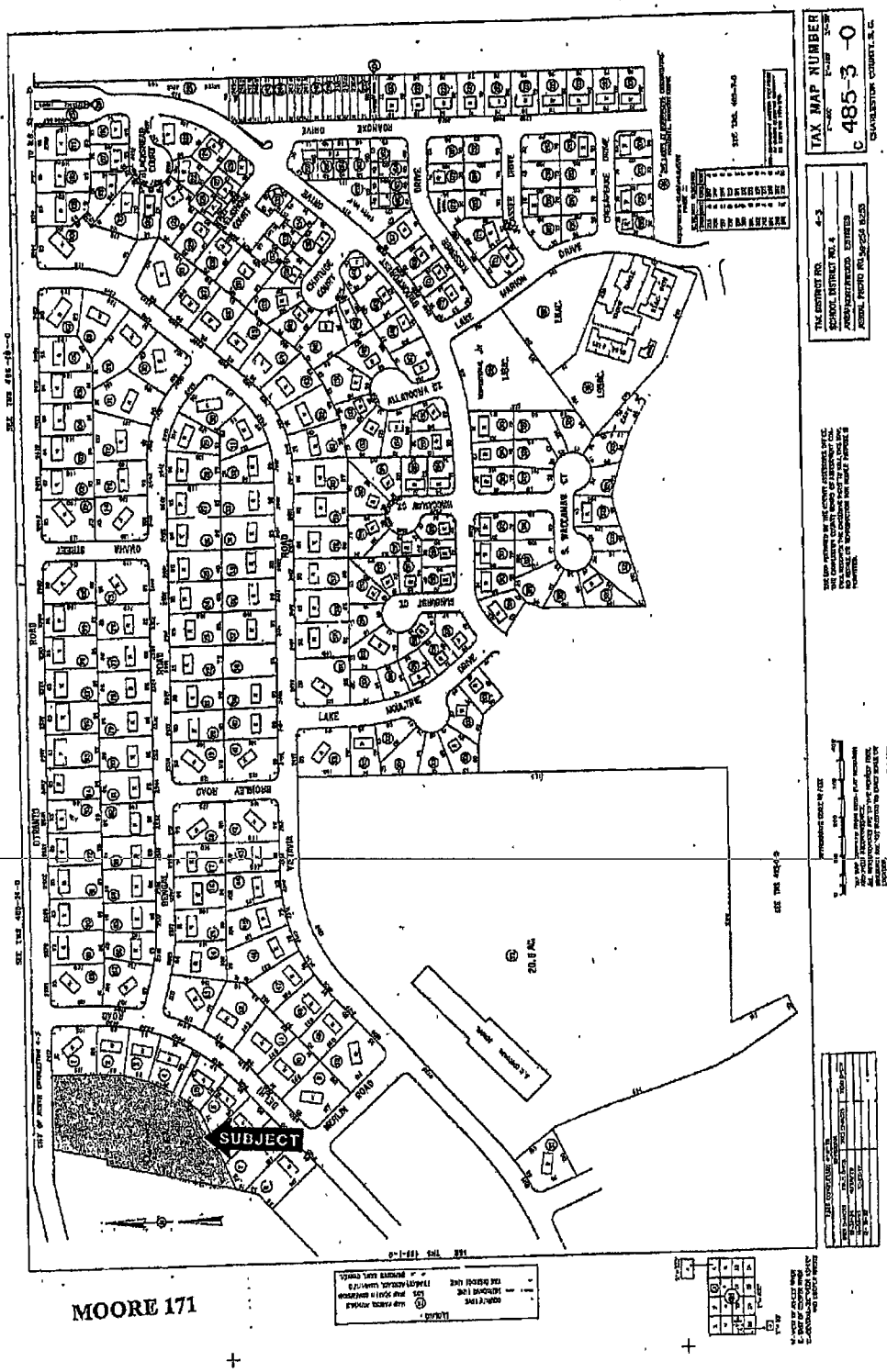
MOORE 167



Appendix 00948


MOORE 169
FEBRUARY 21, 2003
HUTCH HOLDING, INC.
ASHLEY
SURVEYING, INC.


State Hwy S 10 342
Site
Image © 2007 DigitalGlobe
© 2007 National Geographic Society
© 2007 Tele Atlas
Google
Pointer 32°57'46.03" N 80°03'38.67" W elev 56 ft Streaming 100%
Eye alt 1207 ft


TAX MAP NUMBER
485-3 -0
SUBJECT
MOORE 171

IMPROVEMENT ANALYSIS

The subject property consists of a 48-unit apartment complex located in 6 two-story apartment buildings. Additionally, there is a one-story office/clubhouse building. The improvements are located on a 2.25-acre site.

The units are two story buildings with the apartments being one-floor flats with center walkup metal steps. These units are mostly 2-bedroom, 1-bath (42 units), with an additional six units (one per building) that consist of 1 bedroom and 1 bath. Each building has 8 apartments with seven 2-bedroom, 1-bath units and one 1-bedroom, 1-bath unit.

Approx. SQFT:
42 Units @ 2 bedrooms + 1 bath, 832 sqft.
6 units @ 1 bedroom + 1 bath, 660 sqft.

The basic construction of the units is concrete slab foundation with concrete floors on the second floor. The frame is wood with wood roof trusses. The exterior is brick veneer on the first and second floors, and the buildings have pitched roofs with composition shingles. The windows are metal frame with single panes, and the parking lot is paved with asphalt and is in average overall condition. There are a total of 65 parking spaces which provides adequate parking for the complex.

All of the trim work is painted wood. The interior has carpeting in the living room and bedrooms and the bathrooms have either ceramic tile or vinyl floors. The kitchens have sheet vinyl flooring. The bathtubs are constructed of fiberglass, and the kitchens have refrigerators, oven/range/hood fan, garbage disposals, and dishwashers. All appliances are in need of replacement.

The heat and air conditioning system is characterized by individual electric and heating units, which were also in average (-) condition. The overall condition of the property is below average. **This is due to a substantial amount of deferred maintenance.** Structurally, the buildings

appear to be sound. There are no cracks in the exterior siding or any settlement issues as far as we could tell by visual inspection. However, the interiors of the units are in need of repair. Several of the units contain mold or mildew, especially in the bathrooms. Flooring, appliances, doors, etc. are in need of replacement. All of the units inspected need to be painted. There are plans to fully renovate these units in the future.

There is plenty of land and parking area. The density of the apartments is 21.33 units per acre, which in not abnormal for this type of development.

There is an office/workshop/laundry area with a 1,312 S.F. building. The laundry facilities are located in this building and consist of 6-gas powered washers and 6 dryers. Additionally, there is space for a small office and/or maintenance storage. Next to this building is a green area that will serve as a picnic area in the future.

Overall, the buildings appear to be in below average condition and contain a considerable amount of deferred maintenance. However, the property is under contract and the buyers have plans to renovate the entire complex.

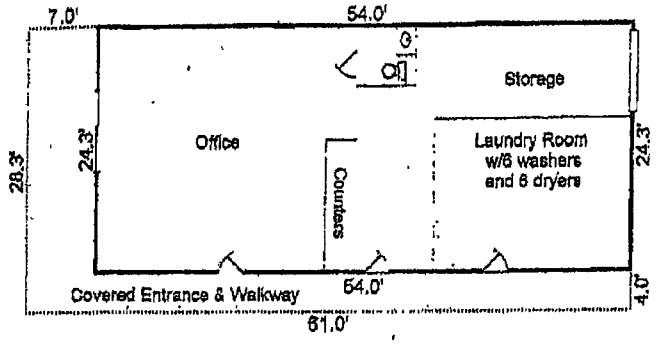
Total Unit Mix and Sizes

42 Units @	832 S.F.	=	34,944 S.F.
6 Units @	660 S.F.	=	3,960 S.F.
48 Units		=	38,940 S.F.

MOORE 173

29

FACILITY SKETCH



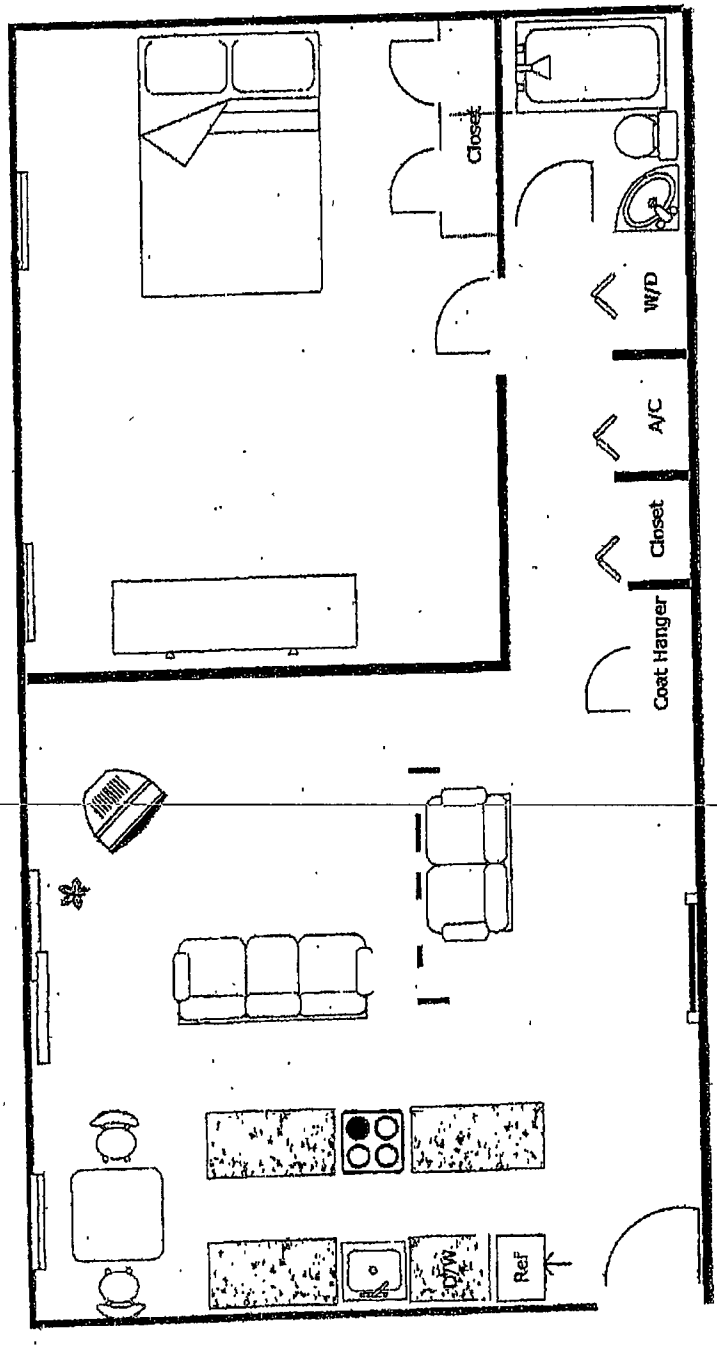
Scale: 1 = 10

AREA CALCULATIONS SUMMARY			
Code	Description	Size	Totals
GRA1	Office	1312.20	1312.20
W/P	Gen Ent/Walk Area	414.10	414.10
TOTAL LIVABLE	(rounded)		1312

LIVING AREA BREAKDOWN		
Breakdown		Subtotals
Office	54.0 x 24.3	1312.20
1 Area Total (rounded)		1312

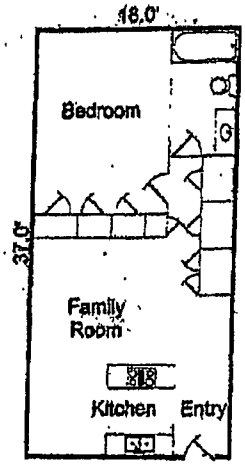
MOORE 174

PAUL K. MOORE & ASSOCIATES, INC.



MOORE 175

FACILITY SKETCH



Typical 1 Bedroom Apt

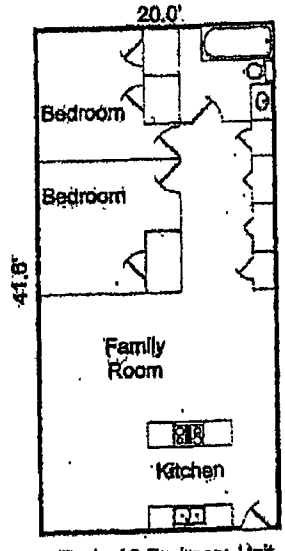
Scale: 1 = 10

AREA CALCULATIONS SUMMARY		
	Size	Totals
[illegible] Unit	666.00	666.00
TOTAL LIVABLE (rounded)		666

LIVING AREA BREAKDOWN	
Breakdown	Subtotals
Typical 1-Bedroom Unit	
18.0 x 37.0	666.00
1 Apts Total (rounded)	666

MOORE 176

FACILITY SKETCH



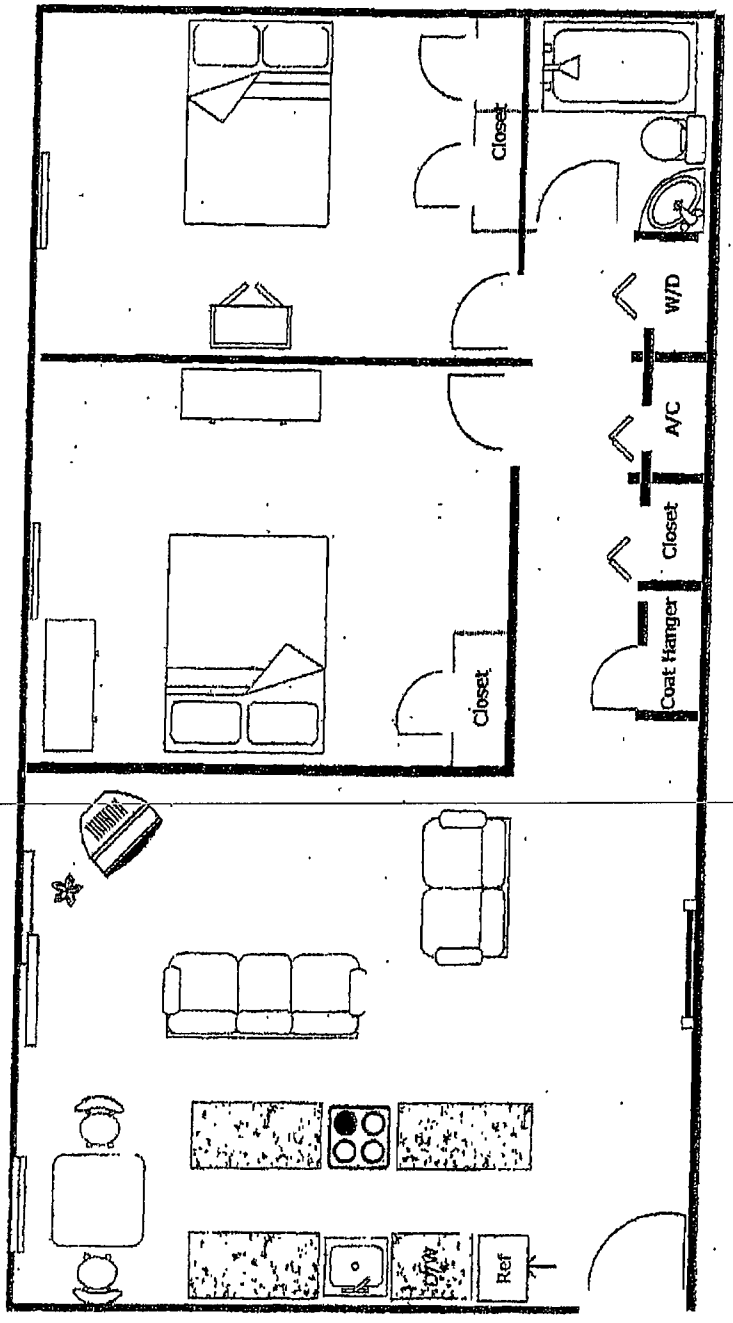
Typical 2 Bedroom Unit

Scale: 1 = 10

AREA CALCULATIONS SUMMARY		
Code Description	Size	Totals
MAIN Typical 2 Bedroom Unit	832.00	832.00
TOTAL LIVABLE (rounded)		832

LIVING AREA BREAKDOWN	
Breakdown	Subtotals
Typical 2 Bedroom Unit	
20.0 x 41.6	832.00
1 Area Total (rounded)	832

MOORE 177



MOORE 178

RENOVATION SPECS AND COST ESTIMATES

The buyers of the complex have plans to totally renovate the subject property upon closing on the property. Details of this renovation are included in the addenda of this report. In summary, all appliances, carpet and doors will be replaced. Additionally, any deferred maintenance including paint, damaged walls, etc will be fixed. Most importantly, the buildings will be renovated according to LEED standards using EarthCraft specifications. This has to do with the new "Green Building" concept.

Green building is the practice of increasing the efficiency of buildings and their use of energy, water, and materials, and reducing building impacts on human health and the environment, through better siting, design, construction, operation, maintenance, and removal — the complete building life cycle.

The related concepts of sustainable development and sustainability are integral to green building. Effective green building can lead to 1) *reduced operating costs* by increasing productivity and using less energy and water, 2) *improved public and occupant health* due to improved indoor air quality, and 3) *reduced environmental impacts* by, for example, lessening storm water runoff and the heat island effect. Practitioners of green building often seek to achieve not only ecological but aesthetic harmony between a structure and its surrounding natural and built environment. The appearance and style of sustainable homes and buildings can be nearly indistinguishable from their less sustainable counterparts.

Green buildings are scored by rating systems, such as the Leadership in Energy and Environmental Design (LEED) rating system developed by the [[United States Green Building Council|U.S. Green Building Council], Green Globes from GBI and other locally developed rating systems].

Implementing the Green Building concept into building design typically increases construction costs 4-6%. However, long term cost savings outweighs initial cost expenditures.

The total cost of renovations is estimated to be $688,814. This is a cost of $14,350/unit. After the renovations are complete, the buyer will have approximately $3,500,000 invested in the property.

This includes the initial purchase of the complex.

VERDANA

2625 Otranto Road
North Charleston, South Carolina 29406

Presented By

ROLANDO V. VILLAVICENCIO

RE/MAX Professional Realty
9209 University Boulevard
North Charleston, South Carolina 29406

Renovation Specifications And Cost Estimates

Description Of Work	Estimate	By
EarthCraft House Multi-Family Program Consulting Costs	$4,800*	EarthCraft House
Licensed Contractor/Structural Engineer/Architecture Fees Allowance up to_____ % of total project costs r cost-plus basis or consultation fee or as used basis	$_____*	TBD
Air-Tightness Insulation:	$86,555.62	Air Tight Spray Foam Caroline Crease 478-8836
Low VOC Paint	$3,579.30*	Sherwin Williams
Permitting, Licensing, Inspections	$3,120.00*	City Of North Charleston
Sheet Removal: Ceiling, Walls, Doors, Wood Cabinets, Etc, and Install New – Labor Only	$33,600.00*	Katz Honey Dew It
	$158,400.00	Morales Drywall 843-330-3998
Exterior Hallways – Convert to Vinyl	$24,000.00*	Katz Honey Dew It
Replace Entire Windows – Labor & Materials	$95,078.85	G&S Home Remodeling 843-572-4440
	$77,500.00*	Davidson, Sash & Doors
Soffit/Fascia/Vinyl Siding/Gutters	$66,301.00*	G&S Home Remodeling
Atlas Pinnacle 35 Year Architectural Shingles Labor, Materials, Permits, Disposal Included	MOORE 181	

Appendix 00961

6 Rental Buildings	$59,328.00	G&S Home Remodeling
Office/Clubhouse Roofing	$10,118.00	G&S Home Remodeling
Patching Hotmix Asphalt, Overlay after Patching, Prep and GemSeal, Re-Striping	$15,100.00*	BGI Parking Lot Maintenance 843-797-5554
4000 square yards overlay @ parking, 1 ½" type 1 hotmix Replace 3 existing speed bumps, stripe, 100' sidewalk	$37,990.00	Howell & Simmons 843-747-3000
Owens Corning 30-Year Oakridge Shingles Hip & Ridge, Ridge Vent, Primary Flashing Labor, Nails, Sealant – Roof Decking Sheet @ $50 per sheet not included; 15-lb felt	$54,446.00	All American Roofing 843-552-4994 Brian Thibes
Tucker Roofing 30 Yr Architectural Shingle	$50,560.00*	Kenny Tucker
Custom Manufactured Awnings & Frame Sunbrella Acrylic Canvass Covers Stapled to Frames 5 Year Warranty with Bonded Polyester Coats Thread	$7,654.53	Awesome Awnings 843-767-1344
2" Drain Lines for Stackable Washer/Dryer Installation	$21,600	Roto Rooter 843-552-5575
Super Size Stackable Washer/Dryer @ approx $850 each	$40,800	Estimate
GE Electric Range, Top Freezer Refrigerator, Dishwasher Badger 5 Disposal, Hood Vent	$79,760.00	Lowes Companies
514' Dogear Picket 6' Privacy Fence	$10,280	Charleston Yardworks 843-364-3289
Wood Privacy Fence & Aluminum Front Fence Clearing & ground prep $2,750.00 Wood Fence 510' dog ear $6,630.00 Wood Privacy @ front of 1 & 6 $455.00 Aluminum Fence at front entrance $1,650.00	$11,485.00*	Great Dane Fence Thomas 843-697-0800
15' x 30' / 305 Sqft Concrete Pool	$42,000.00	Blue Haven Pools
30" Glass Top Range ($477), 21 QF Top Freezer ($468) Dishwasher ($219), OTR Micro/Hood ($276)	$69,120.00*	Wholesale Appliance Center 843-556-0917
8' x 7' Steel Storage/Garage Door **MOORE 182**	$888.00	Precision Door Service

Switch Plates/Phone Plates/Fans/Light Fixtures @ $180.00	$8,640.00*	Lowes
Direct TV Satellite Dish		
Saf-Locks Keyless Entry / Security System		
Hallway Bicycle Storage		
Wireless Internet/Cable Outlets		
Updated Electricals/Meters		
13 Seer RUUD 2 Ton a/c system @ $2,360 x 42 units	$99,120.00	Myers Heating & A/C
13 Seer RUUD 1.5 Ton A/C System @ $2,360 x 6 units	$14,160.00	Myers Heating & A/C
13 Seer RUUD @ $1,300 per unit x 48	$62,400*	Prestige Heating & Air
Unit Doors 36" 6 Panel #21683 @ $138.03 tax ea	$6,625.44*	Lowes
Interior/Hallway Doors/Hardware/Stoppers @ 759.77 tax/unit	$36,468.96*	Lowes
Molding: Baseboard & Quarter Round @ $277.16 tax/unit	$13,303.68*	Lowes
" Vinyl Shutter Blk Louver #8645 $26.50 tax / pair x 72	$1,908.00*	Lowes
Non-Toxic Paint		
12x12 Sahara Beige Ceramic Tile #188333 @ 459sqft x $358.02	$17,184.96*	Lowes
31 5/16 3 x 5 Durock # 72779 @ $247.69 x 24 units	$5,944.56*	Lowes
Highrise Carpet # 241836 @ $329.28 x 336 sqft x 48 units	$15,805.44*	Lowes
6' Cushionaire Carpet Pad # 171537 @ $134.40/56 pcs x 48 units	$6,451.20*	Lowes
Crown Moldings, Trims, Window Coverings		
Kitchen Cabinets Tacoma Oak Honey @ $1,888.95 tax ea x 48	$90,669.60*	Lowes
36" bartop & 6' countertop @ $219.95 tax/unit x 48	$10,557.60*	Lowes
White ReliaBilt Windows & Half-Screen @ $738.44 tax/unit	$35,445.12	Lowes
Landscaping Cold Hardy Palms & Bamboo by Jeff Schryver		843-557-6075
Bldg Front & Rear Doors 2/0 x 3/0 x 2/0 steel @ $2,782 tax / pair	$16,692.00	Lowes
Stairs, Railings, Wood Work, Floorings, Lighting		
Brick Entry Decorative Items / Lighting		

MOORE 184

Signage		
Cluster Box Units (CBU) Mailboxes @ 12 doors @ $1,200 x 4	$4,800.00*	mailboxes.com
TOTAL OF * ITEMS:	**$688,814.18**	
Allowance For Over/Under Estimate of 10%:	**$619,932.76 - $757,695.60**	
Per Unit Cost Budget:	**$12,915.27 – 15,785.32**	

NOTES:

1. **All * items and prices above are based on original price proposals submitted by service providers, noted, and shall be subject to adjustment at actual contract signing;**
2. **Per Unit Cost Budget already includes costs incurred to complete entire complex, as desired, includi but not limited to the office/multi use building, and most other common area and grounds.**
3. **Items above from "Description of Work" that do not have price estimates are only indicated for referen use only. Should there be excess funds available, these items may/shall be taken into consideration.**
4. **The statements and figures herein, while not guaranteed, are secured from sources we belie authoritative;**
5. **Prices, descriptions, estimates, service providers, etc are subject to change without prior written notice;**
6. **All of the above are prepared for use only by RE/MAX Professional Realty, Rolando V. Villavicencio, a guideline, and should not be construed as final and/or in contractual form.**

VERDANA

(Formerly Northwood Garden Apartments)

48 UNIT APARTMENT PURCHASE & RENOVATION

2625 Otranto Road
North Charleston, South Carolina
29406

		TOTALS
Purchase Price:		**$2,800,000**
Cash Needed To Renovate (48 Units Total):		
Improvements - Estimates:	$ 440,000	
Upgrades - Estimates:	$ 212,000	
Capital Reserves - Proposed:	$ 48,000	
TOTAL RENOVATION - Estimates:	**$ 700,000**	
Cost Per Unit @ Acquisition:	$ 58,333	$2,800,000
Cost Per Unit After Renovation:	$ 72,916	$3,500,000
Renovation Allowance Per Unit:	**$ 14,584**	**$ 700,032**

MOORE 186

Appendix 00965

VALUATION PROJECTIONS

Projected Price Per Unit After Renovation - Estimated:	$ 89,225	$4,282,800
Less: Total Cost Per Unit @ Renovation:	$ 72,916	$3,499,968
Gross Equity Per Unit - Estimated:	$ 16,309	$ 782,832
Allowance Expenses @ 10% - Estimated:	$ 1,630	$ 78,240
Net Equity - Estimated:	$ 14,679	$ 704,592
TOTAL PROJECT EQUITY @ 48 UNITS:		**$ 704,592**

HIGHEST AND BEST USE DEFINITION

Highest and Best Use is:

> The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

Highest and Best Use of Land or a Site as Though Vacant is:

> Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.

Highest and Best Use of Property as Improved is:

> The use that should be made of a property, as it exists. An existing property should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.[1]

[1] American Institute of Real Estate Appraisers, the Dictionary of Real Estate Appraisal, Third Edition (Chicago, Illinois, 1993), page 171.

HIGHEST AND BEST USE

The Highest and Best Use is that use which will bring the return to the site and to the improvements under the legal possible and probable uses. There are four criteria for highest and best use. These are as follows.

Legally Permissible:

The subject property is zoned R-2, multifamily by the City of North Charleston, This zoning allows for multi-family use either for townhouse condominiums or for apartments, and therefore the existing apartment complex is considered a legal and conforming use. The subject site has 48 units in total. Thus, this site would be legally permissible to develop as a multi-family property under the current zoning ordinance, and is allowed to continue to operate as apartments.

Physically Possible:

The subject site has all of the necessary utilities for multi-family development. It has access from a public street, SCE&G power, City of North Charleston water and sewer, and BellSouth telephone service. Thus, the site is physically possible to be developed. The site is almost flat and has not unusual soil or drainage problems.

Financially Feasible:

The property has 48 apartment units situated on 2.25 acres of land. At the present time there is 33% vacancy in the entire project. However, this is due to the fact that several of the tenants have been moved out in anticipation for upcoming renovations. Typically, the complex operates with little or no vacancy (<5%). These units have been in existence for 33 years and have had excellent occupancy. The property is located along Otranto Road, which is a major thoroughfare in North Charleston and is convenient both to US-26 and is in close proximity to the U.S. Air Force Base. There is a significant amount of new growth in the area. For example, University Park, located across Otranto Road from the subject, is a new residential development underway by D.R. Horton. This development will consists of 130 single family homes and over 300 multi-family homes. Currently, construction of Phase I has been completed and Phase II of four phases is underway. The site is financially feasible.

Maximally Productive:

The maximally productive use is that use which will bring the greatest return to the site and to the improvements. It appears that most residents in this part of North Charleston prefer to rent apartments rather than own condominiums, which has been undertaken in the past by other competing properties in the same marketplace. Market rents are quite reasonable and the make up of the tenants is such that they appear to be more motivated to rent apartment units.

Therefore, the highest and best use of the subject property is to continue the operation of the Northwood Garden Apartment complex as rental units rather than individual condominium sales.

DEFINITION OF MARKET VALUE

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and Seller are typically motivated.
2. Both parties are well informed or well advised, and acting in what they consider their own best interests.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Sources:

A. Department of the Treasury, Office of Thrift Supervision 12 CFR Part 564.2, dated Thursday, August 23, 1990.

B. Department of the Treasury, Office of the Comptroller of the Currency, 12 CFR Part 34.42, dated Friday, August 24, 1990.

C. Federal Deposit Insurance Corporation, 12 CFR Part 323.2, dated Monday, August 20, 1990.

VALUATION METHODOLOGY

The valuation process begins when an appraiser identifies the appraisal problem and ends when he or she reports a conclusion to the client. Each parcel of real property is unique and many different types of value can be estimated for a single property. The most common appraisal assignment is performed to estimate market value and the valuation process contains all the steps appropriate to this type of assignment. The model also provides the framework for estimating any other defined value. Consulting assignments often call for value estimates, which are derived through modification of the valuation process.

The valuation process is accomplished through specific steps. The number of steps followed depends on the nature of the appraisal assignment and the data available. The model indicates a pattern that can be used in any appraisal assignment to perform market research and data analysis, to apply appraisal techniques, and to integrate the results of these activities into an estimate of defined value.

Research begins after the appraisal problem has been defined. The analysis of data relevant to the problem starts with an investigation of trends observed at all market levels - international, national, regional, community, and neighborhood. This examination will help the appraiser understand the interrelationships among the principles, forces, and factors that affect real property value in the specific area. It also provides raw data from which to extract quantitative information and other evidence of market trends such as positive or negative percentage changes in property value over a number of years, the population movement into an area, and the number of employment opportunities available and their effect on the purchasing power of potential property users. These data can be analyzed and employed to estimate a defined value.

Traditionally, appraisal techniques are the specific procedures within the three approaches that are applied to derive indications of real property value. Other procedures such as the use of inferential statistics and economic models also contribute to appraisals. One or more approaches to value may be used depending on their applicability to the particular appraisal assignment.

In assignments to estimate market value, the ultimate goal of the valuation process is a well-supported value conclusion that reflects all the factors that influence the market value of the property being appraised. To achieve this goal, an appraiser typically studies a property from three different viewpoints, which correspond to the three traditional approaches to value.

1. The value indicated by recent sales of comparable properties in the market -the sales comparison approach.

2. The current cost of reproducing or replacing improvements, minus the loss in value from depreciation, plus site value - the cost approach.

3. The value of a property's earning power based on the capitalization of its income - the income capitalization approach.

The three approaches are interrelated; each requires the gathering and analysis of cost, sales, and income data that pertain to the property being appraised.

From the approaches applied, the appraiser derives separate indications of value for the property being appraised. One or more of the approaches may not be applicable to a specific assignment or may be less reliable due to the nature of the property, the needs of the client, or the data available.

To complete the valuation process, the appraiser integrates the information drawn from market research and data analysis and from the application of approaches to form a value conclusion. This conclusion may be presented as a single point estimate of value or as a range within which the value may fall. An effective integration of all the elements in the process depends on the appraiser's skill, experience, and judgment.[2]

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[2] The Appraisal of Real Estate, Eleventh Edition, page 80, AIREA, 875 North Michigan Avenue, Chicago, Illinois 60611-1980.

LAND VALUATION

The most universally accepted method of land valuation is by comparing properties that have recently sold in the competing market place. This approach is based on the theory that a buyer will not pay more for a site than he would pay for a comparable substitute. We have researched sales in the subject market with emphasis being placed on the commercial zoning use of the property, its shape, frontage, visibility and access.

"Acres" was chosen as the appropriate unit of comparison. Appropriate adjustments were made to each item of the sales on an individual basis. Time adjustments of 7% per year have been used when necessary.

In making a determination of land value, it is assumed that the entire site can be used for development. The appraiser is not aware of any wetlands or unusable land within the subject parcel. The site is easily accessible from Hwy 17 or Brickyard Parkway.

The reader is referred to the following transaction sheets for information on each of the sales used. A location map precedes these sales.

Transaction Number	1	2	3	4	5
Transaction Type	Sale	Sale	Sale	Sale	Sale
Tax Map Reference	486-01-00-216	486-14-00-001	181-00-00-034	478-15-00-054	390-00-00-072
Date of Sale	1/31/2005	1/11/2007	8/2/2005	3/28/2007	11/16/2006
Sales Price	$280,000	$1,508,500	$525,000	$365,000	$125,000
Size/Acre (Usable)	4.76	20.57	5.62	4.99	1.78
Sales Price/Acre	$58,824	$73,331	$93,416	$73,146	$70,225
Time Adjustment (7% Per Year)	18.00%	0.00%	4.00%	0.00%	6.00%
Time Adjusted Price/Acre	$69,412	$73,331	$97,153	$73,146	$74,438

The five sales are listed above along with their TMS numbers, dates of sale, sales price and size. The sales price is then divided by the size to indicate a sales price per acre. A time adjustment of 7% per year is given to sales over one year old. This results in a time-adjusted price per acre.

Size	0%	15%	0%	0%	0%
Location	0%	0%	-15%	0%	0%
Corner/Access	10%	0%	0%	0%	0%

Size

Economies of Scale is defined as a "reduction in cost of production per unit due to a large number of items produced." This same principle can be applied to real estate in that a buyer would pay a lesser price per unit (square foot) for a larger property than he/she would for a similar but smaller property. In other words, as the size of the property increases, the value per unit decreases.

The subject property measures 2.25 acres. Sale #2 measures 20.57 acres. Therefore it is adjusted upward for size.

Location

The subject is located along Otranto Road in North Charleston. This is a two landed road developed almost exclusively with residential development. Sale #3 is located off of Dorchester Road. This is a major thoroughfare in the area with an abundance of residential and commercial development. This is considered to be a superior location when compared to the subject and this sale is adjusted downward for Location.

Corner/Access

The subject is accessed from Otranto Road. Otranto Road is a two laned road accessed off of Hwy 52 in North Charleston. The area is mostly developed with residential homesites. It is easily assessable from Otranto Road and Hwy 52. Sale #1 is located off of Hwy 78 at the rear of Elms Plantation, a residential community. It does not have any frontage along a major thoroughfare. This sale is considered to have inferior access when compared to the subject and this sale is adjusted upward for Access.

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Net Adjustment	*10%*	*15%*	*-15%*	*0%*	*0%*
Adjusted Price/Acre	**$76,352.94**	**$84,331.10**	**$82,580.07**	**$73,146.29**	**$74,438.20**

After adjustments to the transactions, the indicated value range is $73,146/Acre to $84,331/Acre. The median value is $76,352/Acre. The mean value is $78,169/Acre. We believe that the value of the subject property falls within this range. Based upon these sales, we believe that the subject property, as is, has a market value of $78,000/Acre. This would indicate a value for the subject property to have a value of $78,000 acre x 2.25-Acres equals $175,500, or:

ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS

$175,000

MOORE 196

Northwood Garden Apartment Rental Information

UNIT	LAST NAME	FIRST NAME	RENT	OWN PAY	HSG PAY	PAYMENT	BAL DUE	PIF
1A	Vacant		$600.00	$600.00				
1B	Jenkins	Fredricka	$550.00	$102.00	$448.00	$550.00		
1C	Vacant		$600.00	$600.00				
1D	Drayton	Karen	$450.00		$450.00	$450.00		
1E	Vacant		$600.00	$600.00				
1F	Vacant		$600.00	$600.00				
1G	Vacant		$600.00	$600.00				
1H	Vacant		$600.00	$600.00				
2A	Vacant		$600.00	$600.00				
2B	Vacant		$600.00	$600.00				
2C	Vacant		$600.00	$600.00				
2D	Dawkins	James	$500.00	$154.00	$346.00	$500.00		
2E	Vacant		$600.00	$600.00				
2F	Vacant		$600.00	$600.00				
2G	Vacant		$600.00	$600.00				
2H	McCall	Teadra	$500.00	$244.00	$256.00	$500.00		
3A	Vacant		$600.00	$600.00				
3B	Pusha	Vera	$525.00		$525.00	$525.00		
3C	Clemmons	Mitch	$600.00	$600.00		$600.00		
3D	Forrest	Gloria	$600.00	$150.00	$450.00	$600.00		
3E	Hamilton	Patricia	$550.00	$263.00	$287.00	$550.00		
3F	Vacant		$600.00	$600				
3G	Green	Gaberella	$550.00	$145.00	$405.00	$550.00		
3H	Gadson	Lamont	$600.00	$600.00		$600.00		
4A	Gethers	Donna	$600.00		$600	$600.00		
4B	Kinlaw	Shawnette	$600.00		$600	$600		
4C	Hayward	Herman	$600.00		$600.00	$600.00		

4D	Sabaro/Vega	Francisco/Brawny	$500.00	$500.00		$500.00		
4E	Garcia	Wilfredo	$600.00	$600.00		$600.00		
4F	Daniels	Bonetta	$550.00	$384.00	$166.00	$550.00		
4G	Hamilton	Latrice	$600.00	$600		$600.00		
4H	Sibug	Jaime	$550.00	$550.00		$550.00		
5A	Carabantes	Reina	$600.00	$600		$600.00		
5B	Aiken	Elegisah	$525.00	$157.00	$368.00	$525.00		
5C	Brown	Maria	$600.00	$600.00		$600.00		
5D	Westberry	Solomon	$450.00	$85.00	$365.00	$450.00		
5E	Balgobin	Stephanie	$525.00	$410.00	$115.00	$525.00		
5F	Vacant		$600.00	$600.00				
5G	Rosales	Antonio	$600.00	$600.00		$600.00		
5H	Richardson	Suzette	$600.00	$600		$600.00		
6A	Vacant		$600.00	$600.00				
6B	Taylor	Myrnal	$525.00		$525.00	$525.00		
6C	Perez	Oscar	$600.00	$600.00		$600.00		
6D	Broughton	Israh	$450.00	$450.00		$450.00		
6E	Brown	Patricia	$550.00	$35.00	$515.00	$550.00		
6F	Sanders	Vermell	$550.00	$3.00	$547.00	$550.00		
6G	Green	Ekeja	$600.00	$600.00		$600.00		
6H	Gadsen	Rebecca	$525.00	$139.00	$386.00	$525.00		
			$27,325	$19,371.00	$7,954.00	$17,725.00		

INCOME APPROACH

"AS IS"

The Income Approach is based on estimating the gross potential rents less vacant/credit loss. To this is added other income to arrive at the effective gross income. From this is deducted the expenses of operation and fixed expenses. This results in the net operating income. This is then divided by an overall rate to arrive at a present value for the property. The subject property has been operating as a rented apartment complex for 30+ years. We have been provided with the property's current rental rates. This is detailed as follows:

Type	# of Units		$ per month		Gross Income per month
2 BR/1 Ba	42	@	$600.00	=	$25,200.00
2 BR/1 Ba	6	@	$490.00	=	$2,940.00
Totals	48	@	$1,090.00	=	$52,320.00

To verify that the subject is currently leased at market rents we have conducted a rent survey. To do so, we have analyzed the rental rates of comparable properties in the North Charleston market.

Please refer to the following study showing five comparable rents.

Rent Comparable 1 - Colony Squares – 1100 River Road, Hanahan, SC – Built 1972 -76 Total Units

1	1	EFF	550	$506	$506	$0.920	8	1	12.5%
1	1	GRDN	750	$550	$550	$0.733	12	2	16.7%
2	1	GRDN	850	$585	$585	$0.688	56	2	3.6%
Totals/Averages			808			$0.780	76	5	6.6%

Rent Comparable 2 – Deer Run – 8755 Jenny Lind St., North Charleston, SC
Blt 1985 – 152 Units

MOORE 199

1	1	GRDN	780	$620	-	$690	$0.801	56	0	0.0%
2	2	GRDN	960	$720	-	$750	$0.755	80	6	7.5%
3	2	GRDN	1,100	$820	-	$830	$0.750	16	0	0.0%
Totals/Averages			905				$0.772	152	6	3.9%

Rent Comparable 3 – Dorchester Village – 4381 Gwinnett St., North Charleston, SC
Blt 1980 – 139 Units

1	1	GRDN	670	$500	-	$500	$0.746	61	8	13.1%
1	1	TNHS	728	$550	-	$550	$0.755	4	0	0.0%
2	1	GRDN	780	$575	-	$575	$0.737	70	3	4.3%
2	1.5	TNHS	870	$600	-	$600	$0.690	4	1	25.0%
Totals/Averages			735				$0.740	139	12	8.6%

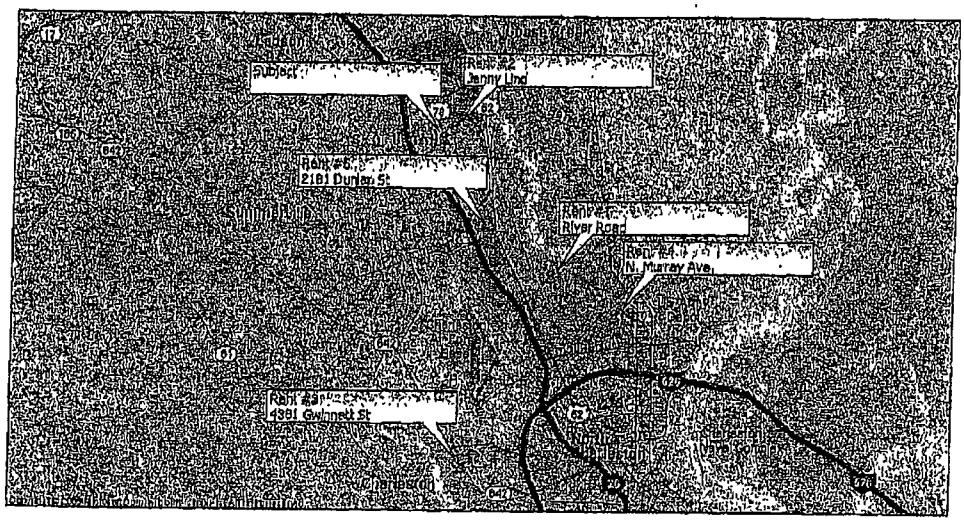
Rent Comparable 4 – Park Place – 5820 Murray Avenue, Hanahan, SC
Yr Blt 1972 - 305 Units

1	1	GRDN	700	$525	-	$525	$0.750	112	5	4.5%
2	1	GRDN	900	$620	-	$620	$0.689	29	2	6.9%
2	1.5	GRDN	900	$640	-	$640	$0.711	99	0	0.0%
3	1.5	TNHS	1,200	$735	-	$735	$0.613	1	0	0.0%
3	2	GRDN	1,100	$735	-	$735	$0.668	64	2	3.1%
Totals/Averages			878				$0.714	305	9	3.0%

Rent Comparable 5 – Merritt Summit Place – 2181 Dunlap St., N. Charleston, SC

1	1	GRDN	800	$695	-	$645	$0.800	48	4	8.3%
2	1.5	TNHS	1,030	$755	-	$755	$0.719	10	0	0.0%
2	2	GRDN	900	$760	-	$720	$0.794	168	7	4.2%
Totals/Averages			895				$0.792	226	11	4.9%

MOORE 200



The subject's one-bedroom units measure 660 SF and the two-bedroom units measure 832 SF SF. Based on the above analysis, we conclude that a reasonable rent for the one-bedroom units would be approximately $500/month. There are six one-bedroom apartments resulting in potential income of $3,000 per month, or $36,000 per year. The two bedroom units would rent for approximately $650/month. There are 42 two-bedroom units resulting in potential income of $27,300 per month or $327,600 per year. The subject was built in 1974. The five comparables used were built between 1972 and 1985. The all have stabilized occupancy with vacancy rates between 3.0% and 6.6%. Vacancy rates this low indicate that the apartments are generally fully occupied with the vacancy rates reporting tenants moving in and out.

The Income Approach was performed using rental rates found in the market.

Potential Gross Income

The total potential income for the entire complex, using market rates, is $363,600 *per year*, before vacancy and credit loss.

Vacancy and Credit Loss

MOORE 201

Vacancy and Credit Loss

The vacancy rate in North Charleston has improved slightly from 7.5% in August 2006 to 7.4% in February 2007. The current (02/07) rate for the overall market is 9.6%. For the purpose of this appraisal, we have assumed a 7.4% vacancy rate.

Effective Gross Income

Subtracting the estimated vacancy and collection loss ($26,906) from the Potential Gross Income ($363,600) indicates the Effective Gross Income, which is estimated to be $336,693.

Expenses

Management

Apartment complexes of this type are usually managed by a professional property manager who includes the property within their company brochures and pamphlets and is able to offer the property to multiple tenants who contact their offices. In addition, many types of newer apartment complexes have waiting lists within the subject market. A management fee of 6%, or $20,201, is allocated and is consistent with the existing management cost of other units within the immediate area.

Taxes

The total taxes for the subject property for the 2006 tax year were $28,246.80.

Insurance

According to the operating statements provided to us, insurance expenses totaled $19,977 for 2006.

Utilities

According to estimates provided by the agent overseeing the property, annual utilities are estimated at $16,800.

Capitalization Rates

Our capitalization rate is supported by two methods.

1) By comparison, the sale of the Clement Arms Apartments sold on August 30, 2005 with an indicated overall rate of **8.5%.**
2) The Califf Arms Apartments at 5465 Califf Road in North Charleston sold on November 15, 2005 with a cap rate of **7.9%.**
3) The Wildwood townhouse apartments at 507 Stinson Drive sold on November 9, 2001 with an indicated overall rate of **8.00%.**
4) The Northwoods Villas apartments at 8056 Thelen Avenue, North Charleston sold on May 12, 2006 with an indicated overall rate of **7.42%.**
5) The Florida Avenue Apartments located at 3335 Florida Avenue in North Charleston sold on November 3, 2005 with an indicated overall rate of **8.5%.**
6) The Driftwood Apartments located at 7360 Stall Road in North Charleston sold on June 30, 2006 with an indicated overall rate of **7.55%.**
7) Waverly Place apartments in North Charleston sold on April 15, 2005 with an overall rate of **8.5%.**

Therefore, based upon the two methods of analysis and other information within our files, we believe that a capitalization rate of **8.25%** is reasonable for the subject property in today's favorable apartment rents.

Therefore, when the Net Operating Income of $225,401 is capitalized or divided by .0825, there is an indicated value by the Income Approach of $2,732,133, rounded to:

TWO MILLION SEVEN HUNDRED THOUSAND DOLLARS

$2,700,000

MOORE 203

DIRECT SALES COMPARISON APPROACH

"AS IS"

The Direct Sales Comparison Approach is based on finding sales of similar property, which can be used to compare to the subject property to estimate the market value for the subject. The appraiser has found several sales that we have used to estimate the market value of the subject property. The sales prices are then converted to a sales price per unit for comparison to the subject.

Transaction Number	1	2	3	4
Transaction Type	Sale	Sale	Sale	Sale
	Hampton Oaks	South Pointe	Driftwood Apts.	Cliff Arms
Tax Map Reference	475-06-00-005	265-03-00-028	476-02-00-035	473-13-00-101
Date of Sale	6/28/2006	12/29/2006	6/30/2006	11/15/2005
Sales Price	$6,300,000	$14,290,000	$2,795,000	$955,000
Number of Units	160	256	85	24
Sales Price/Unit	$39,375	$55,820	$32,882	$39,792
Time Adjustment (10% Per Year)	10.00%	7.50%	10.00%	15.00%
Time Adjusted Price/Unit	$43,313	$60,007	$36,171	$45,760

Each of the four sales is listed above along with the name of the complex, the tax map number, the date of sale and the number of units. The sales price is then divided by the number of units to derive a sales price per unit. For sales over one year old, an upward time adjustment of 10% per year is made. This results in a time-adjusted price per unit.

ADJUSTMENTS				
Size	15%	15%	10%	-5%
Location	0%	0%	0%	15%
Corner/Access	0%	0%	0%	0%
Quality/Condition	0%	-10%	15%	0%

Adjustments are then made for individual factors such as size, location, access, quality and condition. This is as follows.

MOORE 204

Size

Economies of Scale is defined as a "reduction in cost of production per unit due to a large number of items produced." This same principle can be applied to real estate in that a buyer would pay a lesser price per unit (square foot) for a larger property than he/she would for a similar but smaller property. In other words, as the size of the property increases, the value per unit decreases.

The subject consists of a 48 unit apartment complex. The first three sales contain more than 48 units. Therefore, they are adjusted upward. The fourth sale contains less than 48 units. This sale is adjusted downward for size.

Location

The subject enjoys a convenient location along Otranto Road proximate to both Hwy 78 and Hwy 52. This is less than one mile east of I-26. Sale #4 is located off of Sumner Avenue in North Charleston. This is south of N. Rhett Ave and North of I-526. This is considered to be an inferior location when compared to the subject and this sale is adjusted upward for Location.

Quality/Condition

The subject is in average (-) condition with deferred maintenance. Sale #2 is in superior condition and is adjusted downward. Sale #3 was in poor condition at the time of sale and is adjusted upward.

Net Adjustment	*15%*	*5%*	*25%*	*10%*
Adjusted Price/Acre	**$49,809**	**$63,007**	**$45,213**	**$50,336**

This results in final adjusted sales prices ranging from $45,213 per unit to $63,007 per unit. Based on the locational characteristics as well as these comparable sales, we believe that the subject apartment complex could command a sales price of $60,000 per unit. The subject contains 48-units. Therefore, we believe that the overall value of the subject property as of the date of inspection is ($60,000 x 48-units) $2,880,000.

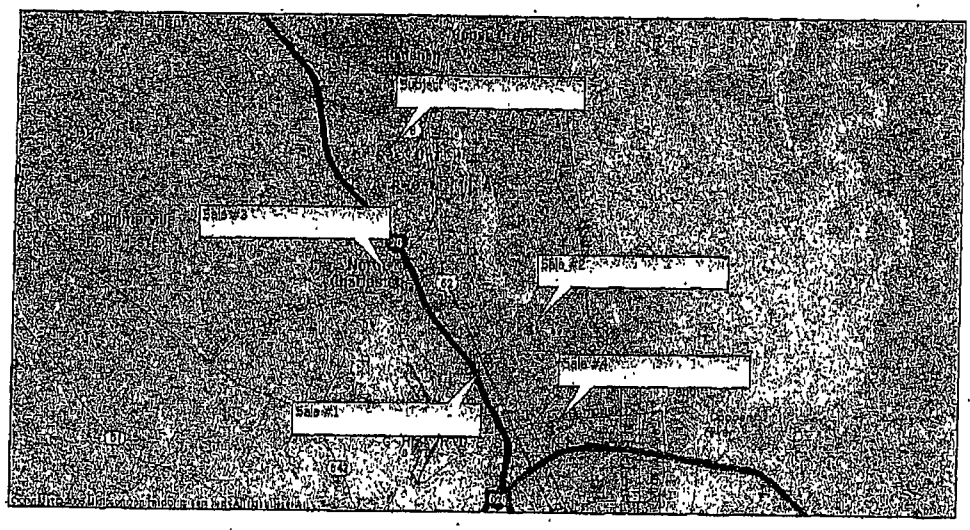
TWO MILLION EIGHT HUNDRED EIGHTY THOUSAND DOLLARS

$2,880,000

MOORE 206

APARTMENT SALES SUMMARY TABLE

No.	Location	Sale Date	Sale Price	No. of Units	Price/ SF	Price/ Unit
1.	6600 Rivers Avenue	June 23,2006	$6,300,000	160		$39,375
2.	6220 North Murray Drive	December 29,2006	$14,290,000			
3.	7360 Stall Road	June 30,2006	$2,795,000	82	$34,085.37	$34,085
4.	5465 Califf Road	November 15,2005	$955,000	24		$39,792



MOORE 207

Multi-Family Sale No. 1

Property Identification

Record ID	144
Property Type	Apartment
Property Name	Hampton Oaks
Address	6600 Rivers Avenue, North Charleston, Charleston County, South Carolina 29406
Tax ID	475-08-00-005

Sale Data

Grantor	MERIDIAN APARTMENTS LLC
Grantee	MPI MERIDIAN PROP LLC
Sale Date	June,23,2006
Deed Book/Page	K590/0498
Recorded Plat	ZPG27
Property Rights	Fee Simple
Verification	RealData; Confirmed by P. Kendall Moore, Jr.
Sale Price	$6,300,000
Cash Equivalent	$6,300,000

Land Data

Land Size	7.710 Acres or 335,848 SF
Topography	Level
Utilities	All Available

Unit Mix

Unit Type	No. of Units	Size SF	Rent/Mo.	Mo. Rent/SF
1 BR 1 Ba	47	675	$575	$0.85
2 BR 1 Ba	113	900	$650	$0.72

Total Units	160
Avg. Unit Size	800
Avg. Rent/Unit	$628
Avg. Rent/SF	$0.75

General Physical Data

Construction Type	Brick Ext
Stories	2
Year Built	1971

Remarks

This apartment complex is a two story complex built in 1971. It was in average condition at the time of sale. It had a 1.9% vacancy rate as of 02/07.

MOORE 208

Multi-Family Sale No. 2

Property Identification

Record ID	136
Property Type	Garden
Property Name	South Pointe
Address	6220 North Murray Drive, Hanahan, Berkeley County, South Carolina 29406
Tax ID	265-03-00-028

Sale Data

Grantor	Quail Run of Charleston, LLC
Grantee	Novo Properties
Sale Date	December 29, 2006
Deed Book/Page	6237/0097
Property Rights	Fee Simple
Verification	Real Data; Confirmed by P. Kendall Moore, Jr.
Sale Price	$14,290,000
Cash Equivalent	$14,290,000

Land Data

Land Size	10.920 Acres or 475,675 SF
Topography	Level
Utilities	All Available

Unit Mix

Unit Type	No. of Units	Size SF	Rent/Mo.	Mo. Rent/SF
	256	894		

Total Units	256
Avg. Unit Size	894

General Physical Data

Unit Amenities	Ceiling Fans, Washer/Dryer Connections, Microwaves
Project Amenities	Outdoor Pool, Outdoor Tennis, Clubhouse, Laundry, Sports Court
Year Built	1970

Remarks

This is the sale of the 256-unit South Pointe apartment complex in Hanahan, SC. This complex consists of 28 1 BR 1 Ba units measuring 685 SF, 196 2 BR 1 BA units measuring 900 SF, and 32 2 BR 1.5 Ba units measuring 1,043 SF. The units were in good condition at the time of sale. The sales price is $55,820 per unit.

MOORE 209

Multi-Family Sale No. 3

Property Identification	
Record ID	128
Property Type	Garden
Property Name	Driftwood Apartments
Address	7360 Stall Road, North Charleston, Charleston County, South Carolina 29406
Tax ID	478-02-00-035
Sale Data	
Grantor	The Whitfield Company
Grantee	S&K Apartments, LLC
Sale Date	June,30,2006
Deed Book/Page	V589/312
Recorded Plat	EJ877
Verification	Deed, MLS; Confirmed by Francis B. Kerr
Sale Price	$2,795,000
Cash Equivalent	$2,795,000
Land Data	
Land Size	3.410 Acres or 148,540 SF
Zoning	Multi-Family Residential
Topography	Level
Utilities	All Available
Net SF	82
General Physical Data	
Construction Type	Brick on Slab
HVAC	Central
Parking	2 per unit
Stories	2
Utilities with Rent	Water
Project Amenities	Outdoor Pool, Clubhouse, Laundry
Year Built	1971
Condition	Average(-)/Average
Indicators	
Sale Price/Net SF	$34,085.37
Occupancy at Sale	95%

Remarks
This is a 82 unit apartment complex built around 1971. Condition was mixed with units in average and below average condition. There is a pool, clubhouse and laundry. One bedroom units have 480 SF and 2 bedroom units have 600 SF. Rents were below market at the time of sale.

MOORE 210

Multi-Family Sale No. 4

Property Identification	
Record ID	111
Property Type	Garden
Property Name	Califf Arms Apartments
Address	5465 Califf Road, North Charleston, Charleston County, South Carolina 29405
Tax ID	473-13-00-101
Sale Data	
Grantor	Sandover Investments, LLC
Grantee	K & G Properties, LLC
Sale Date	November, 15, 2005
Deed Book/Page	U562/861
Recorded Plat	U/157
Property Rights	Fee Simple
Verification	Owen Tyler (Selling Agent; April 13, 2006; Other sources: CTAR MLS; Deed, Confirmed by Gantt Folline
Sale Price	$955,000
Land Data	
Land Size	1.640 Acres or 71,438 SF
Zoning	R-2, Multi-Family
Topography	Level
Utilities	All
Avg. Unit Size	482
Gross SF	11,568
General Physical Data	
No. of Buildings	2
Construction Type	Brick
Electrical	Typ.
HVAC	Good Condition
Parking	Paved surface
Stories	2
Year Built	1970
Condition	Average
Income Analysis	
Potential Gross Income	$113,600
Vacancy	$2,272 Est. @ 2%
Effective Gross Income	$111,328
Expenses	$24,428
Net Operating Income	$86,900

MOORE 211

Multi-Family Sale No. 4 (Cont.)

Indicators	
Sale Price/Gross SF	$82.56 Actual or $82.56 Adjusted
Sale Price/Unit	$39,792 Actual or $39,792 Adjusted
PGIM	8.41
EGIM	8.58
Expenses/SF	$2.11 Gross
Expenses/Unit	$1,018
Expenses as % of PGI	21.50%
Expenses as % of EGI	21.94%
Overall or Cap Rate	9.1%
NOI/SF	$7.51 Gross
NOI/Unit	$3,621

Remarks

This is the sale of the Califf Arms Apartments in North Charleston, SC. The property is made up two, 2-story brick buildings with a total of twenty-four, 1 bedroom/1bathroom units that were reported to be in above average condition. The parking lot had been resurfaced in 2002. There is an on-site coin operated laundry. Taxes and insurance for the property was reported to be $13,000 per year at the time of sale.

INCOME APPROACH

"AS COMPLETE"

As stated in the Description of Improvements section of this report, the entire subject apartment complex will be undergoing extensive renovations beginning immediately after the transfer of ownership. The total costs of renovations are estimated to be $688,814, or $14,350/unit. Details of the renovation are attached in the addenda of this report. Due to the higher quality and condition of the complex after renovation, one would expect that the rental rates would increase. In this section of the report we value the complex based on rentals of complexes that are in similar condition as the subject as complete.

Please refer to the following study showing five comparable rents.

Rent Comparable 1 - Coopers Pointe – 2225 Greenridge Road, N. Charleston, SC – Built 1986 -192 Total Units

1	1	GRDN	697	$729	-	$749	$1.060	76	2 2.6%
2	2	GRDN	931	$839	-	$859	$0.912	116	3 2.6%
Totals/Averages			838				$0.971	192	5 2.6%

Rent Comparable 2 – Farrington Place – 7927 St. Ives Road, North Charleston, SC Blt 1989 – 168 Units

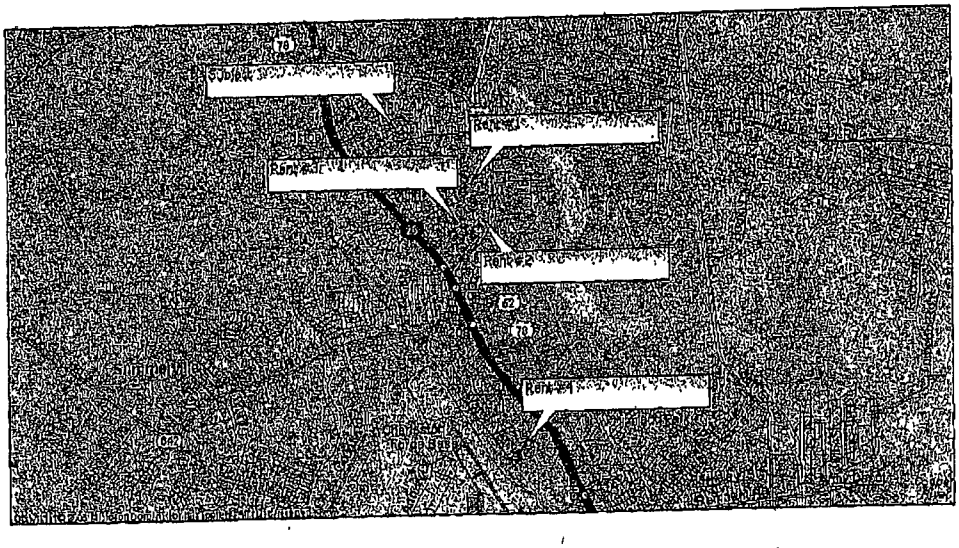
1	1	GRDN	738	$675	-	$685	$0.921	84	7 8.3%
2	2	GRDN	925	$800	-	$810	$0.865	60	5 8.3%
3	2	GRDN	1,250	$980	-	$990	$0.788	24	1 4.2%
Totals/Averages			900				$0.864	168	13 7.7%

Rent Comparable 3 – Planters Crossing – 7910 Crossroads Dr., North Charleston, SC Blt 1980 – 256 Units

1	1	GRDN	650	$629	-	$629	$0.968	128	24 18.8%
2	2	GRDN	950	$749	-	$749	$0.788	128	11 8.6%
Totals/Averages			800				$0.878	256	35 13.7%

Rent Comparable 4 – Willow Lake –6834 Ward Avenue, N. Charleston , SC Yr Blt 1974 - 68 Units

1	1	GRDN	425	$400	- $400	$0.941	68	11 16.2%
Totals/Averages			425			$0.941	68	11 16.2%



The subject's one-bedroom units measure 660 SF and the two-bedroom units measure 832 SF SF. Based on the above analysis, we conclude that a reasonable rent for the one-bedroom units "as complete" would be approximately $700/month. The lease rate is adjusted upward slightly due to the fact that the subject will be converted to a "green" building. This will be done using guidelines provided by Earthcraft House. EarthCraft House is a green building program that serves as a blueprint for healthy, comfortable homes that reduce utility bills and protect the environment. There are six one-bedroom apartments resulting in potential income of $4,200 per month, or $50,400 per year. The two bedroom units would rent for approximately $800/month. There are 42 two-bedroom units resulting in potential income of $33,600 per month or $403,200 per year. The subject was built in 1974. The four comparables used were built between 1974 and 1989.

The Income Approach is performed using rental rates found in the market. These rents are of apartment complexes in the subject area that have been well maintained and are in good condition. Once the subject property is renovated, it will be comparable to these comparables.

Potential Gross Income

The total potential income for the entire complex, using market rates, is $453,600 *per year*, before vacancy and credit loss.

Vacancy and Credit Loss

The vacancy rate in North Charleston has improved slightly from 7.5% in August 2006 to 7.4% in February 2007. The current (02/07) rate for the overall market is 9.6%. For the purpose of this appraisal, we have assumed a 7.4% vacancy rate.

Effective Gross Income

Subtracting the estimated vacancy and collection loss ($33,566) from the Potential Gross Income ($453,600) indicates the Effective Gross Income, which is estimated to be $420,033.

Expenses

Management

A professional property manager who includes the property within their company brochures and pamphlets and is able to offer the property to multiple tenants who contact their offices usually manages apartment complexes of this type. In addition, many types of newer apartment complexes have waiting lists within the subject market. A management fee of 6%, or $25,202, is allocated and is consistent with the existing management cost of other units within the immediate area.

Taxes

Real estate taxes are estimated to be $33,600 per year.

Insurance

Insurance expenses are estimated to be $26,250 per year.

Utilities

According to estimates provided by the agent overseeing the property, annual utilities are

estimated at $16,800.

Legal and Accounting
This cost is for basic bookkeeping and tenant legal expenses. This is not meant to account for additional cost that an owner may pay when including the reports within his own personal or business income. Based upon the appraiser's experience, an estimated cost of $300/month or $3,600 is allocated.

Licenses and Fees
General business licenses and fees are based on governmental cost. They should be approximately $500 per year.

Pest Control
According to the agent overseeing the property, pest control averages about $2,400 per year.

Reserves
Reserves have been allocated for the eventual replacement of long-term items such as roofs and repairs to the parking area. Some general maintenance costs may be allocated to these items over time. These annual amounts will be compounded over the years and should be adequate funds for the replacement of these items. Mostly, these items are considered to have 10 to 20 year life expectancies. We have allocated 2.5% or EGI or $10,500/year.

Maintenance
Maintenance costs are estimated to be $9,600 per year.

Landscaping and Clean-up
Because there are grassed areas and parks associated with these buildings, there should be some amount allocated for the cutting of grass and landscaping. We estimate landscaping costs to equal about $250/month or $3,000 per year.

NOI

Total expenses equal $131,452 or 31% of effective gross income. After deducting this amount, there is a total net income of $288,571.

Using the same capitalization rate found in the "As Is" Income Approach, we capitalize the NOI. Therefore, when the Net Operating Income of **$288,571** is capitalized or divided by .0825, there is an indicated value by the Income Approach of $3,497,951 , rounded to:

THREE MILLION FIVE HUNDRED THOUSAND DOLLARS

$3,500,000

DIRECT SALES COMPARISON APPROACH

"AS COMPLETE"

In a previous section of the report, we used the Direct Sales Comparison Approach to value the property "as is." In this section, we will use the same approach to value the property after all of the renovations have been completed. This is as follows:

Transaction Number	1	2	3	4
Transaction Type	Sale	Sale	Sale	Sale
	Rosewood TH	Alta Shores	Woodbridge	Reserve Wescott
Tax Map Reference	252-11-07-011	486-00-00-172	353-13-00-003	N/A
Date of Sale	12/29/2006	12/1/2005	4/15/2006	9/15/2005
Sales Price	$7,291,000	$15,162,786	$14,500,000	$16,775,000
Number of Units	100	240	198	192
Sales Price/Unit	$72,910	$63,178	$73,232	$87,370
Time Adjustment (10% Per Year)	7.50%	17.50%	10.00%	20.00%
Time Adjusted Price/Unit	$78,378	$74,234	$80,556	$104,844

Each of the four sales is listed above along with the name of the complex, the tax map number, the date of sale and the number of units. The sales price is then divided by the number of units to derive a sales price per unit. For sales over one year old, an upward time adjustment of 10% per year is made. This results in a time-adjusted price per unit.

ADJUSTMENTS				
Size	10%	15%	15%	15%
Location	0%	0%	-15%	-15%
Corner/Access	0%	0%	0%	0%
Quality/Condition	-10%	-10%	0%	-25%

Adjustments are then made for individual factors such as size, location, access, quality and condition. This is as follows.

MOORE 219

Size

Economies of Scale is defined as a "reduction in cost of production per unit due to a large number of items produced." This same principle can be applied to real estate in that a buyer would pay a lesser price per unit (square foot) for a larger property than he/she would for a similar but smaller property. In other words, as the size of the property increases, the value per unit decreases.

The subject consists of a 48 unit apartment complex. Each of the four sales used are larger than the subject. Therefore, these sales are adjusted upward for size.

Location

The subject enjoys a convenient location along Otranto Road proximate to both Hwy 78 and Hwy 52. This is less than one mile east of I-26. Sale #3 is located off Ashley River Road inside of I-526. This is considered to be a superior location when compared to the subject and this sale is adjusted downward for Location. Sale #4 is located in Wescott Plantation off of Dorchester Road. This is considered to be a superior location when compared to the subject and this sale is adjusted downward for Location.

Quality/Condition

Sales #1, 2 and 4 were built between 1987 and 2004. Although the subject is being valued as if it were fully renovated, these sales are still considered to be of superior quality and condition. For this reason these sales are adjusted downward.

Net Adjustment	*0%*	*5%*	*0%*	*-25%*
Adjusted Price/Acre	**$78,378**	**$77,946**	**$80,556**	**$78,633**

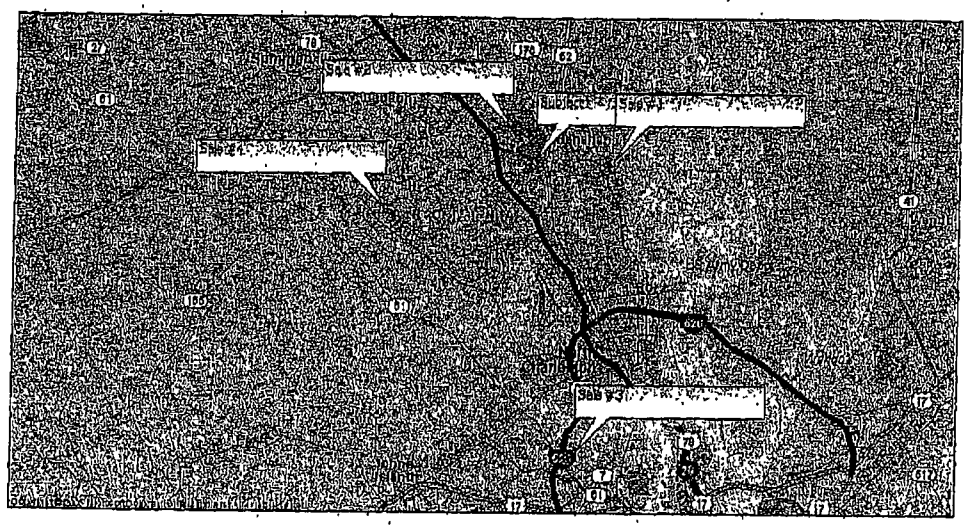
This results in final adjusted sales prices range from $77,946 per unit to $80,556 per unit. Based on the locational characteristics as well as these comparable sales, we believe that the subject apartment complex could command a sales price of $78,000 per unit. The subject contains 48-units. Therefore, we believe that the overall value of the subject property as of the date of inspection is ($78,000 x 48-units) $3,744,000, or:

THREE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS

$3,750,000

APARTMENT SALES SUMMARY TABLE

No.	Location	Sale Date	Sale Price	Size in SF	No. of Units	Price/ SF	Price/ Unit
5.	4501 Harbor Lake Drive	December 29,2006	$7,291,000		100		$72,910
6.	2605 Elms Plantation Blvd.	October 05,2004	$15,162,786		240		$63,178
7.	2040 Ashley River Road	April 12,2006	$14,500,000		192		$75,521
8.	4975 Wescott Boulevard	September 01,2005	$16,774,000		192		$87,365



MOORE 221