

RECEIVED

SEP 22 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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 IV OF IV

Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
(803) 796-9299
ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Robert E. Stepp
Tina Cundari
Benjamin R. Gooding
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Volume I of IV

Record on Appeal	1-500
------------------------	-------

Volume II of IV

Record on Appeal	501-1000
------------------------	----------

Volume III of IV

Record on Appeal	1001-1500
------------------------	-----------

Volume IV of IV

Record on Appeal	1501-1803
------------------------	-----------

Appellant's Final Brief	1804
-------------------------------	------

Appellant's Final Reply Brief.....	1862
------------------------------------	------

Final Brief of Respondent.....	1891
--------------------------------	------

Court of Appeals Opinion No. 5488 Filed May 24, 2017	1942
--	------

Respondent's Petition for Rehearing	1951
---	------

Order Denying Petition for Rehearing	1962
--	------

{ Joe + Angie Breech
881-2271 - Home
834-0270 - Cell

New Prospect Baptist Church
Lawrence - Hwy. 221
Kennedy General Home -
606 Main St.
11-2:30 p.m. Lawrence, Mo.
(86) 985-535

- Craig Crosby # 563-4766 / # 560-2508 I-26 to Clinton Airt
- Manning Hughes - # 563-3469 or # 560-2021 -
- Steve Stahl - # 532-8978

- Colleen Rhodes - # 563-2077 / # 560-0336
- Jesse McNeal - # 906-7178
- Share → Chris Bender + Calvin McCoy = # 724-9953 / # 410-330-3440
- Selena Bayfield - # 563-6606 / # 991-6080
- Tim Walden # 532-5134 / # 576-0132 / 805-6060

- * Carnest Cunningham - # 200-4862 (Sharp's Sharps Paints - His Boss)
- Pat Arnold - # 884-3550
- George Kurlow - # 530-1486 - sheetmetal (Carnest)
- Clyde Dargatzis - # 568-0404
- (Dolly Cannon - # 886-6061 (Potter's Dr. Tessler))

air
Sept
Tent holding

{ * David Strickland (SCE + S) - Fresno - Calif. - # 209-3814
Tom Walliser (gas line connector - # 200-5075
recommended by David)

- John R. Cumbie - # 729-5618 or 719-2051
Billie or Darla Cumbie Realty

- Homer - # 899-3003 or # 709-6493
Berkeley Monument + Sign Co.

Tommy Melfi - Palmdale - # 343-1651

Mr. Shepard - # 514-1749

{ Danny Lott (Electrician) - # 364-0156

- Melvin Mangault - # 478-9352

- Art Nichols - # 843-860-1067

- David Baywell - # 864-923-4030

- Salvador Escobar - # 367-2368
530-4631

- Fred (does Carpet - Melvin's friend)

Blumberg { J.P. Haggerson - # 554-6547 / 200-6916

{ Brandon from Cusi County Rental recommended) # 767-0262

* Rocky Brumbaugh - # 412-6662

* Marvin Smith - # 534-8676 (Chris' friend -
Landscape, Caters)

- Reginald Underwood (Rene's Dad) # 873-8593
(will haul old scrap metal - stoves, refrigerators, etc.)

- Carroll Bense - 478-6650

{ Rocky Brumbaugh - # 412-6662

{ Diego Ferrera - # 642-1919
-784-

Blackburn - * 1-810-224-2677

* 704-535-9313

* 214-854-3190 # 214-854-3000

* 864-594-8210

972-683-5131 Tammy.Matij@Blackburn.com

Review

Lease - Real Estate Program Mgr. - Marc Comstock * 972-683-8733

* Ref. S. Jore # 45033 Richard Property * 972-683-8289 972-683-5131

* Jan Litzynmaier - # 972-683-8654

300 Redbud Blvd. Fax # 972-683-8406

WMS Kinney, Texas 75069

- e-mail mar.comstock@blackburn.com

Fax # - 972-683-8406 to Jan

- e-mail jan.litzynmaier@blackburn.com

- Shara Faucette - # 532-2104
Home Improvement - (saw truck at the mill)

- Bridgette # 910-514-8255
- Jessica + Aasha - # 557-5029
College students - Tuba + Ches. South - old or new

- Jerico Wade - # 304-4253
needs 1-bedroom

- Penelope (P.G.) - # 513-4468 (friend of Marquette)
needs 2 bedroom upstairs

Christy Anne - # 452-2624

- Crystal Smith - # 843-442-3252 (2-bedroom)

- Shannon Holmes # 843-225-4914
(2 = bedroom)

old or new 2-Bedroom
Shannon Holmes - # 843-642-4109

new 2-Bedroom
Crystal Harper - # 843-270-9688

new 1-Bedroom
Andrea Lee - # 843-906-5624

new 2-Bedroom
Ray Davis (Section 8) # 843-329-9239

need 2-Bedroom
Johnny Young - # 843-735-5106 (A/C)

- Quincy P... - # 843-642-0540

- Robert Donofrio - # 813-389-9834
813-398-1861

new - Cynthia Lindsey - # 926-6063
(friend of Fred + Chita Lopez)

- Tanya - # 843-302-9557

Aug. 2008 -

1) Ches Co. Housing	- \$ 1973. ⁰⁰	8/1/08
2) Dorothy Barnwell	for Rent 750. ⁰⁰	# 843-589-2325
	167. ⁰⁰	
Patricia Brown	117. ⁰⁰	- \$487. ⁰⁰
Sheumille	26. ⁰⁰	- \$574. ⁰⁰
Donna Siller	97. ⁰⁰	
Vernon	50. ⁰⁰	
Jamie Siler	550. ⁰⁰	
Solomon	125. ⁰⁰	
Fredrich Jenkins		- 134. ⁰⁰
Leticia Hamilton		- 433. ⁰⁰

Advanced Auto	\$ 4958.33
Papa John's	\$ 1792.20
Check out Cash	\$ 2075. ⁰⁰
First Frankie	\$ 200. ⁰⁰
Blockbuster	\$ 5840. ⁰⁰

788

#569-3773 Cpt. 436 - Home Depot (Patty)

1) Kitchen Stainless Steel Sink - 33" x 22" x 6" deep

- Home Depot #39

HD Supply #43.99

Side Splash #14.97

Side Splash - #

2) Bathroom Vanity - 2' wide x 18" deep x 2'8" high

Home Depot - #79

HD Supply - #135.47

* Set House feed - Max Jones Jay

#843-761-2013

1) Front door = Power hinge broken - screws

2) Ceiling lights - over ^{1st} 2nd room on right
w/ black design - are these lights & do they work?

3) Receptacles on wall in all areas

- 2nd office - exposed wires on wall

4) Paint door frames

5) Moulding ^{or tile} around bottom wall in front area

6) Put switch on wall for back area - put on wall as you walk into room on right inside wall near sink wall

→ Back wall - check work mess? you can see slope - looks horrible -

7) Clean ceiling vents - dust & dirt hanging

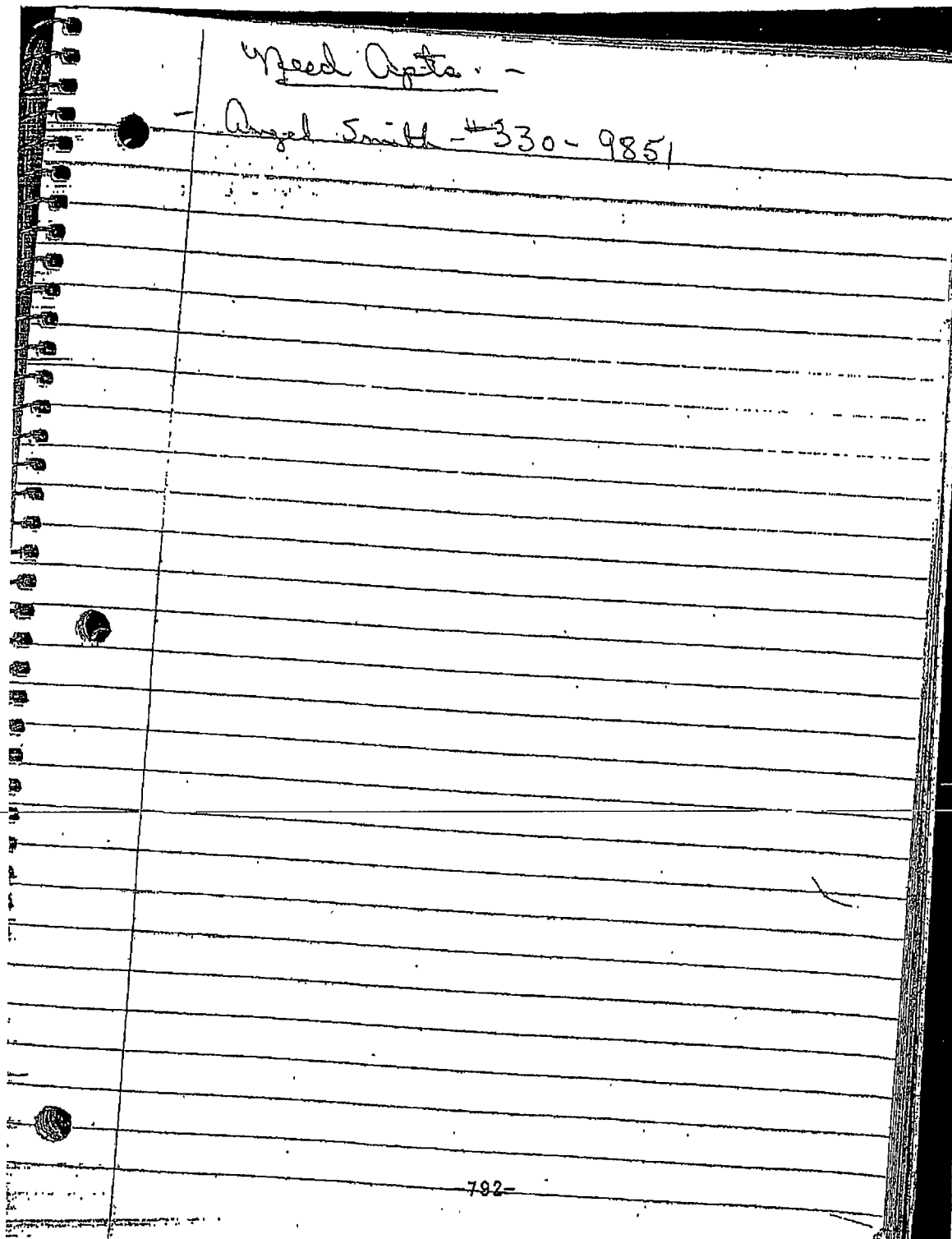
8) Fix door handle on bathroom door

9) Fix door stopper on wall in 1st office, 2nd office

10) Fix 2 holes in wall behind counter area

Brown trim on head board - set paint off

- 12) Bead on top of wall need painting
- 13) 2nd office - ceiling black trim hanging down
- 14) Bead board section missing - 1st office
- 15) 1st office - hole in bottom wall where tile is missing - fix or replace missing tile
- 16) 1st office ceiling - ^{fix} round cover fell off - floor
- 17) Melvin Manguild - sheetrock messy looks like showing - screws & nails exposed -
- 18) Tray - couple ceiling tiles wet w/ stain - did you not replace these?



Speed Apts. -

Angel Smith - #330-9851

792-

- 1) Mack - electrical dis-connected boxes.
 1) gas line over hot water heater box -
 can't open door
- 2) Mack - 1) Order more sand & brick
 2) Be sure to clean up old brick before
 Wed. - for landscaper
- 3) Call Cain - Mack - checks
- 4) Buy Vending Machine for \$350 near Cost-less
- 5) Trey - Measure insulation in attic
- 6) Pressure Wash - to put seals down in parking lot
- 7) Epoxy bit for ball foyer -
- 8) Jack Swift / Steve Cimber - office renovation -
- 9) Check e-mail from Grand about direct pricing
 from Manufacture on hardwood flooring for office
 - Pick out office boxes / Home Depot
- 10) Comcast - wireless internet for office phone -
 # 554-4100 / # 347-140
 # 266-3057
- 11) Sign for Shipping Center - to rent
- 12) Sign - holder letters - 1935 - Auto-rental sign

- 13) Major Kinard - NCPD - for ^{30 day} Surveillance
- 14) Max Stern - about Relando - audit
- 15) Bldg. 5 - fix hole in concrete - Plumbing
- 16) Bldg. 6 - Find water leak
- 17) Bldg. 4 - Hole in back dry steps -
- 18) Dumpster - Concrete block + concrete slab - ^{post} ~~find~~
- 19) Vinyl shutters - vinyl company - G+S Vinyl -
- 20) America Bank - Call Benji for Meet
 (a) Summerhill Branch - pick up copies checks - ^{Anne or} ~~making~~ that
- 21) Insurance on lifts & shop center - Check coverage
- 22) America Bank - Benji needs → 10-99's on Palm Blvd.
 + other estimated income -
- 23) Window World - # 579-0706
 aka ^{aka} Donald Jones # 324-0706

→ 843-803-9990 - Water Loss

- * 24) Set power bill for Ralph + water
- Check on missing refrigerator
 - Check on missing Chandeliers
 - Check on broken mirror glass sliding door
 - Side splash for bathroom vanity

- 25) Jack - back splash -
- pt. for window
 - window wood lock in 1-A
 - door knob loose front door

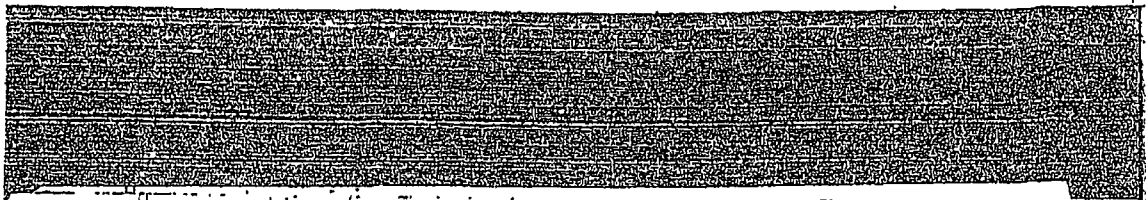
26) Pay Deon - Mail check + call him

27) Check on chowanso - ^{Apts - 492 Kenne Agency} # 795-0189
^{Ship. Contr. #}
MS Kay chow - ^{St. John # 492 Kay}

28) Dave Finn - Re-Max
Helping - I am trying to do the right thing. I thought it was
I can't get my papers, invoices, bills - doing business w/
reliable co. like Re-Max - is Re-Max a reliable company?
D) figures are not coming up - can't get my leases / contracts -
properties have been mis-managed - escrow accts. are not
right - even my CPA + attorney are not adding up

29) Sign Co. - March Lane

30) ~~Sign Co.~~ - # 887-7953



Advertisement

ESPION - check credit
#980-8811

- Apts. Cam Mary Housing # 764-7294
764-7264
- For Rent. cam CAFB Housing # 963-2100
963-3858

✓ Tracy Elders - Jennell Center - # 296-6922

- Joanie Young - # 864-363 8050
- Beach House # 864-353-9262

- Teresa Bullford - 646 Albany Blvd. - Summerville, S.C. 29485

- Jeff - 761-8588 (Central - 4 Menche Corner)
Hardware + supply

✓ Appl. w/ Kevin Holmes - 3:30 p.m. - Wed. 6/25/08

- For Rent. cam - Area # (843) - 367-5452
- Home - Rob-Robles - # 556-4320 (Call ahead call me)

6-A

3 - AC in kitchen

1 - refing - 1 stove

1 - AC / Htg unit

6-C

- Doors

= Hot water heater in hall

- AC / Htg units

- Stoves, refing, Dishwash

Stacked up in living room

Hot water heater in hallway

6-D

15 or 16 Hot water heaters

Stove

Htg. return unit

1 refing

1 Dishwash

1 sink

7 or 8 new doors

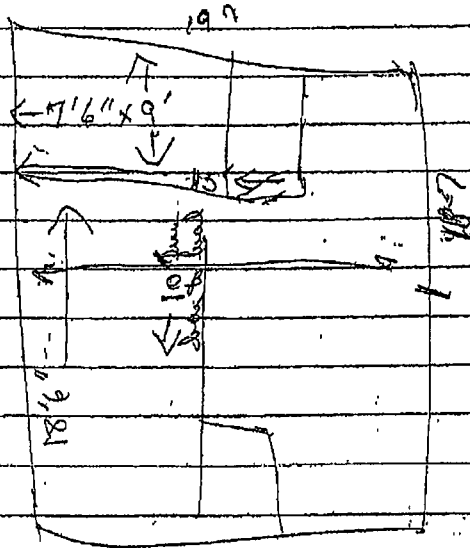
Bundle of old AC return units

6-B

refing

Dishwash

Hot water heater



-798-

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 LINDA A. GIBSON, HERITAGE)
 SEVEN, L.L.C., and SEVEN)
 OAKS APARTMENTS, L.L.C.,)
)
 Plaintiffs,)
)
 -vs-)
)
 ROLANDO V. VILLAVICENCIO,)
 RPV INVESTMENTS, L.L.C.,)
 DPS OF CHARLESTON, INC. d/b/a)
 RE/MAX PROFESSIONAL,)
 and PAUL K. MOORE ASSOCIATES, INC.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 2008-CP-10-4282

SECOND AMENDED
 COMPLAINT
 (JURY TRIAL REQUESTED)

2010 AUG 11 PM 4:45
 JULE L. ARMSTRONG
 CLERK OF COURT

FILED

The Plaintiffs, LINDA A. GIBSON, HERITAGE SEVEN, L.L.C., and SEVEN OAKS APARTMENTS, L.L.C., by their undersigned attorneys, allege in their Amended Complaint against the Defendants, ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, L.L.C., and DPS OF CHARLESTON d/b/a RE/MAX PROFESSIONAL REALTY, and PAUL K. MOORE & ASSOCIATES, INC. and would respectfully show unto this Honorable Court:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff, LINDA A. GIBSON, is a resident of the County of Dorchester, State of South Carolina and is the sole shareholder of the Plaintiffs, HERITAGE SEVEN, L.L.C., and SEVEN OAKS APARTMENTS, L.L.C., which in turn respectively own the shopping center and the apartment complex hereinafter described.
2. The Plaintiff, HERITAGE SEVEN, L.L.C., is a corporation organized under the laws of the State of South Carolina which has its principal place of business located in the County of

-1-



Appendix 01517

Dorchester, State of South Carolina and which is engaged in the business of renting a shopping mall located at 109-111 S. Highway 52, Moncks Corner, South Carolina 29461 in the County of Berkeley, State of South Carolina.

3. The Plaintiff, SEVEN OAKS APARTMENTS, L.L.C., is a corporation organized under the laws of the State of South Carolina which has its principal place of business located in the County of Dorchester, State of South Carolina and which is engaged in the business of renting apartments located at 2625 Otranto Road, North Charleston, South Carolina 29406 in the County of Charleston, State of South Carolina.

4. The Defendant, ROLANDO V. VILLAVICENCIO, is a resident of the County of Berkeley, State of South Carolina and is a joint owner or shareholder of the Defendant, RPV INVESTMENTS, L.L.C..

5. The Defendant, RPV INVESTMENTS, L.L.C., is a corporation organized under the laws of the State of South Carolina which has its principal place of business located in the County of Berkeley, State of South Carolina and which is engaged in business of providing investment advice and management services to individuals and businesses, including the Plaintiffs, in the Counties of Berkeley, Charleston, and Dorchester, State of South Carolina.

6. The Defendant DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY is a corporation organized under the laws of the State of South Carolina which has its principal of business located in the County of Charleston, State of South Carolina and which is engaged in the business of providing real estate management services and advice to individuals and businesses, including the Plaintiffs, in the Counties of Berkeley, Charleston, and Dorchester, State of South Carolina.

7. At all times relevant hereto the defendants RPV INVESTMENTS, L.L.C., & ROLANDO V. VILLAVICENCIO, were acting as the agent servant and employees of Defendant DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY, in the scope and course of their employment.

8. Upon information and belief, Defendant PAUL K. MOORE & ASSOCIATES, INC. is a corporation organized and existing under the laws of the State of South Carolina, in the business of real estate appraisals.

9. At all times relevant hereto, Defendant PAUL K. MOORE & ASSOCIATES, INC. was acting as the agent of Defendants ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, L.L.C. DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY.

10. This Honorable Court has jurisdiction of the parties and the subject matter of this action and venue is proper by reason of the residence of at least one of the Defendants and the commission of the acts or omissions hereinafter alleged having occurred in the County of Charleston, State of South Carolina.

FACTUAL ALLEGATIONS

11. The Plaintiff LINDA A. GIBSON, met Defendant ROLANDO V. VILLAVICENCIO at church. Defendant ROLANDO V. VILLAVICENCIO knew of Plaintiffs' relative inexperience in the real estate field, assured the Plaintiffs of his experience and competence in the real estate field, held himself out as an agent for a well known broker, and persuaded the Plaintiffs to allow him to manage Plaintiffs' properties. As a result, the Plaintiffs reposed trust and confidence in all of the Defendants and reasonably believed they were acting in her best interests in all relevant matters and at all relevant times hereto.

12. In December of 2005 the Defendants, **ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, L.L.C.** and **RE/MAX PROFESSIONAL REALTY**, advised the Plaintiff, **LINDA A. GIBSON** to purchase the shopping center located at 109-111 S. Highway 52, Moncks Corner, South Carolina 29461 in the County of Berkeley, State of South Carolina. The Plaintiff, trusting in the Defendants' sound judgment in matters such as these, agreed.

13. The Defendants, **ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, L.L.C.**, and **RE/MAX PROFESSIONAL REALTY**, represented to the Plaintiff, **LINDA A. GIBSON** and **HERITAGE SEVEN, L.L.C.**, that they would manage the shopping center property by performing services including advertising the shopping mall, finding tenants, leasing the mall, paying the mortgage, taking care of repairs and maintenance, and paying the expenses of the mall including taxes, insurance, in consideration of a management fee equal to ten (10%) of the rents collected.

14. The parties orally agreed to the aforementioned contractual terms regarding the management of the shopping center and did not memorialize said agreement in writing.

15. Upon information and belief, the shopping center rental units were leased in the name of the Defendant, **RE/MAX PROFESSIONAL REALTY**, which has collected the rents on a monthly basis, paid expenses as directed by the Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**

16. At the same time the Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, as the disclosed agents for the sellers, advised the Plaintiff, **LINDA A. GIBSON**, to purchase an apartment complex in the Otranto community.

17. Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY represented that the apartments were a good investment for the price, were a suitable investment for a person of Plaintiffs limited level investment sophistication, and would provide a positive return on her investment. None of this was true but Plaintiff did not know or have reason to know of that at that time.

18. Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY further represented that they would help her arrange for the financing of the apartments and would provide confirmation of their value.

19. Defendants informed the Plaintiff that an appraisal of the Apartment Complex is a necessary prerequisite to any loan and retained Defendant PAUL MOORE AND ASSOCIATES to perform an appraisal.

20. Defendant PAUL K. MOORE AND ASSOCIATES undertook to provide an appraisal of the Apartment Complex.

21. On September 12, 2007, Defendant PAUL K. MOORE AND ASSOCIATES provided the Appraisal Report, appraising the Apartment Complex at \$2,800,000 "As Is" and \$3,700,000 in "As Complete" condition as of September 12, 2008.

22. While Plaintiff was not aware of it at the time, the Appraisal Report was inaccurate, materially deficient and negligently prepared, but instead relied upon the Appraisal Report and the advice of the Defendants in making her decision to purchase the apartments.

23. At the same time, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY, convinced Plaintiff to establish a line of credit (secured by a mortgage on her beach home) which the Defendants would have access to provide funds to renovate the apartment buildings.

24. Plaintiff relied on the representations of Defendants as aforesaid and purchased the apartments, and established an \$800,000 line of credit to be used for the renovations of the apartments.

25. Both as an inducement to make the purchase, and following the purchase, the parties orally agreed the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY, would manage the apartment complex consisting of six (6) buildings by performing services including overseeing the renovation of the apartment complex one (1) building at a time to preserve rental income to pay the mortgage, advertising and leasing the apartments, collecting the rents, paying the mortgage, taking care of repairs and maintenance, and paying taxes, insurance, and other expenses.

26. In September of 2007 the Defendant, ROLANDO V. VILLAVICENCIO, approached the Plaintiff, LINDA A. GIBSON, about loaning him Thirty Thousand (\$30,000.00) Dollars to complete a real estate transaction and represented that the loan would be repaid within thirty (30) days and the Plaintiff agreed to make the loan. Plaintiff Gibson and Defendant ROLANDO V. VILLAVICENCIO at all times intended for this loan to be a personal loan to Defendant Villavicencio.

27. Sometime thereafter, the personal loan which Plaintiff LINDA A. GIBSON made to Defendant ROLANDO V. VILLAVICENCIO came due. The Defendant, ROLANDO V. VILLAVICENCIO, failed to repay the \$30,000.00 loan to the Plaintiff, LINDA A. GIBSON, as promised and further failed to provide her with a note as evidence of the personal debt when requested.

28. In the meanwhile, the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY, would periodically make representations to the Plaintiffs how the shopping mall was doing financially but did not provide the Plaintiffs with itemized statements of the receipts and disbursements.

29. Subsequently, the Plaintiffs became concerned about the financial responsibility of the Defendants and requested that the Defendant, RE/MAX PROFESSIONAL REALTY, provide them with an itemized statement of the income and expenses of the shopping center. However, the Defendant, RE/MAX PROFESSIONAL REALTY, which had collected the rents and made the disbursements, told the Plaintiffs they would have to obtain an itemized statement from the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C..

30. Plaintiffs also requested that the Defendant, RE/MAX PROFESSIONAL REALTY, provide them with an itemized statement of the income and expenses of the shopping center. However, the Defendant, RE/MAX PROFESSIONAL REALTY, which had collected the rents and made the disbursements, told the Plaintiffs they would have to obtain an itemized statement from the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C..

31. After numerous demands for an accounting the Defendant, RE/MAX PROFESSIONAL REALTY, finally provided the Plaintiffs with a computer printout of the shopping center's income and expenses which showed, among other things, that \$38,000.00 had been paid to the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., for "miscellaneous expenses."

32. The Plaintiffs requested an explanation of the miscellaneous expenses and further requested that they be provided with copies of the bills or invoices associated with such expenses. However, the Defendant, RE/MAX PROFESSIONAL REALTY, told the Plaintiffs they did not have bills or invoices. Rather, they paid the miscellaneous expenses at the direction of the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., without verification. They further advised the Plaintiffs that they would have to obtain an explanation and copies of the bills or invoices from the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C.

33. At this time, Plaintiff Gibson instructed the Defendant, RE/MAX PROFESSIONAL REALTY, not to disburse further amounts for expenses from her account at the direction of the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., without her prior approval.

34. The Plaintiffs became increasingly concerned and began investigating the renovation of the apartment complex by the Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY, had discovered the following problems:

- a. Renovations had begun on three (3) buildings instead of one (1) as represented thereby limiting rental income needed to pay the mortgage;
- b. Substantial sums of money had been paid to a general contractor who was not performing or supervising the renovation work;
- c. Renovations were started without proper permits having been obtained from the municipal authorities;
- d. Renovations were actually being performed by the owner of the "Honey-Do-It" handyman company;
- e. Substantial sums had been paid to the general contractor to order doors and windows for the apartment which doors were never ordered and the money squandered;
- f. Some of the appliances from the apartment complex were being removed and delivered to another apartment complex owned or managed by the Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**;
- g. Substantial sums of money had been withdrawn from the line of credit established to renovate the apartment complex for materials, labor, and supplies that could not be accounted for;
- h. Defendant **ROLANDO V. VILLAVICENCIO** was taking monthly fee out of Plaintiffs' checking account for what he called project management fee, which Plaintiffs' had not approved.
- i. When the Plaintiffs attempted to ask questions about the foregoing, they were threatened with having the permits pulled on the renovations.

35. After further investigation, the Plaintiffs subsequently became aware that Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, had also used funds from one of Plaintiff Gibson's accounts to pay a person named Antonio Rosales-Gutierrez, carpet installer, for work he had performed on a property which, upon information and belief, is managed or owned by **ROLANDO V. VILLAVICENCIO** for the benefit of Defendant Villavicencio.

36. After further investigation the Plaintiffs discovered Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, have withheld rent checks, failed to timely make mortgage payments and expenses, have failed to produce documentation for large "miscellaneous expenses" the Defendants paid out on behalf of themselves, and have notified the tenants of the properties not to speak with or deal with the Plaintiffs directly thereby making it impossible for them to manage their properties and meet their financial obligations.

37. As a result of the aforesaid conduct on the part of the Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, the Plaintiffs justifiably demanded that they be provided with complete copies of all books and records, leases, contracts, listing agreement, management agreements, files, and an accounting on both the shopping center and the apartment complex so they could be examined by an independent certified public accountant.

38. The Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**,

refused to provide the Plaintiffs with complete copies of all books and records or to make an accounting unless the Plaintiffs entered into a new "termination agreement" with undisclosed terms to be dictated by the Defendants.

39. In December of 2007, Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, presented Plaintiffs with the "termination agreement." This agreement was in fact 3 agreements, an Exclusive Right to Lease Listing Agreement for the shopping center, an Exclusive Right to Lease Listing Agreement for the apartment complex, and a Residential Management Agreement for the apartment complex. Said documents are attached hereto as Exhibits A, B, C. Clearly, these are not "termination agreements."

40. When these agreements were presented to the Plaintiffs, the Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, represented that they were nothing more than a written instrument reflecting the oral agreements, terms, and conditions that they had already agreed upon.

41. However, the aforementioned agreements modify the terms of the December 2005 and September 2007 oral agreements between Defendants and Plaintiffs regarding the management of the shopping center and apartment complex. Moreover, they are grossly unfair and one sided in favor of the Defendants, **ROLANDO V. VILLAVICENCIO** and **RPV INVESTMENTS, L.L.C.**, and **DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY**, in comparison to the oral agreements.

42. Furthermore, no new or additional consideration was given in exchange for said modifications to the December 2007 agreements.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)
(as to Defendants **ROLANDO V. VILLAVICENCIO, RPV**
INVESTMENTS, L.L.C. & DPS of CHARLESTON, INC.
d/b/a **RE/MAX PROFESSIONAL REALTY**)

43. The foregoing paragraphs are incorporated herein by reference.

44. The promises and agreements by and between the Plaintiffs and the Defendants as described herein constitute legally binding oral contracts.

45. The Defendants, by their acts or omissions, have breached the express and implied terms of their agreements with the Plaintiffs in the following particulars:

- a. In failing to provide copies of her contracts, leases, agreements, files and documents;
- b. In failing to provide itemized statements of income and expenses;
- c. In paying "expenses" without reasonable and adequate documentation how the money was being spent;
- d. In failing to repair and maintain the properties as requested by tenants;
- e. In failing to timely pay mortgages and expenses;
- f. In failing to repay the loan to the Plaintiff, **LINDA A. GIBSON**; to the extent the loan is adjudicated to have been made to **RPV Investments, LLC** or any other entity, which the Plaintiff denies, the Plaintiff seeks to pierce the corporate veil and hold Defendant Villavicencio personally liable.

- g. In making withdrawals from the line of credit established to renovate the apartment complex without proper control of how the monies were spent;
- h. In removing some appliances from the apartment complex and converting them to their own use and benefit;
- i. In refusing to allow an independent audit by a certified public accountant of the Plaintiff's books and records;
- j. In paying substantial sums of money to a general contractor who was not actually performing work or supervising work being performed on the apartments;
- k. In threatening the Plaintiffs with "pulling permits" on the apartment complex when confronted with questions and concerns;
- l. In withholding rents unless the Plaintiffs entered into a "termination agreement" on undisclosed terms to be dictated by the Defendants;
- m. In advising Plaintiffs to purchase the apartment complex;
- n. In failing to renovate the apartment complex one (1) building at a time as represented to insure a continuing rental income to pay the mortgage;
- o. In using funds from the Plaintiffs' accounts to pay for unauthorized work and/or work performed on property other than that owned by the Plaintiffs.
- p. In such other particulars as the evidence may show.

46. As a direct and proximate result of the aforesaid breach of contract by the Defendants the Plaintiffs have the right to rescind any agreements entered into with the Defendants. Alternatively, Plaintiffs are entitled to a judgment against the Defendants for actual,

compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)
(as to Defendants, ROLANDO V. VILLAVICENCIO and RPV
INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC.
d/b/a RE/MAX PROFESSIONAL REALTY.)

47. The foregoing paragraphs are incorporated herein by reference.

48. By and through the conduct alleged herein, the Defendants breached the aforesaid oral agreements.

49. The Defendants' dishonesty in fact, unfair dealing, misrepresentations, conversion of Plaintiffs' property, and fraudulent inducement evidences the Defendants' fraudulent intent relating to the breaches and constitutes fraudulent acts accompanying the breaches.

50. As a direct and proximate result of the Defendants' breaches of contract accompanied by fraudulent acts, the Plaintiffs have been injured and suffered damages. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)
(as to Defendants ROLANDO V. VILLAVICENCIO, RPV
INVESTMENTS, L.L.C. & DPS of CHARLESTON, INC.
d/b/a RE/MAX PROFESSIONAL REALTY.)

51. The foregoing paragraphs are incorporated by reference.

52. Defendants represented to Plaintiffs that the Exclusive Right to Lease Listing Agreement for the shopping center, the Exclusive Right to Lease Listing Agreement for the apartment

complex, and the Residential Management Agreement for the apartment complex were termination agreements and later that they were nothing more than a written instrument reflecting the Plaintiffs and Defendants' oral contracts regarding the same.

53. The Defendants further represented that the apartment complex was a good opportunity and that they would manage the apartment complex consisting of six (6) buildings by performing services including overseeing the renovation of the apartment complex one (1) building at a time to preserve rental income to pay the mortgage, among other things.

54. The Defendants had a pecuniary interest in making the representations.

55. These representations were false.

56. Said representations were materially significant and they played the primary role in the Plaintiffs' decision to enter into a written contract.

57. Defendants, experienced in matters such as these, knew of the falsity of the representation made to the Plaintiff or made said representation with reckless disregard for the truth and intended that the representation be acted upon.

58. Plaintiffs did not know that said representations were false, relied on the misrepresentation to their detriment, and had the right to so rely thereon. Plaintiffs would not have undertaken the written agreements if Plaintiffs had known of the falsity of the representations of the Defendants.

59. As a direct and proximate result of the Defendants' fraudulent misrepresentations, the Plaintiffs have been injured and suffered damages. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an

amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION

(Constructive Fraud)

(as to Defendants ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, L.L.C. & DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY.)

60. The foregoing paragraphs are incorporated herein by reference.

61. Defendants conduct constitutes constructive fraud.

62. As a direct and proximate result of the Defendants' misrepresentations and/or constructive fraud the Plaintiffs' have been injured and suffered damages. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A FIFTH CAUSE OF ACTION

(Conversion)

(as to Defendants, ROLANDO V. VILLAVICENCIO and RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC. d/b/a RE/MAX PROFESSIONAL REALTY,

63. The foregoing paragraphs are incorporated herein by reference.

64. By and through the conduct alleged herein, the Defendants' have exercised an unauthorized assumption and exercise of the right of ownership over the goods and/or personal chattels of the Plaintiffs, to the exclusion of the owner's rights.

65. Plaintiffs have the title and/or right to possession of the monies loaned to Defendants as well as the monies appropriated to them, but which were used for improper and unnecessary

renovations to the Plaintiffs' properties, as well as funds used for those things Defendants cannot and will not account for.

66. Plaintiffs further have the title and/or right to possession of the chattels, fixtures, and other property owned by the Plaintiffs which is located on the Plaintiffs real property.

67. Defendants have converted said monies and property to their own use by refusing to repay said loan money and removing chattels, fixtures, and other property owned by the Plaintiffs' from the Plaintiffs' real property without the Plaintiffs' permission or consent.

68. As a direct and proximate result of the Defendants' conversion of Plaintiffs' property, the Plaintiffs' have been injured and suffered damages. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION

(Negligence)

**(as to Defendants, ROLANDO V. VILLAVICENCIO and
RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC.
d/b/a RE/MAX PROFESSIONAL REALTY)**

69. The foregoing paragraphs are incorporated herein by referenced.

70. The Defendants owed Plaintiffs a duty to exercise a reasonable amount of care in their business with the Plaintiff, in advising Plaintiffs on the purchase of the apartment complex, in procuring third party contractors and tenants, and in managing the Plaintiffs' properties.

71. By and through the conduct alleged herein, the Defendants negligently, willfully, and wantonly breached their duties to the Plaintiffs in the following particulars, directly and through the doctrine of vicarious liability and/or respondeat superior, including, but not limited to:

- a. failing to exercise the amount of care one ordinarily would have under the circumstances;
- b. improperly and inadequately investigating and/or screening contractors who would be performing work on the apartment complex;
- c. improperly and inadequately training its agents and/or employees;
- d. improperly and inadequately supervising its agents and/or employees;
- e. hiring incompetent and unqualified workers;
- f. mismanaging the Plaintiffs' rental properties;
- g. mismanaging the renovations of Plaintiffs' properties;
- h. mismanaging the Plaintiffs' funds;
- i. inadequately communicating with the Plaintiffs' regarding their properties;
- j. failing to disclose their dual agent status to the Plaintiffs;
- k. advising that the apartment complex should be purchased; and
- l. in such other particulars as the evidence may show.

72. As a direct and proximate cause of the willful, wanton, and negligent conduct of the Defendants, Plaintiffs have been injured and suffered damages and are entitled to actual compensatory damages in an amount to be determined by the finder of fact, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Training/Supervision/Retention)
(as to Defendants, ROLANDO V. VILLAVICENCIO and
RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC.
d/b/a RE/MAX PROFESSIONAL REALTY)

73. The foregoing paragraphs are incorporated herein by reference.

74. Defendant Re/Max had a duty to the Plaintiff and public in general to properly train, supervise, retain its agents and/or employees.

75. By and through the conduct alleged herein, the Defendant breached those duties and was negligent, grossly negligent, willful, careless, reckless, or wanton in relation to the Plaintiffs, directly and through the doctrine of vicarious liability and/or respondeat superior, in that they failed to:

- a. exercise the amount of care one ordinarily would have under the circumstances;
- b. properly and adequately investigate and/or screen Defendant Villavicencio and/or RPV Investments, LLC, prior to authorizing them to hold themselves out as Re/Max agents;
- c. properly and adequately train Defendant Villavicencio and/or RPV Investments, LLC;
- d. properly advising Plaintiffs in their investment in the apartment complex;
- e. properly and adequately supervise Defendant Villavicencio and/or RPV Investments, LLC;
- f. hire competent and qualified agents and/or employees;
- g. properly manage the Plaintiffs' rental properties in such a way that would not result in lost profits, tenants, and cause substantial additional costs;
- h. properly oversee and manage the renovations of Plaintiffs' properties;
- i. properly oversee and manage the Plaintiffs' funds that were entrusted to them;
- j. properly and adequately communicate with the Plaintiffs' regarding their properties and its agents and/or employees;

- k. exercise due care for the Plaintiffs' properties it was entrusted to manage and lease;
- l. disclose to the Plaintiffs their status as dual agents;
- m. in such other particulars as the evidence may show.

76. As a direct and proximate cause of the willful, wanton, and negligent conduct of the Defendant, Plaintiffs have been injured and suffered damage and are entitled to actual compensatory damages in an amount to be determined by the finder of fact, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

FOR AN EIGHTH CAUSE OF ACTION
(Negligent Misrepresentation)
(as to all Defendants)

77. The allegations above incorporated herein by reference.

78. The Defendants had a pecuniary interest in making certain representations to Plaintiffs as they were made in the course of the Defendants' business, profession, and/or employment, and they stood to gain financially from the transactions in question.

79. The Defendants had a duty to be fair, complete, reasonable and accurate in their representations.

80. Defendants breached this duty by representing to the Plaintiffs that the purchase price of the property was market value and that it was a suitable investment for Plaintiffs when in fact it was not and by failing to disclose that First Reliance Bank and other banks had refused to make the loan.

81. Defendants, experienced in matters such as these, knew or should have known of the falsity of the representations/omission made to the Plaintiff, or made said

representations/omissions with reckless disregard for the truth and intended that the representations be acted upon.

82. Said representations/omissions were materially significant and played the primary role in the Plaintiffs' decision to enter into a written contract.

83. Defendants induced Plaintiffs into entering into a contract for the purchase of the Otranto property at a substantially higher price than market value, thereby increasing their commission fee and damaging the Plaintiffs.

84. Plaintiffs did not know that said representations were false, relied on the misrepresentations to their detriment, and had the right to so rely thereon. Plaintiffs would not have undertaken the written agreements if Plaintiffs had known of the falsity of the representations of the Defendants.

85. As a direct and proximate result of the Defendants' fraudulent and/or negligent misrepresentations the Plaintiffs' have been injured and suffered damages. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A NINTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to All Defendants)

86. The foregoing paragraphs are incorporated herein by reference

87. The Defendants had a fiduciary relationship with the Plaintiffs.

88. By entering into a fiduciary relationship with the Plaintiffs, the Defendants obligated themselves to act only in the best interests of the Plaintiffs.

89. The Defendants conduct constitutes a breach of this duty.

90. As a direct and proximate result of the Defendants actions, inactions, and breaches of fiduciary duties by the Defendants and through its agents, the Plaintiffs have been injured and suffered damage. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR A TENTH CAUSE OF ACTION
(Civil Conspiracy as to All Defendants)

91. The foregoing paragraphs are incorporated herein by reference.

92. By and through the conduct alleged herein, the Defendants formed a combination for the purpose of injuring the Plaintiff.

93. The Defendants committed overt acts in furtherance of the conspiracy as aforesaid.

94. In addition to the damages caused by the Defendants fraudulent and other improper conduct as alleged herein, the resulting damage to the Plaintiffs as a result of the overt acts done pursuant to the combination has caused The Plaintiffs to have to incur substantial legal fees in defending the frivolous counterclaims in this action, have caused Plaintiff Gibson physical manifestations of loss of sleep, stress, nervousness, and other physical manifestations, and such other special damages as the evidence may show.

95. As a direct and proximate result of the Defendants' civil conspiracy, the Plaintiffs' have been injured and suffered damage. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

FOR AN ELEVENTH CAUSE OF ACTION

(Violation of Unfair Trade Practices Act as to all Defendants)
(S.C. Code Ann. §§ 39-5-10 *et seq.*)

96. The foregoing paragraphs are incorporated herein by reference.

97. The Defendants hold themselves out to the public as honorable, reputable, and experienced in the purchase, sale appraisal and financing of real estate.

98. The Defendants misrepresentations, deception, fraudulent and other actions and/or inactions by the Defendants as described above constitute unfair and deceptive acts or practices as defined by the Unfair Trade Practices Act.

99. Upon information and belief, the Defendants have engaged in these types of deceptive and unfair acts or practices in the past, thereby making it likely that this conduct will continue without deterrence and the Defendants' procedures create a potential for repetition.

100. These acts and/or practices are therefore capable of repetition and have an adverse impact on the public interest.

101. Furthermore, a person of ordinary prudence engaged in the real estate trade or commerce, in the exercise of due diligence, could have ascertained that the conduct alleged herein violated the act and the Defendants knew or should have known that this conduct was a violation of the Act. Accordingly, these unfair acts and/or practices are willful and knowing violations of the Unfair Trade Practices Act.

102. As a direct and proximate cause of the Defendants' deceptive and unfair acts and/or practices, Plaintiffs have been injured and suffered damages.

103. The Plaintiffs are entitled to actual, incidental, consequential, and treble damages pursuant to S.C. Code Ann. 39-5-140(a) as a result of the Defendants' willful and intentional conduct together with reasonable attorneys' fees and costs.

FOR A TWELFTH CAUSE OF ACTION

(Violation of S.C. Code Ann. §§ 40-57-137 *et seq.* / Review by the Licensing Board)
(as to Defendants, ROLANDO V. VILLAVICENCIO and
RPV INVESTMENTS, L.L.C., and DPS of CHARLESTON, INC.
d/b/a RE/MAX PROFESSIONAL REALTY)

104. The foregoing paragraphs are incorporated herein by reference.

105. The Defendants, as Real Estate Brokers, Salesmen, and Property Managers that agreed to provide services to Plaintiffs are bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.

106. The Defendants failed to promote the interests of Plaintiffs as required by contract and law and breached their duties by failing to:

- a. exercise the amount of care one ordinarily would have under the circumstances;
- b. properly and adequately investigate and/or screen Defendant Villavicencio and/or RPV Investments, LLC, prior to authorizing them to hold themselves out as Re/Max agents;
- c. properly and adequately train Defendant Villavicencio and/or RPV Investments, LLC;
- d. properly advising Plaintiffs in their investment in the apartment complex;
- e. disclose to Plaintiffs all relevant facts concerning the transaction which were actually known to the licensee or, if acting in a reasonable manner, should have been known to the licensee;

- f. properly manage the Plaintiffs' rental properties in such a way that would not result in lost profits, tenants, and cause substantial additional costs;
- g. properly oversee and manage the renovations of Plaintiffs' properties;
- h. properly oversee and manage the Plaintiffs' funds that were entrusted to them;
- i. properly and adequately communicate with the Plaintiffs' regarding their properties and its agents and/or employees;
- j. exercise due care for the Plaintiffs' properties it was entrusted to manage and lease;
- k. disclose to the Plaintiffs their status as dual agents;
- l. account, in a timely manner, for all money and property received in which the Plaintiffs had an interest;
- m. in such other particulars as the evidence may show.

107. As a direct and proximate cause of the willful, wanton, and negligent conduct of the Defendants, Plaintiffs have been injured and suffered damage and are entitled to actual compensatory damages in an amount to be determined by the finder of fact, and punitive damages in an amount sufficient to deter similar conduct by these defendants and others.

108. Further, Plaintiffs demand an investigation and a hearing be conducted by the Licensing Board pursuant to S.C. Code, § 40-57-150, to determine whether sanctions, suspension, revocation or the Defendants' licenses are warranted.

FOR A THIRTEENTH CAUSE OF ACTION
(Negligence as to Paul K. Moore Associates, Inc.)

109. The foregoing paragraphs are incorporated herein by reference.

110. Defendant Paul Moore owed the Plaintiff a duty to perform an honest and accurate appraisal of the Apartment Complex subject of this action and to appraise the Apartment Complex subject to this action with due care and in accordance with reasonable real estate appraisal standards.

111. Defendant Paul Moore, acting by and through its agents, employees and/or servants, was negligent, careless, reckless, and/or grossly negligent and acted in violation of its duties to the Plaintiffs, including, but not necessarily limited to:

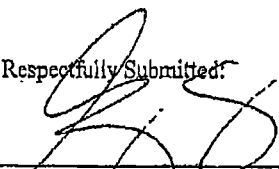
- a. Failing to perform an accurate appraisal of the Apartment Complex at issue;
- b. Performing an inflated appraisal of the Apartment Complex at issue;
- c. Failing to conform to accepted industry standards in appraising the Apartment Complex at issue;
- d. Failing to use the degree of care and caution that a reasonable and prudent real estate appraiser would have used under the circumstances; and
- e. in such other particulars as the evidence may show.

112. As a direct and proximate result of the Defendant's negligence, the Plaintiffs' have been injured and suffered damage. Plaintiffs are entitled to a judgment against the Defendants for actual, compensatory, consequential, incidental, and punitive damages, in an amount sufficient to deter similar conduct by these Defendants and others, in an amount determined by the trier of fact.

WHEREFORE, the Plaintiffs LINDA A. GIBSON, HERITAGE SEVEN, L.L.C., and SEVEN OAKS APARTMENTS, L.L.C. pray for judgment against the Defendants ROLANDO V. VILLAVICENCIO, RPV INVESTMENTS, L.L.C., and RE/MAX

PROFESSIONAL REALTY, jointly, and severally, for actual, special, consequential, treble, and punitive damages to the fullest extent allowed by law in the amount determined by the trier of fact, for the costs of this action, for such equitable relief as the Court may deem appropriate, and for such other relief as this Honorable Court deems just, prudent, and proper.

Respectfully Submitted:


George J. Kefalos, Esquire
GEORGE J. KEFALOS, P.A.
3 State Street
Charleston, SC 29401
P: 843-722-6612
F: 843-377-1310
George@kefaloslaw.com

Andrew K. Epting, Jr., Esquire
ANDREW K. EPTING, JR., LLC
3 State Street
Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com

On this 11 day of Aug 2010
Charleston, SC

From: Dees, Rae Ann
To: Lanier, Benjamin
Sent: 4/9/2008 6:41:34 PM
Subject: RE: Heritage Seven LLC

Done.

Thank you,
Rae Ann Dees
Ameris Bank
Loan Operations Document Prep
(229) 558-8022

From: Lanier, Benjamin
Sent: Wednesday, April 09, 2008 2:37 PM
To: _Tifton-Loan Booking_Funding
Subject: Heritage Seven LLC

Hello,
Can you please make the following draw for Heritage Seven, LLC:

Draw \$18,310.52 from loan# 7970000179-101 (Heritage Seven, LLC)

Deposit into checking account# 2048480204 (Heritage Seven, LLC)

Thanks and please let me know if you have any questions.

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

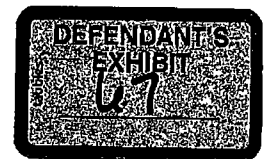
benjamin.lanier@amerisbank.com
www.amerisbank.com



AMERIS-EMAILS-000339

Appendix 01544

From: Lanier, Benjamin
To: Lanier, Benjamin
Sent: 4/26/2008 6:25:14 PM
Subject: Heritage Seven LLC
Attachments: EC-SC070_EXCHANGE_04282008-142413.PDF



AMERIS-EMAILS-000437

Appendix 01545

Heritage Seven LLC 79700017300101 Commercial Loan 024612112	Current Note Account Remarks Shindy cc
Customer snapshot P/in office: Barbara Loria Branch: 0800970 Phone: ()	Account snapshot P/in office: 97007 Last trans amt: 28582.00 Last trans date: 04/28/2008 Current rate: 5.500000% Current balance: 2,622,655.28

Account closed on 01/28/2008

Note Information

Collateral:	49 Unit apartment complex		
Note type:	Com Real Estate		
Last transaction:	28,582.00	04/28/2008	
Interest rate:	5.500000	Secured code:	<Secured, collateral no>
Principal balance:	2,622,655.28	Account status:	Accrued
APR:	0.000000	Branch:	0800970
Original balance:	2,110,164.80	Issued/Term:	11/02/2007 080
Original rate:	7.750000	Maturity date:	11/02/2012
Post no bill:	<Allow transactions to p>	Debit receiver:	No
Send no bill:	Send bill to account	Interest receiver:	No
Paid status:	Not paid	Escrow:	No

Commercial Information

Organization type:	None of the above	Index:	Well street prime
Interest paid to:	04/02/2008	Margin:	0.250000
Expiration date:	11/02/2012	Margin/index relation:	<Positive above or below>
Available amount:	187,489.22	Floor rate:	0.000000
Commitment amt:	2,810,164.80	Collateral:	999 889999
Orig contract amt:	2,810,164.80	Next change date:	//
Draw indicator:	Allow draw	Change frequency:	Same day
Commitment:	Construction loans	Renewed/Times:	// 000

Primary Name and Address

Heritage Seven LLC
 ATTN: Linda Gibson
 183 Horse Trail Rd
 St George SC 29477-8264

Additional Note Information

Autopay indicator:	<Payments not taken th>	Bill type:	<Bill applied with billing>
Account type:		Principal rate accrued:	
Autopay account:	0.00	Frequency:	Monthly
		Cost center:	0800970
Apply overage:		Total interest:	11/02/2007
First billing:	25	First interest:	12/02/2007
Extensions:	000	First payment:	12/02/2008

Mortgage Services LLC 787009017301101 Commercial Loan 020612112		Contract Notes Account Remarks 6/17/11
Customer supplied Prin officer: Debra Ann Lister Branch: 0000370 Phone: ()	Account supplied Prin officer: 97907 Last trans dat: 03/25/2008 Last trans date: 04/25/2008 Current rate: 5.500000% Current balance: 2,622,695.39	

				Reversal		
				Get Query		
Effective	Posted	Description	Amount	Principal	Interest	Balance
04/23/2008	04/23/2008	Note increase	2,652.00	26,522.00	0.00	2,672.00
04/24/2008	04/24/2008	Note increase	28,214.45	28,214.45	0.00	2,694.08
04/21/2008	04/21/2008	Payment (Reg...	12,664.84	0.00	12,664.84	2,664.78
04/21/2008	04/21/2008	Note increase	6,876.00	6,876.00	0.00	2,664.78
04/19/2008	04/19/2008	Note increase	2,186.50	2,186.50	0.00	2,559.28
04/14/2008	04/14/2008	Fee (late charg...	100.00			
04/11/2008	04/11/2008	Note increase	25,958.72	25,958.72	0.00	2,657.18
04/10/2008	04/10/2008	Note increase	1,594.00	1,594.00	0.00	2,631.33
04/09/2008	04/09/2008	Note increase	18,310.82	18,310.82	0.00	2,529.77
04/04/2008	04/04/2008	Note increase	5,375.00	5,375.00	0.00	2,611.46
03/31/2008	03/31/2008	Note increase	3,600.00	3,600.00	0.00	2,605.68
03/28/2008	03/28/2008	Note increase	17,083.10	17,083.10	0.00	2,602.23
03/28/2008	03/28/2008	Note increase	10,059.00	10,059.00	0.00	2,495.20
03/21/2008	04/01/2008	Note increase	14,083.00	14,083.00	0.00	2,475.14
03/18/2008	03/18/2008	Rate charge	5,500.00		51.27	2,461.06
03/10/2008	03/10/2008	Payment (Reg...	11,530.88	0.00	11,530.88	2,461.06
03/06/2008	03/13/2008	Note increase	20,185.00	20,185.00	0.00	2,461.06
03/04/2008	03/04/2008	Note increase	15,828.00	15,828.00	0.00	2,440.87
02/26/2008	03/04/2008	Note increase	41,812.00	41,812.00	0.00	2,425.95
02/25/2008	02/25/2008	Note increase	88,780.00	88,780.00	0.00	2,383.43
02/19/2008	02/19/2008	Note increase	6,300.00	6,300.00	0.00	2,314.67
02/12/2008	02/12/2008	Note increase	20,649.99	20,649.99	0.00	2,308.37
02/08/2008	02/08/2008	Note increase	3,800.00	3,800.00	0.00	2,297.73
02/01/2008	02/04/2008	Payment (SIC...	14,656.82	0.00	14,656.82	2,284.29
01/30/2008	01/31/2008	Rate charge	6,250.00		-31.73	2,284.29
01/25/2008	01/25/2008	Note increase	5,200.00	5,200.00	0.00	2,284.29
01/23/2008	01/23/2008	Note increase	12,183.15	12,183.15	0.00	2,273.03
01/22/2008	01/22/2008	Rate charge	8,750.00		0.00	2,265.84

Hendega Sevan LLC
 737600017900101 Commercial Loan
 02-0512112

Contact Notes
 Account Remarks
 Show <<

Customer: Hendega Sevan LLC
 Data office: Portland, Maine
 Branch: 6906370
 Phone: 1 1

Account number:
 Pin office: 67807
 Last trans amt: 30,593.00
 Last trans date: 04/28/2008
 Current rate: 9.500000%
 Current balance: 2,622,665.23

Effective	Posted	Description	Amount	Principal	Interest	Balance
01/26/2008	01/26/2008	Note increase	6,200.00	6,200.00	0.00	2,204.23
01/26/2008	01/26/2008	Note increase	12,183.16	12,183.16	0.00	2,278.05
01/22/2008	01/22/2008	Rate change	6,750.00		0.00	2,265.91
01/18/2008	01/18/2008	Note increase	18,495.69	18,495.69	0.00	2,265.91
01/04/2008	01/04/2008	Note increase	6,000.00	6,000.00	0.00	2,248.34
01/02/2008	01/02/2008	Payment (Resp.)	14,483.08		14,483.08	2,248.34
01/02/2008	01/02/2008	Note increase	2,976.00	2,976.00	0.00	2,248.34
12/21/2007	12/21/2007	Fee waiver - 670	100.00			2,240.37
12/16/2007	12/16/2007	Payment (Resp.)	13,685.27		13,685.27	2,215.07
12/13/2007	12/13/2007	Note increase	6,025.00	6,025.00	0.00	2,215.07
12/13/2007	12/13/2007	Note increase	6,000.00	6,000.00	0.00	2,209.04
12/12/2007	12/12/2007	Fee (late chrg.)	100.00			2,209.04
12/11/2007	12/11/2007	Rate change	7,500.00		15.30	2,203.04
11/26/2007	11/26/2007	Note increase	49,200.00	49,200.00	0.00	2,203.04
11/28/2007	11/28/2007	Note increase	29,941.36	29,941.36	0.00	2,193.04
11/14/2007	11/14/2007	Note increase	14,741.00	14,741.00	0.00	2,124.90
11/13/2007	11/13/2007	Fee payment	160.00			2,124.90
11/13/2007	11/13/2007	Fee payment	160.00			2,124.90
11/13/2007	11/13/2007	Fee (monthly)	10,000.00			2,124.90
11/13/2007	11/13/2007	Fee (monthly)	160.00			2,124.90
11/07/2007	11/07/2007	Fee payment	14.00			2,124.90
11/07/2007	11/07/2007	Fee (automatic)				2,124.90
11/07/2007	11/07/2007	Fee (automatic)				2,124.90
11/07/2007	11/07/2007	Fee (monthly)	14.60			2,124.90
11/07/2007	11/07/2007	Fee (automatic)				2,124.90
11/02/2007	11/02/2007	Note increase	2,110.18	2,110.18	0.00	2,110.18
11/02/2007	11/02/2007	Note (New) - 310	0.00	0.00	0.00	2,110.18

AMERIS-EMAILS-000440

Appendix 01548

From: Lanier, Benjamin
To: eglbson777@yahoo.com
Sent: 4/28/2008 8:30:51 PM
Subject: Heritage Seven Transactions
Attachments: Heritage Seven LLC

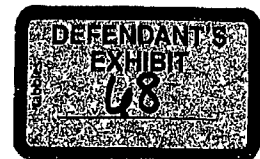
Elizabeth,

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



AMERIS-EMAILS-000325

Appendix 01549

From: Lanier, Benjamin
To: Lanier, Benjamin
Sent: 4/28/2008 6:25:14 PM
Subject: Heritage Seven LLC
Attachments: EC-SC970_EXCHANGE_04282008-142413.PDF

AMERIS-EMAILS-000326

Appendix 01550

Heritage Seven LLC
 797000173000101 Commercial Loan
 02-0612112

Contact Notes
 Account Remarks
 Blank <<

Customer Snapshot
 Print client: Genesis Lender
 Branch: 0000970
 Phone: ()

Account Snapshot
 Print client: 97007
 Last trans amt: 23532.00
 Last trans date: 04/28/2009
 Current rate: 9.500000%
 Current balance: 2,632,665.29

Note Information

Collateral: 48 Unit apartment complex
 Note type: Com Real Estate
 Last transaction: 28,532.00 04/28/2009

Interest rate: 8.500000 Secured order: <Secured, collateral no>
 Principal balance: 2,632,665.29 Accrual status: Accrual
 APB: 0.000000 Brand: 0000970

Original balance: 2,110,184.60 Issued/Term: 11/02/2007 060
 Original rate: 7.750000 Maturity date: 11/02/2012

Post no lient: <Allow transactions to> Dealer reserves: No
 Send no bill: Send bill to account Insure/no reserves: No
 Paid status: Not paid Escrow: No

Commercial Information

Organization type: None of the above Index: Wall street prime
 Interest paid to: 04/02/2009 Margin: 0.250000
 Expiration date: 11/02/2012 Margin/index relation: <Point above or below>
 Available amount: 107,455.22 Floor rate: 0.000000
 Commitment amt: 2,810,184.60 Ceiling rate: 999.999999
 Orig commit amt: 2,810,184.60 Next change date: //
 Draw schedule: Allow draws Change frequency: Same day
 Commitment: Construction loans Renewal/Times: // 000

Primary Name and Address

Heritage Seven LLC
 ATTN: Linda Gibson
 133 Horse Trail Rd
 St George UT 84777-8251

Additional Note Information

Auto pay indicator: <Payments not taken by BR type> <Bill cycled with billing>
 Account type: <Principal plus accrued>
 Auto pay account: 000 Frequency: Monthly
 Apply override: 000 Cost center: 0000970
 First billing: 25 Start interest: 11/02/2007
 Extension: 000 First interest: 12/02/2007
 First payment: 12/02/2008

Monte Seven LLC
 737000179-00101 Commercial Loan
 02-0612112

Account Notes
Account Remarks
 Shrink <<

Customer snapshot
 Pin officer: Barbara Loria
 Branch: 0000970
 Pin: ()

Account snapshot
 Pin officer: 97607
 Last transact: 20/03/00
 Last trans date: 04/25/2008
 Current rate: 6.500000
 Current balance: 2,622,665.39

							Search...
							Get Details
Effective	Period	Description	Amount	Principal	Interest	Balance	
01/29/2008	01/29/2008	Note increase	25,922.00	25,922.00	0.00	2,598.38	
04/24/2008	04/24/2008	Note increase	26,314.45	26,314.45	0.00	2,594.08	
04/21/2008	04/21/2008	Payment (Reg)	12,564.84	0.00	12,564.84	2,564.78	
04/21/2008	04/21/2008	Note increase	6,375.00	6,375.00	0.00	2,564.78	
04/18/2008	04/18/2008	Note increase	2,186.50	2,186.50	0.00	2,555.35	
04/14/2008	04/14/2008	Fee (late chrg)	100.00				
04/11/2008	04/11/2008	Note increase	25,856.72	25,856.72	0.00	2,557.18	
04/10/2008	04/10/2008	Note increase	1,654.00	1,654.00	0.00	2,531.33	
04/09/2008	04/09/2008	Note increase	18,310.52	18,310.52	0.00	2,526.77	
04/04/2008	04/04/2008	Note increase	6,375.00	6,375.00	0.00	2,511.45	
03/31/2008	03/31/2008	Note increase	3,600.00	3,600.00	0.00	2,505.08	
03/26/2008	03/26/2008	Note increase	17,093.10	17,093.10	0.00	2,502.28	
03/26/2008	03/26/2008	Note increase	10,059.00	10,059.00	0.00	2,485.20	
03/21/2008	04/01/2008	Note increase	14,083.00	14,083.00	0.00	2,476.14	
03/18/2008	03/18/2008	Rate change	5.500000		-51.27	2,481.05	
03/10/2008	03/10/2008	Payment (Reg)	11,530.95	0.00	11,530.95	2,481.08	
03/06/2008	03/13/2008	Note increase	20,189.00	20,189.00	0.00	2,451.05	
03/04/2008	03/04/2008	Note increase	15,525.00	15,525.00	0.00	2,440.97	
02/28/2008	03/04/2008	Note increase	41,512.00	41,512.00	0.00	2,425.35	
02/25/2008	02/25/2008	Note increase	58,760.00	58,760.00	0.00	2,363.43	
02/18/2008	02/15/2008	Note increase	5,300.00	5,300.00	0.00	2,314.57	
02/12/2008	02/12/2008	Note increase	20,549.59	20,549.59	0.00	2,308.37	
02/09/2008	02/09/2008	Note increase	3,500.00	3,500.00	0.00	2,297.73	
02/01/2008	02/04/2008	Payment (P10)	14,055.82	0.00	14,055.82	2,294.23	
01/30/2008	01/31/2008	Rate change	6.250000		-31.73	2,294.23	
01/25/2008	01/25/2008	Note increase	5,200.00	5,200.00	0.00	2,294.23	
01/25/2008	01/25/2008	Note increase	12,163.15	12,163.15	0.00	2,278.03	
01/22/2008	01/22/2008	Rate change	6.750000			2,255.84	

Hendrix Seven LLC
 78060017900101 Commercial Loan
 020512112

Contact Notes
 Account Remarks
 Shrink <<

Customer: cashshot
 Pina Office: Devon L. Lawler
 Branch: 0703070
 Phone: 1 1
 Account number: 57807
 Last trans am: 20,533.00
 Last trans date: 04/29/2008
 Current rate: 8.500000%
 Current balance: 2,110,164.23

							Search...
							Get Details
Effective	Posted	Description	Amount	Principal	Interest	Balance	
01/26/2006	01/26/2006	Note Increase	5,200.00	5,200.00	0.00	2,204.23	
01/26/2006	01/26/2006	Note Increase	12,183.15	12,183.15	0.00	2,276.03	
01/22/2006	01/22/2006	Rate change	6,750.00		0.00	2,266.84	
01/18/2006	01/18/2006	Note Increase	18,499.89	18,499.89	0.00	2,266.84	
01/04/2006	01/10/2006	Note Increase	6,000.00	6,000.00	0.00	2,248.34	
01/02/2006	01/02/2006	Payment (Reg)	14,483.09		14,483.09	2,243.34	
01/02/2006	01/02/2006	Note Increase	2,976.00	2,976.00	0.00	2,243.34	
01/02/2006	01/02/2006	Note Increase	25,300.00	25,300.00	0.00	2,240.37	
12/21/2007	12/21/2007	Fee Waiver - 870	100.00				
12/18/2007	12/18/2007	Payment (Reg)	13,685.27		13,685.27	2,215.07	
12/13/2007	12/14/2007	Note Increase	6,025.00	6,025.00	0.00	2,215.07	
12/12/2007	12/14/2007	Note Increase	6,000.00	6,000.00	0.00	2,209.04	
12/12/2007	12/12/2007	Fee (rate change)	100.00				
12/11/2007	12/12/2007	Rate change	7,500.00		-15.30	2,203.04	
11/26/2007	11/26/2007	Note Increase	48,200.00	48,200.00	0.00	2,203.04	
11/28/2007	11/28/2007	Note Increase	28,941.36	28,941.36	0.00	2,163.84	
11/14/2007	11/14/2007	Note Increase	14,741.00	14,741.00	0.00	2,124.90	
11/13/2007	11/13/2007	Fee payment	10,000.00				
11/13/2007	11/13/2007	Fee payment	160.50				
11/13/2007	11/13/2007	Fee (manually)	10,000.00				
11/13/2007	11/13/2007	Fee (manually)	160.50				
11/07/2007	11/07/2007	Fee payment	14.50				
11/07/2007	11/07/2007	Fee (automatic)					
11/07/2007	11/07/2007	Fee (automatic)					
11/07/2007	11/07/2007	Fee (manually)	14.50				
11/07/2007	11/07/2007	Fee (automatic)					
11/02/2007	11/02/2007	Note Increase	2,110.16	2,110.16	0.00	2,110.16	
11/02/2007	11/02/2007	Note (New) - 310	0.00	0.00	0.00	0.00	

AMERIS-EMAILS-000329

Appendix 01553



13233 Hwy. 68 N.
Clinton, SC 29325

phone (864) 833-6764 fax (864) 833-6888

email: bagwallcontractors@att.net

SC General Contractors License No. 014703

PROPOSAL

DATE: August 20, 2008

TO: Ms. Linda Gibson
Seven Oaks Apartments
2826 Oporto Rd.
N. Charleston, SC 29408

PROJECT: Renovations to Buildings 3, 4, 5 and 6

LOCATION: Seven Oaks Apartments
2826 Oporto Rd.
N. Charleston, SC 29408

SCOPE OF WORK AND SPECIFICATIONS:

After an on site inspection of your apartment complex, and based on plans and specifications supplied by Ms. Linda Gibson, we propose to supply all labor, materials, supplies and equipment necessary to complete the below scope of work:

- A. Complete existing renovations to Building 3, which houses eight (8) apartments.
 - #1 Complete remaining plumbing.
 - #2 Complete remaining electrical.
 - #3 Complete remaining sheetrock, sand, finish, and paint.
 - #4 Install remaining cabinets.
 - #5 Install new appliances (stoves, refrigerators, dishwashers and garbage disposals).
 - #6 Install floor coverings, which include carpet and vinyl.
- B. Demo and completely renovate interiors of Buildings 4, 5 and 6, which house eight apartments each, for a total of 24 units. These renovations are based on plans and specifications submitted by Ms. Linda Gibson.
 - #1 Remove necessary walls to upgrade plumbing to local Code. - Bat-in-new-fixtures. - Install new exterior gas water heaters. Proposal - Seven Oaks Apt. - 8/20/2008 - 1

08/20/08

08/20/2008 11:01 FAX



Appendix 01554

- #2 Add designated lighting for layout of kitchen. Wiring throughout each unit will be brought up to local Code.
- #3 Install all new appliances (stove, refrigerator, dishwasher, and garbage disposal).
- #4 Remove necessary sheetrock and construct new walls. Add sheetrock where necessary in order to meet local Fire Code. All new sheetrock will be sanded and finished. All existing walls will be repaired, sanded and finished. All walls to receive two coats of paint.
- #5 Texture all ceilings.
- #6 All interior doors will be removed and replaced.
- #7 All interior trim, baseboards and window trims will be removed and replaced with new. All trim will be painted.
- #8 All floor coverings are to be removed. New carpeting and vinyl will be installed per specifications.

C. Renovations of the exterior of Buildings 3, 4, 5 and 6 will consist of:

- #1 Removing all windows and installing new thermo pane windows per specifications.
- #2 Repair existing fascia boards and boxing. Paint fascia boards and boxing.
- #3 Remove existing exterior doors and install new doors per specifications.
- #4 Existing staircases will be brought up to local Code.

We will clean up and dispose of all construction debris.

We estimate that it will take approximately eight (8) weeks from starting date to complete these projects.

We propose to complete these projects for the budget price of \$ 267,000.00

NOTE: The quoted price may vary slightly due to local Code requirements and unforeseen material price increases.

Thank you for the opportunity to work with you on this proposed project.

BAGWELL CONTRACTORS, INC.

David E. Bagwell

Proposal Seven Oaks Apts. * 8/20/2008 * 2

800/200 08

08/20/2008 11:41 FAX

From: Seven Oaks Apartments (Elizabeth)
To: Lanier, Benjamin
Sent: 8/26/2008 9:19:23 PM
Subject: Seven Oaks Apartments
Attachments: ATT2241819.htm; TenantsPDF.pdf

Hi Benji,

Here is a list of the expenses monthly at Seven Oaks:

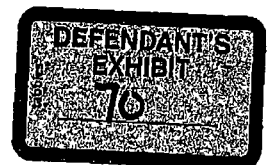
SCE&G	\$645.01
Chas. Water	\$646.39
Fennell Container	\$142.69
Lawn Maintenance	\$400.00
	Total: \$1,834.009

List of expenses yearly:

Property Taxes	\$26,057.58
Insurance	\$21,463.94
	Total: \$47,521.52

Attached is a spreadsheet of our monthly income in addition we receive a check from Coinmach total around \$67.00 a month.

Our total number of units is 48. Right now 23 units are occupied leaving 25 to be renovated. Once these are complete and finished we should receive an average of \$700 which would be total of \$17,500 a month. I hope this is clear please let me know if I have confused you or if you have any questions. Thanks, Linda and Elizabeth



AMERIS-EMAILS-000240

Appendix 01556

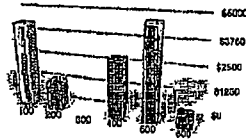
Seven Oaks Apartments
Elizabeth Gibson - *Property Manager*
sevenoaksapartments@gmail.com
Phone: 843-297-8717
Fax: 843-297-8727

AMERIS-EMAILS-000241

Appendix 01557

Address	City	State	Zip	Lat	Long	Area	Value	Year	Bedrooms	Bathrooms	Sq Ft
10000 1st St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 2nd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 3rd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 4th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 5th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 6th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 7th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 8th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 9th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 10th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 11th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 12th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 13th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 14th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 15th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 16th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 17th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 18th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 19th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 20th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 21st St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 22nd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 23rd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 24th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 25th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 26th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 27th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 28th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 29th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 30th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 31st St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 32nd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 33rd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 34th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 35th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 36th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 37th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 38th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 39th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 40th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 41st St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 42nd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 43rd St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 44th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 45th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 46th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 47th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 48th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 49th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500
10000 50th St	San Diego	CA	92121	32.82	-117.14	10000	150000	1995	3	2	1500

Area	Value	Year	Bedrooms	Bathrooms	Sq Ft
10000	\$4,450	1	2	0	1500
20000	\$1,450	2	0	0	1500
30000	\$2,800	3	0	0	1500
40000	\$4,700	4	0	0	1500
50000	\$6,500	5	0	0	1500
TOTAL	\$19,300	23	0	0	7500



AMERIS-EMAILS-000242

From: Donnelly, Joli
To: Lanier, Benjamin
Sent: 8/29/2008 7:43:08 PM
Subject: RE: Linda Gibson

That's great.

Joli F. Donnelly
Branch Manager
Amoris Bank
966-C Houston Northcutt Blvd.
Mt. Pleasant, SC 29464
Ph. 843-375-4969
Direct 843-375-4971
Fax 843-881-8350
joli.donnelly@amorisbank.com

-----Original Message-----

From: Lanier, Benjamin
Sent: Friday, August 29, 2008 2:21 PM
To: Donnelly, Joli
Subject: Linda Gibson

Joli

I met with Linda today and I think we are going to be able to move over her security deposit account and her apt operating acct. She said she may also move some personal money as well. The courier service is what sealed the deal!

I'll be back shortly

Benjamin R. Lanier Jr.
Vice President Business Banker



AMERIS-EMAILS-000726

Appendix 01559

From: Benjie Lanier
To: Snipes, Don; Sturm, Richard
Sent: 9/5/2008 3:48:54 PM
Subject: Fwd: Seven Oaks CF and repair quote
Attachments: EC-SC973_EXCHANGE_09032008-103301.PDF

Don/Richard,

This is an attachment that will accompany a memo for a credit I need to submit Monday. I will be sending the complete memo and LCA later today. For the time being I will be sending a partial memo for you to read and have an idea of the credit. I am currently in New Jersey so I am trying to piece this together for you guys.

This is for the refinance/LLC name change of a loan we have on our books in the name of Heritage Seven LLC. The owner of the LLC, Linda Gibson wants to move this particular property out of the Heritage Seven LLC and put in an LLC by itself in the name of Seven Oaks Apartments, LLC. Linda is also requesting a \$250k increase to allow for the completion of the last three buildings in this complex. The total exposure of this loan will be over \$3 million so this will need board approval.

I met with Linda last Friday and we reviewed the repairs that are left to be made. In most cases the materials and large ticket items have been purchased she just needs the interior revamped and for the materials to be installed.

I will be sending you more info later today.

Thanks for your help!
Benjie

----- Forwarded message -----
From: Lanier, Benjamin <Benjamin.Lanier@amerisbank.com>
Date: Wed, Sep 3, 2008 at 10:36 AM
Subject: Seven Oaks CF and repair quote
To: Benjiemba@gmail.com

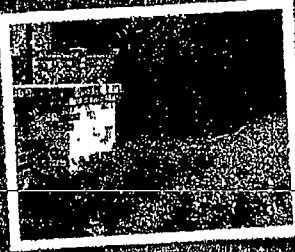
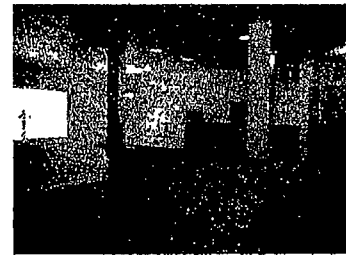
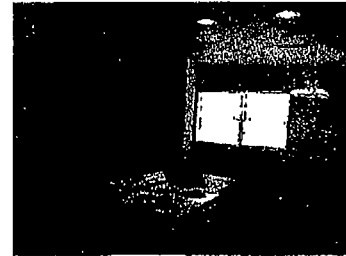


AMERIS-EMAILS-000006

Appendix 01560

SEVEN OAKS APARTMENTS

2625 OTRANTO ROAD - NORTH CHARLESTON



Thank you for your interest in our apartments.

We are in the middle of the old look with the modern life. Come to see how we manage the old style and still provide you all the modern day conveniences of 21st century.

Are you ready for the decision that will change your life !?

Two options for you to choose:

One Bedroom:

- One Bath
- Newly renovated
- 695sq.ft of living space
- Energy efficient appliances
- Open floor plan
- Water saving devices
- Furn air conditioning

Price: \$650.00 / month*

Two Bedroom:

- One Bath
- Newly renovated
- 832 sq.ft of living space
- Energy efficient appliances
- Open floor plan
- Water saving devices
- Furn air conditioning

Price: \$750.00 / month*

* Prices subject to change

We are continuing to rent the older apartments. The units that have not been renovated has special conditions of prices and payment. Make sure to ask us for them !!

Color advertising: Elizabeth Gillison
Office: 843-297-9717
Cell: 843-693-1396



Office
2625 Otranto Rd
North Charleston, SC 29910

AMERIS-EMAILS-000007

Seven Oaks Apartments August 2008

Building	Number	Tenant	Rent	Paid	Date	OBS:	Building	Number	Tenant	Rent	Paid	Date	OBS:
100	A	Renee Weidmann	\$790	<input checked="" type="checkbox"/>	08/05/2008	2 bedroom	400	A	Donna Gethes	\$800	<input checked="" type="checkbox"/>	08/07/2008	2 bedroom
100	B	Deborah Burr	\$795	<input checked="" type="checkbox"/>		2 bedroom	400	B			<input type="checkbox"/>		2 bedroom
100	C	Ebony Winn	\$700	<input checked="" type="checkbox"/>		2 bedroom	400	C			<input type="checkbox"/>		2 bedroom
100	D	Nathan Jordan	\$650	<input checked="" type="checkbox"/>		1 bedroom	400	D			<input type="checkbox"/>		1 bedroom
100	E	Whitney Ollif	\$750	<input checked="" type="checkbox"/>	08/07/2008	2 bedroom	400	E	Shawnette Kinlaw	\$600	<input checked="" type="checkbox"/>	08/06/2008	2 bedroom
100	F	Deborah Richardson	\$700	<input checked="" type="checkbox"/>	08/15/2008	2 bedroom	400	F	Bonetta Daniels	\$550	<input checked="" type="checkbox"/>	08/07/2008	2 bedroom
100	G			<input type="checkbox"/>		2 bedroom	400	G	Larisa Harshman	\$800	<input checked="" type="checkbox"/>		2 bedroom
100	H	N/A		<input type="checkbox"/>		2 bedroom	400	H	James Siburg	\$550	<input checked="" type="checkbox"/>	08/01/2008	2 bedroom
200	A			<input type="checkbox"/>		2 bedroom	500	A	Frederica Jenkins	\$500	<input checked="" type="checkbox"/>		2 bedroom
200	B	Pamela Bance	\$700	<input checked="" type="checkbox"/>	08/25/2008	2 bedroom	500	B	Kamesha Hair	\$800	<input checked="" type="checkbox"/>	08/05/2008	2 bedroom
200	C	Ernest Anderson	\$750	<input checked="" type="checkbox"/>	08/03/2008	2 bedroom	500	C	Wayne Greene	\$600	<input checked="" type="checkbox"/>		2 bedroom
200	D			<input type="checkbox"/>		1 bedroom	500	D	Solomon Westbury	\$500	<input checked="" type="checkbox"/>		1 bedroom
200	E			<input type="checkbox"/>		2 bedroom	500	E	Stephanie Belgobin	\$600	<input checked="" type="checkbox"/>		2 bedroom
200	F			<input type="checkbox"/>		2 bedroom	500	F	Wayne West	\$600	<input checked="" type="checkbox"/>		2 bedroom
200	G			<input type="checkbox"/>		2 bedroom	500	G	Antonio Rosales Jr.	\$800	<input checked="" type="checkbox"/>	08/01/2008	2 bedroom
200	H			<input type="checkbox"/>		2 bedroom	500	H	Zeniqua Taylor	\$500	<input checked="" type="checkbox"/>		2 bedroom
300	A			<input type="checkbox"/>		2 bedroom	600	A			<input type="checkbox"/>		2 bedroom
300	B			<input type="checkbox"/>		2 bedroom	600	B			<input type="checkbox"/>		2 bedroom
300	C			<input type="checkbox"/>		2 bedroom	600	C			<input type="checkbox"/>		2 bedroom
300	D			<input type="checkbox"/>		1 bedroom	600	D			<input type="checkbox"/>		1 bedroom
300	E			<input type="checkbox"/>		2 bedroom	600	E	Patricia Brown	\$550	<input checked="" type="checkbox"/>		2 bedroom
300	F			<input type="checkbox"/>		2 bedroom	600	F			<input type="checkbox"/>		2 bedroom
300	G			<input type="checkbox"/>		2 bedroom	600	G			<input type="checkbox"/>		2 bedroom
300	H			<input type="checkbox"/>		2 bedroom	600	H			<input type="checkbox"/>		2 bedroom

Building	Total	Apartments Occupied
100	\$4,345	7
200	\$1,450	2
300	\$0	0
400	\$2,900	5
500	\$4,700	8
600	\$550	1
TOTAL	\$13,945	23



\$31,405
 3960
 1834

 \$25,651 / \$22,567 = 1.13

#3084 extra

Lanier, Benjamin

From: Seven Oaks Apartments (Elizabeth) [sevenoaksapartments@gmail.com]
Sent: Tuesday, August 26, 2008 5:19 PM
To: Lanier, Benjamin
Subject: Seven Oaks Apartments
Attachments: TenantsPDF.pdf; ATT2241816.htm

Hi Benji,

Here is a list of the expenses monthly at Seven Oaks:

SCE&G	\$645.01
Chas. Water	\$646.39
Fennell Container	\$142.69
Lawn Maintenance	\$400.00
Total:	\$1,834.009

List of expenses yearly:

Property Taxes	\$26,057.58
Insurance	\$21,463.94
Total:	\$47,521.52

Attached is a spreadsheet of our monthly income in addition we receive a check from Coinmach total around \$67.00 a month.

Our total number of units is 48. Right now 23 units are occupied leaving 25 to be renovated. Once these are complete and finished we should receive an average of \$700 which would be total of \$17,500 a month. I hope this is clear please let me know if I have confused you or if you have any questions. Thanks, Linda and Elizabeth

8/27/2008

AMERIS-EMAILS-000009

Appendix 01563

1557



13233 Hwy. 56 N.
Clinton, SC 29325

phone (864) 833-6764 fax (864) 833-5699

email: bagwellcontractors@msn.com

SC General Contractors License No. G14783

PROPOSAL

DATE: August 20, 2008

TO: Ms. Linda Gibson
Seven Oaks Apartments
2625 Otranto Rd.
N. Charleston, SC 29406

PROJECT: Renovations to Buildings 3, 4, 5 and 6

LOCATION: Seven Oaks Apartments
2625 Otranto Rd.
N. Charleston, SC 29406

SCOPE OF WORK AND SPECIFICATIONS:

After an on site inspection of your apartment complex, and based on plans and specifications supplied by Ms. Linda Gibson, we propose to supply all labor, materials, supplies and equipment necessary to complete the below scope of work:

- A. Complete existing renovations to Building 3, which houses eight (8) apartments.
 - #1 Complete remaining plumbing.
 - #2 Complete remaining electrical.
 - #3 Complete remaining sheetrock, sand, finish, and paint.
 - #4 Install remaining cabinets.
 - #5 Install new appliances (stoves, refrigerators, dishwashers and garbage disposals).
 - #6 Install floor coverings, which include carpet and vinyl.
- B. Demo and completely renovate interiors of Buildings 4, 5 and 6, which house eight apartments each, for a total of 24 units. These renovations are based on plans and specifications submitted by Ms. Linda Gibson.
 - #1 Remove necessary walls to upgrade plumbing to local Code. Set in new fixtures. Install new exterior gas water heaters. Proposal - Seven Oaks Apts. - 8/20/08 - 1

800 / 200 00

XZF 10:11 8002/02/00

AMERIS-EMAILS-000010

Appendix 01564

- #2 Add designated lighting for layout of kitchen. Wiring throughout each unit will be brought up to local Code.
- #3 Install all new appliances (stove, refrigerator, dishwasher, and garbage disposal).
- #4 Remove necessary sheetrock and construct new walls. Add sheetrock where necessary in order to meet local Fire Code. All new sheetrock will be sanded and finished. All existing walls will be repaired, sanded and finished. All walls to receive two coats of paint
- #5 Texture all ceilings.
- #6 All interior doors will be removed and replaced.
- #7 All interior trim, baseboards and window trims will be removed and replaced with new. All trim will be painted.
- #8 All floor coverings are to be removed. New carpeting and vinyl will be installed per specifications.

C. Renovations of the exterior of Buildings 3, 4, 5 and 6 will consist of:

- #1 Removing all windows and installing new thermo pane windows per specifications.
- #2 Repair existing fascia boards and boxing. Paint fascia boards and boxing.
- #3 Remove existing exterior doors and install new doors per specifications.
- #4 Existing staircases will be brought up to local Code.

We will clean up and dispose of all construction debris.

We estimate that it will take approximately eight (8) weeks from starting date to complete these projects.

We propose to complete these projects for the budget price of \$ 257,000.00

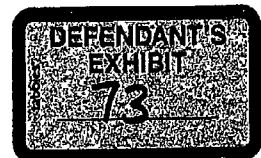
NOTE: The quoted price may vary slightly due to local Code requirements and unforeseen material price increases.

Thank you for the opportunity to work with you on this proposed project.

BAGWELL CONTRACTORS, INC.

David E. Bagwell

From: Google Documents
To: Lanier, Benjamin; benjlemba@gmail.com
Sent: 9/11/2008 12:31:07 PM
Subject: Credit Application Memo-Seven Oaks Apartments, LLC
Attachments: Credit Application Memo.doc



AMERIS-EMAILS-000247

Appendix 01566

Loan Committee Memorandum

AMERIS-EMAILS-000248

Loan Committee Memorandum

Date:

Date: 9/5/08

Borrower's Name: Seven Oaks Apartments, LLC (formerly known as Heritage Seven, LLC)

Loan Officer: Benjie Lanier

I. Business Overview / History

TELL THE STORY OF THE CREDIT AND PRINCIPALS

Who are they?

Seven Oaks Apartments, LLC consists of one guarantor known as Linda A. Gibson. Seven Oaks Apartments is the new LLC name in which Linda would like the apartments to be listed under in order to provide a separation between our current collateral (the 48 unit complex on Otranto Rd.) and a shopping center she owns in Moncks Corner.

Type of company? (Sole Proprietor, Partnership, S-Corp. or C-Corp?)

Seven Oaks Apartments is formed as an LLC.

When did they begin in business?

This LLC was formed in the summer of 2008.

Who are the owners?

Linda A. Gibson is the sole member of this LLC.

Is there a solid management plan?

If something were to happen to Linda, her daughter Elizabeth can fully take over the day to day operation of the apartment complex.

What does the company do?

Seven Oaks Apartments is a real estate holding company for the 48 unit apartment complex known as Seven Oaks.

How long have they been doing it?

This apartment complex was purchased in the fall of 2007 and financed by Ameris Bank under the name Heritage Seven LLC.

AMERIS-EMAILS-000249

Loan Committee Memorandum

Are they in good standing with the state?

Yes, both Seven Oaks Apartments and Heritage Seven LLC are both in good standing.

What is our current relationship, all loans, deposits etc.?

We currently have the apartment complex loan, a deposit account that is used for repairs and a personal CD of Linda's. We are currently in the process of opening the apartment operating account now that they units are being leased and we will also get the escrow account for the apartment complex and the shopping center. We have the opportunity to finance the shopping center she has as well as landing more of her personal accounts due to the easy access to our bank the couriers provide.

Will the loan proceeds produce a future company benefit?

The additional proceeds will be used to finish out the repairs in the three remaining buildings. This will allow for the buildings to complete their restoration and the rental rate will increase given this.

II. Current Relationship

What is the current relationship with Ameris? Loans? Deposits?

Loans-

- \$2.85MM loan in the name of Heritage Seven LLC which is to be refinanced into the name of Seven Oaks Apartments LLC. with an additional request of \$250,000 to finish repairs on the interior of the last 24 units.

Deposits

- Seven Oaks Rehab deposit account- amount varies
- Linda Gibson CD- \$15k
- Seven Oaks Operating Account- in the process of being opened. This account will handle all the monthly payments received. This will be another customer that will utilize the courier route.
- Real Estate Escrow Account- in the process of being opened. This account will handle all security deposits for Seven Oaks Apartments and the shopping center Linda owns in Moncks Corner, SC.

Refer reader to Loan and Collateral Summary

AMERIS-EMAILS-000250

Appendix 01569

Loan Committee Memorandum

III. Requested Credit Facility

Loan Purpose:

What is the specific, identifiable purpose of the loan?

This request has 2 purposes.

The first purpose is to refinance the existing loan in the name of Heritage Seven LLC into the new LLC name of Seven Oaks Apartments, LLC.

The second purpose is to provide \$250,000 of additional dollars to finish the rehabilitation and repairs to the remaining 3 buildings (24 apartment units) in this complex.

What circumstances in the borrower's business brought about this need?

To date roughly \$700,000 has been put into the complex to provide structural repairs to the inside and outside of all six apartment buildings. Three of the buildings have been completely renovated and are now in the process of being leased up. A list of the remaining repairs that are to be made to this building are attached to this memo.

How much is the borrower contributing toward the cost?

At the time of the closing the borrower injected \$700,000 of her own cash to purchase this property.

What are the repayment terms?

Currently this project is being repaid by interest only monthly payments ending in December and then begin amortizing. If this request is approved I would like to propose interest only until June of next year to allow for the completion of the repairs and the full lease up period of the building.

Amortization period?

Once the interest only period ends this loan will be placed on a 20 year amortization with a 5 year call.

Is that consistent with both loan policy and the economic life of the asset?

Yes, now that this property has experienced an intensive rehab the economic life now matches or exceeds that of a 20 year amortization.

Collateral / Appraisal Description and Valuation:

What is the collateral?

The collateral is a 48 unit apartment complex consisting of 42 Two bedroom units and 6 One bedroom units. In addition, we have a piece of property containing a cell phone tower (that produced lease income) located off of Clements Ferry Rd. in Daniel Island. We took this property to provide additional collateral and income to the project while the construction/lease up took place.

AMERIS-EMAILS-000251

Appendix 01570

Loan Committee Memorandum

Where is it located? The primary property is located off of Otranto Rd. in North Charleston. The project is minutes from Rivers Avenue as well as University Blvd. Both Rivers Avenue and University Blvd, has many restaurants and shopping options for the people living in the apartment complex. The complex is also very convenient to Charleston Southern University.

What is the age of the collateral?

The complex was originally built in the 1970s however since last fall extensive renovations have been made to the project bringing the building up to date.

How was the value derived?

An appraisal from last fall used marketing, income and costs approaches to derive value. A value of \$2.8 million "as is" was given to the project and an "as complete" value of \$3.7 million once all the repairs were made to the building.

The additional collateral was given a in house value of \$465,000 given its proximity to the Wando River and the small income this property produces. A new appraisal is requested on this property in order to have a solid value on the property.

What is the loan to value percentage? Based on our loan of 2.8 million vs. an as complete value of 3.7 million the LTV was 76%. If the additional collateral that houses the cell tower was included the LTV would decrease to around 70%.

What is the actual cost? The building was purchased for \$2.8 million

Loan to cost percentage? Loan to Cost of 75% on the initial purchase. Linda put \$700,000 into this project at closing.

Loan Pricing / Profitability Issues:

Rate and fees? The loan was originally priced at prime+0 with a \$10,000 fee. The refinance will propose the loan with the new funds be priced at Prime+1/4% with a 5.25% floor and a \$2500 fee for the new money.

How that ties to the profitability model?

If below Ameris' target, what are the mitigating factors to approve the pricing as presented?

IV. Loan Policy Exceptions / Justifications

AMERIS-EMAILS-000252

Appendix 01571

Loan Committee Memorandum

V. Financial Analysis

Guarantors

Discuss what guarantor's net worth is centered in.

The majority of Linda Gibson's \$52 million dollar net worth is centered in wholly owned real estate. Linda owns quite a bit of property in the Daniel Island area that was her family's land and her late husband's land. The only debts Linda has are her personal home, the Isle of Palms beach house that is a rental, the shopping center in Moncks Corner that is fully leased and the 48 unity apartment building that Ameris Bank has financed.

VI. Industry / Market Review

Direction of borrower's main industry?

The apartment rental business is quite hot right now due to the fact that many people who want to buy homes can either not afford them or get financing for them. In many cases they turn to apartment living. This complex is located close to shopping, businesses and Charleston Southern University.

Competition in the industry?

There are several complexes located close to Seven Oaks Apartments. However, of those complexes Seven Oaks is the only one that has undergone extensive rehab in the last several years.

This makes the complex much more marketable to potential tenants and should keep occupancy rates high.

Any variations in the specific market?

Features of the market conditions that support the loan request?

VII. Strengths / Weaknesses

Strengths:

AMERIS-EMAILS-000253

Appendix 01572

Loan Committee Memorandum

Weaknesses:

VII. Downside Risk

What is/are the one or two risk items that could jeopardize the loan performing as presented? Items to consider include adverse changes to the borrower's financial condition, changes to the market area that might adversely affect collateral values, or zoning, permitting or other legal problems, etc.

How might these changes affect repayment of the loan?

How will the officer monitor those potential changes and mitigate the risk?

IX. Summary / Conclusion

Summarize why the loan should be made and the supports.

AMERIS-EMAILS-000254

From: Lanier, Benjamin
To: benjemba@gmail.com
Sent: 9/12/2008 8:48:15 PM
Subject: FW: Seven Oaks Apartments LLC
Attachments: EC-SC973_EXCHANGE_09122008-163758.PDF

From: Lanier, Benjamin
Sent: Friday, September 12, 2008 4:41 PM
To: Lanier, Benjamin
Subject: Seven Oaks Apartments LLC
Importance: Low



AMERIS-EMAILS-000255

Seven Oaks Apartments Proposed CF

PROPOSED CASH FLOW

Income	Monthly	Annually
2bd room rents	\$ 31,500.00	\$ 378,000.00
1 bd room rents	\$ 3,900.00	\$ 46,800.00
Laundry Room Income	\$ 100.00	\$ 1,200.00
Total Income	\$ 35,500.00	\$ 426,000.00
Vacancy @4%	\$ 2,840.00	\$ 34,080.00
Income after Vacancy	\$ 32,660.00	\$ 391,920.00
Expenses		
SCC&G	\$ 645.01	\$ 7,740.12
Charleston Water	\$ 1,300.00	\$ 15,600.00
Lawn Maintenance	\$ 400.00	\$ 4,800.00
Property Tax Escrow	\$ 2,171.47	\$ 26,057.58
Insurance Escrow	\$ 1,788.66	\$ 21,463.94
Total Expenses	\$ 6,305.14	\$ 75,661.64
NOI	\$ 26,354.86	\$ 316,258.36
Pmt to Ameris	\$22,739.98	\$272,879.77
Excess Cash Flow	\$ 3,614.88	\$ 43,378.59

*Assumes rents of \$750 for 2 bds and \$650 for 1 bds
 *Assumes all 48 Units Rented
 *42 (2) bedrooms and 6 (1) bedrooms

Ameris Bank Proposed Loan \$3,050,000
 Average Rate (Prime+2.5%) 6.50%
 Proposed Term (In years) 20

CF/DS Coverage 1.16

CAP RATES	NOI	Value
6.00%	\$ 316,258.36	\$ 5,270,972.67
6.50%	\$ 316,258.36	\$ 4,865,513.23
6.85%	\$ 316,258.36	\$ 4,616,910.36
7.00%	\$ 316,258.36	\$ 4,517,996.57
7.25%	\$ 316,258.36	\$ 4,362,184.28
7.50%	\$ 316,258.36	\$ 4,216,778.13
8.00%	\$ 316,258.36	\$ 3,953,229.50
8.50%	\$ 316,258.36	\$ 3,720,686.59
9.00%	\$ 316,258.36	\$ 3,513,981.78
10.00%	\$ 316,258.36	\$ 3,162,583.60

Rate	Debt Service	CF	CF/DS Ratio
5.25%	\$20,552.25	\$ 26,354.86	1.28
5.50%	\$20,980.56	\$26,354.86	1.26
5.75%	\$21,413.55	\$26,354.86	1.23
6.00%	\$21,851.15	\$26,354.86	1.21
6.25%	\$22,293.31	\$26,354.86	1.18
6.50%	\$22,739.98	\$26,354.86	1.16
6.75%	\$23,191.10	\$26,354.86	1.14
7.00%	\$23,646.62	\$26,354.86	1.11
7.25%	\$24,106.47	\$26,354.86	1.09
7.50%	\$24,570.59	\$26,354.86	1.07

AMERIS-EMAILS-000257

Appendix 01576

Seven Oaks Apartments Current CF

CURRENT CASH FLOW

Income

Rents Received	\$	13,945.00
Laundry Room	\$	67.00
Total Income	\$	14,012.00

*23 total units are currently occupied

*12 tenants in the older units are are paying less than mkt rent

*25 units are vacant due to renovation

Expenses

SCE&G	\$	645.01
Charleston Water	\$	646.39
Fennell Container	\$	142.69
Lawn Maintance	\$	400.00
Property Tax Escrow	\$	2,171.47
Insurance Escrow	\$	1,788.66
Total Expenses	\$	5,794.22

NOI	\$	8,217.78
-----	----	----------

Pmt to Ameris	\$	12,250.00
---------------	----	-----------

Cash Flow	\$	(4,032.22)
-----------	----	------------

AMERIS-EMAILS-000258

Appendix 01577

From: Lanier, Benjamin
To: Snipes, Don; Sturm, Richard
CC: Hudgens, Charles
Sent: 9/15/2008 3:09:15 PM
Subject: FW: Seven Oaks Apartments LLC
Attachments: EC-SC973_EXCHANGE_09152008-103138.PDF

Richard/Don,
Attached is a package for the loan I wanted to talk about last week.

I am still waiting to get her updated PFS (showing current liquidity situation) and her pmts on contingent debts. I would like to discuss this on the call this afternoon.

Please let me know if you seen anything further that you may need.

Thanks,
Benjie

From: Lanier, Benjamin
Sent: Monday, September 15, 2008 10:32 AM
To: Lanier, Benjamin
Subject: Seven Oaks Apartments LLC
Importance: Low



AMERIS-EMAILS-000200

Appendix 01578

Borrower: Seven Oaks Apartments, LLC
 Address: 133 Horse Trail Rd.
St. George, SC 29477
 Type of Business: Apartment Management

Bank Location: Mount Pleasant, SC
 Reg O: Yes X No
 Officer: Benjie Lanier Date: 9/11/08
 Customer Since: Nov 2007 NAICS Code: _____

Approve / Ratification*	New / Renewal	Loan Type	Original \$ of Commitment	Current Balance	Available Commitment	Rate / Fee	Loan Term / Expiration	Collateral Codes	Special Codes
1 Approve /	New /	150 - Secured by 5 or more Famly- Conventional	\$ 3,050,000		\$ 3,050,000	Prime+2.5%; \$2500	9 mos 10/20 yr am; 5yr call	R0 Residential Real Estate - City	
2									
3									
4									
5									
			\$ -	\$ 3,050,000					= \$ 3,050,000

Comments:
 This loan shall serve to pay out the existing loan known as Heritage Seven, LLC in the amount of \$2.8MM. The owner of these LLC's, Linda Gibson wants to put these apartment units in the name of Seven Oaks Apartments, L.L.C. Linda is also requesting an additional \$250,000 to finish the repairs to the inside of units 4,5,6. This brings the total loan request to \$3,050,000.

Balance Recap

	Avail. Balance
Demand Deposits	\$ 5,100
Interest Bearing	\$ 5,344
Total Deposits	\$ 35,494

Other Direct & Related Borrowers

Other Direct & Related Debt (See Loan and Collateral Summary)	Exposure
Total Exposure	<u>\$ 3,050,000</u>

*Ratification Approval Authority

Strategy / AQG / DSC

Increase	20	1:16
Exposure Strategy	Asset Quality Grade	Debt/Income or DSC
Purpose of Credit (if purchase, indicate cost)	Cost	Loan to Cost
1 Refinance existing credit from another LLC and provide add'l funding to finish the project	na	na
2		
3		
4		
5		

FDIC, Part 365, LTV Exception
 Does the loan exceed FDIC Supervisory TV limits?
 Yes No If Yes, identify:
 1. Raw Land (65%)
 2. Land Development (75%)
 3. Coal, Multifamily and other Non Residential Construction (80%)
 4. 1-4 Family Residential Construction (85%)
 5. Improved Property (85%)
 6. Owner Occupied 1-4 Family, and Home Equity (90%)

Repayment Terms (frequency of principal and interest payments)

	Primary Source of Repayment	Secondary Source of Repayment
1 9 months IO then convert to a 20 yr am with a 5 year call	Apl. Income	Borrower Funds
2		
3		
4		
5		

Material Exceptions / Loan Agreement

Borrower/Guarantor's Financial statements are accurate
 Borrower/Guarantor's Beacon score below 625
 Interest payment frequency outside of policy
 Capitalized interest has been added to loan
 LTV ratio exceeds policy for loan type
 Credit term exceeds policy (term, amortization, etc)
 DSC below policy for loan type
 Check if other exceptions exist and complete page 3
 Check if Loan Agreement is proposed. If yes, see pg 2.

Collateral Recap

	Date Valued	Gross Value	Margin	Net Value
1st mortgage on 48 unit Apt Complex off Otranto Rd in N. Charleston	9/12/07	\$ 3,700,000	85.00%	\$ 3,145,000
Add'l collateral of a 1st mortgage on Klister Ln w/ assignment of cell tower lease	10/20/07	\$ 465,000	100.00%	\$ 465,000
		\$ -	100.00%	\$ -
		\$ -	100.00%	\$ -
		\$ -	100.00%	\$ -
	Less (Prior Liens)	\$ -		\$ -
		\$ 4,165,000		\$ 3,610,000

***New Appraisals to be ordered on both before the closing of the loan request
 LTV = 73.2%

Borrower(s) / Guarantor(s)	Guaranty Amount	Beacon Score	Statement Date	Liquid Assets	Total Assets	Total Liabilities	Net Worth	Income
Linda A Gibson	100%	622	9/30/07	\$ 840,800	\$ 56,194,950	\$ 3,189,184	\$ 53,005,766	\$ 155,604
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
Totals				\$ 840,800	\$ 56,194,950	\$ 3,189,184	\$ 53,005,766	\$ 155,604

Approvals	Initials	Date
Officer	B. Lanier	
Bank President		
Bank ELC		
RCO / SCO		
Ameris OLC		
Ameris ELC		

Special Approval Conditions

Global Cash Flow Analysis

Linda Gibson

Prepared by: Benjie Lanier

Name	(Name)	Tax Return	Combined	Comments
Date of Statement	(Date)	12/31/06		
Business Income:				
Gross Sales	\$ -	\$ -	\$ -	
Net Income	\$ -	\$ -	\$ -	
+ Depreciation	\$ -	\$ -	\$ -	
+ Amortization	\$ -	\$ -	\$ -	
Traditional Cash Flow	\$ -	\$ -	\$ -	
+ Interest (Business term)	\$ -	\$ -	\$ -	
- Dividends/Withdrawals	\$ -	\$ -	\$ -	
+/- Nonrecurring or Extraordinary	\$ -	\$ -	\$ -	
Personal Income:				
Salary	\$ -	\$ -	\$ -	
Retirement Benefits	\$ -	\$ 1,005	\$ 1,005	
Dividends/Interest Income	\$ -	\$ -	\$ -	
Recurring Capital Gains	\$ -	\$ -	\$ -	
Mortgage/Note Receivable	\$ -	\$ 148,849	\$ 148,849	
Other Income	\$ -	\$ -	\$ -	
Positive Net Rental Cash Flow**	\$ -	\$ -	\$ -	
Total Income		\$ 149,854	\$ 149,854	
+ Withdrawals/Distributions	\$ -	\$ -	\$ -	
- Taxes (Incl. Federal, State, FICA, etc.)	\$ -	\$ -	\$ -	
- Living Expenses	\$ -	\$ (44,956)	\$ (44,956)	
Cash Available to Service Debt	\$ -	\$ 104,898	\$ 104,898	
Debt Service				
	Monthly Pmt			
Business Loans:				
Loan 1	\$ -	\$ -	\$ -	
Loan 2	\$ -	\$ -	\$ -	
Loan 3	\$ -	\$ -	\$ -	
Loan 4	\$ -	\$ -	\$ -	
Loan 5	\$ -	\$ -	\$ -	
Personal Loans:				
First Citizens	\$ 1,014.00	\$ 12,168	\$ 12,168	
Chase	\$ 380.00	\$ 4,560	\$ 4,560	
Discover	\$ 15.00	\$ 180	\$ 180	
Discover	\$ 51.00	\$ 612	\$ 612	
THD	\$ 48.00	\$ 576	\$ 576	
BOA	\$ 102.00	\$ 1,224	\$ 1,224	
Discover	\$ 26.00	\$ 312	\$ 312	
- Negative Rental Property Cash Flow	\$ -	\$ -	\$ -	
- Total Debt Service	\$ -	\$ 19,632	\$ 19,632	
Excess (Deficit)	\$ -	\$ 85,266	\$ 85,266	
Debt Service Coverage		5.34	5.34	
Debt/Income (%)		13.10%		
Rental Cash Flow:				
Gross Rents (Tax Return/Sch.E)	\$ -	\$ -	\$ 0	
Net Rental Income (Sch. E)	\$ -	\$ -	\$ 0	
+ Depreciation	\$ -	\$ -	\$ 0	
+ Interest	\$ -	\$ -	\$ 0	
Existing Rental CF	\$ -	\$ -	\$ -	
Gross Rents (New Property)	\$ -	\$ -	\$ 0	
Vacancy (8%)	\$ -	\$ -	\$ 0	
= Gross Effective Income	\$ -	\$ -	\$ 0	
- Other Expenses	\$ -	\$ -	\$ 0	
Maintenance Expenses (10%)	\$ -	\$ -	\$ 0	
- Taxes & Insurance	\$ -	\$ -	\$ 0	
Total Rental Cash Flow	\$ -	\$ -	\$ -	
Existing Rental Debt Service (P&I)	\$ -	\$ -	\$ 0	
New Rental Debt Service (P&I)	\$ -	\$ -	\$ 0	
Total Rental Debt Service	\$ -	\$ -	\$ -	
**Net Rental Cash Flow	\$ -	\$ -	\$ -	
Existing Rental DSC				
Total Rental DSC				
Overall DSC			5.34	

Note: If "-" is part of the Description, you must enter a negative sign with that line entry.

Ameris

CF

Prepared 9/15/2008

AMERIS-EMAILS-000202

Appendix 01580

Loan and Collateral Summary

Borrower Seren Oaks Apartments, LLC

Date 9/17/2008

<u>Borrower Name</u>	<u>Origin-ation Date</u>	<u>Purpose</u>	<u>Original Loan Amt/ Commitment</u>	<u>Current Balance</u>	<u>Available Commitment</u>	<u>Rate/Fee</u>	<u>Collateral</u>	<u>Collateral Appraised Value</u>	<u>Margin</u>	<u>Collateral Loan Value</u>	<u>Terms/ Maturity</u>	<u>AQG</u>
<i><u>DIRECT EXPOSURE</u></i>												
Seren Oaks Apartments, LLC		Refinance existing apt loan	\$ 3,050,000		\$ 3,050,000	Prime+149% \$3500	1st mortgage on 48 unit Apt. Complex on Otisco Rd. N Charleston	\$ 3,700,000		\$ -	9 mos 10 then 20 yr pm/5 yr call	30
		Total Direct Exposure	\$ 3,050,000	\$ -	\$ 3,050,000			\$ 3,700,000		\$ -		
<i><u>INDIRECT EXPOSURE</u></i>												
		Total Indirect Exposure	\$ -	\$ -	\$ -			\$ -		\$ -		
TOTAL DIRECT EXPOSURE			<u>\$ 3,050,000</u>					<u>\$ 3,700,000</u>			<u>LTV= 82.4%</u>	
TOTAL INDIRECT EXPOSURE			<u>\$ -</u>					<u>\$ -</u>			<u>LTV= PD/VOL</u>	
TOTAL EXPOSURE			<u>\$ 3,050,000</u>					<u>\$ 3,700,000</u>			<u>LTV= 82.4%</u>	

AMERIS-EMAILS-000203

Appendix 01581

Ameris Bank Profitability Analysis

9/15/2008

Seven Oaks Apts, LLC

Loans:	Fixed/ Variable	AQQ	Avg. Annual Balance	Interest Rate	Avg. Term (months)	Gross Fees	Profitability Calculation		
1	v	20	\$ 3,050,000	5.25%	60	\$ 2,500	1	Total Interest Income	\$ 160,125
2	F	20	\$ -	0.00%	0	\$ -	2	+ Loan Fees	\$ 500
3	F	20	\$ -	0.00%	0	\$ -	3	- Interest Expense	\$ (1,191)
4	F	20	\$ -	0.00%	0	\$ -	4	- Cost of Funds	\$ (78,080)
5	F	20	\$ -	0.00%	0	\$ -	5	+ Funds Credit	\$ 653
6	F	20	\$ -	0.00%	0	\$ -	6	Net Interest Income	\$ 82,007
7	F	20	\$ -	0.00%	0	\$ -	7		
8	F	20	\$ -	0.00%	0	\$ -	8	+ Equity Credit	\$ 8,246
9	F	20	\$ -	0.00%	0	\$ -	9	+ Loan Loss Reserve Credit	\$ 1,236
10	F	20	\$ -	0.00%	0	\$ -	10	- Loan Loss Provision	\$ (6,100)
Total Loans			\$ 3,050,000				11	Gross Income	\$ 85,389
Deposits:							12	+ Non Interest Income	\$ -
	DDA		\$ 5,100				13	- Overhead Allocation	\$ (13,725)
	High Yield		\$ 10,000	3.75%			14	Net Income Before Taxes	\$ 71,664
	Savings		\$ -	0.00%			15		
	CD's		\$ 5,344	4.00%	0		16		
	CD's		\$ 15,050	4.00%	0		17	- Taxes	\$ (24,366)
	CD's		\$ -	0.00%	0		18	Net Income	\$ 47,298
	CD's		\$ -	0.00%	0		19		
	CD's		\$ -	0.00%	0		20		
Total Deposits			\$ 35,494				Key Information		
Other Income Sources:							21	Allocated Equity	\$ 266,875
	I/C Fees		\$ -				22	Allocated Loan Loss Reserve	\$ 56,425
	Other		\$ -				23	Net Interest Margin	2.69%
							24	Return on Assets	1.55%
							25	Return on Equity	17.72%
							26	Target Return on Equity	18.00%
							27	\$ of Income Below Target ROE	\$ 739
							28		

Instructions for completing the customer information:

Lines 1-10 Each loan in a relationship (up to 10) should be listed separately. The interest rate should be designated as fixed (F) or variable (V). The Asset Quality Grade (AQQ) for each loan should be indicated. The loan balance(s) should reflect the average annual balance of the loan by loan type. For Ag-related borrowers, this would normally be 50% - 65% of the total commitment. For term loans, this would be the current outstanding balance less 1/2 the annual payment. The current interest rate on each loan should be listed. For variable-rate loans with floor rates that are greater than the current rate, the floor rate should be used. Conversely, if the calculated rate is greater than the ceiling rate, then the ceiling rate should be used. Officer judgement is best used when considering the interest rate, given all these factors. The term of the loan(s) should be expressed in months. This is NOT the original loan term, but the remaining term to maturity, or the next available repricing date, whichever is earlier. Finally, the gross fees charged on the loan should be entered, as the model will use the average term to annualize the fee, per FASB 91.

Lines 14-21 Average annual deposit balances should be reflected on these lines. There is no interest rate associated with DDA deposits. For all other deposit types, the current interest rate charged on that account should be indicated. Up to five CD's can be shown, along with the interest rate and the remaining term of the CD(s), expressed in months. As with the loan term, this is NOT the original term of the CD(s), but the time until the next repricing date.

Line 25 Any fees for standby and/or commercial letters of credit should be included here.

Line 26 Other income sources should be included, such as account-analysis charges, merchant services, trust fees, etc.

Last Revised 9/02/2008

AMERIS-EMAILS-000204

Appendix 01582

Seven Oaks Apartments Current CF

CURRENT CASH FLOW

Income

Rents Received	\$	13,945.00
Laundry Room	\$	67.00
Total Income	\$	14,012.00

*23 total units are currently occupied

*12 tenants are in the older units and are paying less than mkt rent

*25 units are vacant due to renovation

Expenses

SCE&G	\$	645.01
Charleston Water	\$	646.39
Fennel Container	\$	142.69
Lawn Maintenance	\$	400.00
Property Tax Escrow	\$	2,171.47
Insurance Escrow	\$	1,788.66
Total Expenses	\$	5,794.22

NOI \$ 8,217.78

Pmt to Ameris \$ 12,250.00

Cash Flow \$ (4,032.22)

AMERIS-EMAILS-000205

Appendix 01583

Seven Oaks Apartments Proposed CF

PROPOSED CASH FLOW

Income	Monthly	Annually
2bd room rents	\$ 31,500.00	\$ 378,000.00
1 bd room rents	\$ 3,900.00	\$ 46,800.00
Laundry Room Income	\$ 100.00	\$ 1,200.00
Total Income	\$ 35,500.00	\$ 426,000.00
Vacancy @ 8%	\$ 2,840.00	\$ 34,080.00
Income after Vacancy	\$ 32,660.00	\$ 391,920.00
Expenses		
SCE&G	\$ 645.01	\$ 7,740.12
Charleston Water	\$ 1,300.00	\$ 15,600.00
Lawn Maintenance	\$ 400.00	\$ 4,800.00
Property Tax Escrow	\$ 2,171.47	\$ 26,057.58
Insurance Escrow	\$ 1,788.66	\$ 21,463.94
Total Expenses	\$ 6,305.14	\$ 75,661.64
NOI	\$ 26,354.86	\$ 316,258.36
Pmt to Ameris		
	\$22,739.98	\$272,879.77
Excess Cash Flow	\$ 3,614.88	\$ 43,378.59

*Assumes rents of \$750 for 2 bds and \$650 for 1 bds
 *Assumes all 48 Units Rented
 *42 (2) bedrooms and 6 (1) bedrooms

Ameris Bank Proposed Loan **\$3,050,000**
 Average Rate (Prime+.25%) **6.50%**
 Proposed Term (in years) **20**

CF/DS Coverage **1.16**

CAP RATES	NOI	Value
6.00%	\$ 316,258.36	\$ 5,270,972.67
6.50%	\$ 316,258.36	\$ 4,865,513.23
6.85%	\$ 316,258.36	\$ 4,616,910.36
7.00%	\$ 316,258.36	\$ 4,517,976.57
7.25%	\$ 316,258.36	\$ 4,362,184.28
7.50%	\$ 316,258.36	\$ 4,216,178.13
8.00%	\$ 316,258.36	\$ 3,953,229.50
8.50%	\$ 316,258.36	\$ 3,720,686.59
9.00%	\$ 316,258.36	\$ 3,513,981.78
10.00%	\$ 316,258.36	\$ 3,162,583.60

Rate	Debt Service	CF	CF/DS Ratio
5.25%	\$20,552.25	\$26,354.86	1.28
5.50%	\$20,980.56	\$26,354.86	1.26
5.75%	\$21,413.55	\$26,354.86	1.23
6.00%	\$21,851.15	\$26,354.86	1.21
6.25%	\$22,293.31	\$26,354.86	1.18
6.50%	\$22,739.98	\$26,354.86	1.16
6.75%	\$23,191.10	\$26,354.86	1.14
7.00%	\$23,646.62	\$26,354.86	1.11
7.25%	\$24,106.47	\$26,354.86	1.09
7.50%	\$24,570.39	\$26,354.86	1.07

Loan Committee Memorandum

Date: 9/5/08

Borrower's Name: Seven Oaks Apartments, LLC (formerly known as Heritage Seven, LLC)

Loan Officer: Benjie Lanier

I. Business Overview / History

TELL THE STORY OF THE CREDIT AND PRINCIPALS

Who are they?

Seven Oaks Apartments, LLC consists of one guarantor known as Linda A. Gibson. Seven Oaks Apartments is the new LLC name in which Linda would like the apartments to be listed under in order to provide a separation between our current collateral (the 48 unit complex on Otranto Rd.) and a shopping center she owns in Monoks Corner.

Type of company? (Sole Proprietor, Partnership, S-Corp. or C-Corp?)

Seven Oaks Apartments is formed as an LLC.

When did they begin in business?

This LLC was formed in the summer of 2008.

Who are the owners?

Linda A. Gibson is the sole member of this LLC.

Is there a solid management plan?

If something were to happen to Linda, her daughter Elizabeth can fully take over the day to day operation of the apartment complex.

What does the company do?

Seven Oaks Apartments is a real estate holding company for the 48 unit apartment complex known as Seven Oaks.

How long have they been doing it?

This apartment complex was purchased in the fall of 2007 and financed by Ameris Bank under the name Heritage Seven LLC.

Are they in good standing with the state?

AMERIS-EMAILS-000207

Appendix 01585

Loan Committee Memorandum

Yes, both Seven Oaks Apartments and Heritage Seven LLC are both in good standing.

What is our current relationship, all loans, deposits etc.?

We currently have the apartment complex loan, a deposit account that is used for repairs and a personal CD of Linda's. We recently opened another account for Seven Oaks Apartments as well as a business CD we will also get the escrow account for the apartment complex and the shopping center. We have the opportunity to finance the shopping center she has as well as landing more of her personal accounts due to the easy access to our bank the couriers provide.

Will the loan proceeds produce a future company benefit?

The additional proceeds will be used to finish out the repairs in the three remaining buildings. This will allow for the buildings to complete their restoration and the rental rate will increase given this.

II. Current Relationship

What is the current relationship with Ameris? Loans? Deposits?

Loans-

- \$2.8 MM loan in the name of Heritage Seven LLC which is to be refinanced into the name of Seven Oaks Apartments LLC. with an additional request of \$250,000 to finish repairs on the interior of the last 24 units.

Deposits

- Linda Gibson CD- \$15k
- Linda Gibson- \$10k High Yield Checking Account
- ~~Seven Oaks Operating Accounts- Two checking accounts have been opened. One account has a balance of \$4900 and the other account has an opening balance of \$200. Seven Oaks also has a 7 month CD in the amount of \$5344. This will be a customer that will utilize the courier route.~~
- Real Estate Escrow Account- This account is in the process of being opened. This account will handle all security deposits for Seven Oaks Apartments and the shopping center Linda owns in Moncks Corner, SC.

Refer reader to Loan and Collateral Summary

III. Requested Credit Facility

AMERIS-EMAILS-000208

Appendix 01586

Loan Committee Memorandum

Loan Purpose:

What is the specific, identifiable purpose of the loan?

This request has 2 purposes.

- The first purpose is to refinance the existing loan in the name of Heritage Seven LLC into the new LLC name of Seven Oaks Apartments, LLC.
- The second purpose is to provide \$250,000 of additional dollars to finish the rehabilitation and repairs to the remaining 3 buildings (24 apartment units) in this complex.

What circumstances in the borrower's business brought about this need?

To date roughly \$700,000 has been put into the complex to provide structural repairs to the inside and outside of all six apartment buildings. Three of the buildings have been completely renovated and are now in the process of being leased up. A list of the remaining repairs that are to be made to this building are attached to this memo.

How much is the borrower contributing toward the cost?

At the time of the closing the borrower injected \$700,000 of her own cash to purchase this property.

What are the repayment terms?

Currently this project is being repaid by interest only monthly payments ending in December and then begins amortizing. If this request is approved I would like to propose interest only until June of next year to allow for the completion of the repairs and the full lease up period of the building.

Amortization period?

Once the interest only period ends this loan will be placed on a 20 year amortization with a 5 year call.

Is that consistent with both loan policy and the economic life of the asset?

Yes, now that this property has experienced an intensive rehab the economic life now matches or exceeds that of a 20 year amortization.

Collateral / Appraisal Description and Valuation:

What is the collateral?

The collateral is a 48 unit apartment complex consisting of 42 Two bedroom units and 6 One bedroom units. In addition, we have a piece of property containing a cell phone tower (that produced lease income) located off of Clements Ferry Rd. in Daniel Island. We took the Klister Lane property to provide additional collateral and income to the project while the construction/lease up took place.

Where is it located? The primary property is located off of Otranto Rd. in North Charleston. The project is minutes from Rivers Avenue as well as University Blvd. Both Rivers Avenue and

AMERIS-EMAILS-000209

Appendix 01587

Loan Committee Memorandum

University Blvd. has many restaurants and shopping options for the people living in the apartment complex. The complex is also very convenient to Charleston Southern University. The Klister Lane property is located off of Clements Ferry Rd. near Daniel Island.

What is the age of the collateral?

The complex was originally built in the 1970s however since last fall extensive renovations have been made to the project bringing the building up to date.

How was the value derived?

An appraisal from last fall used marketing, income and costs approaches to derive value. A value of \$2.8 million "as is" was given to the project and an "as complete" value of \$3.7 million once all the repairs were made to the building. A new appraisal will be conducted on the approval of this request to verify that the LTVs are still in line with the current market conditions.

The additional collateral was given a in house value of \$465,000 given its proximity to the Wando River and the small income this property produces. A new appraisal is requested on this property in order to have a solid value on the property.

What is the loan to value percentage? Based on our loan of 2.8 million vs. an as complete value of 3.7 million the LTV was 76%. If the additional collateral that houses the cell tower was included the LTV would decrease to around 70%.

What is the actual cost? The building was purchased for \$2.8 million

Loan to cost percentage? Loan to Cost of 75% on the initial purchase. Linda put \$700,000 into this project at closing.

Loan Pricing / Profitability Issues:

Rate and fees? The loan was originally priced at prime+0 with a \$10,000 fee. The refinance will propose the loan with the new funds be priced at Prime+1/4% with a 5.25% floor and a \$2500 fee for the new money.

How that ties to the profitability model?

Per the profit model this loan comes in at an ROE of 17.52% this is slightly below the 18% ROE requirement. This will improve as the accounts that have been opened are utilized more.

V. Financial Analysis

Guarantors

Discuss what guarantor's net worth is centered in.

The majority of Linda Gibson's \$52 million dollar net worth is centered in wholly owned real

AMERIS-EMAILS-000210

Appendix 01588

Loan Committee Memorandum

estate. Linda owns quite a bit of property in the Daniel Island area that was her family's land and her late husband's land. The only debts Linda has are her personal home, the Isle of Palms beach house that is a rental, the shopping center in Moncks Corner that is fully leased and the 48 unity apartment building that Ameris Bank has financed.

VI. Industry / Market Review

Direction of borrower's main industry?

The apartment rental business is quite hot right now due to the fact that many people who want to buy homes can either not afford them or get financing for them. In many cases they turn to apartment living. This complex is located close to shopping, businesses and Charleston Southern University.

Competition in the industry?

There are several complexes located close to Seven Oaks Apartments. However, of those complexes Seven Oaks is the only one that has undergone extensive rehab in the last several years.

This makes the complex much more marketable to potential tenants and should keep occupancy rates high.

Any variations in the specific market?

Features of the market conditions that support the loan request?

VII. Strengths / Weaknesses

Strengths:

Borrower/GTR has \$700k of her personal money invested in this project.

Linda and her daughter Elizabeth are hands on managers and oversee the day to day operations of the apartment complex.

Linda has many pieces of collateral that can be pledged or liquidated if trouble arose in the repayment of this loan.

Linda's other contingent debts consist of a shopping center in Moncks Corner that is 100% and that she has a large equity stake in. Her other debts consist of a family beach house on the Isle of Palms and her personal residence in St. George, SC.

AMERIS-EMAILS-000211

Appendix 01589

Loan Committee Memorandum

Weaknesses:

Lack of large amounts of liquidity given Linda's \$50+ net worth.

A large majority of Linda's net worth is centered in wholly and partially owned real estate. The mitigating factor of this is that many of these property are owned outright and have no mortgages on them.

VII. Downside Risk

What is/are the one or two risk items that could jeopardize the loan performing as presented?
If the rental market dried up and Linda was unable to rent the units for the market price some repayment problems could occurs based solely on said collateral. However, given Linda's character and her ability to repay the loan this would be negated.

IX. Summary / Conclusion

This loan should be approved as presented at a grade of 20 given Linda's character, past payment performance and her financial strength.

AMERIS-EMAILS-000212

Appendix 01590

From: Lanier, Benjamin
To: sevenoaksapartments@gmail.com
Sent: 9/15/2008 7:43:15 PM
Subject: Heritage Seven Payoff and Personal Statement
Attachments: Heritage Seven Payoff; Personal Financial Statement.xls

Linda,

First off, I would like to thank you for your business and thank you for coming by last week and opening those new accounts. These accounts mean a lot to us and we look forward to servicing any of your other needs in the future.

Here is the payoff for Heritage Seven you requested. I have also attached a personal financial statement. Please let me know if you have any questions when filling this out.

Here are the items my guys addressed again today on the call when I spoke with them about the request:

- Updated Personal Financial Statement. The previous statement I had for you is almost a year old so we would like to see any updates you may have and get a new statement for our file.
- List of bank accounts/liquidity (aka Bank account balances for all of your holdings). This will help show my guys the cash you have on hand in addition to the accounts you have with us.
- Cash flow (income/expenses/payment) of the Moncks Corner shopping center- we will need this when we are looking at this loan but also need to get an idea of the Cash Flow that is currently coming into the building.
- Amount of monthly income from your building/land rentals (ex: BarGib)

Our goal is to show my guys where your income sources are and that this is a solid project.

Once again thank you for your business and please accept my condolences on your loss.

Best regards,
Benjamin R. Lanier Jr.
Vice President- Business Banker
Ameris Bank
968 Houston Northcutt Blvd. Suite C
Mount Pleasant, SC 29464
Direct: 843-375-4973
Cell: 843-345-3507
Fax: 843-881-8350

benjamin.lanier@amerisbank.com
www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.



AMERIS-EMAILS-000486

Appendix 01591

From: Lanier, Benjamin
To: Lanier, Benjamin
Sent: 9/15/2008 7:33:47 PM
Subject: Heritage Seven Payoff
Attachments: EC-SC973_EXCHANGE_09152008-153206.PDF

AMERIS-EMAILS-000487

Appendix 01592

Route Seven LLC 737000179-00101 Commercial Loan 02-0512112	Contact Notes Account Remarks Shirts <<
Customer number: Fin officer: Douglas Lane Branch: 090270 Phone: (-)	Account number: Fin officer: 97807 Last trans date: 12/517/53 Last trans date: 03/11/2008 Current rate: 5.250000% Current balance: 2,781,214.20

Payoff Date: 09/15/2008 Calculate



Payoff Summary
 Total payoff: 2,785,865.39
 As of: 09/15/2008
 Paid to: 405,5937375

Loan Information:
 Collateral: 408 Unit apartment complex
 V/U:
 Paid to: 09/02/2008
 Status: Actual

Included in Payoff Calculation
 Principal balance: 2,781,214.20
 Interest: 5,271.18
 Late charges: 100.00
 Other fees: 380.00

Note type: Con Real Estate
 Bill type: Bill copied with billing agent
 Interest type: Simple Interest, In arrears
 Calc base: Actual/360

	A	B	C	D	E	F	G	H	I	
1	Amoris Bank									
2										
3										
4	PERSONAL FINANCIAL STATEMENT									
5	Answer all questions using "no" or "none" where necessary. Please begin by completing the schedule on the reverse side.									
6										
7										
8	Personal Information									
9	Name (last, middle, first)								Nick Name	
10										
11	Home Address								City, State, Zip	
12										
13	Business/employer								City/State/Zip and	
14										
15	Business Address								City, State, Zip	
16										
17	Do you have any children? If yes, list age									
18										
19	Have you ever taken bankruptcy? If yes, explain.									
20										
21	If debt settlement, list names of individuals whose name, address, and license are included.									
22										
23										
24										
25	Indicate "A" (Applicant), "C" (Co-applicant), or "J" (Jointly held with others) beside assets and li									
26	ASSETS						A or C		B Asset	
27	Cash on hand and unrestricted in funds from orders						\$			-
28	Accounts of banks/savings (Schedule 3)						\$			-
29	Cash accounts/retirement (Do not include 4)						\$			-
30	List of AMEX, NYSE Stocks (omit NY Govt Securities/Schedule 4)						\$			-
31	Other Stocks and Bonds (Schedule 4)						\$			-
32	Real Estate in your or partner's name (Schedule 4)						\$			-
33	Automobiles						\$			-
34	Boat						\$			-
35	IRA / Retirement Accounts						\$			-
36	Other Assets - Assets						\$			-
37	Personal Property						\$			-
38							\$			-
39							\$			-
40	Total Assets						\$			-
41	Net Worth Enter net worth (Schedule 3) from total assets and enter figure to right									
42	Contingent Liabilities As guarantor or co-signer. List date on loan or contract									
43										
44										
45	Income Information						Annual			
46	All money, cash support or separate contributions income must not be revealed if you do not wish to have it reported as a bank for reporting this obligation									
47	Salary (Check)						\$			-

AMERIS-EMAILS-000489

	J	K	L	M	N	O	P	Q	R
1									
2									
3									
4									
5									
6									
7									
8									Date of Birth
9									Home Phone Number
10									Business Phone Number
11									How Long?
12									How Long?
13									How Long?
14									Business Phone Number
15									
16									
17									If you list name of partner
18									
19									Is it a sole proprietorship? If yes, explain.
20									
21									Medicaid Number
22									
23									
24									
25									Indicate to whom item applies.
26									LIABILITIES
27									Accounts payable (including 1)
28									Notes and interest due to others (including 1)
29									Accounts payable to creditors (including 1)
30									Notes secured, but unpaid
31									Mortgages payable on real estate (including 1)
32									Accounts and bills payable
33									Credit Cards - Revolving
34									
35									
36									Other Liabilities - Secured
37									
38									
39									
40									Total Liabilities
41									
42									
43									
44									
45									
46									Parting Relationships
47									Items are address of bank. Credit to Total (Y) Total (Y)

AMBRIS-EMAILS-000490

	A	B	C	D	E	F	G	H	I	
48	Domestic corporation, dividend income						\$		-	
49	Interest income						\$		-	
50	Other income - taxable						\$		-	
51	Total Income						\$		-	
52										
53										
54	I warrant that I have not prepared this return unless I am a duly qualified preparer, or unless I am a partner, or unless I am a person who is acting as a preparer, and that I am not acting as a preparer for the purpose of obtaining a refund of tax.									
55										
56	Signature							Date		
57										
58										
59										
60										
61										
62										
63										
64										
65										
66										
67										
68	Supplementary Schedules (Totals to front)									
69										
70	Schedule 1 Debit/Credit Lines									
71	Name of Bank (Do not)									
72										
73										
74										
75	Total Debit and Credit Lines									
76	Name of Bank (not bank, in, holding credit cards)									
77										
78										
79										
80	Total Debit and Credit Lines									
81	Grand Total Debit/Credit Lines									
82										
83	Schedule 2 Accounts, Loans and Notes Receivable									
84	Name and address of debtor							Amount Due		
85								\$		
86								\$		
87	Total Accounts, Loans and Notes Receivable							\$		
88										
89	Schedule 3 Life Insurance									
90	Name of Insurer									
91								\$		
92								\$		
93								\$		
94										

AMBRIS-EMAILS-000491

	J	K	L	M	N	O	P	Q	R
48								\$	-
49								\$	-
50								\$	-
51	Total Cash (Info to asset accting above)							\$	-
52									
53									
54	Cash and cash equivalents, etc.								
55									
56	Agreement						Date		
57									
58									
59									
60	is sheet								
61									
62									
63									
64									
65									
66									
67									
68	Attach schedule pages if necessary								
69									
70	Schedule of assets (if asset)								
71		Credit Line		Original Amount		Unpaid Balance		Monthly Payment	
72	\$	-	\$	-	\$	-	\$	-	-
73	\$	-	\$	-	\$	-	\$	-	-
74	\$	-	\$	-	\$	-	\$	-	-
75	\$	-	\$	-	\$	-	\$	-	-
76		Credit Line		Original Amount		Unpaid Balance		Monthly Payment	
77	\$	-	\$	-	\$	-	\$	-	-
78	\$	-	\$	-	\$	-	\$	-	-
79	\$	-	\$	-	\$	-	\$	-	-
80	\$	-	\$	-	\$	-	\$	-	-
81	\$	-	\$	-	\$	-	\$	-	-
82									
83									
84		Annual Cost		Description of asset or item		Description of security held		Replacement Term	
85		-							
86		-							
87		-						\$	-
88									
89									
90		Credit Insurance Value		Loan Against Policy		Yield Percent		Type of Policy	is Policy Available
91	\$	-	\$	-	\$	-			
92	\$	-	\$	-	\$	-			
93	\$	-	\$	-	\$	-			
94									

AMERIS-EMAILS-000492

	A	B	C	D	E	F	G	H	I
95	Schedule 4 Stocks, Bonds and US Government Securities								
96	Description of Security	Registered to the Name of				Total Number of Shares			
97									
98								-	\$
99								-	\$
100								-	\$
101	Total Listed Securities								
102	Total Unlisted Securities								
103	Schedule 5 Real Estate								
104	Description or address of property	This is the name of				Date Acquired	Original	Cost	
105							\$	-	
106							\$	-	
107							\$	-	
108							\$	-	
109	TOTAL						\$	-	
110	Other Credit References								
111	Name and Address					Date			
112									
113									

AMERIS-EMAILS-000493

	J	K	L	M	N	O	P	Q	R
95									
96	Market Value per Share	Total Market Value	Plotted	Units				In stock listed (L) or sold (L)	
97	- \$	-						L	
98	- \$	-						L	
99	- \$	-						L	
100	\$	-							
101	\$	-							
102									
103									
104	Market	Value	Original Loan Amount	Unpaid	Balance	Monthly	Payment		
105	\$	- \$	- \$			- \$	-		
106	\$	- \$	- \$			- \$	-		
107	\$	- \$	- \$			- \$	-		
108	\$	- \$	- \$			- \$	-		
109	\$	- \$	- \$			- \$	-		
110									
111	Account Number				Type of Account			High Credit	
112								\$	-
113								\$	-

AMERIS-EMAILS-000494

From: Seven Oaks Apartments (Elizabeth)
To: Lanier, Benjamin
Sent: 9/15/2008 9:45:43 PM
Subject: Re: Heritage Seven Payoff and Personal Statement

Moncks Corner:

Advanced Auto Parts- \$4958.33
Check into Cash- \$2075.00
Papa Johns- \$1792.20
Blockbuster- \$5840.00
First Franklin- \$2000.00
Berkeley Federal Credit Union- \$1350.00

Total: \$18,015.53

I will look through my papers on the other statements. Thanks, Linda Gibson

On Sep 15, 2008, at 3:43 PM, Lanier, Benjamin wrote:

Linda,

First off, I would like to thank you for your business and thank you for coming by last week and opening those new accounts. These accounts mean a lot to us and we look forward to servicing any of your other needs in the future.

Here is the payoff for Heritage Seven you requested. I have also attached a personal financial statement. Please let me know if you have any questions when filling this out.

Here are the items my guys addressed again today on the call when I spoke with them about the request:

- Updated Personal Financial Statement. The previous statement I had for you is almost a year old so we would like to see any updates you may have and get a new statement for our file.
- List of bank accounts/liquidity (aka Bank account balances for all of your holdings). This will help show my guys the cash you have on hand in addition to the accounts you have with us.
- Cash flow (Income/expenses/payment) of the Moncks Corner shopping center- we will need this when we are looking at this loan but also need to get an idea of the Cash Flow that is currently coming into the building.
- Amount of monthly income from your building/land rentals (ex: BarGib)

Our goal is to show my guys where your income sources are and that this is a solid project.

Once again thank you for your business and please accept my condolences on your loss.

Best regards,
Benjamin R. Lanier Jr.
Vice President- Business Banker
Ameris Bank
966 Houston Northcutt Blvd. Suite C
Mount Pleasant, SC 29464
Direct: 843-375-4973
Cell: 843-345-3507
Fax: 843-861-8350

benjamin.lanier@amerisbank.com



AMERIS-EMAILS-000497

Appendix 01600

www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

<mime-attachment.eml><Personal Financial Statement.xls>

Seven Oaks Apartments
Elizabeth Gibson - *Property Manager*
sevenoaksapartments@gmail.com
Phone: 843-297-8717
Fax 843-297-8727

AMERIS-EMAILS-000498

Appendix 01601

From: Seven Oaks Apartments (Elizabeth)
To: Lanier, Benjamin
Sent: 9/18/2008 6:10:59 PM
Subject: Re: Heritage Seven Payoff and Personal Statement

Benji,

We have almost all of building 200 rented minus two units updated since the last spreadsheet I gave to you. The rented apartments now in building 200: A,B,C,D,E,F. We now have 33 units rented for a income of \$17,095 a month.

Banks:
First Reliance Bank: \$18,681
First Citizens: \$4900

This is what we have at the present time. Let me know if you need anything else. Thanks, Linda Gibson

On Sep 15, 2008, at 3:43 PM, Lanier, Benjamin wrote:

Linda,
First off, I would like to thank you for your business and thank you for coming by last week and opening those new accounts. These accounts mean a lot to us and we look forward to servicing any of your other needs in the future.

Here is the payoff for Heritage Seven you requested. I have also attached a personal financial statement. Please let me know if you have any questions when filling this out.

Here are the items my guys addressed again today on the call when I spoke with them about the request:

- Updated Personal Financial Statement. The previous statement I had for you is almost a year old so we would like to see any updates you may have and get a new statement for our file.
- List of bank accounts/liquidity (aka Bank account balances for all of your holdings). This will help show my guys the cash you have on hand in addition to the accounts you have with us.
- Cash flow (income/expenses/payment) of the Moncks Corner shopping center- we will need this when we are looking at this loan but also need to get an idea of the Cash Flow that is currently coming into the building.
- Amount of monthly income from your building/land rentals (ex: BarGib)

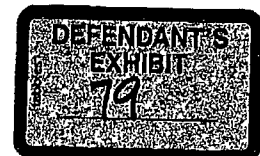
Our goal is to show my guys where your income sources are and that this is a solid project.

Once again thank you for your business and please accept my condolences on your loss.

Best regards,
Benjamin R. Lanier Jr.
Vice President- Business Banker
Ameris Bank
968 Houston Northcutt Blvd. Suite C
Mount Pleasant, SC 29464
Direct: 843-375-4973
Cell: 843-345-3507
Fax: 843-881-8350

benjamin.lanier@amerisbank.com
www.amerisbank.com

This e-mail and any files transmitted with it are confidential



AMERIS-EMAILS-000495

Appendix 01602

and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

<mime-attachment.eml><Personal Financial Statement.xls>

-
Seven Oaks Apartments
Elizabeth Gibson - *Property Manager*
sevenoaksapartments@gmail.com
Phone: 843-297-8717
Fax: 843-297-8727

AMERIS-EMAILS-000496

Appendix 01603

Proposal



CARROLL GEASE BUILDERS

1215 Pine Court
HANAHAN, SC 29406
Phone 754-7134 Fax 754-0082 Cell 478-8650
SC Lic. #014813

DEPENDANT'S DEPOSITION
EXHIBIT
E. Gibson
12-30-10

PROPOSAL SUBMITTED TO <i>MRS. LINDA GIBSON OWNER</i>	PHONE <i>697-0118</i>	DATE <i>10/24/08</i>
STREET <i>2625 ATLANTA RD.</i>	JOB NAME <i>SEVEN OAKS APARTMENTS</i>	
CITY, STATE AND ZIP CODE <i>NORTH CHARLESTON, S.C.</i>	JOB LOCATION <i>BUILDING #3 ONLY</i>	
ARCHITECT	DATE OF PLANS	JOB PHONE <i>SAME</i>

We hereby submit specifications and estimates for:

- SCOPE OF WORK TO COMPLETE BUILDING #3 AS FOLLOWS:
- 1) SUPERVISE BALANCE OF REMAINING WORK TO COMPLETE BUILDING #3.
 - 2) INSTALL ALL REMAINING KITCHEN & BATH CABINETS & COUNTERTOPS.
 - 3) COMPLETE ANY REMAINING TRIM WORK ON INTERIOR.
 - 4) PAYMENTS TO ME & MY WORKERS TO BE MADE WEEKLY AND SET UP ON HOURS WORKED ON BUILDING #3 ONLY.
 - 5) ESTIMATED COST OF COMPLETION OF DRYWALL, PAINTING, TRIM, CABINET INSTALLATION & FLOOR COVERING APPROX. \$10,000.00

We propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:
TEN THOUSAND AND NO CENTS dollars (\$ *10,000.00*).
Payment to be made as follows:
WEEKLY FOR ME AND MY WORKERS BASED ON TIME WORKING ON BUILDING #3 ONLY

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature: *David Cass*

Note: This proposal may be withdrawn by us if not accepted within *30* days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: *11-5-08 24 2008*

Signature: _____

Signature: _____

-1178-

DEPENDANT'S
EXHIBIT
81

DEPENDANT'S
EXHIBIT
APR 25 2009
GIBSON

Appendix 01604

From: Lanier, Benjamin
To: Snipes, Don
Sent: 12/11/2008 9:46:08 PM
Subject: Heritage Seven
Attachments: Heritage Seven Modification LCA Package

Don,
Attached is the LCA and updated rent rolls for Linda Gibson's apartment complex. I have included her personal cash flow and a listing of her sources of cash/debts.

She has requested 9 months interest only due to the fact that she is doing these improvements on the remaining buildings along and along and does not expect them to be complete until late summer of next year. I think by providing her the 9 month IO period I can sell her on the increase of the rate which is currently P+1/4 with no floor (4.25%) to Prime+1/4 with a 6% floor.

The complex currently has a 72% occupancy. A total of 35 units are occupied. 17 of the occupied units have been renovated and 18 of the units have tenants that are in the unrenovated units. Building 3 is completely vacant due to renovations and should be complete by the end of the month and ready to lease up. This will increase CF for her and enable her to pay for the repairs that are being done on the other outdated buildings.

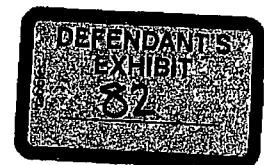
Please let me know if you need anything further and I will be happy to provide.

Thanks,

Benjamin R. Lanier Jr.
Vice President- Business Banker
Ameris Bank
968 Houston Northcutt Blvd. Suite C
Mount Pleasant, SC 29464
Direct: 843-375-4873
Cell: 843-345-3507
Fax: 843-881-8350

benjamin.lanier@amerisbank.com
www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.



AMERIS-EMAILS-000226

Appendix 01605

From: Lanier, Benjamin
To: Lanier, Benjamin
Sent: 12/11/2008 8:28:18 PM
Subject: Heritage Seven Modification LCA Package
Attachments: EC-SC073_EXCHANGE_12112008-182820.PDF

AMERIS-EMAILS-000227

Appendix 01606

Seven Oaks Apartments Current CF

CURRENT CASH FLOW- 11/2008

Income

Rents Received	\$	20,995.00
Laundry Room	\$	67.00
Total Income	\$	21,062.00

*35 total units are currently occupied
 *18 tenants are in the older units are are paying less than mkt rent
 *72% occupied
 *13 units are vacant due to renovation

Expenses

SCE&G	\$	645.01
Charleston Water	\$	646.39
Fennell Container	\$	142.69
Lawn Maintance	\$	400.00
Property Tax Escrow	\$	2,171.47
Insurance Escrow	\$	1,788.66
Total Expenses	\$	5,794.22

NOI	\$	15,267.78
------------	-----------	------------------

Pmt to Ameris	\$	14,000.00
----------------------	-----------	------------------

Assumes 6% interest only payment

Cash Flow	\$	1,267.78
------------------	-----------	-----------------

CF/DS		1.09
--------------	--	-------------

Global Cash Flow Analysis

Linda Olsson

Prepared by: Benjie Lanier

Name Date of Statement	(Name) (Date)	Tax Return 12/31/07	Combined	Comments
Business Income:				
Gross Sales	\$		\$	
Net Income	\$		\$	
+ Depreciation	\$		\$	
+ Amortization	\$		\$	
Traditional Cash Flow	\$		\$	
+ Interest (Business term)	\$		\$	
- Dividends/Withdrawals	\$		\$	
+/- Nonrecurring or Extraordinary	\$		\$	
Personal Income:				
Salary	\$		\$	
Retirement Benefit	\$		\$	
Dividends/Interest Income	\$	7,477	\$	7,477
Recurring Capital Gains	\$		\$	
Mortgage/Note Receivables	\$	81,258	\$	81,258
Other Income	\$		\$	
Positive Net Rental Cash Flow**	\$		\$	
Total Income	\$	88,735	\$	88,735
+ Withdrawals/Distributions	\$		\$	
- Taxes (Incl. Federal, State, FICA, etc.)	\$		\$	
- Living Expenses	\$	(31,057)	\$	(31,057)
Cash Available to Service Debt	\$	\$	\$	57,678
Debt Service				
	Monthly Pmt			
Business Loans:				
Loan 1	\$	\$	\$	
Loan 2	\$	\$	\$	
Loan 3	\$	\$	\$	
Loan 4	\$	\$	\$	
Loan 5	\$	\$	\$	
Personal Loans:				
First Citizens	\$ 1,014.00	\$	\$	12,168
Chase	\$ 300.00	\$	\$	4,560
Discover	\$ 15.00	\$	\$	180
Discover	\$ 51.00	\$	\$	612
THD	\$ 48.00	\$	\$	576
BOA	\$ 102.00	\$	\$	1,224
Discover	\$ 26.00	\$	\$	312
- Negative Rental Property Cash Flow	\$		\$	
- Total Debt Service	\$	\$	\$	19,632
Excess (Deficit)	\$	\$	\$	38,046
Debt Service Coverage				2.94
Debt/Income (%)				22.12%
Rental Cash Flows				
		Tax Return		Comments
Gross Rents (Tax Return /Sch.E)	\$		\$	0
Net Rental Income (Sch. E)	\$		\$	0
+ Depreciation	\$		\$	0
+ Interest	\$		\$	0
Existing Rental CF	\$		\$	
Gross Rents (New Property)	\$		\$	0
Vacancy (8%)	\$		\$	0
= Gross Effective Income	\$		\$	0
- Other Expenses	\$		\$	0
Maintenance Expenses (10%)	\$		\$	0
- Taxes & Insurance	\$		\$	0
Total Rental Cash Flow	\$		\$	
Existing Rental Debt Service (P&I)	\$		\$	0
New Rental Debt Service (P&I)	\$		\$	0
Total Rental Debt Service	\$		\$	
**Net Rental Cash Flow	\$		\$	
Existing Rental DSC				
Total Rental DSC				
Overall DSC				2.94

Note: If "-" is part of the Description, you must enter a negative sign with that line entry.

Ameris

CP

Prepared 12/11/2008

AMERIS-EMAILS-000229

Appendix 01608

Ameris Bank Profitability Analysis

12/11/2008

Heritage Seven/Linda Gibson

Loans:	Fixed/ Variable	AOG	Avg. Annual Balance	Interest Rate	Avg. Term (months)	Gross Fees			
1	v	25	\$ 2,810,000	6.00%	48	\$ 250	Profitability Calculation		
2	F	20	\$ -	0.00%	0	\$ -	1	Total Interest Income	\$ 168,600
3	F	20	\$ -	0.00%	0	\$ -	2	+ Loan Fees	\$ 63
4	F	20	\$ -	0.00%	0	\$ -	3	- Interest Expense	\$ (918)
5	F	20	\$ -	0.00%	0	\$ -	4	- Cost of Funds	\$ (103,689)
6	F	20	\$ -	0.00%	0	\$ -	5	+ Funds Credit	\$ 1,741
7	F	20	\$ -	0.00%	0	\$ -	6	Net Interest Income	\$ 65,797
8	F	20	\$ -	0.00%	0	\$ -	7		
9	F	20	\$ -	0.00%	0	\$ -	8	+ Equity Credit	\$ 11,409
10	F	20	\$ -	0.00%	0	\$ -	9	+ Loan Loss Reserve Credit	\$ 2,339
Total Loans			\$ 2,810,000				10	- Loan Loss Provision	\$ (10,538)
Deposits:							11	Gross Income	\$ 69,007
	DDA		\$ 22,486				12	+ Non Interest Income	\$ -
	NOW / MMA		\$ -	0.00%			13	- Overhead Allocation	\$ (12,645)
	Savings		\$ -	0.00%			14	Net Income Before Taxes	\$ 56,362
	CD's		\$ 15,050	4.50%	0		15		
	CD's		\$ 5,344	4.50%	0		16		
	CD's		\$ -	0.00%	0		17	- Taxes	\$ (10,163)
	CD's		\$ -	0.00%	0		18	Net Income	\$ 37,199
	CD's		\$ -	0.00%	0		19		
Total Deposits			\$ 42,880				20	Key Information	
Other Income Sources:							21	Allocated Equity	\$ 281,000
	L/C Fees		\$ -				22	Allocated Loan Loss Reserve	\$ 57,605
	Other		\$ -				23	Net Interest Margin	2.34%
							24	Return on Assets	1.32%
							25	Return on Equity	13.24%
							26	Target Return on Equity	18.00%
							27	\$ of Income Below Target ROE	\$ 13,381
							28		

Instructions for completing this customer information:

Lines 1-10 Each loan in a relationship (up to 10) should be listed separately. The interest rate should be designated as fixed (F) or variable (V). The Asset Quality Grade (AOG) for each loan should be indicated. The loan balance(s) should reflect the average annual balance of the loan by loan type. For Ag-related borrowers, this would normally be 50% - 65% of the total commitment. For term loans, this would be the current outstanding balance less 1/2 the annual payment. The current interest rate on each loan should be listed. For variable-rate loans with floor rates that are greater than the current rate, the floor rate should be used. Conversely, if the calculated rate is greater than the ceiling rate, then the ceiling rate should be used. Officer judgement is best used when considering the interest rate, given all these factors. The term of the loan(s) should be expressed in months. This is NOT the original loan term, but the remaining term to maturity, or the next available repricing date, whichever is earlier. Finally, the gross fees charged on the loan should be entered, as the model will use the average term to annualize the fee, per FASB 91.

Lines 14-21 Average annual deposit balances should be reflected on these lines. There is no interest rate associated with DDA deposits. For all other deposit types, the current interest rate charged on that account should be indicated. Up to five CD's can be shown, along with the interest rate and the remaining term of the CD(s), expressed in months. As with the loan term, this is NOT the original term of the CD(s), but the time until the next repricing date.

Line 25 Any fees for standby and/or commercial letters of credit should be included here.

Line 26 Other income sources should be included, such as account-analysis charges, merchant services, trust fees, etc.

Last Revised 12/01/2008

AMERIS-EMAILS-000230

Appendix 01609

Loan and Collateral Summary

Borrower Heritage Seven LLC

Date 12/11/2008

Borrower Name	Origin-ation Date	Purpose	Original Loan Amt/ Commitment	Current Balance	Available Commitment	Rate/Fee	Collateral	Collateral Appraised Value	Margin	Collateral Loan Value	Terms / Maturity	AQG
<u>DIRECT EXPOSURE</u>												
Sevan Oaks Apartments, LLC		Refinance existing apt loan	\$ 2,800,000		\$ 2,800,000	Prime+1/4% F: 6%	1st mortgage on 48 unit Apt. Complex on Ontario Rd N Charleston	\$ 3,700,000		\$ -	9 mos IG then 20 yr 30/5 yr call	25
		Total Direct Exposure	\$ 2,800,000	\$ -	\$ 2,800,000			\$ 3,700,000		\$ -		
<u>INDIRECT EXPOSURE</u>												
		Total Indirect Exposure	\$ -	\$ -	\$ -			\$ -		\$ -		
TOTAL DIRECT EXPOSURE			\$ 2,800,000					\$ 3,700,000		LTV= 75.7%		
TOTAL INDIRECT EXPOSURE			\$ -					\$ -		LTV= 0%		
TOTAL EXPOSURE			\$ 2,800,000					\$ 3,700,000		LTV= 75.7%		

1604

Appendix 01610
AMERIS-EMAILS-000231

Linda Gibson Sources of Income	<u>Monthly</u>	<u>Annual</u>	
IOP Beach Rental	\$ 5,408.70	\$ 64,904.37	rental income
BarGib Enterprises	\$ 7,500.00	\$ 90,000.00	rental income; land/building lease
Hidden Cove Associates	\$ 7,031.25	\$ 84,375.00	rental income; land/building lease
Cell Phone Tower Leases	\$ 1,473.33	\$ 17,680.00	land lease
Moncks Corner Shopping Center	\$ 18,015.00	\$ 216,180.00	Shopping Center
National Companies	\$ 575.25	\$ 6,903.00	Personal Business
Total 2007 W2 Income	\$ 40,003.53	\$ 480,042.37	

Linda Gibson Expenses	<u>Monthly</u>	<u>Annual</u>	
First Citizens	\$ 1,014.00	\$ 12,168.00	1st mortgage on primary residence
Chase	\$ 380.00	\$ 4,560.00	2nd mortgage on primary residence
Discover	\$ 15.00	\$ 180.00	credit card
Discover	\$ 51.00	\$ 612.00	credit card
THD	\$ 48.00	\$ 576.00	credit card
BOA	\$ 102.00	\$ 1,224.00	credit card
Discover	\$ 26.00	\$ 312.00	credit card
Moncks Corner Shopping Center	\$ 10,484.24	\$ 125,810.88	shopping center loan
IOP Beach House	\$ 7,812.41	\$ 93,748.92	beach house loan
Total	\$ 19,932.65	\$ 239,191.80	

Debt to Income %		50%	50%
Cash Flow/Debt Service		2.01	2.01
Excess Cash	\$ 20,070.88	\$ 240,850.57	

AMERIS-EMAILS-000232

Appendix 01611

Linda Gibson/Heritage Seven

Moncks Corner Shopping Center CF

Tenant	Lease Rate
Advanced Auto	\$ 4,958.33
Check Into Cash	\$ 2,075.00
Papa Johns	\$ 1,792.20
Blockbuster	\$ 5,840.00
First Franklin	\$ 2,000.00
Berkeley Federal CU	\$ 1,350.00
Total Income	\$ 18,015.53

Monthly Payment to FRB \$ 12,000.00

CF/DS 1.50

AMERIS-EMAILS-000233

Appendix 01612

From: Lanier, Benjamin
To: Seven Oaks Apartments (Elizabeth)
Sent: 12/18/2008 5:47:45 PM
Subject: RE: Questions on behalf of Linda Gibson

Linda,
Here are the answers to the questions in regards to your loan:

• What is the loan balance?

As of 12/18/2008 the loan balance is \$2,796,216.75. The total committed amount of the loan is \$2,809,431.86. Thus there is \$13,215.11 left to draw on the project.

• What is the loan structure (term, interest only or amortized)?

The loan was structured as interest only payments due monthly on the outstanding principal balance for 12 months during the construction/rehab period. After the 12 month period the loan was to begin amortizing with principal and interest payment due monthly based on a 20 year amortization with a 4 year call to maturity.

As of December 2nd, 2008, the 12 month interest only period ended and the loan converted to principal and interest payments based on a 20 year amortization at a rate of 7.75% (which was the rate at the time of the original loan closing) as per the promissory note.

This loan is in the process of being modified to remain on interest only to allow for the completion of the final three buildings in the complex. The payment on the renewal will be interest only payments of 6% on the outstanding principal balance for a period of 9 additional months (proposed).

• What is the interest rate?

Interest rate upon the note modification shall be WSJ prime +1/4% with a floor rate of 6%. Thus meaning the lowest this rate can go is 6% during the loan term. 6% is the lowest we are currently able to price loans given the current lending environment.

• Monthly payment?

The proposed modified payment shall be the interest accrued on the outstanding loan balance at a rate of 6%. Given the current balance of \$2,796,216.75 the monthly payment shall be roughly \$13,981 per month.

• What specific properties are used as collateral for the loan?

~~The collateral for this loan is a mortgage on 2625 Otranto Road North Charleston, SC and the parcel of land on Klister Lane with the TMS# 271-00-01-129. Klister Lane is to be released once the rehab of the apartment project is complete and an occupancy of 75% is obtained in the complex.~~

• What is the insurance requirement for this property? Do you take into account replacement cost and or value of land?

Per the evidence of insurance in the file the coverage on this loan is \$2,050,000. Hazard insurance is required for all loans with a vertical structure upon it. This loan did not require flood insurance.

• Is this a recourse or a non-recourse loan?

This loan has recourse as it is personally guaranteed by Linda Gibson.

I hope this helps. If you have any further questions in regards to the loan, please let me know and I'll be happy to help.

Benjie

From: Seven Oaks Apartments (Elizabeth) [mailto:sevenoaksapartments@gmail.com]
Sent: Thursday, December 18, 2008 12:04 PM
To: Lanier, Benjamin
Subject: Re: Questions on behalf of Linda Gibson



AMERIS-EMAILS-000729

Appendix 01613

error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

Seven Oaks Apartments
Elizabeth Gibson - *Property Manager*
sevenoaksapartments@gmail.com
Phone: 843-297-8717
Fax: 843-297-8727

AMERIS-EMAILS-000731

Appendix 01614

From: Lanier, Benjamin
To: Tifton-Loan Servicing
Sent: 12/23/2008 5:46:12 PM
Subject: Heritage Seven, LLC

Irene,

Attached is the loan modification I spoke with you about a few weeks ago. This loan was originally done with a 12 month term of interest only then converted to 48 months of principal and interest. The 12 month term expired on 12/2/2008 and I have received approval to extend this loan for 9 more months on interest only. In our conversation you told me it would be best just to redo the note and use a new loan number. Please let me know if you have any questions. I will be out of the office in NJ but I will have access to my Blackberry. I would like to date this note for 12/28.

Thank you in advance for your help!

Benjamin R. Lanier Jr.
Vice President- Business Banker
Ameris Bank
966 Houston Northcutt Blvd. Suite C
Mount Pleasant, SC 29464
Direct: 843-375-4973
Cell: 843-345-3507
Fax: 843-881-8350

benjamin.lanier@amerisbank.com
www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.



AMERIS-EMAILS-000562

Appendix 01615

GUARANTY
(Continued)

DATE AND PARTIES. The date of this Guaranty is December 25, 2008. The parties and their addresses are:

LENDER:
AMERIS BANK
40 Andros Drive
Charleston, SC 29401
Telephone: (803) 854-2040

BORROWER:
HEALTHCARE SERVICES, LLC
a South Carolina Limited Liability Company
103 Horse Trail Rd
St George, SC 29577

GUARANTOR:
PAUL WILLIAM OSBORN FAMILY TRUST
Trust Dated 06/18/03, R006, 9-999 in Certain Trust
103 Horse Trail Rd
St George, SC 29577

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. **Articles.** The documents "A," "B," and "C" refer to all portions of exhibits signing this Guaranty, taken jointly and together. "You" and "your" refer to the Lender.

B. **Notes.** "Notes" refers to the documents that constitute the Borrower's indebtedness, and any extensions, renewals, modifications and substitutions of the Notes.

C. **Property.** "Property" means the present, real, personal or intellectual, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to induce you, as your agent, to make loans in exchange in any other transactions with the Borrower from time to time, I, the Guarantor, and unconditionally agree to all terms of and guaranty to you the payment and performance of all such and future Debt of every type, purpose and description that the Borrower shall incur, whether, among all or a portion of them, such as with interest, may now or at any time in the future owe you, including, but not limited to the following described Debts (including without limitation, all Advances, interest, attorney's fees and collection costs), whensoever by law, that may become due from the Borrower to you in connection and relating to the Debt and all other agreements with respect to the Borrower:

A. **Presently due or other agreements.** No. 7870000178-102, dated January 0, 2006, from Heritage Servs. LLC (Borrower) to you, in the amount of \$2,500,000.00.

In addition, Debt refers to debt, interest, extensions, modifications and substitutions of the Debt (including, but not limited to, accounts opened to be paid under the terms of any notes or agreements securing the payment of any Debt, lease, liability or obligation, overdraft, advance on credit, purchase advance for taxes, insurance, repairs and storage, and all extensions, renewals, modifications and substitutions of these items) whether now existing or created or hereinafter to be created, due or to become due, no matter at what time, including all debts arising from the terms of all documents prepared or submitted for the execution such as applications, security agreements, certificates, and the Notes.

You may, without notice, apply this Guaranty to each Debt of the Borrower as you may select from time to time.

3. EXTENT OF DEBT. I guarantee all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation as to the number of renewals, extensions, modifications or substitutions.

A. **Rules Advances.** I waive notice of and consent to any and all future advances made to the Borrower by you.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other guarantor, co-maker or endorser of the Debt or against any Property. You may sue me alone, or anyone else who is obligated on this Guaranty, or any number of us together to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and I am not subject to contribution or exoneration in any way from the liability or any instrument executed in connection with the Debt. My obligation to pay continues to the term of this Guaranty and is not affected by the liability, insolvency or unavailability of any other person or persons in discharging the Debt, the violation of any applicable laws, state or federal, or any other circumstances which make the liability of any other person or persons against the Borrower. I will remain obligated to pay on this Guaranty until I am otherwise paid in full, including any interest, attorney's fees and collection costs, and any other charges or expenses, reasonable or otherwise, as determined by law.

5. WAIVER OF DEFENSE. It is acknowledged and agreed that the Guarantor, the liability of the Debt, or for my liability is essential, shall be enforceable and the Debt shall be enforceably payable by me. I acknowledge and agree that this Guaranty and this Debt, together with any other debt or obligation, shall be enforceable at any time, notwithstanding any statute or state or federal law, or of any state or federal court, or of any court of any state or of the United States District Court. Such notice or undertaking, without limitation, violation of Property, election of remedies or imposition of subordination or suspension of claims shall not constitute a defense to the Debt or this Guaranty. In the event that any person or persons of principal or interest involved and paid by any other guarantor, co-maker, endorser or co-maker is engaged, by final order of a court of competent jurisdiction, to have been a valid defense under the bankruptcy or insolvency laws of the United States or of any state, then my obligation will remain as an obligation to you and will not be considered as having been discharged.

6. RENOVATION. I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any Debts outstanding, until you have actually received in full the entire amount of my debt to the Lender. In the event of a renewal or extension of your debt or of a substitution of the Debt without my agreement, this Guaranty shall remain in full force and effect until you have actually received in full the entire amount of my debt to the Lender. I agree that if any other person signing this Guaranty provides a notice of rescission to you, I will not be obligated under this Guaranty until I provide such a notice of rescission to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligations under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, recharged, released in whole or in part or subordinated without notice to me and without affecting, diminishing or discharging my liability. My obligation to include and your efforts to perfect any security interest in any debt or obligation by you which include the Property will not release me or my liability under this Guaranty. You are under no duty to preserve or protect any Property until you are in actual or constructive possession. The purposes of this paragraph, shall only be to "preserve" possession when you have physical, immediate and exclusive control over the Property and have knowledge of such control in writing. Further, you shall only be deemed to be in "constructive" possession when you have title to the Property and intent to exercise control over the Property.

8. DEFAULT. I will be in default if any of the following occur:

- A. Payment is not made as required in full when due;
- B. Insolvency or bankruptcy. The death, insolvency or bankruptcy or appointment of a receiver by or on behalf of, application of any debtor relief law, the appointment for the benefit of creditors by or on behalf of, the voluntary or involuntary liquidation or operation by, or the commencement of any proceeding under any present or future federal or state bankruptcy, reorganization, reorganization, composition or other relief law by or against me, Borrower, or any co-signer, endorser, surety or guarantor of this Guaranty or any Debt;
- C. Breach of Termination. I miss, default, neglect, and my business or extension, or a partner or jointly owned firm or is declared legally incompetent;
- D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Guaranty;
- E. Other Defaults. A default occurs under the terms of any other document relating to the Debt;
- F. Other Agreements. I am in default on any other debt or agreement I have with you;
- G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided;
- H. Judgment. I fail to satisfy or appeal any judgment against me;
- I. Foreclosure. The Property is used in a manner or for a purpose that creates a lien in favor of a third party by a legal authority;
- J. Change of Name. I change my name or assume an additional name without notifying you before making such a change;
- K. Property Transfer. I transfer all or a substantial part of my assets or property;
- L. Property Value. You determine in good faith that the value of the Property has declined or is impaired;
- M. Material Change. Without first notifying you, there is a material change in my business, including ownership, management, and financial conditions.

Paul William Osborn Family Trust
South Carolina Guaranty
5074000178-102-0000028020100002 *1038 Builders Systems, Inc., 01. Dec 2008 10:51 AM EST
Initials: [Handwritten] Page: 1



Ameris-00181

Appendix 01616

TO: CREDIT INFORMATION. I agree that from time to time you may obtain credit information about me from others, including other financial institutions reporting agencies, and report to others (such as a credit reporting agency) your credit experience with me. I agree that you will not be liable for any credit report, the use of information provided to you by others or for providing such information to others.

SO: SIGNATURES. By signing under date, I agree to the terms contained in this Guaranty. I also acknowledge receipt of a copy of this Guaranty.

GUARANTY
For William Gibson Family Trust
By [Signature]
WILLIAM GIBSON, TRUSTEE

Acc William Gibson Family Trust
South Carolina Guaranty
304279ba3a202a0000023a3027010000Y

© 1996 Eastern Systems, Inc., 65 Cloud, MI 48407

Initials
Page 2

Ameris-00183

Appendix 01618

GUARANTY
Continuity Debt - Unsecured

DATE AND PARTIES: The date of this Guaranty is December 26, 2008. The parties and their addresses are:

LENDER:
AMERICA BANK
49 Archdale Square
Charlotte, NC 28240
Telephone: (704) 684-0040

BORROWER:
REPUTAGE BRYAN, LLC
4 South Center Building Liberty Company
100 River Trail
St. Charles, MO 63047

GUARANTOR:
LINDA A GIBSON
120 River Trail Rd
St. Charles, MO 63047

1. **DEFINITIONS.** As used in this Guaranty, the terms have the following meanings:

- A. **Person(s).** The persons "I", "me" and "my" refer to all persons or entities signing this Guaranty, individually and together. "You" and "you" refer to the Lender.
- B. **Debt.** "Debt" refers to the document that evidences the borrower's indebtedness, and any extension, renewal, modification and substitution of the Note.
- C. **Property.** "Property" means any property, real, personal or intangible, that secures performance of the obligations of the Note, Debt, or this Guaranty.

2. **PRESENT AND FUTURE DEBT GUARANTY.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to fulfill my, as your agent, to make loans or engage in any other transactions with the Borrower from time to time, I voluntarily and irrevocably agree to all terms of and guaranty to you the payment and performance of such and every Debt, of every type, amount and description that the Borrower owes, including, among all or a portion of payments, of which interest may vary or at any time in the future owe you, including, but not limited to the following described debts (including without limitation, all principal, accrued interest, attorney's fees and collection costs, which shall be less than may become due from the Borrower to you in collecting and enforcing the Debt and all other agreements with respect to the Borrower).

A. **Personal Note or other agreement.** No. 7870000179-102, dated January 6, 2004, from Hastings Street, LLC (Borrower) to you. In the amount of \$1,000,000.00.

In addition, Debt refers to debts, liabilities and obligations of the Borrower including, but not limited to, any loans or agreements entered into under the terms of any notes or agreements securing the payment of any debt, loan, liability or obligation, whether in form of credit, promissory, advances for cash, deposits, checks and drafts, and all extensions, renewals, refinancings and modifications of these debts (including any debts) whether now existing or created or incurred in the future, but not to be limited to, or secured or guaranteed, including obligations and debts arising from the terms of all documents prepared or submitted for the maintenance such as applications, credit applications, contracts, and the like.

You may, without notice, apply this Guaranty to each Debt of the Borrower as you may select from time to time.

3. **ENTIRETY.** I consent to all renewals, extensions, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may deem fit from time to time without further notice to me and without limitation as to the number of extensions, renewals, modifications or substitutions.

A. **Other Advances.** I hereby agree to and consent to any and all future advances made to the Borrower by you.

4. **UNCONDITIONAL LIABILITY.** I am unconditionally liable under this Guaranty, regardless of whether or not you demand any of your remedies against the Borrower, against any other guarantor, jointly, severally or as a partner of the Debt or against any Property. You may sue me alone, or against me with or without the Borrower, or any number of us together, to enforce the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and neither is my obligation to pay any amounts due or payable by the Borrower or any amounts due or payable by me in connection with the Debt. My obligation to pay according to the terms of this Guaranty shall not be affected by the insolvency or insolvency of any person or entity including the Debt. The violation of any applicable laws, federal, or any other laws or regulations which violate the independence of the Borrower, I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay this Debt, including the Borrower, has such obligation discharged in bankruptcy, reorganization, or otherwise discharged by law.

5. **NONDISBURSEMENT.** If a bankruptcy petition should at any time be filed by or against the Borrower, the maturity of the Debt, as far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect at all times, notwithstanding any discharge in bankruptcy, or liquidation, or reorganization, or any other proceeding in connection with the Debt, and shall not be discharged or otherwise discharged by any court, including any bankruptcy court, without my written consent. My obligation to pay according to the terms of this Guaranty shall not be affected by the insolvency or insolvency of any person or entity including the Debt. The violation of any applicable laws, federal, or any other laws or regulations which violate the independence of the Borrower, I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay this Debt, including the Borrower, has such obligation discharged in bankruptcy, reorganization, or otherwise discharged by law.

6. **REVOCATION.** I agree that this is an absolute and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any other persons named, with you have made any other written notice of my revocation or withdrawal of my debt in this Guaranty. Notice of revocation or withdrawal of my debt in this Guaranty shall not affect my obligations under this Guaranty. My obligation to pay according to the terms of this Guaranty shall not be affected by the insolvency or insolvency of any person or entity including the Debt. The violation of any applicable laws, federal, or any other laws or regulations which violate the independence of the Borrower, I will remain obligated to pay on this Guaranty even if any other person who is obligated to pay this Debt, including the Borrower, has such obligation discharged in bankruptcy, reorganization, or otherwise discharged by law.

7. **PROPERTY.** I agree that any Property may be assigned, pledged, encumbered, released in whole or in part or substituted without notice to you and without discharge, distribution or distribution of my liability. My obligation to you shall not be affected by any assignment or release of any Property which you may have in connection with this Guaranty. You are under no duty to preserve or protect any Property until you are in actual constructive possession. The purpose of this paragraph is to provide you with a right of possession when you have physical, immediate and exclusive control over the Property and have no other legal obligation. Property, you will only be deemed to be in "possession" possession when you have both the power and intent to exercise control over the Property.

8. **DEFAULT.** I will be in default if any of the following occur:

- A. **Payments.** I fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The direct, insolvency or insolvency of, appointment of a receiver by or on behalf of, liquidation of any estate real or personal, or the voluntary or involuntary liquidation or assignment of assets by, or the commencement of any proceeding under any statute or laws relating to bankruptcy, insolvency, reorganization, composition or other relief law by or against me, Borrower, or any co-debtor, creditor, surety or guarantor of the Guaranty or any Debt.
- C. **Death or Incompetency.** I die or am declared legally incompetent.
- D. **Failure to Perform.** I fail to perform any condition or to keep any promise or covenant of this Guaranty.
- E. **Other Defaults.** A default occurs under the terms of any other document relating to the Debt.
- F. **Other Agreements.** I am in default on any other contract or agreement I have with you.
- G. **Misrepresentation.** I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or otherwise in material fact at the time it is made or provided.
- H. **Assignments.** I fail to verify or accept any judgment assignment.
- I. **Portfolios.** The Property is used by a member of for a purpose that I have not authorized by a legal authority.
- J. **Name Change.** I change my name or assume an additional name without notifying you before making such a change.
- K. **Property Taxation.** I transfer all or a substantial part of my real or personal property.
- L. **Property Value.** You determine in good faith that a material adverse change has occurred in my financial condition from the condition set forth in my most recent financial statements before the date of this Guaranty or that the prospect for payment or satisfaction of the Debt is impaired by any reason.

Linda A Gibson
Continuity Guaranty
7870000179-102-000006490270 (01/07/07)

1098 Bankers Options, Inc., St. Charles, MO 63047

Page 1



Amerls-00194

Y 4 4 4
GILBERTSON
[Handwritten Signature]
Linda A. Gilson
Indefinitely

Linda A. Gilson
Board of Directors
BGCAPM/Member/00024665008289227015003Y

©1996 Datasoft Systems, Inc., St. Cloud, MN 55321

Page 2

Amaris-00186

Appendix 01621

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
787000170 10A	Hidage Rev. LLC		01/08/08	SL
NOTE AMOUNT	INDEX (if/initial)	RATE	MATURITY DATE	LOAN PURPOSE
12,809,481.40	Wall Street Journal Prime plus 0.300%	0.500%	10/02/08	Commercial

Credit Use Only

PROMISSORY NOTE
(Continued - Draw)

DATE AND PARTIES. The date of this Promissory Note (Note) is January 8, 2008. The parties and their addresses are:

LENDER:
ARIZONA BANK
48 Archuleta Street
Charleston, SD 57401
Telephone: (605) 334-2040

DEBTOR/BORROWER:
HIDAGE REV. LLC
a South Carolina Limited Liability Company
133 Horse Trade Rd
St. George, SC 29577

- 1. DEFINITIONS.** As used in this Note, the terms have the following meanings:
- A. **Advance.** The amount of "net" and "net" total to each Debtor under this Note, individually and together. "You" and "Your" refer to the Lender.
 - B. **Note.** Note refers to this document, and any amendments, renewals, modifications and substitutions of this Note.
 - C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
 - D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
 - E. **Property.** Property is any property, real, personal or tangible, that secures my performance of the obligations of this Note.
 - F. **Percent.** Rates and rate change definitions are expressed as percentages.

2. REFINANCING. This Note will pay off the following described note(s):

Note Date	Note Number	Note Amount
November 8, 2007	# 787000170-101	12,809,481.40

The remaining balance of the note listed in the table above is 12,788,310.76.

3. PROMISE TO PAY. For value received, I promise to pay you at your office, at your address, or at such other location as you may designate, amounts advanced from time to time under the terms of this Note up to the maximum total principal balance of 17,000,000.00 (Principal), plus interest from the date of Disbursement on the unpaid outstanding Principal balance until the Note is paid in full and you have no further obligations to make advances on the Note under this Note.

4. ADVANCES. Advances under this Note are made according to the following terms and conditions:

- A. **Request for Advance.** My requests are a warranty that I am in compliance with all the Loan Documents. When required by you for a particular method of advance my request for an advance must be accompanied by the requested amount and the date and be accompanied with any agreements, documents, and instruments that you require for the Loan. Any payment by you at any check, wire or other advance only, at your option, constitutes an advance on the Loan to me. All advances will be made in United States dollars. I will indemnify you and hold you harmless for your reliance on my request for advance that you reasonably believe to be correct. To the extent permitted by law, I will indemnify you and hold you harmless when the person making any request (expresses that) I authorized this person to request an advance even when this person is unauthorized or this person's signature is not genuine.

I or anyone I authorize to act on my behalf may request advances by the following methods:

- (1) I make a request in person.
- (2) I make a request by phone.

5. ADVANCE LIMITATION. In addition to any other loan conditions, requests for, and access to, advances are subject to the following limitations:

- (1) **Discretionary Advances.** You will make all loan advances at your sole discretion.
- (2) **Advance Amount.** Subject to the terms and conditions contained in this Note, advances will be made in exactly the amount I request.
- (3) **Out-of-Town.** Requests for an advance received before 0500 PM will be made on any day that you are open for business, on the day for which the advance is requested.
- (4) **Disbursement of Advances.** On my affirmation of this Note's terms and conditions, you will disburse the advance in any manner as you and I agree.
- (5) **Credit Limit.** I understand that you may not automatically request for an advance that would exceed the credit limit of my loan to me. I will agree to the Principal limit. You may, at your option, grant me a request without obligating yourself to do so in the future. I will pay any over-advances in addition to my regularly scheduled payments. I will repay any over-advance by paying you in full within 10 days after the over-advance occurs.
- (6) **Records.** Your records will be conclusive evidence as to the amount of advances, the Loan's unpaid principal balance and the amount of interest.

6. Additional Condition. UPON WRITTEN OR VERBAL REQUEST BY CUSTOMER

7. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 0.000 percent (initial) fixed until January 10, 2009, after which time it may change as described in the Variable Rate subsection.

A. Interest After Default. If you declare a default under the terms of the Loan, including for failure to pay in full at maturity, you may increase the interest rate payable on the outstanding Principal balance of this Note. In such event, interest will accrue on the outstanding Principal balance at 10.000 percent will paid in full.

B. Maximum Interest Amount. Any interest assessed or collected as interest under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any remaining will be returned to me.

C. Regulatory Authority. The amount assessed or collected on this Note is authorized by the South Carolina money lender under S.C. Code Ann. §§ 37-2-606, 37-2-103 and 37-10-101 as they apply.

D. Annual. Interest accrues using an Actual/360 days counting method.

E. Premium Rate. The stated rate allows a premium on your credit market rate of interest for comparable loans of 2.500 percent. This Premium Rate will be in effect until January 10, 2009.

F. Variable Rate. The interest rate may change during the term of this Note as follows:

- (1) **Index.** Beginning with the first Change Date, the Interest Rate will be based on the following Index: the base rate on corporate loans posted by at least 75% of the 30 largest U.S. banks known as the Wall Street Journal U.S. Prime Rate.
- (2) **Current Index.** The current Index figure available on each Change Date. You do not guarantee by selecting this Index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans at any of time you make to me or other borrowers. If the margin is no longer available, you will substitute a similar Index. You will give me notice of your choice.
- (3) **Change Date.** Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change January 10, 2009 and every thereafter.

(4) **Calculation of Change.** On each Change Date you will calculate the Interest Rate, which will be the Current Index plus 0.300 percent. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitation, this will be the Interest Rate until the next Change Date. The next

Hidage Rev. LLC
South Carolina Promissory Note
2008-01-08 000004500001240207010000H

©1988 Bankers Systems, Inc., St. Cloud, MN 55026

Initials: SL
Page 1



Interest Rate will become effective on each Change Date. The Interest Rate and other changes on this Note will never exceed the highest rate or charge allowed by law for this Note.

(ii) Limitations. The Interest Rate changes are subject to the following limitations:

(A) Uniform. The Interest Rate will never be less than 6.000 percent.

(B) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the first payment will change.

6. ADDITIONAL CHARGES. In addition to the interest, I agree to pay, where applicable, these additional fees and charges:

A. Nonresponsible Fee and Charges. The following fees are assessed when collected and will not be refunded if I prepay this Note before the scheduled maturity date:
Loan Origination. A fee of \$300.00 payable from the loan proceeds.

7. PREPAID CHARGES. In addition to the interest, I agree that I will pay these additional fees based on my method and pattern of payments:
A. Late Charge. If a payment is more than 10 days late, I will be charged 6.000 percent of the Unpaid Portion of Payment of \$6.00, whether or not the payment is made. However, this charge will not be greater than \$100.00. I will pay this late charge promptly but not later than the date of each late payment.

B. Payment Check Charge. I agree to pay a fee not to exceed \$30.00 for each check, regardless of whether or not I have in connection with this Loan that is returned because it has been cashed.

8. PAYMENT. I agree to pay this Note on demand, but if no demand is made, I agree to pay this Note in accordance with the following: Beginning February 2, 2009, and then on the 2nd day of each month thereafter, I agree to pay the entire unpaid Principal and any unpaid but not due interest on October 2, 2009. Payments will be provided to the account 601, with the final payment I also agree to pay any additional fees or charges owing and the amount of any amount you have made to advance on my behalf. Payments scheduled to be paid on the 28th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due due to any charges that I owe more than principal and interest, and finally to principal due in due. If you and I agree to a different application of payment, we will describe our agreement on this Note. You may charge later payments are applied to your sole discretion without notice to me. The actual amount of my final payment will depend on my payment history.

9. PREPAYMENT. If I prepay in full, I will pay a prepayment penalty of \$300.00.

10. LOAN PURPOSE. The purpose of this Loan is REPURCHASE LOAN 787000010-101 MERIDY EXISTING NOTE TO REMAIN ON INTEREST ONLY UNTIL THE CONSTRUCTION PHASE IS COMPLETED.

11. SECURITY. The Loan is secured by certain security instruments prepared together with this Note as follows:

Description Name Address or Document
Mortgage - 2008 CITRANTO RD N CHARLSTON SC Hedges Haven, LLC
2008 (BY MTR DATED 11-02-07 REC 11-04-07 BK 042
PG 730 CHARLSTON SC
Mortgage - 271-00-01-102 KILPATRICK LANE CHARLSTON SC Linda A Gibson
SC 29408 (BY MTR 11-02-07 REC 11-07-07 BK 0710 PG
208 DENVER SC SC

12. DEFAULT. I understand that you may demand payment anytime at your discretion. For example, you may demand payment in full if any of the following occur:

- A. Payment. I fail to make a payment in full when due.
- B. Insolvency or Bankruptcy. The death, resignation or insolvency of, appointment of a receiver by or on behalf of, appointment of any director or officer, the appointment of the trustee of creditors by or on behalf of, the voluntary or involuntary commencement of reorganization by, or the commencement of any proceeding under any state or federal law to reorganize, liquidate, or otherwise affect the business, assets, or liabilities of the borrower or any guarantor, endorser, surety or guarantor of this Note or any other obligation I have with you.
- C. Business Termination. I merge, dissolve, reorganize, and my business or substance, or a portion or majority thereof, or I declare myself insolvent.
- D. New Obligations. Without your written consent, I acquire, merge into, or associate with an entity or entities that is or may be a guarantor, endorser, surety or guarantor of this Note or any other obligation I have with you.
- E. Failure to Perform. I fail to perform any condition or to keep any promise or agreement of this Note.
- F. Other Documents. A default occurs under the terms of any other Loan Document.
- G. Other Agreements. I am in default on any other debt or agreement I have with you.
- H. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or contains a material omission that I should have made or provided.
- I. Assignment. I fail to notify or obtain my lender's consent to:
- J. Foreclosure. The Property is used in a manner that threatens foreclosure by a legal authority.
- K. Name Change. I change my name or assume an additional name without notifying you before making such a change.
- L. Property Transfer. I transfer all or a substantial part of my money or property.
- M. Property Value. You determine in good faith that the value of the Property has declined or is declining.
- N. Material Changes. Without first notifying you, there is a material change in my business, including ownership, management, and financial condition.
- O. Insolvency. You determine in good faith that a material adverse change has occurred in my financial condition (that the occurrence or failure in my credit report financial statement before the date of this Note or that the payment or performance of the Loan is impaired for any reason).

13. OUS ON SALE OR ENCUMBRANCE. You may, at your option, declare this entire balance of this Note to be immediately due and payable upon the creation of, or continuation for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by Federal law 112 C.F.R. 10.101, as applicable.

14. WAIVER AND CONSENT. To the extent not prohibited by law, I waive present, demand, demand, notice of acceleration, notice of intent to accelerate and notice of default.

A. Additional Waiver By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the terms of a party or this Note.

- (1) You may enforce or collect payments on this Note, regardless of the number of such payments or periods.
- (2) You may take any recovery, including, but not limited to, any proceeds from the sale of any collateral.
- (3) You may collect, enforce or collect any property securing this Note.
- (4) You, or any institution participating in this Note, may enforce your right of set-off.
- (5) You may enforce any other rights or participations of this Note to any person in any amount and I waive notice of such sales, participations or participations.
- (6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note at any time without my consent, participating or taking to this Note.
- (7) I agree that you may inform any party who guarantees this Loan of any Loan nonperformance, interest, acceleration, modification, substitution or future advances.

B. No Waiver By Lender. Your exercise of default, or your enforcement hereon, or delay in, the exercise of any of your rights, remedies, privileges or rights to enforce upon any other participation or any participations contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

- 15. REMEDIES. After I default, you may at your option do any one or more of the following:
A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.
B. Foreclosure. You may use any and all remedies you have under state or federal law or in any Loan Document.
C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.
D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest non-prime interest rate.

Hedges Haven, LLC
South Carolina Fidelity Home
2008 (BY MTR DATED 11-02-07 REC 11-04-07 BK 042
PG 730 CHARLSTON SC
© 2008 Bankers Systems, Inc., St. Cloud, MN 56301
Wills Page 8

- 18. **Termination.** You may terminate my right to obtain advances and may choose to make any further extensions of credit.
- 19. **Assignment.** You may assign the right of this Note. This means you may assign any amount due and payable under the terms of this Note against any right I have to receive money from you.
My right to receive money from you includes any deposit or other account balance I have with you, any money owed to me on an loan presented to you or in your possession for collection or assignment and any receivable or other non-cash asset. "Any amount due and payable under the terms of this Note" means the total amount in which you are entitled to demand payment under the terms of this Note at the time you are asked.
Subject to any other written contract, I may assign to you any money from you that is owed by someone who has not agreed to pay this Note, your right of assignment will apply to my interest in the advance but not to any other accounts I could withdraw on my own request or authorization.
Your right of assignment does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any individual retirement account or other tax-deferred investment account.
You will not be liable for the discharge of any check when the disbursement bears because you act as agent for any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of assignment.
20. **Waiver.** Except as otherwise required by law, by checking any box or more of these boxes you do not give up your right to the any other remedy. You do not waive a default if you choose not to sue a remedy. By checking any box, you do not waive your right to first demand the event a default and to sue any remedy if the default continues or occurs again.
- 21. **COLLECTION EXPENSES AND ATTORNEY'S FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note as may other Loan Documents. Expenses include, but are not limited to, attorney's fees, court costs and other legal expenses. These expenses are due and payable immediately. I will pay immediately these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect prevailing in the state of this Note. All fees and expenses will be covered by the Property I have granted to you. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorney's fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.
- 22. **COMMISSIONS.** I understand and agree that you or your affiliates will earn commissions or fees on any business property, and may earn such fees on other sources that I buy through you or your affiliate.
- 23. **WARRANTIES AND REPRESENTATIONS.** I make as you the following warranties and representations which will continue as long as this Note is in effect:
A. **Power.** I am duly organized, and validly existing and in good standing in all jurisdictions in which I operate. I have the power and authority to enter into this transaction and to carry on my business as currently and in the future, and, as applicable, am authorized to do so in each jurisdiction in which I operate.
B. **Authorization.** The execution, delivery and performance of this Note and the obligations evidenced by this Note are within my powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which I am a party or in which I am or may be any of my Property is subject.
C. **Name and Place of Business.** Does this document accurately reflect the name of your firm (I have not changed my name at principal place of business within the last 10 years and have not used any other name or business name, without your prior written consent, I do not and will not use any other name and will preserve my existing name, trade name and nicknames.
- 24. **INSURANCE.** I agree to obtain the insurance described in this Loan Agreement.
A. **Property Insurance.** I will insure or obtain insurance coverage on the Property and abide by the insurance requirements of my security instrument covering the Loan.
B. **Flood Insurance.** Flood insurance is not required at this time. If any be required in the future about the property be included in an updated flood plain map, I agree to obtain flood insurance in the future. I may obtain flood insurance from anyone I want but I am not necessarily responsible to you.
C. **Insurance Warranties.** I agree to purchase any insurance coverages that are required. In the amounts you require, as described in one of my other documents I sign for the Loan. I will provide you with a copy of each of coverages. I will buy or provide insurance from a firm licensed to do business in the state where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be a member of the National Flood Insurance Association. I will have the business necessary to pay you if I pay your policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amount I owe you, I will pay the difference. I will keep the insurance until all debt secured by this agreement is paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to the purchase.
- 25. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent each state laws have the provisions of Federal law.
- 26. **JOINT AND SEVERAL LIABILITY AND SUCCESSION.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any member of us together, to collect the Loan. Extending the Loan or renewing it does not release you from the Loan, but you will remain liable on the Loan and I will not be obligated to pay the Loan. This Note shall have the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, executors, heirs and assigns.
- 27. **AMENDMENT, INTEGRATION AND REVOCABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and accepted by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be removed and the remaining provisions will still be enforceable. No waiver or release agreement covering any other debt or obligation will create the payment of this Loan if, as a result, the Loan would become subject to Section 810 of the Joint Uniform National Defense Authorization Act for Fiscal Year 2007.
- 28. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The words "hereof" and "herein" only refer to the text of the instrument or other document.
- 29. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by electronic mail or regular mail by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one borrower will be deemed to be notice to all borrowers. I will inform you in writing of any change in my name, address or other applicable information. I will provide you any document to the notice to all borrowers. I will inform you in writing of any change in my name, address or other applicable information. I will provide you any additional document or verification that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to maintain your lien status on any Property. Time is of the essence.
- 30. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably require. You will make the requests for this information without undue frequency, and will give me reasonable time in which to supply the information.
- 31. **ENTIRE AGREEMENT AND ASSIGNMENT.** I agree, if requested by you, to fully cooperate in the assignment, if necessary, in the assignment of this Note to any and all other parties to this Note, including any other party to this Note, and to execute all documents necessary to carry out the assignment of this Note. I agree to assume all costs including by way of illustration but not limitation, actual expenses, legal fees and marketing fees for failing to reasonably comply with your requests within thirty (30) days.
- 32. **SIGNATURES.** By signing under and seal, I agree to the terms contained in this Note. I also enclose herewith a copy of this Note.

BORROWER
Hickory Bank, LLC
By: [Signature]
Loan Officer/Underwriter
By: Paul [Signature] Chief Deputy T. [Signature]
By: [Signature]
Loan A. Officer/Teller

Hickory Bank, LLC
South Carolina Fidejussory Note
SCN0014191008450000213027010000

Hickory Bank System, Inc., B. Co., 1011 [Signature]
Page 2

Space Above This Line For Recording Data

This document was prepared by

MORTGAGE
(With Future Advances Clause)

DATE AND PARTIES: The date of this Mortgage (Security Instrument) is JANUARY 8, 2008. The parties and their addresses are:

MORTGAGOR:
HERITAGE SEVEN, LLO
A South Carolina Limited Liability Company
138 Horse Trail Rd
St George, SC 29477

LENDER:
AMERIS BANK
Organized and existing under the laws of Georgia
48 Archdale Street
Charleston, SC 29401

1. **CONVEYANCE:** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in CHARLESTON County at 2825 OTRANTO RD N-CHARLESTON SC 29408 1ST MTG DATED 11-02-07 REC 11-08-07 BK 043 PG 788 CHARLESTON CO, CHARLESTON, South Carolina 29408.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, wells, ditches and water, stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as **Property**). This Security Instrument will remain in effect until the Secured Debt and all underlying agreements have been terminated in writing by Lender.

2. **MAXIMUM OBLIGATION LIMIT:** The total principal amount secured by this Security Instrument at any one time will not exceed \$2,809,881.86. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. **SECURED DEBTS:** The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 7870000178-102, dated January 8, 2008, from Mortgagor to Lender, with a loan amount of \$2,809,881.86 and maturing on October 2, 2008. One or more of the debts secured by this Security Instrument contains a future advances provision.

B. **All Debts.** All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is

Heritage Seven, LLC
South Carolina Mortgage
8014X28481000700000620370109597

©1997 Software Systems, Inc. St. Cloud, MN Export 2

Initials
Page 1



Ameris-00203

Appendix 01625

created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sumo Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

5. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement executed by the lien document without Lender's prior written consent.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 601), as applicable.

9. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:

A. A beneficial interest in Mortgagor is sold or transferred.

B. There is a change in either the identity or number of members of a partnership or similar entity.

C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

10. **WARRANTIES AND REPRESENTATIONS.** Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. **Power.** Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. **Authority.** The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor or any of Mortgagor's property is subject.

C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchise.

11. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any changes in any leases, restrictive covenants or easements without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property of at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Mortgage Servicing, LLC
South Street Mortgage
604N2517A0006480000918324703099V

©1998 Banker Systems, Inc., St. Cloud, MN 55626

6446
Page 2

Ameris-00204

Appendix 01626

12. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

13. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

A. Existing or future leases, subleases, licenses, guarantees and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rent" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied as Lender's obligation to the Secured Debt, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not substitute, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents, without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender acts to exercise any of its remedies against any party obligated under the Leases.

14. **DEFAULT.** Mortgagor will be in default if any of the following occur:

- A. **Payments.** Mortgagor fails to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any assignor, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. **Business Termination.** Mortgagor merges, dissolves, reorganizes, ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
- D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debt.
- F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or otherwise a material fact at the time it is made or provided.
- H. **Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. **Material Change.** Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

15. Inaccuracy. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debt is impaired for any reason.

15. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debt. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debt. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debt immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The satisfaction by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to 38 Code § 10-65-10, or sec. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

16. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debt. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debt. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

17. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substance defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

Heritage Bank, L.L.C.
Bank of America Branch
62600014-0021460000248270100009

© 1996 BankOne Systems, Inc., St. Louis, MO 63102

... ENCL...
Page 9

Ameris-00206

Appendix 01628

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of this to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

18. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

19. **INSURANCE.** Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debt, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debt.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once; or Lender may add the insurance premiums to the balance of the Secured Debt and charge interest on it at the rate that applies to the Secured Debt. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

20. **ESROW FOR TAXES AND INSURANCE.** Mortgagor will pay to Lender amounts for (a) yearly taxes and assessments on the Property which under the law may be superior to this Security Instrument, (b) yearly household payments or ground rents (if any), (c) yearly premiums for hazard or property insurance, (d) yearly premiums for flood insurance (if any), and (e) yearly premiums for mortgage insurance (if any). Mortgagor will pay those amounts to Lender unless Lender tells Mortgagor, in writing, that Mortgagor does not have to do so, or unless the law requires otherwise. Mortgagor will make those payments at the times required by Lender.

Lender will estimate from time to time Mortgagor's yearly taxes, assessments, household payments or ground rents and insurance premiums, which will be called the Escrow Items. The amounts that Mortgagor pays to Lender for Escrow Items under this section will be called the Funds.

Lender will keep the Funds in a savings or banking institution which has its deposits or accounts insured or guaranteed by a federal or state agency. If Lender is such an institution, Lender may hold the Funds. Lender will use the Funds to pay the Escrow Items.

Lender will not be required to pay Mortgagor any interest or earnings on the Funds unless either (1) Lender and Mortgagor agree in writing, at the time Mortgagor signed this Security Instrument, that Lender will pay interest on the Funds; or (2) the law requires Lender to pay interest on the Funds.

Space Above This Line For Recording Date

This document was prepared by

MORTGAGE
(With Future Advance Clause)

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is JANUARY 8, 2008. The parties and their addresses are:

MORTGAGOR:
LINDA A GIBSON
An unmarried individual
FKA LINDA ANN AVINGER
155 Horse Trail Rd
St George, SC 29477

LENDER:
AMERIS BANK
Organized and existing under the laws of Georgia
49 Archdale Street
Charleston, SC 29401

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in BERKLEY County at 271-00-01-128 KUSTER LANE CHARLESTON SC 29492 1ST MTG 11-02-07 REC 11-07-07 BK 6678 PG 208 BERKLEY CO SC, CHARLESTON, South Carolina 29492.

together with all rights, easements, appurtenances, royalties, mineral rights, all and gas rights, all water and riparian rights, wells, ditches and water stock, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debt and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$2,809,881.86. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBT. The term "Secured Debt" includes and this Security Instrument will secure each of the following:

A. Specific Debt. The following debt and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, No. 787000178-102, dated January 8, 2008, from Heritage Seven, LLC (Borrower) to Lender, with a loan amount of \$2,809,881.86 and maturing on October 2, 2008. One or more of the debts secured by this Security Instrument contains a future advance provision.

B. All Debt. All present and future debts from Heritage Seven, LLC to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of foreclosure, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security

Heritage Seven, LLC
South Carolina Mortgage
SCMORT200800088000024027010908Y

© 2008 Equifax Systems, Inc. All Rights Reserved

Initials Page 1



Ameris-00187

Appendix 01632

Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Suma Advanced.** All suma advanced and expenses incurred by Lender under the terms of this Security Instrument.

2. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the assets conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, less payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by Federal law (12 C.F.R. 601), as applicable.

9. **WARRANTIES AND REPRESENTATIONS.** Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any lease, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount payable for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement. Mortgagor will promptly provide Lender with copies of the Leases and will

Mortgage Branch, LLC
South Carolina Mortgage
55740000000000000000000000000000

©1990 Bankers Trust Company, Inc., St. Louis, MO

FILED
Page 2

Ameris-00198

Appendix 01633

certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to those Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on lease, license and landlord and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Leases defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance. Mortgagor will not sublet, modify, extend, amend, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases unless the Lessor so request without Lender's consent. Mortgagor will not assign, subordinate, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, deterioration, or other losses or damages when Lender has to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

13. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. **Payments.** Mortgagor or Borrower fail to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. **Death or Incompetency.** Mortgagor dies or is declared legally incompetent.
- D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.
- F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgments.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. **Insolvency.** Lender determines in good faith that a material adverse change has occurred in Borrower's financial condition from the conditions set forth in Borrower's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

14. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are disjunctive, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to EC Code §15-85-10, or eq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of a receiver generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to

Hullman Loan, LLC
 South Dakota Mortgage
 2016-000084690082430220100007

©1999 Bentley Systems, Inc. St. Cloud, MN 56301

Page 5

Ameris-00200

payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagee, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

16. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagee agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagee agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagee agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagee.

18. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq., all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagee represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagee has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagee will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagee will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagee has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagee or any tenant of any Environmental Law. Mortgagee will immediately notify Lender in writing as soon as Mortgagee has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagee and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added without Lender's consent in writing.

G. Mortgagee will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagee will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagee and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagee agrees, at Mortgagee's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagee's obligations under this section at Mortgagee's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagee will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, claims, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagee will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

The First Security Bank, LLC
Security Instrument
S02122744.00004800002432270101007

©1998 Banker Systems, Inc., S.L. Check, 10/1/98/5476

Page 4

Ameris-00199

17. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other loan document.

18. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences may change during the term of the Secured Debt. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits if agreed to separately in writing.

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debt, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debt.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debt and charge interest on it at the rate that applies to the Secured Debt. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

19. ESCROW FOR TAXES AND INSURANCE. Mortgagor will pay to Lender amounts for (a) yearly taxes and assessments on the Property which under this law may be superior to this Security Instrument, (b) yearly household payments of ground rents (if any), (c) yearly premiums for hazard or property insurance, (d) yearly premiums for flood insurance (if any), and (e) yearly premiums for mortgage insurance (if any). Mortgagor will pay those amounts to Lender unless Lender tells Mortgagor, in writing, that Mortgagor does not have to do so, or unless the law requires otherwise. Mortgagor will make these payments at the times required by Lender.

Lender will estimate from time to time Mortgagor's yearly taxes, assessments, household payments or ground rents and insurance premiums, which will be called the Escrow Items. The amounts that Mortgagor pays to Lender for Escrow Items under this section will be called the Funds.

Lender will keep the Funds in a savings or banking institution which has its deposits or accounts insured or guaranteed by a federal or state agency. If Lender is such an institution, Lender may hold the Funds. Lender will use the Funds to pay the Escrow Items.

Lender will not be required to pay Mortgagor any interest or earnings on the Funds unless either (i) Lender and Mortgagor agree in writing, at the time Mortgagor signed this Security Instrument, that Lender will pay interest on the Funds; or (ii) the law requires Lender to pay interest on the Funds.

If the amount of the funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may notify borrower in writing, and, in such case, borrower will pay to Lender the amount necessary to make up the shortage or deficiency. Borrower shall make up the shortage or deficiency as Lender directs, subject to the requirements of applicable law.

If, by reason of any default under this Security Instrument, Lender declares all Secured Debts due and payable, Lender may then apply any Funds against the Secured Debts.

When Mortgagor has paid all of the sums secured, Lender will promptly refund to Mortgagor any Funds that are being held by Lender.

20. CO-OBTAINERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

21. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

22. FIXTURE FILING. Mortgagor gives to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.

23. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such state laws are preempted by federal law.

24. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. If this Security Instrument secures a guaranty

Mortgage Servicing, LLC
South Carolina Mortgage
SCLM1234-000480000240027C100097

©1998 DocuSign Systems, Inc., St. Cloud, MN 55026

MS044
Page 8

Ameris-00202

between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or anti-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

25. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debt are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

26. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

27. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR

Linda A. Gibson (Seal)
Individually

(Witness)

(Witness)

ACKNOWLEDGMENT.
(Individual)

_____ OF _____ OF _____, do hereby certify that Linda A. Gibson, an unmarried individual, FKA/LINDA ANN AVINGER, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this _____ day of _____.

Signature of Notary Public

My commission expires:

Heritage Bank, LLC
South Carolina Mortgage
9000 Highway 100B #500008230370100001

©1998 Bankers Systems, Inc., St. Cloud, MN 55726

Initials 
Page 2

Ameris-00201

Appendix 01637

From: Lanier, Benjamin
To: Seven Oaks Apartments (Elizabeth)
Sent: 2/12/2009 7:41:17 PM
Subject: Heritage Seven Loan Pmt

Linda,

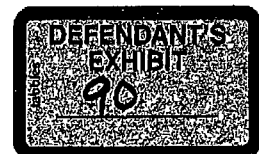
I hope you are doing well. Your loan popped up on the past due report at 9 days and I wanted to give you a heads up before it hit 10 days and incurred the late fee. Let me know if I need to have Riley come by there and pick the payment up and I will be happy to do that. The amount due is \$11,185.87. Please let me know if you have any questions.

Thanks and have a great weekend,

Benjamin R. Lanier Jr.
Vice President- Business Banker
Ameris Bank
986 Houston Northcut Blvd. Suite C
Mount Pleasant, SC 29464
Direct: 843-375-4973
Cell: 843-345-3507
Fax: 843-881-8350

benjamin.lanier@amerisbank.com
www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.



AMERIS-EMAILS-000601

Appendix 01638

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



AMERIS-EMAILS-000136

Appendix 01639

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.

AMERIS-EMAILS-000137

Appendix 01640

15

Ameris Bank Loan Committee Application

Borrower: Heritage Seven LLC Bank Location: Mount Pleasant, SC
 Address: 133 House Trill Rd. Reg. Or: Yes No
St. George, SC 29477 Officer: Karl H. Zerbst Jr. Date: 6/2/09
 Type of Business: Apartment Management Customer Since: Nov. 2007 NAJCS Code: 531110

Approval/Modification	New/Renewal	Loan Type	Original \$ of Commitment	Current Balance	Available Commitment	Rate / Fee	Loan Term / Amortization	Collateral Order	Special Collateral
1	Approval/Modification	1st Secured by 1st trust family Conventional	\$ 2,810,164	\$ 2,796,467	\$ -	Prime+2.5% 4.5%AF	90 days; then review	no residential trust - CH	
2									
3									
4									
5									
			\$ 2,810,164	\$ 2,796,467					\$ 2,796,467

Comments:
 This is a loan modification request to reduce the current floor of 6% to a floor of 4.5% effective June 2nd 2009. This loan was originally closed in November of 2007 with a rate of Prime+2.5% with no floor. The original terms allowed 12 months for repairs and rehab of the complex. Due to several factors the apartment complex is still undergoing renovations and when the loan was renewed at the end of the 12-month interest only period the rate adjusted from 3.25% to a rate of 6% due to the 0% floor mandate. A Rer meeting with Linda Gibson on 6/2/2009 and understanding the lack of tenants who has in the complex plus the need to keep this loan current there is being moved to 4.5% for 90 days. This will allow time for Linda to complete the improvements for 6 units and to get them leased.

Balance Recap		Avg. Balance	Other Direct & Related Borrowers	Report
Demanded Deposits	Direct	\$ 107	Other Direct & Related Debt (See Loan and Collateral Summary)	
	Related	\$ 6,497		
Interest Bearing	Direct	\$ 3,408	Total Exposure	\$ 2,796,467
	Related	\$ 15,397		

Total Deposits \$ 27,269 Strategy / AQG / DBC

*Ratification Approval Authority	Maintain		30		1,16	
	Exposure Strategy	Asset Quality Grade	Debt/Income or DBC	Cost	Loan to Cost	
FDIC, Part 368, LTV Exception Does the borrower exceed FDIC Regulatory LTV Limit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Identify:	1	Interest rate reduction to assist in cash flow issues due to the ongoing renovation and the vacancies in the complex	no	no		
	2					
	3					
	4					
	5					

FDIC, Part 368, LTV Exception Does the borrower exceed FDIC Regulatory LTV Limit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Identify: 1. Raw Land (0%) 2. Land Development (75%) 3. Conv. Multi-Family and other Non-Residential Construction (80%) 4. 1-4 Family Residential Construction (85%) 5. Impact of Property (85%) 6. Owner Occupied 1-4 Family, and Home Equity (90%)	Repayment Terms (frequency of principal and interest payments)		Primary Source of Repayment	Secondary Source of Repayment
	1	90 days interest only; then review at that time	Apt. Income	Borrower Funds
	2			
	3			
	4			

Material Exceptions / Loan Agreement		Collateral Recap		Date Valued	Gross Value	Margin	Net Value
Borrower/Owner's/Fluoridite are making or will	<input type="checkbox"/>	1st mortgage on 48 unit Apt Complex off Orange Rd	9/12/07	\$ 3,700,000	83.00%	\$ 3,145,000	
Borrower/Owner's/Fluoridite are making or will	<input type="checkbox"/>	In N. Charleston		\$ -	100.00%	\$ -	
Interest payment frequency outside of policy	<input type="checkbox"/>	Add collateral of 1st mortgage on Kistar Ln w/	10/26/07	\$ 465,000	100.00%	\$ 465,000	
Optimized interest has been added in loan	<input type="checkbox"/>	reassignment of coll lower loans		\$ -	100.00%	\$ -	
LTV ratio exceeds policy for loan type	<input type="checkbox"/>			\$ -	100.00%	\$ -	
CREW (with excess) policy (rent, administration, etc)	<input type="checkbox"/>	Loss: (Prior Loans)		\$ -		\$ -	
DEB (with excess) policy for loan type	<input type="checkbox"/>			\$ 4,165,000		\$ 3,610,000	
Check if other exceptions exist and complete page 2	<input type="checkbox"/>						

Borrower(s) / Guarantor(s)	Quantity	Beacon Score	Statement Date	Liquid Assets	Total Assets	Total Liabilities	Net Worth	Income
Linda A. Gibson	100%	622	7/7/08	\$ 840,880	\$ 56,194,950	\$ 3,189,184	\$ 53,005,766	\$ 153,804
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
Totals				\$ 840,880	\$ 56,194,950	\$ 3,189,184	\$ 53,005,766	\$ 153,804

Approvals: Karl H. Zerbst Jr. Date: 6/2/2009
 Bank President: [Signature]
 Bank LLC: [Signature]
 RCO/BCO: [Signature]
 Amended LLC: [Signature]
 Asset: LLC

AMERIS EMAILS 014



Loan and Collateral Summary

Borrower Reddy Screen LLC
 Date 6/26/09

Borrower Name	Origin- ation Date	Purpose	Original Loan Amt/ Commitment	Current Balance	Available Commitment	Rate/Fee	Collateral	Collateral Appraised Value	Priority	Collateral Loan Value	Terms/ Maturity	AQG
<u>DIRECT EXPOSURE</u>												
Seven Oaks Apartments, LLC		Refinance existing apt loan	\$ 2,810,164	\$ 2,796,457	\$ -	Prime+1.00% F-4.5%	1st mortgage on 48 unit Apt. Complex on Ouzens Rd. N Charleston	\$ 3,700,000	\$ -	\$ -	90 days 90, then arise	30
		Total Direct Exposure	\$ 2,810,164	\$ 2,796,457	\$ -			\$ 3,700,000	\$ -	\$ -		
<u>INDIRECT EXPOSURE</u>												
		Total Indirect Exposure	\$ -	\$ -	\$ -			\$ -	\$ -	\$ -		
TOTAL DIRECT EXPOSURE			<u>\$ 2,796,457</u>					<u>\$ 3,700,000</u>			LTV= 75.5%	
TOTAL INDIRECT EXPOSURE			<u>\$ -</u>					<u>\$ -</u>			LTV= 0%	
TOTAL EXPOSURE			<u>\$ 2,796,457</u>					<u>\$ 3,700,000</u>			LTV= 75.6%	

AMERIS INTL 9-015

Ameris Bank Profitability Analysis

6/2/2009

Heritage Seven, LLC

Loan#	Loan Type	Fixed/ Variable	AQG	Avg. Annual Balance	Interest Rate	Avg. Term (months)	Gross Fees
1	CRE	V	25	\$ 2,796,467	4.50%	3	\$ -
2		V	20	\$ -	0.00%	0	\$ -
3		V	20	\$ -	0.00%	0	\$ -
4		V	20	\$ -	0.00%	0	\$ -
5		V	20	\$ -	0.00%	0	\$ -
6		V	20	\$ -	0.00%	0	\$ -
7		V	20	\$ -	0.00%	0	\$ -
8		V	20	\$ -	0.00%	0	\$ -
9		V	20	\$ -	0.00%	0	\$ -
10		V	20	\$ -	0.00%	0	\$ -
Total Loans				\$ 2,796,467			
Deposits							
	DDA			\$ 107			
	NOW/MMA			\$ 11,780	2.00%		
	Savings				0.00%		
	CD's			\$ 13,397	2.50%	12	
	CD's			\$ -	0.00%	0	
	CD's			\$ -	0.00%	0	
	CD's			\$ -	0.00%	0	
	CD's			\$ -	0.00%	0	
Total Deposits				\$ 27,284			
Other Income Sources:							
	L/C Fees			\$ -			
	Other			\$ -			

Profitability Calculation	
1	Total Interest Income \$ 125,841
2	+ Loan Fees \$ -
3	- Interest Expense \$ (621)
4	+ Cost of Funds \$ (88,089)
5	+ Funds Credit \$ 955
6	Net Interest Income \$ 38,087
7	
8	+ Equity Credit \$ 10,766
9	+ Loan Loss Reserve Credit \$ 2,555
10	- Loan Loss Provision \$ (41,947)
11	Gross Income \$ 9,461
12	+ Non Interest Income \$ -
13	- Overhead Allocation \$ (12,580)
14	
15	Net Income Before Taxes \$ (3,123)
16	
17	- Taxes \$ 1,062
18	Net Income \$ (2,061)
19	
Key Information	
21	Allocated Equity \$ 307,611
22	Allocated Loan Loss Reserve \$ 73,988
23	Net Interest Margin 1.36%
24	Return on Assets -0.07%
25	Return on Equity -0.67%
26	Target Return on Equity 18.00%
27	\$ of Income Below Target ROE \$ 57,432
28	

Instructions for completing the customer information:

Loan Types: A&D - Acquisition & Development Loans (includes Raw Land), AC RE - Loans Secured by Agriculture Real Estate, CRE - Commercial Real Estate Term Loans, C/L - Construction Loans, including both Commercial and Residential Construction, HELOC - Home Equity Line of Credit, LOC - Both Revolving and Non-Revolving Lines of Credit, RRE - Residential Real Estate Term Loans, SBA - SBA Guaranteed, STL - Short Term Loans (< 12 mos) Secured by Collateral Other Than Real Estate, TML - Term Loans (> 12 mos) Secured by Collateral Other Than Real Estate.

Lines 1-10: Each loan in a relationship (up to 10) should be listed separately. The interest rate should be designated as fixed (F) or variable (V). The Asset Quality Grade (AQG) for each loan should be indicated. The loan balance(s) should reflect the average annual balance of the loan by loan type. For Ag-related borrowers, this would normally be 50% - 65% of the total commitment. For term loans, this would be the current outstanding balance less 1/2 the annual payment. The current interest rate on each loan should be listed. For variable-rate loans with floor rates that are greater than the current rate, the floor rate should be used. Conversely, if the calculated rate is greater than the ceiling rate, then the ceiling rate should be used. Officer judgment is best used when considering the interest rate, given all these factors. The term of the loan(s) should be expressed in months. This is NOT the original loan term, but the remaining term to maturity, or the next available repricing date, whichever is earlier. Finally, the gross fees charged on the loan should be entered, as the model will use the average term to annualize the fee, per FASB 91.

Lines 14-21: Average annual deposit balances should be reflected on these lines. There is no interest rate associated with DDA deposits. For all other deposit types, the current interest rate charged on that account should be indicated. Up to five CD's may be shown, along with the interest rate and the remaining term of the CD(s), expressed in months. As with the loan term, this is NOT the original term of the CD(s), but the time until the next repricing date.

Line 25: Any fees for standby and/or commercial letters of credit should be included here.

Line 26: Other income sources should be included, such as account-analysis charges, merchant services, trust fees, etc.

Last Revised 6/01/2009

AMERIS EMALS 016

Appendix 01643

Status Memo

Date: 06/02/2009

Borrower's Name: Heritage Seven, LLC

Loan Officer: Bernjie 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 Monoks 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 the 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

AMERIS EMAILS 017

Appendix 01644

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.

AMERIS EMAILS 018

Appendix 01645

From: Lanier, Benjamin
To: zzzDisabled - Zerst, Karl
Sent: 8/21/2009 1:54:24 PM
Subject: RE: Seven Oaks CF
Attachments: Seven Oaks Cash Flow.xls

Karl,
Here is the CF Analysis with the changes you asked for. I also put a hard copy in your chair for review.

From: Zerst, Karl
Sent: Thursday, August 20, 2009 6:03 PM
To: Lanier, Benjamin
Subject: RE: Seven Oaks CF

Thank you

Karl H. Zerst, 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.zerst@amerisbank.com

From: Lanier, Benjamin
Sent: Thursday, August 20, 2009 2:15 PM
To: Zerst, Karl
Subject: Seven Oaks CF

Karl
Here is a cash flow scenario I worked up on Seven Oaks per the parameters we discussed.

Benjamin R. Lanier Jr.
Ameris Bank | VP, Business Banker
966 Houston Northcutt Blvd, Suite C
Mount Pleasant, SC 29464
(D) 843-375-4973 (F) 843-881-8350 (C) 843-345-3507
benjamin.lanier@amerisbank.com

Visit us online at www.amerisbank.com

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.



AMERIS-EMAILS-000127

Appendix 01646

	A	B	C	D	E	F	G
1	Seven Oaks Apartments Current CF						
2	Seven Oaks Apartments Cash Flow Analysis						
3	Income				No. of Units	Type	Proposed Rents
4	Rents Received	\$ 28,200.00			42	2 bd 2 ba	\$ 600.00
5					\$	1 bd 1 ba	\$ 600.00
6	Total Income	\$ 28,200.00			Grand Total		
7							
8	Gross Rental Revenue	\$ 28,200.00					
9							
10	Expenses @50%	\$ 14,100.00			Loan Amount	\$ 1,850,000	
11	Total Expenses	\$ 14,100.00			Rate	\$ 80%	
12					Amortization	25	
13	NOI	\$ 14,100.00			Payment	\$11,471.38	
14							
15	Pmt to Amaris	\$11,471.38					
16							
17	Cash Flow	\$ 2,628.64					
18							
19	CF/OS		1.23				
20							
21							
22							
23	2 bedroom apts are currently renting for \$700						
24	1 bedroom apts are currently renting for \$600						

AMBRIS-EMAILS-000128

H	
1	
2	
3	Total Rents
4	\$ 25,200.00
5	\$ 3,000.00
6	\$ 28,200.00
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	

AMERIS-EMAILS-000129

From: Snipes, Don
To: Lanier, Benjamin; Edwards, Jon
Sent: 9/29/2009 8:23:23 PM
Subject: LCA for Heritage Seven
Attachments: EC-SC900_EXCHANGE_09292009-162130.PDF

Jon,

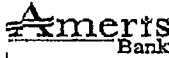
Attached is an LCA I signed using admin authority to pay taxes on the real estate securing Heritage Seven. I need the approval ratified. Thanks.

<<EC-SC900_EXCHANGE_09292009-162130.PDF>>



AMERIS-EMAILS-000002

Appendix 01649



Loan Committee Application

Borrower: Heritage Seven, LLC
Address: 133 Horse Trail Rd.
St. George, SC 29477
Type of Business: Property Mgt.

Bank Location: Mount Pleasant, SC
Reg. O: Yes X No
Officer: Benjie Lanier **Date:** 9/29/09
Customer Since: Nov. 2007 **NAICS Code:** 511110

	Approve / Renewal*	New / Renewal	Loan Type	Original \$ of Commitment	Current Balance	Available Commitment	Rate / Fees	Loan Term / Expiration	Collateral Codes	Special Codes
1	Approve	Now	100 Secured by non- farm, non residential	\$ 50,071.96	\$ 50,071.96		4.50%	60 days	R1 C6MRS-City Property	
2										
3										
4										
5										
				\$ 50,071.96	\$ -					= \$ 50,071.96

Comments:
 The following request is a note to be extended for the payment of 2008 Charleston County property taxes. The taxes are due in the amount of \$50,071.96. Note shall be for 60 days to allow for the sale of the property.

Balance Recap / ROE		Avg. Balances	Other Direct & Related Borrowers	Exposure
Demand Deposits	Direct	\$ 107	Other Direct & Related Debt (See Loan and Collateral Summary)	\$ 2,796,467
	Related	\$ 6,341	Total Exposure	\$ 2,846,538
Interest Bearing	Direct	\$ 5,511		
	Related	\$ 15,397		
Total Deposits		\$ 27,356		

Strategy / AQG / DSC
 Decrease Exposure Strategy 30 Asset Quality Grade Debt/Incom or DSC

*Ratification Approval Authority	Purpose of Credit (If purchase, indicate cost)	Cost	Loan to Cost
	1 Loan to pay 2008 Taxes		
	2		
	3		
	4		
	5		

FDIC, Part 365, LTV Exception	Repayment Terms (frequency of principal and interest payments)	Primary Source of Repayment	Secondary Source of Repayment
Does the loan exceed FDIC Supervisory LTV limits? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, identify it	1 Single pay note due at maturity	Apt. Income	Borrower Funds
1. Raw Land (65%)	2		
2. Land Development (35%)	3		
3. Conv'l. Multi-Family and other Non-Residential Construction (20%)	4		
4. 1-4 Family Residential Construction (35%)	5		
5. Improved Property (35%)			
6. Owner Occupied 1-4 Family, and Home Equity (40%)			

Material Exceptions / Loan Agreement	Collateral Recap	Date Valued	Gross Value	Margin	Net Value
Discover/Overstate's Filenotes are missing or stale <input checked="" type="checkbox"/>	Secured by mtg on 2625 Ontario Rd N. Charleston, SC	9/2007	\$ 4,165,000	100.00%	\$ 4,165,000
Borrower/Guarantor's Beacon score below 625 <input checked="" type="checkbox"/>	3+ acres of Land on Klister Rd. Charleston, SC		\$ -	100.00%	\$ -
Interest payment frequency outside of policy <input type="checkbox"/>			\$ -	100.00%	\$ -
Capitalized Interest has been added to loan <input type="checkbox"/>			\$ -	100.00%	\$ -
LTV ratio exceeds policy for loan type <input type="checkbox"/>			\$ -	100.00%	\$ -
Credit item exceeds policy (type, securitization, etc) <input type="checkbox"/>			\$ -	100.00%	\$ -
DSC below policy for loan type <input type="checkbox"/>			\$ -	100.00%	\$ -
Check if other exceptions exist and complete pg 3 <input type="checkbox"/>			Less: (Prior Liens)		\$ (2,796,467)
Check if Loan Agreement is proposed. If yes, see pg 2. <input type="checkbox"/>					\$ 1,368,533
			LTV =	68.3%	

Borrower(s) / Guarantor(s)	Guaranty Amount	Beacon Score	Statement Date	Liquid Assets	Total Assets	Total Liabilities	Net Worth	Income
Linda A. Gibson	100%	698	7/7/08	\$ 112,555	\$ 56,835,800	\$ 5,723,617	\$ 51,112,183	\$ 155,604
Paul Gibson Trust	100%			\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -	\$ -
Totals				\$ 112,555	\$ 56,835,800	\$ 5,723,617	\$ 51,112,183	\$ 155,604

Approvals	Initials	Date	Special Approval Conditions
Officer	<i>[Signature]</i>	9/29/09	Indicate the most recent year that property taxes on all real estate collateral have been paid? 2007
Bank President	<i>[Signature]</i>		APPROVED VIA ADMINISTRATIVE AUTHORITY
Bank ELO	<i>[Signature]</i>		
RCC/BCO	<i>[Signature]</i>	9/29/09	
Ameris OLC			
Ameris ELO			

AMERIS-EMAILS-000003

Appendix 01650

Ameris Bank Profitability Analysis

9/29/2009

Heritage Seven, LLC

Loans	Loan Type	Fixed/ Variable	AQG	Avg. Annual Balance	Interest Rate	Avg. Term (months)	Gross Fees	Profitability Calculation			
1	CRE	V	30	\$ 50,072	4.50%	2	\$ -	1	Total Interest Income	\$ 2,253	
2		V	20	\$ -	0.00%	0	\$ -	2	+ Loan Fees	\$ -	
3		V	20	\$ -	0.00%	0	\$ -	3	- Interest Expenses	\$ -	
4		V	20	\$ -	0.00%	0	\$ -	4	- Cost of Funds	\$ (1,577)	
5		V	20	\$ -	0.00%	0	\$ -	5	+ Funds Credit	\$ 957	
6		V	20	\$ -	0.00%	0	\$ -	6	Net Interest Income	\$ 1,633	
7		V	20	\$ -	0.00%	0	\$ -	7			
8		V	20	\$ -	0.00%	0	\$ -	8	+ Equity Credit	\$ 193	
9		V	20	\$ -	0.00%	0	\$ -	9	+ Loan Loss Reserve Credit	\$ 49	
10		V	20	\$ -	0.00%	0	\$ -	10	- Loan Loss Provision	\$ (2,504)	
Total Loans								\$ 50,072	11	Gross Income	\$ (629)
Deposits:									12	+ Non Interest Income	\$ -
	DDA			\$ -				13	- Overhead Allocation	\$ (225)	
	NOW / MMA			\$ 11,959	0.00%			14			
	Savings			\$ -	0.00%			15	Net Income Before Taxes	\$ (854)	
	CD's			\$ 15,397	0.00%	0		16			
	CD's			\$ -	0.00%	0		17	- Taxes	\$ 290	
	CD's			\$ -	0.00%	0		18	Net Income	\$ (564)	
	CD's			\$ -	0.00%	0		19			
	CD's			\$ -	0.00%	0		20			
Total Deposits								\$ 27,356	21	Allocated Equity	\$ 5,508
Other Income Sources:									22	Allocated Loan Loss Reserve	\$ 1,387
	L/C Fees			\$ -				23	Net Interest Margin	3.26%	
	Other			\$ -				24	Return on Assets	-1.13%	
									25	Return on Equity	-10.24%
									26	Target Return on Equity	18.00%
									27	\$ of Income Below Target ROE	\$ 1,555
									28		

Instructions for completing the customer information.

<p>Loan Types:</p> <p>Lines 1-10</p> <p>Lines 14-21</p> <p>Line 25</p> <p>Line 26</p>	<p>A&D - Acquisition & Development Loans (includes Raw land), AQRE - Loans Secured by Agriculture Real Estate, CRE - Commercial Real Estate Term Loans, CTL - Construction Loans, including Both Commercial and Residential Construction, HELOC - Home Equity, Line of Credit, LOC - Both Revolving and Non-Revolving Lines of Credit, RRE - Residential Real Estate Term Loans, SBA - SBA Guaranteed, STL - Short Term Loans (< 12 mos) Secured by Collateral Other Than Real Estate, TML - Term Loans (>12 mos) Secured by Collateral Other Than Real Estate. Each loan in a relationship (up to 10) should be listed separately. The interest rate should be designated as fixed (F) or variable (V). The Asset Quality Grade (AQG) for each loan should be indicated. The loan balance(s) should reflect the average annual balance of the loan by loan type. For Ag-related borrowers, this would normally be 50% - 65% of the total commitment. For term loans, this would be the current outstanding balance less 1/2 the annual payment. The current interest rate on each loan should be listed. For variable-rate loans with floor rates that are greater than the current rate, the floor rate should be used. Conversely, if the calculated rate is greater than the ceiling rate, then the ceiling rate should be used. Officer judgement is best used when considering the interest rate, given all these factors. The term of the loan(s) should be expressed in months. This is NOT the original loan term, but the remaining term to maturity, or the next available repricing date, whichever is earlier. Finally, the gross fees charged on the loan should be entered, as the model will use the average term to annualize the fees, per FASB 91.</p> <p>Average annual deposit balances should be reflected on these lines. There is no interest rate associated with DDA deposits. For all other deposit types, the current interest rate charged on that account should be indicated. Up to five CD's can be shown, along with the interest rate and the remaining term of the CD(s), expressed in months. As with the term loans, this is NOT the original term of the CD(s), but the time until the next repricing date.</p> <p>Any fees for standby and/or commercial letters of credit should be included here.</p> <p>Other income sources should be included, such as account-analysis charges, merchant services, trust fees, etc.</p>
---	---

Last Revised 8/03/2009

AMERIS-EMAILS-000005

Appendix 01651

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	ISSUE DATE	INITIALS
3070001910103	Mortgage Serv. LLC		10/01/08	DL
NOTE AMOUNT	INDEX (w/adjust)	RATE	MATURITY DATE	LOAN PURPOSE
180,071.00	Wall Street Journal Price	4.800%	12/31/03	Commercial
		Creditor Use Only		

PROMISSORY NOTE
(Commercial - Single Address)

DATE AND PARTIES. The date of this Promissory Note (hereinafter "Date") is October 1, 2008. The parties and their addresses are:

LENDER:
AMERIS BANK
160-C Horizon Boulevard Blvd
Mt. Pleasant, SC 29556
Telephone: (843) 379-4690

BORROWER:
HERITAGE BRYN LLC
c/o South Carolina Landmark Liability Company
122 North Third St
St. George, SC 29427

1. DEFINITIONS. As used in this Note, the terms have the following meanings:
A. References. The phrases "I," "my," and "my" refer to each borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
B. Note. This refers to this document and any extensions, amendments, modifications and substitutions of this Note.
C. Loan. Loan refers to the transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or reports, and this Note.
D. Loan Documents. Loan Documents refer to all the documents executed as part of or in connection with the Loan.
E. Property. Property is any property, real personal or intangible, that secures my performance of my obligations under this Note.
F. Interest. Rates and rate change fluctuations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I agree to pay you, or your heirs, at your address, or to such other location as you may designate, the principal sum of \$180,071.00 (One Hundred Eighty Thousand and 00/100 Dollars) on the unpaid Principal balance of this Note as this note shall be accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 4.800% (four percent interest rate) until October 2, 2008, after which time it may change as described in the Variable Rate subsection.

A. Interest After Default. If you default a default under the terms of the Loan, which shall include failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue on the unpaid Principal balance of this Note at 10.000 percent until paid in full.

B. Maximum Interest Amount. Any amount assessed or collected hereunder under the terms of this Note will be limited to the maximum lawful amount of interest allowed by state or federal law, whichever is greater. Amounts collected in excess of the maximum lawful amount will be applied first to the unpaid Principal balance. Any amounts not so collected will be returned to me.

C. Voluntary Redemption. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-610 and 37-3-611, 1996.

D. Day Count. Interest accrues using an Actual/360 day counting method.

E. Premium Rate. The stated rate reflects a premium over the current market rate of interest for comparable loans of 1.200 percent. This Premium Rate will be in effect until October 2, 2009.

F. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: the base rate on corporate loans posted by at least 70% of the 10 largest U.S. banks known as the Wall Street Journal U.S. Prime Rate.

The Current Index is the most recent index figure available on each Change Date. You do not guarantee by selecting this index, or the margin, that the Interest Rate on the Note will be the lowest rate available on any other basis or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute an alternate index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change on October 2, 2008 and only thereafter.

(3) Calculation Of Change. On each Change Date you will calculate the Interest Rate, which will be the Current Index. The result of this calculation will be rounded to the nearest 1/100 of a percent. Subject to my obligations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Limitations. The Interest Rate changes are subject to the following limitations:
(a) Minimum. The Interest Rate will never be less than 4.000 percent.
(b) Effect Of Volatility Basis. A change in the Interest Rate will have the following effect on the payments: The amount of the final payment will change.

4. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is made more than 10 days late, I will be charged \$5.00 percent of the Unpaid Portion of Payment or \$5.00, whichever is greater. However, this charge will not be greater than \$100.00. I will pay this late charge promptly but only once for each late payment.

B. Returned Check Charge. I agree to pay a fee not to exceed \$30.00 for each check, negotiable order of withdrawal or draft I issue in connection with the Loan that is returned because it has been dishonored.

5. GOVERNING AGREEMENT. This Note is further governed by the Commercial Loan Agreement entered into between you and me as part of this Loan, as modified, amended or supplemented. The Commercial Loan Agreement states the terms and conditions of this Note, including the terms and conditions under which the maturity of this Note may be accelerated. When I sign this Note, I represent to you that I have reviewed and am in compliance with the terms contained in the Commercial Loan Agreement.

6. PAYMENT. I agree to pay this Note on demand, but if no demand is made, I agree to pay this Note in a single payment of all unpaid Principal and accrued interest on October 1, 2009.

Payments will be rounded to the nearest 1/100. When the final payment I also agree to pay any (initial less of) charges owing and the amount of any advance you have made to others on my behalf. Payments scheduled to be paid on the 30th, 31st or 1st of a month that contains no such day will, instead, be made on the first day of such month.

7. PREPAYMENT. If I prepay in full, I will pay a prepayment penalty of \$300.00.

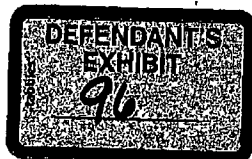
8. LOAN PURPOSE. The purpose of this loan is TO PAY 2008 PROPERTY TAXES ON NORTHWOOD BARDEN APARTMENTS.

9. SECURITY. The Loan is secured by assets security instruments prepared together with this Note as follows:

Heritage Bryn, LLC
South Carolina Promissory Note
SC424444440011800000020241001000

Woburn Kluge Financial Services P/CPE 2008 Danbury Systems

Initials DL
Page 1



Ameris-00162

GUARANTY
(Continuing Debt - Unlimited)

DATE AND PARTIES. The date of this Guaranty is October 1, 2009. The parties and their addresses are:

LENDER:
AMERIS BANK
501-C Heritage Northwest Blvd
Mt. Pleasant, SC 29524
Telephone: (843) 275-6700

DEBTOR/OWNER:
HERITAGE SERVICE, LLC
A South Carolina Limited Liability Company
100 Route 1740 W
St George, SC 29427

GUARANTOR:
LINDA A OGDON
100 Route 1740 W
St George, SC 29427

1. DEFINITIONS. As used in this Guaranty, the terms have the following meanings:

A. "Persons." The pronouns "I," "me" and "my" refer to all persons as either signing this Guaranty, individually and together. "You" and "your" refer to the Lender.

B. "Debt." "Debt" refers to the debt(s) that evidence(s) the Borrower's indebtedness, and any subsequent, amended, modifications and substitutions of the Debt, or Property "Property" means any property, real, personal or tangible, that secures performance of the obligations of the Debt, Debt, or this Guaranty.

2. SPECIFIC AND FUTURE DEBT GUARANTY. For good and valuable consideration, the receipt and delivery of which is hereby acknowledged, and to induce you, at your option, to make loans or advance to any other person(s) with the Borrower from time to time, I, individually and irrevocably agree to act as guarantor of and guaranty to you the payment and performance of each and every Debt, of every type, nature and description that the Borrower either individually, singly or as a portion of themselves, or with others, may owe or at any time in the future owe you, including, but not limited to the following defined Debt(s) including without limitation, all revolving, secured business, attorney's fees and collection costs, when claimed by law, that may be owing from the Borrower to you in writing and including the Debt and all other agreements with respect to the Borrower.

A promissory note or other agreement, No. 7970000178 103, dated October 1, 2009, from Heritage Service, LLC (Borrower) to you, in the amount of \$80,071.00. In addition, Debt refers to debts, liabilities, and obligations of the Borrower (including, but not limited to, amounts agreed to be paid under the terms of any lease or agreement securing the payment of any debt, loan, liability or obligation, including, but not limited to, accounts payable, notes, mortgages, leases and contracts, and all extensions, renewals, replacements and modifications of those debts whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, including obligations and duties arising from the terms of all assignments deposited or submitted for the transaction such as applications, security agreements, disclosures, and the like.

You may, without notice, apply this Guaranty to each Debt of the Borrower as you may collect from time to time.

3. EXTENT OF MY OBLIGATION. I consent to all renewals, amendments, modifications and substitutions of the Debt which may be made by you upon such terms and conditions as you may see fit from time to time without further notice to me and without limitation by the number of renewals, extensions, modifications or substitutions.

A. Future Advances. I waive notice of and consent to any and all future advances made to the Borrower by you.

4. UNCONDITIONAL LIABILITY. I am unconditionally liable under this Guaranty, regardless of whether or not you pursue any of your remedies against the Borrower, against any other maker, guarantor or endorser of the Debt or against any Property. You may sue me for the Debt, at any time and in any court that has jurisdiction over this Guaranty, or any number of me together, to collect the Debt. My liability is not conditioned on the signing of this Guaranty by any other person and I am not subject to any condition not expressly set forth in this Guaranty or any instrument executed in connection with this Debt. My obligation to you according to the terms of this Guaranty shall not be affected by the insolvency, liquidation or reorganization of any party or agreement entered into by the Debt. The inclusion of any applicable state laws, federal, or any other laws, regulations or orders of any governmental authority in any jurisdiction shall not constitute a discharge of my obligation to you under this Guaranty even if any other person who is obligated to pay me the Debt, including the Borrower, has such obligation discharged by bankruptcy, foreclosure, or otherwise discharged by law.

5. BANKRUPTCY. If a bankruptcy action should at any time be filed by or against the Borrower, the majority of the Debt, so far as my liability is concerned, shall be accelerated and the Debt shall be immediately payable by me. I acknowledge and agree that this Guaranty, and the Debt secured hereby, will remain in full force and effect in all states, notwithstanding any notice of insolvency by or against, you or against any Property, in connection with any obligation to any creditor in the United States Bankruptcy Courts. Such notice or insolvency, including, without limitation, valuation of Property, cessation of business or imposition of receiver or other court order shall not affect my obligation to you, guarantor to the United States Bankruptcy Courts, as provided. In the event that any payment of principal or interest is not made and paid by the other guarantor, borrower, guarantor or endorser as determined by the court of a court of competent jurisdiction, it may be a discharge of the obligation under the bankruptcy or insolvency laws of the United States or otherwise, that my obligation will remain as an obligation to you and will not be discharged or have any effect.

6. REVOCACTION. I agree that this is an irrevocable and unconditional Guaranty. I agree that this Guaranty will remain binding on me, whether or not there are any debts outstanding, and you have irrevocably waived notice of revocation or termination of my death or incapacity. Notice of revocation or termination of my death or incapacity will not affect my obligations under this Guaranty with respect to any Debt incurred by or for which you have made a commitment to guarantee before your actual receipt of such notice, and of renewals, extensions, replacements, and modifications of such Debt. I agree that if any other person signing this Guaranty provides a notice of revocation to you, I will still be obligated under this Guaranty until I give you such a notice of revocation to you. If any other person signing this Guaranty dies or is declared incompetent, such fact will not affect my obligation under this Guaranty.

7. PROPERTY. I agree that any Property may be assigned, exchanged, released in whole or in part or substituted without notice to me and without creating, changing or limiting my liability. My obligation is absolute and your failure to perfect any security interest in any real or personal property which impairs the Property will not affect me or my liability under this Guaranty. You are under no duty to purchase or perfect any Property and you are in no way or constructive possession. For purposes of this paragraph, you will not be in "actual" possession when you have physical, beneficial and exclusive control over the Property and have accepted such control in writing. Further, you will only be deemed to be in "constructive" possession when you have both the power and intent to exercise control over the Property.

8. DEFAULT. I will be in default if any of the following occur:

- A. Payments. I fail to make a payment in full when due.
- B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, abandonment of a business by or on behalf of, application of any debt relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary liquidation or dissolution by, or the commencement of any proceeding under any present or future federal or state bankruptcy, insolvency, reorganization, composition or debt relief law by or against me, the Borrower, or any co-debtor, endorser, guarantor or guarantor of this Guaranty or any Debt.
- C. Debt or Insolvency. I file or am declared to be insolvent.
- D. Failure to Perform. I fail to perform any condition of or to pay any amount or payment of this Guaranty.
- E. Other Documents. A default occurs under the terms of any other document relating to the Debt.
- F. Other Agreements. I enter default on any other debt or agreement I have with you.
- G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. Judgment. I fail to satisfy or appeal any judgment against me.
- I. Foreclosure. The Property is used in a manner or for a purpose that constitutes a violation by a legal authority.
- J. Name Change. I change my name or assume an additional name without notifying you before making such a change.
- K. Property Transfer. I transfer all or a substantial part of my money or property.
- L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.
- M. Insolvency. You determine in good faith that a material events change has occurred in my financial condition from the condition set forth in my most recent financial statement before the date of this Guaranty that the present or potential performance of the Debt is impaired for any reason.

Linda A OGDON
South Carolina Guaranty
SC42XMS091100000063926100100Y

Wells Fargo Financial Services P1008, 7000 Bankers Building

10/1/09 LC
Page 1



Ameris-00154

Appendix 01654

9. **WARRANTIES AND COVENANTS.** To the extent not prohibited by law, I warrant protection for payment, demand, notice of acceleration, notice of intent to accelerate and notice of default.

4. **Additional Warranties.** In addition to the extent permitted by law, I covenant to obtain evidence you may wish and generally warrant defenses that may be available based on these actions or based on the status of a party to the Debt or this Guaranty.

(1) You may receive or actions payments on the Debt, regardless of the number of such payments or installments.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or liquidate any Property.

(4) You, or any transferee participating in the Debt, may waive your right of set-off.

(5) You may amend/alter any note, endorsement or participation of the Debt to any person in any amount and I warrant notice of such shall constitute an acknowledgment.

(6) I agree that the Guarantor is authorized to modify the terms of the Debt or any document relating, guaranteeing or relating to the Debt.

(7) You may undertake a realization of any Property in connection with the Debt or any document relating to the Debt or any document relating to the Debt, or as a result of any such realization, or actual amounts received by you arising from the sale of such Property.

(8) I agree to contract to any other person the Borrower, and agree that any delay or lack of discharge in the enforcement of the Debt, or any failure to file a claim or otherwise protect any of the Debt, in no way affects or impairs my liability.

(9) I agree to waive all claims on any real/interest interest, through subordination or otherwise, and each relating in no way affect or breach my RIGHTS, in addition, upon the perfection of the Borrower to lender have been paid in full. I warrant any right of subordination, subordination, subordination in rem, subordination in rem, subordination, and any other right I may have to believe any transfer which you now have or in the future may have against the Borrower or against guarantor or all to any Property.

Any Guaranty which is an "order" as contemplated by the United States Bankruptcy Code, 11 U.S.C. 101, as amended, makes such Guaranty a preference. An order includes, among others, a check, draft, money order or other instrument in control of the Borrower or person or person that is co-signer with the Borrower, an entity in which the Borrower (if a general partner, director, officer or sole officer) has a substantial interest or a share (other than that of a passive partner). Any Guaranty which is not an order makes these warranties void as to such order.

5. **No Waiver of Rights.** Your exercise of a right, at your discretion, from or delay in, the exercise of any of your rights, remedies, privileges or rights to act upon my then performance of any provision contained in the Debt instruments, shall not be construed as a waiver by you, unless your each waiver is in writing and is signed by you.

6. **Waiver of Claims.** I waive all claims for loss or damage caused by you or others or others where you acted reasonably and in good faith.

7. **REMEDIES.** After the Borrower is default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the Borrower immediately due.

B. Suits. You may sue any and all remedies you have under state or federal law or any documents relating to the Debt.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or returns that may be available on the Debt.

D. Payments Made on the Borrower's Behalf. Amounts advanced on the Borrower's behalf will be automatically due and may be added to the balance owing under the Debt.

8. **Set-Off.** You may use the right of set-off. This means you may set off any amount due and payable under the terms of this Guaranty against any right I have to receive money from you.

9. **Right to receive money from you includes the deposit or other account balances I have with you. Any money owed to me on an item presented to me or in your possession for collection or payment and any repurchase agreement or other contractual obligation. Any amount due and payable under the terms of this Guaranty means the total amount in which you are entitled to demand payment under the terms of this Guaranty at the time you present.**

10. **Right to sue others.** If my right to receive money from you is also asserted by another who has not agreed to pay the Debt, your right of set-off will apply to my interest in the collection and to any other amount I could rightfully go and take against an endorsement.

11. **Your right of set-off does not apply to the amount of other obligations where my right of set-off is a representative capacity. It also does not apply to any individual retirement account or other tax deferred investment account.**

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

13. **Waiver.** Except as otherwise required by law, by checking any one or more of these boxes you do not give up your right to use the other remedies. You do not waive a default if you choose not to use a remedy. By checking not to use, any remedy, you do not waive your right to later demand the remedy a default and to use any remedies if the default continues or occurs again.

14. **COLLATERAL EXPENSES AND ATTORNEY'S FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Guaranty or any other document relating to the Debt. To the extent permitted by law, expenses include, but are not limited to, reasonable attorney's fees, court costs and other legal expenses. All fees and expenses will be recovered by the Property I have granted to you. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorney's fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Guaranty. The execution and delivery of this Guaranty will not violate any agreement governing me or to which I am a party.

16. **In addition, I represent and warrant that this Guaranty was entered into at the request of the Borrower, and that I am entitled regarding the Borrower's financial condition and existing indebtedness, authority to borrow and the use and intended use of all Debt proceeds. I further represent and warrant that I have not received any representations or commitments from you or any lender or other person providing me financing for the Borrower, the Borrower's financial condition and existing indebtedness, or the Borrower's authority to borrow or the Borrower's use and intended use of all Debt proceeds.**

17. **RELEASE.** I acknowledge that you are relying on this Guaranty in extending credit to the Borrower, and I have signed this Guaranty to indicate you to extend such credit. I represent and warrant to you that I have a direct and substantial economic interest in the Borrower and agree to derive substantial benefits from any successful completion of the Borrower's financial condition resulting in the collection of indebtedness guaranteed hereby. I agree to rely exclusively on the Debt in reaching this Guaranty connection with this Guaranty and not with any other person or entity. You may rely conclusively on a continuing warranty that continues to be maintained by this Guaranty and you will have no duty to inquire into or confirm the receipt of any such benefits, and this Guaranty will be enforceable whether or not enforceable by any other person or entity.

18. **APPLICABLE LAW.** This Guaranty is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located, except to the extent such laws are preempted by federal law.

19. **ASSIGNMENT, INTEREST AND SUBORDINATION.** This Guaranty may not be amended or modified by oral agreement. No amendment or modification of this Guaranty is effective unless made in writing and signed by you and me. This Guaranty is the complete and final expression of the agreement. If any provision of this Guaranty is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

20. **ASSIGNMENT.** If you assign any of the Debt, you may assign all or any part of this Guaranty without notice to me or my consent, and this Guaranty will remain in the hands of your assignee to the extent of such assignment. You will continue to have the obligation to pay the Debt to the assignee of this Guaranty as to any of the Debt that are not assigned. This Guaranty shall remain in the hands of you and your successors and assigns and any other person to whom you may grant an interest in the Debt and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

21. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Guaranty.

22. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the responsible party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to any Guarantor will be deemed to be notice to all Guarantors. I will advise you in writing of any change in my name, address or other identification information. I will provide you any financial statements or information you request. All financial statements and information that you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may require in order to perfect, continue, and preserve my obligations under this Guaranty and to maintain your lien and/or on any Property. There is of the essence.

23. **CREDIT INFORMATION.** I agree that from time to time you may obtain credit information about me from credit bureaus, including credit bureaus and credit reporting agencies, and report to others (such as a creditor) regarding my credit experience with you. I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

24. **SIGNATURES.** By signing under real, I agree to the terms contained in this Guaranty. I do acknowledge receipt of a copy of this Guaranty.

QUARANTIN
1942 A. D. S. S. S.
Pub. 404

AMERICAN

Linda Gibson Personal Financial Statement

Period: 10/6/2000	
Pimonia, Ansoke	
133 Horse Trail Rd. Bl. George, SC Primary Residence	\$ 300,000.00
177 Quarter Horse Rd. Bl. George, SC	\$ 410,000.00
Auto	\$ 10,000.00
Cato 2000 Trailer	\$ 35,000.00
Other Personal Items	\$ 27,000.00
Total	\$ 722,000.00

Cash in Banks	
3206 Palm Blvd. Acct	\$ 75.00
Gibson Ranch	\$ 5,250.00
BB&T Checking	\$ 150.00
Heritage Seven LLO	\$ 12,000.00
Seven Oaks LLO	\$ 25.00
Final Refinance	\$ 1,000.00
Total	\$ 13,475.00

Assets		TMSB
Tract B, Daniel Island	\$ 170,000.00	248-00-02-042
104 Family Cemetery Rd.	\$ 60,000.00	203-00-01-032
Tract 6 Daniel Island	\$ 483,000.00	271-00-01-003
Kilator Ln. Ct, SC	\$ 987,000.00	271-00-01-087
Clematis Ferry Rd, Lot A, Tract A	\$ 8,480,000.00	271-00-01-040
1000 Pinelind Drive Lot B	\$ 1,780,000.00	271-00-01-094
527 Madras Drive Lot C	\$ 2,026,000.00	271-00-01-095
(Clater Ln. Ct), SC	\$ 455,000.00	271-00-01-129
65 acre Ct, SC	\$ 6,800,000.00	271-00-02-020
2637 Clements Ferry Rd.	\$ 2,800,000.00	271-00-02-030
Highland A Ct, SC	\$ 880,000.00	271-00-02-174
3206 Palm Blvd.	\$ 1,000,000.00	071-00-00-140
109-111 Monoka Corner Shopping Center	\$ 1,990,000.00	
Seven Oaks Apts	\$ 1,100,000.00	
Total	\$ 23,320,000.00	

Total Assets \$ 24,121,275.00

Liabilities	
103 Horse Trail Rd. Bl. George, SC	\$ 151,100.00
3206 Palm Blvd. LOP, SC	\$ 1,550,000.00
133 Horse Trail Home Equity Mtg	\$ 82,262.00
109-111 S. Hwy 52 (Monoka Corner Shopping Center)	\$ 1,110,742.82
Born Loan	\$ 46,200.00
Seven Oaks Apartments	\$ 4,823,932.50
Total	\$ 6,779,380.82

Total Liabilities \$ 6,779,380.82

Net Worth \$ 10,241,015.16

Annual Income	
Cell Tower Lease	\$ 82,400.00
Hidden Cove	\$ 64,375.00
Berdb	\$ 70,000.00
3206 Palm Blvd. Rental	\$ 20,000.00
Monoka Corner Plaza	\$ 400,000.00
Seven Oaks Apartments	\$ 50,000.00
Total	\$ 476,775.00

Linda A. Gibson 10/7/09
 Linda A. Gibson Date



AMERIS-00256

Appendix 01657

From: Sturm, Richard
To: zzz.Deal@amerisbank.com
Sent: 10/13/2009 12:59:05 PM
Subject: RE: Seven Oaks Apts

OK

Richard Sturm
Ameris Bank | President, SC
1901 Ocoee St., Suite 700
Columbia, SC 29201
(C) 803.763.2291 (F) 803.763.2692 (C) 803.653.7597
richard.sturm@amerisbank.com

Visit us online at www.amerisbank.com

From: Zerbst, Karl
Sent: Thursday, October 08, 2009 5:11 PM
To: Sturm, Richard
Subject: RE: Seven Oaks Apts.

See below. I think the right course of action is to now do a term sheet as we have full disclosure subject to approval by all. I also met with Linda and although she has not agreed to the offer of \$1,100,000, I think she will. I plan to visit the parcels of land on Saturday with Linda so we can select the tracts of land that she would offer as collateral. I will need to complete a LOA on both deals very soon so we can decide and this order of priorities. If we can commit next week we then need to allow for the spread so we can close by month end to avoid any carry. Update you were as I know.

Karl H. Zerbst, Jr.
Ameris Bank | Market President
990-C Houston Northwest | Mt. Pleasant, SC 29504
(C) 843-849-8488 (F) 843-505-8330
(C) 843-859-3438 (C) 843-378-4999
kz@amerisbank.com

From: Phillip Murphy [mailto:philmurphy@kwooby.net]
Sent: Thursday, October 08, 2009 4:10 PM
To: Zerbst, Karl
Subject: RE: Seven Oaks Apts.

Karl
Let's move forward. Did your meeting with Linda go OK? Let's put this project to bed and move forward with a closing.
Phillip

-----Original Message-----
From: Zerbst, Karl [mailto:Karl.Zerbst@amerisbank.com]
Sent: Thursday, October 08, 2009 4:13 PM
To: Phillip Murphy
Subject: RE: Seven Oaks Apts.

In response to your email, we can not offer a fixed rate at 4.25% as I mentioned to you when I met you today but we can cap the interest rate to where it is left to both parties. If you want to transfer the debt after 2 years that's fine but that will require a new note. What we discussed today we both agreed it was fair and equitable. And that is how I have always been with you and others. I am not able to negotiate loans beyond what I shared at your house. Let me know if you want a term sheet that supports our conversation, thanks.

Karl H. Zerbst, Jr.
Ameris Bank | Market President
990-C Houston Northwest | Mt. Pleasant, SC 29504
(C) 843-849-8488 (F) 843-505-8330
(C) 843-859-3438 (C) 843-378-4999
kz@amerisbank.com

From: Phillip Murphy [mailto:philmurphy@kwooby.net]
Sent: Thursday, October 08, 2009 4:10 PM
To: Zerbst, Karl
Subject: Seven Oaks Apts.

Karl, please review and call me
Thanks,
Phillip

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If it is not an offer or acceptance, and it is not intended

AMERIS-EMAILS-000199



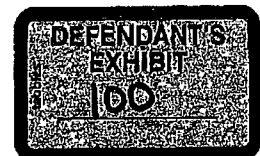
Appendix 01658

From: zzzDisabled - Zerbst, Karl
To: Charpie, David; Sturm, Richard
Sent: 11/6/2009 3:40:26 PM
Subject: Linda Gibson

Update: I meet with her Monday at 4:00 to discuss what tracts of land and how many we will use to secure our residual loan. I plan to offer a term sheet for two loans so we can move forward in the restructuring of the current indebtedness. She told me last night she is expecting an offer for the beach house and as a result First Citizens is waiting to see before they start any type of action. She has the property listed for \$1,650,000 which essentially pays the debt and commission. Update again after Monday.

Karl H. Zerbst, Jr.

Ameris Bank | Market President
986-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



AMERIS-EMAILS-001165

Appendix 01659

From: zzzDisabled - Zerbst, Karl
To: Charpla, David; Snipes, Don
Sent: 11/9/2008 11:10:24 PM
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



AMERIS-EMAILS-000220

Appendix 01660

From: zzzDisabled - Zerbst, Karl
To: Charpia, David; Snipes, Don; Sturm, Richard
Sent: 11/17/2009 10:40:36 PM
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@bttelecom.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 Waterboro in the afternoon but will check emails early and mid-day. Rob

From: Zerbst, Karl [mailto:Karl.Zerbst@amerisbank.com]
Sent: Friday, November 13, 2009 5:39 PM
To: papa@bttelecom.net
Subject: Re: Linda Gibson

He represents me personally but not the bank. That would be his conflict 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.



AMERIS-EMAILS-000214
Appendix 01661

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
8 Carriage Lane
Charleston, SC 29407

AMERIS-EMAILS-000215

Appendix 01662

From: zzzDisabled - Zerbst, Karl
To: Charpia, David; Snipes, Don
CC: Sturm, Richard
Sent: 11/23/2009 10:46:02 PM
Subject: Linda Gibson

She is coming to my office tomorrow with or without her attorney, I would like for him to attend. Do you want to be on the phone for the discussion? She is planning on being in my office at 1:15, does this work? Richard – you are certainly invited as well.

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) 843-375-4989

karl.zerbst@amerisbank.com



AMERIS-EMAILS-000213

Appendix 01663

From: zzzDisabled - Zerbst, Karl
To: Sturm, Richard; Snipes, Don; Charpla, David
Sent: 11/25/2009 2:27:38 PM
Subject: FW: Linda Gibson

Don – nothing has been committed to her as she has not been forthright in her decisions. However, this figure was discussed after Richard made the offer thinking this might make the difference in her moving forward. We might want to consider deferring the interest on the \$300,000 if she moves forward today; however allow the sale of the apartments if more than the current offer be applied to the \$300,000. Just an idea

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) 843-375-4989
karl.zerbst@amerisbank.com

From: Snipes, Don
Sent: Wednesday, November 25, 2009 9:12 AM
To: Sturm, Richard; Zerbst, Karl; Charpla, David
Subject: RE: Linda Gibson

Have we "committed" on the \$300M yet? If not, given her asset values, maybe we reduce that to \$200M or less, but I don't want this to clog up any deal we can strike.

From: Sturm, Richard
Sent: Wednesday, November 25, 2009 8:45 AM
To: Zerbst, Karl; Charpla, David; Snipes, Don
Subject: RE: Linda Gibson

We discussed reducing the residual loan by 300,000 to induce her to take out deal. Is that off the table now?

Richard Sturm

Ameris Bank | President SC

1301 Gervais St. | Suite 700
Columbia, SC 29201
(D) 803.733.2681 (F) 803.733.2692 (C) 803.603.7897
richard.sturm@amerisbank.com

Visit us online at www.amerisbank.com

From: Zerbst, Karl
Sent: Wednesday, November 25, 2009 8:11 AM
To: Charpla, David; Snipes, Don
Cc: Sturm, Richard
Subject: Linda Gibson



As we discussed last evening Linda is to decide today, preferably by noon if she will in fact decide first, to sell the property and stay committed to that decision and second, agree to the terms and most importantly the collateral that I have suggested. To that point, I would like for us to document through this email our plan so I can move quickly to put things in place for the betterment of the bank. Loan #1 for \$1,200,300 secured by the apartment property for 90 days interest only monthly to allow time for Linda to sell or refinance. In 90 days, it must be gone. Loan #2 – Residual loan - \$1,846,237 for 90 days interest only then term out for 9 months, which will be at maturity. Rates of interest are at 4.25% with payments for the 9 months at 30 year amo. This structure is all predicated on Linda offering two tracks of land held in her name and to be cross collateralized on both loans. The 2 tracks are identified as 271-00-01-040 and 271-00-02-030. Gary Pruitt has suggested a value of \$2,450,000 for both tracks. In my opinion these two tracks have the most value in Linda's portfolio. If we can accomplish this structure and

AMERIS-EMAILS-000196

Appendix 01664

quickly it allows for a win-win for both the bank and Linda. It was decided last night we could close with out the appraisals and subsequently order them once closed. I would have the Woody Law Firm to close. If Linda were to use her attorney, I would still have Woody review the documents and borrower's expense. Let me know if I have illustrated our discussion correctly. On the other hand, if she does not agree then David gets the file.

Karl H. Zerbst, Jr.

Ameris Bank | Market President

966-C Houston Northcut | Mt. Pleasant, SC 29464

(D) 843-849-5488 (F) 843-881-8350

(C) 843-452-3838 (O) 843-375-4969

karl.zerbst@amerisbank.com

AMERIS-EMAILS-000197

Appendix 01665

From: zzzDisabled - Zerbst, Karl
To: Charpia, David; Snipes, Don
Sent: 11/25/2009 7:08:48 PM
Subject: FW: Linda Gibson

Just called Linda she is awaiting to hear from her attorney, I look to hear from her soon. Let you know

Karl H. Zerbst, Jr.

Ameris Bank | Market President

986-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: Zerbst, Karl
Sent: Wednesday, November 25, 2009 8:11 AM
To: Charpia, David; Snipes, Don
Cc: Sturm, Richard
Subject: Linda Gibson

As we discussed last evening Linda is to decide today, preferably by noon if she will in fact decide first, to sell the property and stay committed to that decision and second, agree to the terms and most importantly the collateral that I have suggested. To that point, I would like for us to document through this email our plan so I can move quickly to put things in place for the betterment of the bank. Loan #1 for \$1,200,300 secured by the apartment property for 90 days interest only monthly to allow time for Linda to sell or refinance. In 90 days, it must be gone. Loan #2 – Residual loan - \$1,646,237 for 90 days interest only then term out for 9 months, which will be at maturity. Rates of interest are at 4.25% with payments for the 9 months at 30 year amo. This structure is all predicated on Linda offering two tracks of land held in her name and to be cross collateralized on both loans. The 2 tracks are identified as 271-00-01-040 and 271-00-02-030. Gary Pruitt has suggested a value of \$2,450,000 for both tracks. In my opinion these two tracks have the most value in Linda's portfolio. If we can accomplish this structure and quickly it allows for a win-win for both the bank and Linda. It was decided last night we could close with out the appraisals and subsequently order them once closed. I would have the Woody Law Firm to close. If Linda were to use her attorney, I would still have Woody review the documents and borrower's expense. Let me know if I have illustrated our discussion correctly. On the other hand, if she does not agree then David gets the file.

Karl H. Zerbst, Jr.

Ameris Bank | Market President

986-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



AMERIS-EMAILS-001166

Appendix 01666

From: Charpla, David
To: zzzDisabled - Zerbst, Karl
Sent: 11/25/2009 10:26:58 PM
Subject: Re: Linda Gibson

I will touch base with you on Monday when I get back to the office. I hope you have a great thanksgiving. David

From: Zerbst, Karl
To: Charpla, David
Cc: Snipes, Don; Sturm, Richard
Sent: Wed Nov 25 17:21:59 2009
Subject: Linda Gibson

She called me after she talked to Rob Papa and he doesn't want her to make a decision until he has time to think on the issue. So I hand it over to you. She did ask and I told her of the parcels that would be acceptable to us. I think she will decide to do what has been recommended but Rob may slow the process down. Let me know if I can help.

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



AMERIS-EMAILS-001169

Appendix 01667

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into as of December 1, 2010 (the "Effective Date") by and among Galt Valley, LLC ("Galt"), Heritage Seven, LLC ("Heritage"), Paul William Gibson Family Trust ("Trust"), and Linda A. Gibson f/k/a Linda Ann Avinger ("Gibson"). The signatories to this Agreement, as the context may require, are sometimes referred to individually as a "party" and collectively as the "Parties".

RECITALS

WHEREAS, Heritage is the maker of a promissory note also known as loan number 7970000179-101 dated November 2, 2007 ("Note 101"), made payable to Ameris Bank and its successors and assigns, in the original principal amount of \$2,810,164.50.

WHEREAS, Note 101 is secured by a Mortgage dated November 2, 2007 (the "101 Mortgage") covering certain property identified therein (the "Charleston Property"), and recorded at Book L643, Page 739, in the property records of Charleston County RMC on November 6, 2007, South Carolina.

WHEREAS, Note 101 was also secured by an Assignment of Leases and Rents dated November 2, 2007 (the "101 Leases"), and recorded in Book O643, page 226, in the property records of Charleston County RMC, South Carolina on November 6, 2007.

WHEREAS, Heritage is the maker of a promissory note also known as loan number 7970000179-103 dated October 1, 2009 ("Note 103"), made payable to Ameris Bank and its successors and assigns, in the original principal amount of \$ 50,071.96.

WHEREAS, Note 103 is secured by a Mortgage, Assignment of Leases and Rents dated November 2, 2007 (the "103 Leases") covering certain property identified therein (the "Berkeley Property"), and recorded at Book 6975, page 204, and Book 6975, page 212, respectively in the property records of Berkeley County, South Carolina.

WHEREAS, the indebtedness evidenced by Note 101 and Note 103 (collectively, the "Notes") were guaranteed by the Trust and Gibson (the "Guaranties"), who at all relevant times, were the sole members and managers of Heritage.

WHEREAS, Heritage failed to make payments due under the Notes and Ameris Bank declared a default thereunder.

WHEREAS, on June 14, 2010, Ameris Bank filed a lawsuit against Heritage et al in an action styled Ameris Bank v. Linda A. Gibson, formerly known as Linda Ann Avinger, individually and as Trustee of the Paul W. Gibson Family Trust, Heritage Seven, LLC, and Access Portable Toilets, Inc., in the Court of Common Pleas, Berkeley County, South Carolina, Civil Action File No. 2010-CP-08-2134 (the "Lawsuit"), asserting claims for breach of the Notes, breach of the Guaranties and for attorneys' fees. Heritage and Gibson, individually and as trustee, answered and asserted counterclaims against Ameris Bank in the Lawsuit.



WHEREAS, on July 14, 2010, Ameris Bank, assigned Note 101, Note 103, 101 Mortgage, 103 Mortgage, 101 Leases, 103 Leases, and Guaranties (collectively, the "Loan Documents"), to Galt.

WHEREAS, by Consent Order, dated August 23, 2010, Galt, as assignee of the Loan Documents, was substituted for Ameris Bank as Plaintiff in the Lawsuit, and Ameris Bank was interposed as a Counterclaim Defendant.

WHEREAS, the Parties, without any admission of liability, desire to fully compromise and settle all litigation, claims and disputes between them, and to avoid the uncertainty, inconvenience and expense of further litigation, upon the terms contained herein.

NOW, THEREFORE, in consideration of the covenants, promises, releases and other provisions contained herein, and the recitals hereto which are an integral part of this Agreement, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Transfer of Interest in the Collateral Properties. Heritage hereby agrees to execute deeds attached hereto as Exhibits A and B and bill of sale attached hereto as Exhibit C as well as any other documents necessary to effect the transfer of all of its right, title and interest in the real property and personal property secured by the 101 Mortgage and 103 Mortgage, and that such transfer is effective as of the Effective Date, with Galt now the owner.

2. Payment by Heritage to Galt. Heritage agrees to pay Galt the sum of all monies received from Leases and Rents as to the property in Berkeley County since October 15, 2010 and December 1, 2010 as to the property in Charleston County related to the properties which are the subject of the recitals.

3. Satisfaction of the Notes. The Parties agree that Note 101 and Note 103 are deemed satisfied as a result of this Agreement and Galt, therefore, shall cancel the Loan Documents of record.

5. Dismissal of Litigation. Within ten (10) days of the execution of this Agreement, the Parties agree to dismiss all pending litigation between or among them as follows:

(a) The Parties agree to file a Consent Order and Stipulation of Dismissal With Prejudice in the Lawsuit, in the form attached hereto as Exhibit D.

6. Releases.

(a) Heritage, the Trust, and Gibson on behalf of themselves and their respective predecessors, successors, assigns, heirs, executors, parent

corporations, subsidiaries, affiliates, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, do hereby fully, finally and forever release and discharge Galt and its respective successors, assigns, parent corporations, subsidiaries, affiliates, partnerships, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, from any and all claims, disputes, demands, actions, causes of action or suits of any kind or nature whatsoever, in law or equity, whether known or unknown, arising out of or related in any way to any acts, events, facts or transactions from the beginning of time through the Effective Date of this Agreement, including without limitation, any and all claims or counterclaims that were or could have been asserted in the Lawsuit but expressly reserves all claims against Ameris and its agents and employees.

(b) Galt, on behalf of itself and its predecessors, successors, assigns, parent corporations, subsidiaries, affiliates, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, does hereby fully, finally and forever release and discharge Heritage, the Trust, and Gibson, and their respective predecessors, successors, assigns, heirs, executors, parent corporations, subsidiaries, affiliates, past and present officers, directors, managers, employees, partners, members, shareholders, owners, attorneys, representatives and agents, from any and all claims, disputes, demands, actions, causes of action or suits of any kind or nature whatsoever, in law or equity, whether known or unknown, arising out of or related in any way to any acts, events, facts, transactions, or documents which are the subject of the recitals from the beginning of time through the Effective Date of this Agreement, including without limitation, any and all claims or counterclaims that were or could have been asserted in the Lawsuit.

(c) ~~The releases set forth above in paragraphs 6(a) and 6(b) shall not release or otherwise affect any rights and obligations established by or under this Agreement, or the agreements and instruments executed in connection herewith.~~

7. Covenant Not to Sue. Each Party hereby covenants and agrees that it will not commence, prosecute, authorize, direct, participate or assist in any way in the commencement or prosecution of any action, suit, arbitration, complaint, or other proceeding against the other based on any claims released by it herein.

8. Notices. All notices and communications under this Agreement shall be in writing and shall be given by (a) hand delivery, (b) first class mail (postage prepaid), (c) certified mail, return receipt requested (postage prepaid), or (d) nationally-recognized overnight commercial delivery service (charges prepaid) to the addresses listed in this Agreement. Notice shall be deemed to be effective: (a)

if by hand delivery, upon delivery; (b) if by mail, upon the expiration of five (5) business days from the date first deposited in the United States mail, inclusive of the day deposited; (c) if by certified mail, return receipt requested, upon the expiration of five (5) business days from the date first deposited in the United States mail, inclusive of the day deposited; and (d) if by overnight delivery service, on the date of delivery. A Party may change its address by giving written notice to the other Parties as specified herein. The current notice addresses of the Parties are:

If to Galt:

Galt Valley, LLC
Attn: Jeremiah A. Henderson, III
3540 W. Sahara Avenue #729
Las Vegas, NV 89102

With copy to:

Rosen, Rosen, & Hagood, LLC
Attn: Alice Paylor
134 Meeting Street, Suite 200
P.O. Box 893
Charleston, South Carolina 29402-0893

If to Heritage or Gibson:

Heritage Seven, LLC
Attn: Linda Gibson
133 Horse Trail Rd
St. George, South Carolina 29477

With copy to:

Andrew K. Epting, Jr., LLC
Attn: Andrew K. Epting, Jr.
3 State Street
Charleston, South Carolina 29401

9. No Prior Assignment. Each Party represents and warrants that it has not assigned or transferred or purported to assign or transfer to any person, firm, corporation or other entity any of the claims released by it in this Agreement.

10. Governing Law and Venue. This Agreement shall in all respects be governed, construed, interpreted and enforced in accordance with the laws of the State of South Carolina, without regard to its choice of law principles.

11. No Admission of Liability. In entering into this Agreement, no Party is admitting the sufficiency of any of the claims, counterclaims, assertions,

contentions, evidence, or position of any other Party, nor the sufficiency of any defense to any such claims, counterclaims, assertions, contentions, evidence or position. This Agreement is executed by the Parties for the sole purpose of compromising and settling the claims herein.

12. Entire Agreement. This Agreement and the agreements and instruments executed in connection herewith, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, offers and negotiations, oral or written.

13. Amendments, Modifications. This Agreement may not be amended or modified except by a written instrument signed by the Parties.

14. Severability. In the event that any term or provision of this Agreement is found to be invalid, unenforceable or void, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect, and the term or provision held to be invalid, unenforceable or void shall be deemed not to be a part of this Agreement.

15. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

16. Authority and No Violation. Each Party represents and warrants to each other Party that (a) it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder, (b) such execution, delivery and performance have been duly and validly authorized by all necessary corporate or other action, (c) such execution, delivery and performance will not violate or breach its charter or bylaws or any agreement to which it is a party or by which it might be bound, and (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

17. Advice of Counsel. ~~The Parties represent and warrant to each other that they~~ have fully read this Agreement, have consulted with their counsel regarding the Agreement, understand its effects, and without coercion or duress, enter into this Agreement freely and voluntarily.

18. Interpretation of Agreement. In the interpretation of this Agreement, there shall be no presumptions made on account of draftsmanship inasmuch as this Agreement has been negotiated, reviewed and approved by all Parties and their counsel.

19. Settlement Documentation/Counterparts. The Parties agree to execute any further documents necessary to effectuate this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all counterparts so executed shall constitute one agreement binding upon all of the Parties hereto, notwithstanding that all of the Parties are not signatories to the

same counterpart. Signatures transmitted by facsimile or by electronic mail shall be deemed originals.

20. Transition of Ownership of Properties. Gibson, the Trust and Heritage agree to assist Galt in the transition of the ownership of the Properties and to provide to Galt all documents and information in their possession concerning the operation of the Charleston and Berkeley Properties and to assist in any way necessary to make a smooth transition of the ownership of the Properties.

21. No other liens on Properties. Gibson, the Trust and Heritage attest that there are no liens on the Properties other than the mortgage liens previously described and a Mechanic's Lien from Access Portable Toilets, Inc., and they further agree that, as of December 1, 2010, should there be any additional liens on the Properties, Gibson, the Trust and Heritage will be responsible for satisfying those liens within thirty (30) days of receipt of notice from Galt.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year written above.

Galt Valley, LLC

By: _____

Name: _____

Title: _____

Heritage Seven, LLC

By: Linda Gibson

Name: _____

Title: MANAGING MEMBER

Paul W. Gibson Family Trust

By: Linda Gibson

Name: _____

Title: MANAGING MEMBER

Linda Gibson
Linda Gibson

TITLE NOT SEARCHED BY ROSEN, ROSEN & HAGOOD, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that the HERITAGE SEVEN, LLC (hereinafter "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to the Grantor in hand paid at and before the sealing and delivery of these presents by GALT VALLEY, LLC (hereinafter "Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released to the Grantee, its successors and assigns forever, all right, title, and interest of Grantor in and to all of the property described on Exhibit "A" which is attached hereto, made a part hereof, and incorporated herein by reference.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee hereinabove named, and its successors and assigns forever.

And the Grantor does hereby bind the Grantor and its successors and assigns to warrant and forever defend all singular and said premises unto the Grantee hereinabove named, and its successors and assigns and against the Grantor and its successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)



Appendix 01674

WITNESS the Grantor's hand and seal this 3rd day of December, 2010.

IN THE PRESENCE OF:

HERITAGE SEVEN, LLC

Carol Johnson
V. Sheri Towne

By: Linda A. Gibson
Linda A. Gibson f/k/a Linda Avinger
Its: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, Vicki Sheri Towne, Notary Public for South Carolina, do hereby certify that HERITAGE SEVEN, LLC, by Linda A. Gibson, its Managing Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3rd day of December, 2010.

Vicki Sheri Towne
Notary Public for South Carolina
My Comm. Expires: 08-14-2017 commission expires: _____
VICKI SHERI TOWNE
NOTARY PUBLIC
SOUTH CAROLINA

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Charleston, containing 3.633 acres, more or less, as shown and designated as Tracts A & B on a plat prepared by Sigma Engineers, Inc. dated April 14, 1971, and recorded in the RMC Office for Charleston County on April 28, 1971, in Plat Book AA at Page 37. Reference is hereby made to the most recent survey for a more complete and accurate metes and bounds description thereof.

SUBJECT TO all restrictions, set back lines, road ways, easements and rights of way, if any, appearing of record on the premises, or on the recorded plat(s) which affect the property hereinabove described.

BEING the same property conveyed to Grantor by deed of ABESPRO, LLC dated November 2, 2007 and recorded November 6, 2007 in Book L-643 at Page 016 in the RMC Office for Charleston County, South Carolina.

TMS No.: 485-03-00-114

Address for Tax Bill: 3540 West Sahara Avenue, # 729
Las Vegas, NV 89102

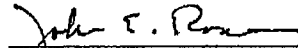
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT RE DEED RECORDING FEE


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 being transferred by Heritage Seven, LLC to Galt Valley, LLC for property known as 2625 Otranto Road, North Charleston, Charleston County, South Carolina, 29406, bearing TMS No. 485-03-00-114 on December 3, 2010.
3. CHECK ONE of the following:
 - (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 of exemption No. 13, deed in lieu; if exempt, skip items 4-7 and go to item 8 of this Affidavit.
4. Check one of the following if either 3(a) or 3(b) 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 .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) \$.00 the amount listed in 4 above; LESS
 - (b) \$~~----~~ 0.00, the amount listed in 5 above (if none, show 0);
 - (c) \$~~.00~~ Subtract 6(b) from 6(a) and place 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 Grantor and Grantee.

I understand that a person required to furnish this Affidavit who willfully 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.


John E. Rosen

SWORN to before me this
3rd day of December, 2010


Notary Public for South Carolina
My Commission Expires: 9-8-2020

Appendix 01677

TITLE NOT SEARCHED BY ROSEN, ROSEN & HAGOOD, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY) GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that the HERITAGE SEVEN, LLC (hereinafter "Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to the Grantor in hand paid at and before the sealing and delivery of these presents by GALT VALLEY, LLC (hereinafter "Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released to the Grantee, its successors and assigns forever, all right, title, and interest of Grantor in and to all of the property described on Exhibit "A" which is attached hereto, made a part hereof, and incorporated herein by reference.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee hereinabove named, and its successors and assigns forever.

And the Grantor does hereby bind the Grantor and its successors and assigns to warrant and forever defend all singular and said premises unto the Grantee hereinabove named, and its successors and assigns and against the Grantor and its successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)



Appendix 01678

WITNESS the Grantor's hand and seal this 2nd day of December, 2010.

IN THE PRESENCE OF:

HERITAGE SEVEN, LLC

Laura Gibson
V. Shin Town

By: Linda A. Gibson
Linda A. Gibson f/k/a Linda Avinger
Its: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, Vicki Shin Town, Notary Public for South Carolina, do hereby certify that HERITAGE SEVEN, LLC, by Linda A. Gibson, its Managing Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2nd day of December, 2010.

Vicki Shin Town
Notary Public for South Carolina
My Comm. Exp. 06-14-2017 My commission expires: _____
VICKI SHERI TOWN
NOTARY
PUBLIC
SOUTH CAROLINA

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the County Of Berkeley, South Carolina, and shown and designated as "Residential Property of Linda Ann Gibson TMS # 271-00-01-037 (now TMS # 271-00-01-129, on a "Plat Showing a 100' Right of Way Designated Parcels "A" and "B" and a 50' Right of Way Designated Parcels "C" & "D", Parcels "B" & "D" Being owned by Linda Ann Gibson, Parcels "A" & "C" being owned by the Heirs of Ben Billinger, Parcels "A" Thru "D" about to be acquired by the South Carolina State Ports Authority, Parcels located in Saint Thomas-Saint Dennis Parish, Berkeley County, South Carolina" prepared by Cornerstone Surveying & Engineering, Inc. on June 6, 1997, and recorded in the RMC Office for Berkeley County in Plat Cabinet N, at Page 86.

SUBJECT TO all restrictions, set back lines, road ways, easements and rights of way, if any, appearing of record on the premises, or on the recorded plat(s) which affect the property hereinabove described.

BEING a portion of the same property conveyed to Grantor by deed of New Mary Ann Baptist Church a/k/a Maryann Baptist Church dated May 24, 1985 and recorded September 12, 1985 in the ROD Office for Berkeley County in Book A-616 at Page 220, and by Deed of W.R. Detyens dated May 15, 1969 and recorded in Book A-261 at Page 40.

TMS No.: 271-00-01-129
Address for Tax Bill: 3540 West Sahara Avenue, # 729
Las Vegas, NV 89102

Appendix 01680

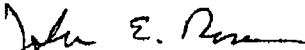
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT RE DEED RECORDING FEE


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 being transferred by Heritage Seven, LLC to Galt Valley, LLC for property known as 615 Klister Lane, Charleston, Charleston County, South Carolina, 29492, bearing TMS No. 271-00-01-129 on December 3, 2010.
3. CHECK ONE of the following:
 - (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 of exemption No. 13, deed in lieu; if exempt, skip items 4-7 and go to item 8 of this Affidavit.
4. Check one of the following if either 3(a) or 3(b) 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 .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) \$.00 the amount listed in 4 above; LESS
 - (b) \$--- 0.00, the amount listed in 5 above (if none, show 0);
 - (c) \$:00 Subtract 6(b) from 6(a) and place 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 Grantor and Grantee.

I understand that a person required to furnish this Affidavit who willfully 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.


John E. Rosen

SWORN to before me this
3rd day of December, 2010


Notary Public for South Carolina
My Commission Expires: 9-8-2020

Appendix 01681

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that HERITAGE SEVEN, LLC (hereinafter called the "Grantor"), for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS to it in hand paid, at and before the sealing and delivery of these presents by GALT VALLEY, LLC, the receipt whereof it does hereby acknowledge, has bargained and sold, and by these presents does bargain, sell and deliver to the said GALT VALLEY, LLC, its successors and assigns forever, all of its right, title and interest in the following described property, to wit:

[insert property description] *SEE ATTACHED LIST*

TO HAVE AN TO HOLD, all and singular, the said goods, chattel, equipment and all other items of personal property to the said GALT VALLEY, LLC, its successors and assigns, to its own use forever.

The Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said personal property unto the GALT VALLEY, LLC, its successors and assigns, against itself and its successors and assigns and any person lawfully claiming through Grantor.

The Grantor does hereby warrant that said personal property is free and clear from all claims, liens and encumbrances by any person claiming through Grantor.



Appendix 01682

IN WITNESS WHEREOF, the Grantor has hereunto set its Hand and Seal, this 3rd day of December, 2010

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

HERITAGE SEVEN, LLC

David Johnson
Vicki Shi-Tou

By: Linda A. Gibson
Linda A. Gibson f/k/a Linda Avinger
Its: Managing Member

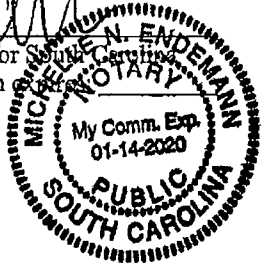
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SS

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named HERITAGE SEVEN, LLC, by Linda A. Gibson, its Managing Member, sign, seal, and as its act and deed, deliver the within written instrument, and that (s)he with the other witness witnessed the execution thereof.

Vicki Shi-Tou

Sworn to before me this
3rd day of December, 2010.

Michelle N. Endemann
Notary Public for South Carolina
My commission expires


100

A O, S, R, D
B S, R, D
C E, S, D
D O, S, R, D
E O, S, R, D
F O, S, R, D
G O, S, R, D
H E, S, D

200

A O, S, R, D
B O, S, D, R
C E, S, D
D O, S, R, D
E O, S, R, D
F O, S, R, D
G O, S, R, D
H E, S, R, D

300

A E N
B E N
C E N
D E N
E E N
F E N
G E N
H E N

R, 200
Storage

400

A O, S, R
B O, S, R, D
C O, S, R, D
D E, R, D
E E, S, R, D
F E, N
G O, S, R, D
H O, S, R, D

500

A O, S, R, D
B E, S, D
C E, D
D O, S, R, D
E O, S, R, D
F E, S
G E, S, R, D
H E, D, S

600

A E D
B E N
C E N
D E N
E E D
F E, S, D, R
G E, R, D
H F, D

R = Refrigerator
S = stove
D = Dishwasher
E = Empty
N = No Appliances
O = Occupied

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

Galt Valley, LLC,)
Plaintiff,)
v.)

Linda A. Gibson, formerly known as Linda)
Ann Avinger, Individually and as Trustee of)
the Paul William Gibson Family Trust,)
Heritage Seven, LLC and Access Portable)
Toilets, Inc.,)
Defendants.)

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

v.)
Ameris Bank,)
Counterclaim Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2010-CP-08-2134

ORDER

This matter comes before me on Motion of the Plaintiff (Galt Valley, LLC) and with the consent of the Defendants, Linda A. Gibson, formerly known as Linda Ann Avinger, Individually and as Trustee of the Paul William Gibson Family Trust, and Heritage Seven, LLC. It appears that the claims against the Defendants on the obligations and notes sued upon by Ameris Bank and assigned to Plaintiff have been settled and that Galt and the Defendants have released each other; and

It further appearing that the Counterclaimants' claims against the Counterclaim Defendant, Ameris Bank, remain as stated by the Defendants in their pleading as filed on July 20, 2010.



Appendix 01685

Order
Case No.: 2010-CP-08-2134

It is ordered that the claims of the Plaintiff are dismissed with prejudice and that the claims of the Counterclaimant against the Counterclaim Defendant continue.

IT IS SO ORDERED.

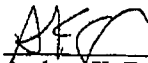
Robert E. Watson
Master-in-Equity

_____, 2010
Moncks Corner, South Carolina

Order
Case No.: 2010-CP-08-2134

WE SO MOVE:

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr.
3 State Street
Charleston, SC 29401
Ph.: 843-377-1871
Fx.: 843-377-1310

GEORGE J. KEFALOS, PA
George J. Kefalos
3 State Street
Charleston, SC 29401
Ph.: 843-722-6612
Fx.: 843-377-1310

Attorneys for Defendants Linda A. Gibson, formerly
Known as Linda Ann Avinger, Individually and as Trustee of the
Paul William Gibson Family Trust and Heritage Seven, LLC

Order
Case No.: 2010-CP-08-2134

I CONSENT:

ROSEN, ROSEN & HAGOOD, LLC

Alice F. Paylor
134 Meeting St., Suite 200
PO Box 893
Charleston, SC 29402
Ph.: 803-404-6900
Fx.: 803-404-6901
Email: apaylor@rrhlawfirm.com

Attorney for Plaintiff Galt Valley, LLC

Order
Case No.: 2010-CP-08-2134

I CONSENT:

McDONALD, McKENZIE, RUBIN, MILLER & LYBRAND, LLP

Ben N. Miller, III
PO Box 58
Columbia, SC 29202
Ph.: 803-252-0500
Email: bmiller@mmrml.com

Attorney for Plaintiff Ameris Bank

Order
Case No.: 2010-CP-08-2134

I CONSENT:

SOWELL GRAY STEPP & LAFFITTE, LLC

Amy L. B. Hill
PO Box 11449
Columbia, SC 29211
Ph.: 803-929-1400
Fx.: 803-929-0300
Email: ahill@sowellgray.com

Attorney for Counterclaim Defendant Ameris Bank

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Linda A. Gibson, Heritage Seven, LLC,
and Seven Oaks Apartments, LLC,

Plaintiffs,

vs.

Rolando V. Villavicencio, RPV
Investments, LLC, and DPS of
Charleston, Inc., d/b/a RE/MAX
Professional-Realty,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2008-CP-10-4282

**CONTRACT OF AND
STIPULATION OF SETTLEMENT**

ES
FILED
FEB 17 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT

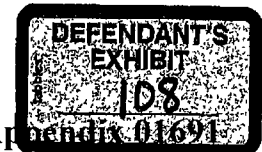
It appearing that the parties have compromised and settled their differences and wish to reduce this agreement to a formal stipulation. The Defendants shall pay the sum of Eight Hundred Fifty Thousand and no/100 (\$850,000.00) Dollars, allocated as follows:

Linda A. Gibson \$400,000, it being expressly understood that \$200,000 is being allocated to the causes of action for conversion and intentional infliction of emotional distress and the balance to settle the remaining causes of action and damages.

Heritage Seven, LLC \$449,000

Seven Oaks Apartments, LLC \$1,000

The Plaintiffs shall execute a full final and complete Release of the defendants above named and their owners, agents, members, employees, insurers, heirs and assigns, with



Appendix 01691

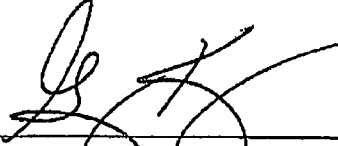
an indemnification provision for any unsatisfied liens, subrogation interests and unpaid medical bills; notwithstanding the aforesaid, the aforesaid plaintiffs release no claims against Ameris Bank or its agents or servants. The Defendants shall provide the Release and Stipulation of Dismissal with prejudice and the settlement check within thirty (30) days of the signing of this agreement.

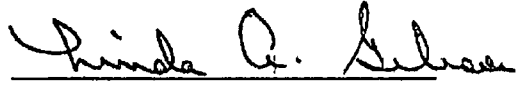
The Plaintiff shall cause all medical liens and subrogation interests, if any, to be satisfied from the proceeds of the settlement and will indemnify and hold the Defendants harmless from any unsatisfied medical liens or subrogation interests.

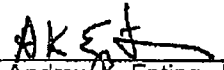
The parties, through their attorneys of record, agree and stipulate that this is the voluntary settlement reached between them and it is ordered that this settlement be entered into the record at this time.

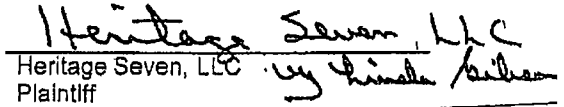
For the separate consideration of \$20.00, the terms of this settlement shall not be disclosed publicly to any print or media source or published in any way by any party, except as may be required by law or required to negotiate a settlement with other un-named entities. The parties, their affiliates, successors, subsidiaries, and successors, and any agents, officers and employees thereof, shall not comment publicly or privately, or make any disparaging communication to or with any non-party concerning the allegations made in the case or defenses asserted, or concerning the underlying facts giving rise to this action, or to the terms of settlement or the reasons for settlement. If inquiry is made by media or other entities of this information, the parties, their affiliates, successors, subsidiaries, and successors, and any agents, officers and employees thereof shall have no comment aside from stating that the parties have resolved their differences entirely and have moved forward in a positive mutually beneficial manner. These terms are specifically bargained for.

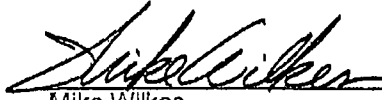
AS OF FEBRUARY 16, 2012:

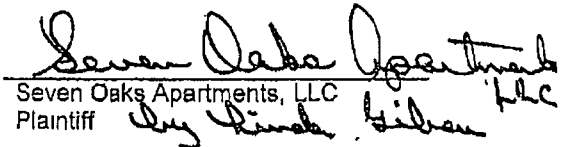

George Kefalos
Attorney for Plaintiffs Linda A. Gibson,
Heritage Seven, LLC, and Seven
Oaks Apartments, LLC

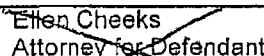

Linda A. Gibson
Plaintiff

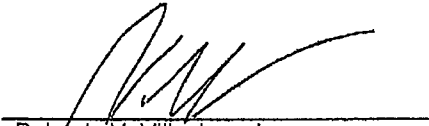

Andrew R. Epting, Jr.
Attorney for Plaintiffs Linda A. Gibson,
Heritage Seven, LLC, and Seven
Oaks Apartments, LLC

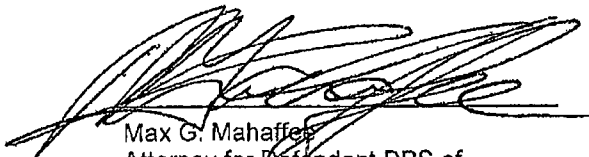

Heritage Seven, LLC
Heritage Seven, LLC
Plaintiff

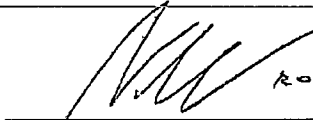

Mike Wilkes
Attorney for Defendants Rolando V.
Villavicencio and RPV Investments,
LLC


Seven Oaks Apartments
Seven Oaks Apartments, LLC
Plaintiff

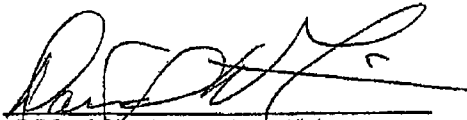

Ellen Cheeks
Attorney for Defendants Rolando V.
Villavicencio and RPV Investments,
LLC


Rolando V. Villavicencio
Defendant


Max G. Mahaffey
Attorney for Defendant DPS of
Charleston, Inc. d/b/a RE/MAX
Professional Realty


ROLANDO
VILLAVICENCIO,
MEMBER
RPV Investments, LLC
Defendant


CNA INSURANCE
KEVIN APPLE

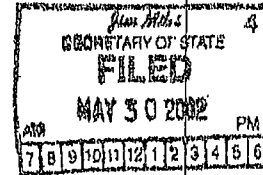

DPS of Charleston, Inc. d/b/a
RE/MAX Professional Realty
Defendant

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

MAY - 3 2012

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY



M. H. [Signature]
MAKE OR PRINT SECRETARILY IN BLACK INK
SECRETARY OF STATE OF SOUTH CAROLINA

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Section 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

- The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is: 3205 Palm Boulevard, LLC
- The address of the initial designated office of the Limited Liability Company in South Carolina is:

133 Horse Trail Road
Street Address

St. George 29477
City Zip Code

- The initial agent for service of process of the Limited Liability Company is

Linda Gibson *[Signature]*
Name Signature

and the street address in South Carolina for this initial agent for service of process is

133 Horse Trail Road
Street Address

St. George 29477
City Zip Code

- The name and address of each organizer is

(A) Linda Gibson 843-563-2984
Name Telephone Number

133 Horse Trail Road St. George
Street Address City

South Carolina 29477
State Zip Code

(B) _____
Name Telephone Number

Street Address City

State Zip Code

02-029745CC



Appendix 01694

3205 Palm Boulevard, LLC

Name of Limited Liability Company

5. Check this box only if the company is to be a term company. If so, provide the term specified:
December 31, 2050
6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(A) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

(B) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

(C) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

(D) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

7. Check this box if only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____

3205 Palm Boulevard, LLC
Name of Limited Liability Company

9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement

10. Signature of each organizer

[Signature] Date May 22, 2002

_____ Date _____

FILING INSTRUCTIONS

- 1. File two copies of this form, the original and either a duplicate original or a conformed copy.
- 2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk that will allow for expansion of the space on the form.
- 3. The filing fee of \$110.00 payable to the Secretary of State must accompany this form.
Return to: Secretary of State
P O Box 11350
Columbia SC 29211
- 4. The first annual report for a Limited Liability company must be delivered to the Secretary of State between January first and April first of the calendar year after which the Limited Liability Company was organized or the foreign company was first authorized to transact business in South Carolina. Subsequent annual reports must be delivered to the Secretary of State between January first and April first of the ensuing calendar years.

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734 2511.

LLC ARTICLES OF ORGANIZATION

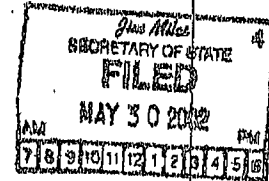
FORM REVISED BY SOUTH CAROLINA
SECRETARY OF STATE, MAY 1999

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

MAY 16 2012

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY



Make Us
~~TYPE OR PRINT CLEARLY IN BLACK INK~~
SECRETARY OF STATE OF SOUTH CAROLINA

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Section 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is. 600 Carolina Boulevard, LLC

2. The address of the initial designated office of the Limited Liability Company in South Carolina is:

133 Horse Trail Road
Street Address

St. George 29477
City Zip Code

3. The initial agent for service of process of the Limited Liability Company is

Linda Gibson
Name

Linda Gibson
Signature

and the street address in South Carolina for this initial agent for service of process is

133 Horse Trail Road
Street Address

St. George 29477
City Zip Code

4. The name and address of each organizer is

(A) Linda Gibson 843-583-2984
Name Telephone Number

133 Horse Trail Road St. George
Street Address City

South Carolina 29477
State Zip Code

(B) _____
Name Telephone Number

Street Address City

State Zip Code

02-029746CC



600 Carolina Boulevard, L.L.C.

Name of Limited Liability Company

5. Check this box only if the company is to be a term company. If so, provide the term specified:
December 31, 2050
6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(A) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

(B) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

(C) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

(D) Name _____ Telephone Number _____

Street Address _____ City _____

State _____ Zip Code _____

7. Check this box if only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____

Appendix 01698

600 Carolina Boulevard, LLC
Name of Limited Liability Company

9 Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

[Signature]

Date 5/22/02

Date _____

Date _____

Date _____

FILING INSTRUCTIONS

1. File two copies of this form, the original and either a duplicate original or a conformed copy.
2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk that will allow for expansion of the space on the form.
3. The filing fee of \$110.00 payable to the Secretary of State must accompany this form.
Return to: Secretary of State
P O Box 11350
Columbia, SC 29211
4. The first annual report for a Limited Liability company must be delivered to the Secretary of State between January first and April first of the Calendar year after which the Limited Liability Company was organized or the foreign company was first authorized to transact business in South Carolina. Subsequent annual reports must be delivered to the Secretary of State between January first and April first of the ensuing calendar years.

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OR THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-2511.

LLC-ARTICLES OF ORGANIZATION

FORM REVISED BY SOUTH CAROLINA
SECRETARY OF STATE, MAY 1999

051201-0210 Filed: 11/30/2005
 HERITAGE SEVEN LLC
 Filing Fee \$110.00 ORIG
 Mark Hammond South Carolina Secretary of State

CERTIFIED TO BE A TRUE AND CORRECT COPY
 AS TAKEN FROM AND COMPARED WITH THE
 ORIGINAL ON FILE IN THIS OFFICE

MAY 17 2012

Mark Hammond
 SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
 SECRETARY OF STATE

ARTICLES OF ORGANIZATION
 FOR A
 LIMITED LIABILITY COMPANY

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the 1976 South Carolina Code of Laws, as amended is HERITAGE SEVEN LLC

2. The address of the initial designated office of the Limited Liability Company in South Carolina is
133 HORSE TRAIL ROAD
 Street Address
SAINT GEORGE SC 29477-0000
 City Zip Code

3. The initial agent for service of process of the Limited Liability Company is
LINDA GIBSON Electronically filed on SCBOS.
 Name Signature
Signature not required.

and the street address in South Carolina for this initial agent for service of process is

133 HORSE TRAIL ROAD
 Street Address
SAINT GEORGE SC 29477-0000
 City Zip Code

4. The name and address of each organizer is
 a) LINDA GIBSON
 Name
133 HORSE TRAIL ROAD
 Street
SAINT GEORGE SC 29477-0000
 City State Zip Code

5. Check this box if the company is to be a term company. If so, provide the term specified.



Appendix 01700

HERITAGE SEVEN LLC

Name of Corporation

6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager.

7. Check this box if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:

9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

Electronically filed on SCBOS,
Refer to attached signature page.

Date 2005-11-30

FORM REVISED BY SOUTH CAROLINA
SECRETARY OF STATE, JANUARY 2005

Appendix 01701

Signature Page Attachment to South Carolina Business One Stop (SCBOS)
For
The State of South Carolina Secretary of State

This page must be completed, scanned and submitted as an attachment when filing on SCBOS.
Attach additional pages as needed.

Type of Filing: ARTICLES OF ORGANIZATION (Limited Liability Company)

Name of Limited Liability Company:

HERITAGE SEVEN LLC

Signature of Each Organizer:

LINDA GIBSON

Name

11/30/2005

Date



Signature

Name

Signature

Date

Name

Signature

Date

Name

Signature

Date

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

MAY 17 2012

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

AMENDED ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

TYPE OR PRINT CLEARLY IN BLACK INK

The limited liability company amends its articles of organization in accordance with Section 33-44-204 of the 1976 South Carolina Code of Laws, as amended

- 1 The name of the limited liability company is
600 Carolina Boulevard, LLC
- 2 The dates the articles of organization were filed
May 30, 2002
- 3 The articles of organization are amended in the following respects, of which all amended provisions may lawfully be included in the articles of organization
The name of the Limited Liability Company is Heritage Seven, LLC

Date December 12, 2005

Linda Gissen
Signature

Linda Gissen Member
Name/Capacity

FILING INSTRUCTIONS

- 1 Management of the limited liability company is vested in managers, a manager shall execute these amended articles of organization. If management of the limited liability company is reserved to the members, a member shall execute these amended articles of organization. Specify whether a member or manager is executing these amended articles of organization.
- 2 File two copies of this form, the original and either a duplicate original or a conformed copy.
- 3 This form must be accompanied by the filing fee of \$110.00, payable to the Secretary of State.

Return to Secretary of State
P O Box 11350
Columbia, SC 29211

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME ON OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-2511.

061213-0179 FILED 12/13/2006
HERITAGE SEVEN, LLC

Filing Fee \$110.00 ORIG

Mark Hammond

South Carolina Secretary of State



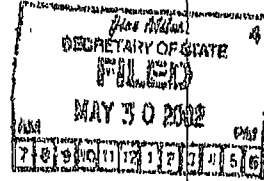
Appendix 01705

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MAY 17 2012

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY



M. H. H.
PLEASE PRINT CLEARLY IN BLACK INK
SECRETARY OF STATE OF SOUTH CAROLINA

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Section 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1 The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is: 800 Carolina Boulevard, LLC

2. The address of the initial designated office of the Limited Liability Company in South Carolina is:

133 Horse Trail Road
Street Address

St. George
City

29477
Zip Code

3 The initial agent for service of process of the Limited Liability Company is

Linda Gibson
Name

Linda Gibson
Signature

and the street address in South Carolina for this initial agent for service of process is

133 Horse Trail Road
Street Address

St. George
City

29477
Zip Code

4 The name and address of each organizer is

(A) Linda Gibson
Name

843-563-2884
Telephone Number

133 Horse Trail Road
Street Address

St. George
City

South Carolina
State

29477
Zip Code

(B)

Name

Telephone Number

Street Address

City

State

Zip Code

02-029746CC

Appendix 01704

590 Carolina Boulevard, L.L.C.
Name of Limited Liability Company

- 5 Check this box only if the company is to be a term company. If so, provide the term specified: December 31, 2050
- 6 Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(A) _____
Name Telephone Number

Street Address City

State Zip Code

(B) _____
Name Telephone Number

Street Address City

State Zip Code

(C) _____
Name Telephone Number

Street Address City

State Zip Code

(D) _____
Name Telephone Number

Street Address City

State Zip Code

- 7 Check this box if only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.
- 8 Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____

600 Carolina Boulevard, LLC
Name of Limited Liability Company

9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

_____	Date <u>5/22/02</u>
_____	Date _____
_____	Date _____
_____	Date _____

FILING INSTRUCTIONS

- 1. File two copies of this form, the original and either a duplicate original or a conformed copy.
- 2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk that will allow for expansion of the space on the form.
- 3. The filing fee of \$110.00 payable to the Secretary of State must accompany this form.

Return to: Secretary of State
P. O. Box 11350
Columbia, SC 29211
- 4. The first annual report for a Limited Liability company must be delivered to the Secretary of State between January first and April first of the calendar year after which the Limited Liability Company was organized or the foreign company was first authorized to transact business in South Carolina. Subsequent annual reports must be delivered to the Secretary of State between January first and April first of the ensuing calendar years.

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-2511.

LLC-ARTICLES OF ORGANIZATION

FORM REVISED BY SOUTH CAROLINA
SECRETARY OF STATE, MAY 1998

Appendix 01706

VERIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

MAY 16 2012

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended

- 1 The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976 as amended is Seven Oaks, LLC Apartments LLC
- 2 The address of the initial designated office of the Limited Liability Company in South Carolina is
133 Horse Trail Road
Street Address
St George, SC 29477
City Zip Code

- 3 The initial agent for service of process of the Limited Liability Company is
MVA RA, LLC
Name [Signature] Signature H Manning Unger, Member of Moore & Van Allen, PLLC, Its Manager
and the street address in South Carolina for this initial agent for service of process is
40 Calhoun St, Suite 300
Street Address
Charleston, SC 29401
City Zip Code

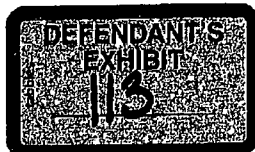
- 4 The name and address of each organizer is
 - (a) H Manning Unger, Esq
Name
40 Calhoun St, Suite 300 Charleston
Street Address City
SC 29401
State Zip Code
 - (b) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

- 5 Check this box only if the company is to be a term company. If so, provide the term specified



080604-0080 FILED 08/03/2008
SEVEN OAKS APARTMENTS LLC
Filing Fee \$110.00 ORIG
Mark Hammond South Carolina Secretary of State

Appendix 01707

Seven Oaks, LLC Apartments, LLC
Name of Limited Liability Company

6 [] Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager.

(a) _____
Name

Street Address City

State Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

7 [] Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members and for which debts, obligations or liabilities such members are liable in their capacity as members.

Service Onks, LLC Amendments, LLC
Name of Limited Liability Company

- 8 Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

 - 9 Set forth any other provisions not inconsistent with law which the organizers determine to include including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

 - 10 Signature of each organizer
[Signature]

(Add Additional lines if necessary)
- Date 6/3/08

FILING INSTRUCTIONS

- 1 File two copies of this form: the original and either a duplicate original or a conformed copy.
 - 2 If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form or prepare this using a computer disk which will allow for expansion of the space on the form.
 - 3 This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.
- Return to: Secretary of State
P O Box 11350
Columbia SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT IN AND OF ITSELF PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 724-1720.

Form Revised by South Carolina
Secretary of State January 2000

From: Lanier, Benjamin [Benjamin.Lanier@amerisbank.com]
Sent: Tuesday, October 23, 2007 11:25 AM
To: ROLANDO VILLAVICENCIO
Subject: RE: ameris 102507 response - benjie lanier - 2025 otranto road VERDANA financing

Rolando,
I am so glad that you and Portia will be able to make it Thursday. Several of the executives from Columbia and Georgia will be here Thursday so if Linda can make it to the party with you guys that would be great. I am looking forward to seeing you guys and getting you a commitment.

Have a great day!

From: ROLANDO VILLAVICENCIO [mailto:rolandovllavicencio@msn.com]
Sent: Tuesday, October 23, 2007 8:56 AM
To: Lanier, Benjamin; Portia Villavicencio; AMGRolando Villavicencio
Subject: ameris 102507 response - benjie lanier - 2625 otranto road VERDANA financing

good morning benjie.

just touching base.

got an invitation from you for thursday evening event.

portia and I have already rsvp'ed.

by the way, is your columbia exec going to be there too.

would like to meet with him/her then.

would it be necessary that you or your execs also meet linda gibson.

let me know so we can make arrangements.

we are anxious to receive your commitment by thursday as you noted.

thanks for your confidence in this project.

this will probably be the first most extensive "green building" apartment project of it's kind in the tri-county area.

glad to know you and ameris will become a part of this program.

meanwhile, just let us know if you need anything else for the thursday outcome.

cordially,

rolando

ROLANDO V. VILLAVICENCIO

RE/MAX Professional Realty

9209 University Boulevard

North Charleston, South Carolina 29406

843-767-7777 Office

843-767-4006 Fax

800-633-9275 Toll Free

843-303-3411 Cell

rolandovllavicencio@remax.net



AM_00867

Appendix 01710

Subject: RE: benjie lanier - 2625 otranto road VERDANA financing
Date: Fri, 19 Oct 2007 17:44:05 -0400
From: Benjamin.Lanier@amerisbank.com
To: rolandovillavicencio@msn.com

Rolando,
I talked with my boss Marc Bogan on the deal and he is very interested. I still need to talk to our exec in Columbia who will be in town late next week. We should have you guys a final answer by Thursday. I will keep you posted as things progress. Right now everything looks very positive.

Have a great weekend!

From: ROLANDO VILLAVICENCIO [mailto:rolandovillavicencio@msn.com]
Sent: Friday, October 19, 2007 11:58 AM
To: Lanier, Benjamin; Portia Villavicencio; AMGRolando Villavicencio
Subject: benjie lanier - 2625 otranto road VERDANA financing

benjie, thank you so much for your promptness and immediate action.

If you can call us before end of business day today just to get us updated, that would be great.

thanks again.

rolando

ROLANDO V. VILLAVICENCIO

RE/MAX Professional Realty
9209 University Boulevard
North Charleston, South Carolina 29406
843-767-7777 Office
843-767-4006 Fax
800-633-9275 Toll Free
843-303-3411 Cell
rolandovillavicencio@remax.net

Subject: RE: 2625 otranto road VERDANA financing
Date: Fri, 19 Oct 2007 09:51:23 -0400
From: Benjamin.Lanier@amerisbank.com
To: rolandovillavicencio@msn.com

Rolando,
We appreciate the referral. I will start the process of presenting this loan this morning and hopefully have you guys an answer by early next week. I'll keep you posted as the process progresses. Thanks and let me know if you have any questions in the mean time.

Benjie

From: ROLANDO VILLAVICENCIO [mailto:rolandovillavicencio@msn.com]
Sent: Friday, October 19, 2007 9:16 AM
To: Lanier, Benjamin; AMGRolando Villavicencio; Portia Villavicencio
Subject: 2625 otranto road VERDANA financing

good morning benjie.

coincidentally, at around 4 pm yesterday, we got a call from ben brazell of first reliance.

regrettably, he is not able to submit the package this friday to loan committee as he promised.

AM_00868

It appears he did not get to review our package as he said he would.

It also appears he has a lot more Important stuff on his plate at the moment than our loan.

as you know, we no longer have time to waste.

we should have closed this project months ago.

anyway, with the above, let this be our official request for ameris bank to proceed with processing for above loan.

you had mentioned you may be able to provide to us a commitment letter by early next week.

we anticipate this to be the positive outcome we have been longing for from you.

should you have any questions, please feel free to contact me.

otherwise, it was great meeting with you again.

by the way, congratulations again on your recent wedding.

cordially,

rolando

ROLANDO V. VILLAVICENCIO

RE/MAX Professional Realty

9209 University Boulevard

North Charleston, South Carolina 29406

843-767-7777 Office

843-767-4006 Fax

800-633-9275 Toll Free

843-303-3411 Cell

rolandovillavicencio@remax.net

Peek-a-boo FREE Tricks & Treats for You! Get 'em!

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

Peek-a-boo FREE Tricks & Treats for You! Get 'em!

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

Windows Live Hotmail and Microsoft Office Outlook – together at last. [Get it now!](#)

~~signed copy~~ signed copy

MORTGAGE LOAN SALE AGREEMENT

Between

GALT VALLEY, LLC

and

AMERIS BANK



Appendix 01714

MORTGAGE LOAN SALE AGREEMENT

THIS AGREEMENT is entered into as of July 14, 2010, by and between GALT VALLEY, LLC, an Nevada limited liability company ("Purchaser"), and Ameris Bank, a Georgia banking corporation ("Seller").

WITNESSETH:

WHEREAS, Seller is the sole owner and holder of the Mortgage Loans, as defined in this Agreement, and wishes to sell such Mortgage Loans; and

WHEREAS, Seller has full right and authority to sell, assign and transfer the Mortgage Loans

WHEREAS, Purchaser wishes to purchase such Mortgage Loans;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, Seller and Purchaser agree as follows:

ARTICLE I

Definitions

For purposes of this Agreement, the following terms have the meanings indicated:

"Agreement" means this Mortgage Loan Sale Agreement, including all Exhibits and Schedules hereto.

"Allonges" mean the Allonges to be delivered to Purchaser as provided in this Agreement in the form attached hereto as Exhibit A.

"Assignments of Mortgage" means the Assignments of Mortgage relating to loans secured by real property in Florida and South Carolina to be delivered to Purchaser as provided in this Agreement in the form attached hereto as Exhibit B.

"Assignment of Loan Documents" mean the Assignment of Loan Documents in the form attached hereto as Exhibit E.

"Borrower" means any promissor under any given Mortgage Note which is not an accommodation party.

"Business Day" means any day, other than a Saturday, a Sunday, a federal holiday or any day on which Seller generally, or the specific office thereof

responsible for the administration of this Agreement, is not generally open for business.

"Certification and Receipts" mean the Certification and Receipts to be delivered to Purchaser as provided in this Agreement in the form attached hereto as Exhibit C.

"Claim" means any claim, demand or legal proceeding.

"Closing" means the delivery of the Closing Documents, the sale of the Mortgage Loans and the payment of the Mortgage Loan Purchase Price pursuant to Article V.

"Closing Date" means no later than July 15, 2010.

"Closing Documents" means all documents that under the terms of this Agreement are required to be delivered by Seller or Purchaser at the Closing.

"Deposit" means Fifty Thousand Dollars (\$5,000.00), and shall be due to Escrow Agent within two (2) business days of the execution of this Agreement.

"Escrow Agent" means Rogers Towers PA, or another agent agreed upon by Purchaser and Seller insured or secured by a national title insurance company with credit ratings of A or better.

"Inspection Period" means ~~three (3) business days from the date of~~ execution of this Agreement, as further described in Section 2.4, for Purchaser to conduct due diligence.

"Mortgages" mean the Mortgages executed by the person named as Mortgagor relating to the Mortgage Loans described in Exhibit D.

"Mortgage Files" mean Seller's legal files for the respective Mortgage Loans, which consist of:

- (a) The original Mortgage Notes evidencing the respective Mortgage Loan;
- (b) the original Mortgages or true and correct copies thereof, and the original or a true and correct copy of each document or instrument constituting a part thereof, in each case with evidence of recording indicated thereon;
- (c) originals or true and correct copies of all assumption, modification and substitution agreements in those instances where the terms or provisions of the Mortgages or Mortgage

Notes have been modified or the Mortgages or Mortgage Notes have been assumed; and

- (d) originals or true and correct copies of all guaranties;
- (e) originals or true and correct copies the Lender's title insurance policies issued in connection with origination of the related Mortgage Loans and any endorsements thereto.

"Mortgage Loans" means the loans payable to Seller and evidenced by the Mortgage Notes, secured by the Mortgages, together with all of Seller's lien on or interest in and to any of the Borrower's property held by Seller, all collateral and any guaranties obtained in connection with the Mortgage Loans.

"Mortgage Loan Purchase Price" means the sum of the Unpaid Principal Balance for each Mortgage Loan multiplied by the Purchase Percentage.

"Mortgage Notes" mean the original executed Notes, executed by the Borrower, as listed in Exhibit E.

"Mortgaged Property" means the property securing the Mortgage Notes, as described in the Mortgages.

"Mortgagor" means any party who is a signatory to a Mortgage as owner of real property to convey the property or create a lien on the property to secure a Mortgage Note or a guaranty of a Mortgage Note or otherwise provide security for a loan evidenced by a Mortgage Note.

"Purchase Percentage" means the to be negotiated percentage of the Unpaid Principal Balance that Buyer shall pay for a particular Mortgage Loan according to the following charts:

Borrower	UPB	% of UPB	BID
Jeannine Balanky	\$ 151,890.00	39.50%	\$ 60,000.00
Heritage Seven LLC	\$ 2,796,467.00	34.51%	\$ 975,000.00
Welcome to the Big Leagues	\$ 487,063.00	35.89%	\$ 175,000.00

"Surviving Provisions - Closing" means the following terms, conditions and provisions of this Agreement:

1. As to Seller, delivery provisions of Section 2.2,

2. As to Purchaser, Purchaser's responsibilities as provided in Section 2.3(c).
3. As to Purchaser, the indemnification provisions in Section 2.4
4. As to Seller, the representations and warranties of the Seller in Section 3.1 and Section 3.2 (a) (i), (ii), (v), (vi) and (vii),
5. As to Purchaser, the representations, warranties and covenants of Purchaser in Article IV
6. As to Purchaser, the provisions of Section 5.1
7. As to Seller, the provisions of Section 5.2
8. As to Purchaser, the provisions of Section 5.3
9. As to Purchaser, the provisions of Section 5.4
10. The Notice provisions of Article VIII
11. The Miscellaneous Provisions of Article IX
12. The Indemnification provisions of Article X

"Surviving Provisions - Termination" means the following terms, conditions and provisions of this Agreement:

1. As to Purchaser, the indemnification provisions in Section 2.4
2. As to Purchaser, the representations, warranties and covenants of Purchaser in Article IV (a), (b) and (d)
3. As to Purchaser, the provisions of Section 5.1
4. ~~The Notice provisions of Article VIII~~
5. The Miscellaneous Provisions of Article IX
6. The Indemnification provisions of Article X

"Unpaid Principal Balance" means the current amount of principal of each Mortgage Note that remains unpaid and outstanding. Unpaid Principal Balance may be referred to as "UPB".

ARTICLE II

Sale and Purchase of the Mortgage Loans

Section 2.1 Agreement to Sell and Purchase Mortgage Loans. Seller agrees to sell, and Purchaser agrees to purchase, the Mortgage Loans, without recourse or warranty, for the Mortgage Loan Purchase Price, pursuant to the terms of this Agreement. The Mortgage Loans are in default and Seller makes no representation regarding any implied waivers, releases or similar defenses regarding the Mortgage Loans nor does Seller make any representations as to assessments or real property taxes. Purchaser agrees

that, except as expressly contained in this Agreement, no representations by or on behalf of Seller have been made to Purchaser as to the condition of the Mortgaged Properties, any restrictions related to the rehabilitation of the Mortgaged Properties, the applicability of or compliance with any governmental requirements, including but not limited to environmental requirements, pertaining to the Mortgaged Properties, or the suitability of the Mortgaged Properties for any purpose whatsoever. Purchaser represents to Seller that Purchaser has made its own independent investigation of the Mortgaged Properties.

Section 2.2 Delivery of the Mortgage Files. No later than thirty (30) days after the sale of the Mortgage Loans to Purchaser, Seller will deliver to Purchaser the Mortgage Files with respect to the Mortgage Loans to be conveyed to Purchaser. Conveyance of the Mortgage Files to Purchaser is deemed to occur at the earlier of (i) delivery of the Mortgage Files to Purchaser or (ii) such time as Seller has received payment of the Mortgage Loan Purchase Price in accordance with Article V. From and after such conveyance of the Mortgage Files to Purchaser, Seller has no responsibility or risk of loss or damage with respect to such Mortgage Files.

Section 2.3 Conveyance of the Mortgage Loans.

- (a) On the Closing Date, provided all representations and warranties of Seller and Purchaser under this Agreement are true and correct, ~~against payment of the Mortgage Loan Purchase Price pursuant to Article V, Seller sells, transfers, assigns, sets over and conveys to Purchaser, without recourse, warranty, or representation except as expressly set forth in Article III of this Agreement, its right, title and interest in and to the Mortgage Loans.~~
- (b) No later than the first business day following the receipt of the Mortgage Loan Purchase Price pursuant to Article V, Seller will deliver to the Escrow Agent an original, executed Certification and Receipt, the original Mortgage Notes (or a lost note affidavit), accompanied by original, executed Allonges, and the Assignments of Mortgage (in recordable form).
- (c) Purchaser is solely responsible for recording the Assignments of Mortgage at Purchaser's sole cost and expense, including, without limitation, all transfer taxes, recording fees and costs, fees for title policy endorsements and continuations and other similar charges.
- (d) Each of Seller and Purchaser will pay and be solely responsible for its own costs, including attorneys' fees, associated with the execution, delivery and performance of this Agreement.

(e) Seller shall indemnify and hold harmless Purchaser for any lien attaching to a property subject to a Mortgage transferred under this Agreement relating to condominium assessments (including without limitation any late fees, costs or attorney fees accruing prior to the Closing Date) or public or private assessments and ad valorem taxes not paid by the Seller at Closing; provided, however, Purchaser shall be responsible for and Seller has no obligation to pay public or private assessments (other than condominium assessments) and ad valorem taxes not due and payable as of the Closing.

(f) Seller hereby covenants to cooperate reasonably with the Purchaser in connection with Purchaser's enforcement of any of the loan documents sold in this Agreement, including without limitation, by executing such affidavits and other documents reasonably approved by Seller as may be required to enforce the loan documents or defend any lender liability claims or other counterclaims asserted by the borrowers or other defendants

Section 2.4. Inspections. Purchaser shall have three (3) business days following the execution of this Agreement (the "Inspection Period"), to perform its due diligence review of the Loan Documents and the Properties at Purchaser's sole cost and expense. Purchaser shall have the right to physically inspect the Properties during the Inspection Period; provided, however, notwithstanding anything to the contrary contained herein, Purchaser expressly acknowledges and agrees: (a) that Seller is not in possession of the Properties; (b) that neither Purchaser nor its principals, affiliates, agents, employees or contractors may contact any Borrowers and or their guarantors without the express prior written consent of Seller, which may be withheld in Seller's sole discretion, and (c) that all inspections of any of the Properties shall be subject to receipt by Seller in advance of the inspection of an authorization and/or waiver by the applicable Borrower to inspect same. Promptly upon Seller's written request, Purchaser shall provide Seller with a copy of the results of any tests and inspections made by Purchaser, its agents or employees. Purchaser shall and does hereby indemnify and hold harmless Seller from and against any claim, loss, damage, or obligation arising out of or incurred in connection with the exercise of the rights of Purchaser under this Paragraph (and such indemnity obligation shall survive any termination of this Agreement without the Closing contemplated hereby having occurred).

Section 2.5 Termination during Inspection Period. If Purchaser determines, in its sole discretion and prior to the expiration of the Inspection Period, that the Loan Documents or the Property are unacceptable for Purchaser's purposes, Purchaser shall have the right to terminate this Agreement by giving written notice of termination to the Escrow Agent and Seller, in which event the Deposit shall be disbursed to Purchaser by the

Escrow Agent, and the Parties shall have no further rights or obligations under this Agreement, except the Surviving Provisions - Termination.

Section 2.6 Other Mortgage Loan Sale Agreements. Purchaser and Seller agree that Seller may continue to market the Mortgage Loans prior to the Closing, and that Seller may enter into other Mortgage Loan Sale Agreements with other potential Mortgage Loan purchasers. Seller is not obligated to sell the Mortgage Loans to Purchaser until the Closing occurs. If Purchaser is ready to close the Mortgage Loan purchase, but Seller does not sell the Mortgage Loan to Purchaser, the Deposit shall be disbursed to Purchaser by the Escrow Agent, and the Parties shall have no further rights or obligations under this Agreement, except the Surviving Provisions - Termination. Purchaser agrees that such refund reimburses it in full for its administrative, opportunity and other costs in connection with this transaction.

ARTICLE III

Representations and Warranties of Seller

Section 3.1 Representations and Warranties of Seller. Seller hereby represents and warrants that:

- (a) Seller has taken all necessary action to authorize the execution, delivery and performance of this Agreement by it, and has the power and authority to execute, deliver and perform this Agreement and all the transactions contemplated hereby, including, but not limited to, the power and authority to sell, assign and transfer the Mortgage Loans in accordance with this Agreement;
- (b) There is no action, suit or proceeding pending against Seller in any court or by or before any other governmental agency or instrumentality which would materially and adversely affect the ability of Seller to carry out the transactions contemplated by this Agreement; and
- (c) The Mortgage Loans are whole loans and not a participation in a loan.

Section 3.2 Representations and Warranties as to the Mortgage Loans.

(a) Seller hereby represents and warrants that, except as disclosed herein:

- (i) Seller is the sole owner and holder of the Mortgage Loans;

- (ii) Seller has full right and authority to sell, assign and transfer the Mortgage Loans;
 - (iii) Upon delivery of the Mortgage Notes to Purchaser, duly endorsed to Purchaser, and payment by Purchaser to Seller of the consideration therefor, Purchaser has all rights of Seller under (A) the Mortgages securing the Mortgage Notes, (B) any guaranties of the Mortgage Notes, and (C) Seller's Lender's title Insurance policy issued on the date of the origination of the related Mortgage Loans and any endorsements thereto;
 - (iv) Seller has previously delivered to Purchaser a complete, accurate copy of the Mortgage Files and the following additional documents:
 - (A) a complete, accurate, copies of the appraisals upon which the original loans were based; and
 - (B) complete, accurate copies of all demand letters, default letters, modification letters, waiver letters, and forbearance agreements, if any, relating to the Mortgage Loans.
 - (v) Seller has delivered to Purchaser complete, accurate copies of all written agreements between Seller and the Borrower relating to the Mortgage Loans that would prevent or delay the exercise of any remedies in the respective Mortgage Notes and Mortgages;
 - (vi) The Mortgage Notes are in default; and
 - (vii) Seller represents that the loan information set forth in Exhibit E is accurate.
- (b) Seller makes no representations or warranties regarding the legal enforceability of default interest, late charges or other loan charges or the enforceability of any specific provision of the Mortgage Notes, Mortgages or any other loan documents; and
- (c) Except as represented and warranted herein, Seller makes no other representations or warranties expressed or implied at law.

ARTICLE IV

Representations, Warranties and Covenants of Purchaser

Purchaser hereby represents, warrants and agrees that:

- (a) Purchaser is duly and legally authorized to execute, deliver and perform this Agreement, it has complied with all laws, rules, regulations and charter provisions to which it may be subject, and the undersigned representative is authorized to act on behalf of Purchaser and to bind Purchaser to the terms of this Agreement;
- (b) Purchaser is a sophisticated investor. Purchaser is purchasing the Mortgage Loans for its own account in respect of a commercial transaction made in the ordinary course of business and not with a view to or in connection with any subdivision, resale, or distribution thereof. Purchaser is engaged in the business of entering into commercial transactions (including transactions of the nature contemplated herein), can bear the economic risk related to the purchase of the Mortgage Loans, and has had access to all information deemed necessary by it in making its decision whether or not to purchase the Mortgage Loans.
- (c) Purchaser's bid with respect to the Mortgage Loans and its decision to purchase the Mortgage Loans is based upon its independent evaluation of the Mortgage Loans, the documents evidencing the Mortgage Loans, and the Mortgaged Properties. In entering into this Agreement, ~~Purchaser has not relied upon any oral or written information (other than the representations and warranties of Seller contained herein) provided by Seller.~~ Purchaser acknowledges that no employee or representative of Seller has been authorized to make, and that Purchaser has not relied upon, any statements or representations other than those specifically contained in this Agreement;
- (d) Purchaser agrees that it will not institute any legal action in the name of Seller nor will Purchaser intentionally or unintentionally, through misrepresentation or nondisclosure, mislead any person as to, or conceal from any person, the identity of Purchaser of the Mortgage Loans; and
- (e) PURCHASER UNDERSTANDS THAT THE SALE OF THE MORTGAGE LOANS ARE BEING MADE ON AN "AS IS, WHERE IS AND WITH ALL FAULTS" BASIS, AND PURCHASER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF SELLER HEREIN, SELLER MAKES AND HAS MADE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW AND

SPECIFICALLY DISCLAIMS ANY SUCH WARRANTY AND REPRESENTATION, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF OWNERSHIP, EXISTENCE, QUALITY, QUANTITY, VALUE, CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS OF THE BORROWER, THE PROPERTY, OTHER COLLATERAL, AND/OR THE LOAN DOCUMENTS FOR ANY PARTICULAR PURPOSE. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CONSUMMATION OF THE TRANSACTIONS HEREIN PROVIDED.

ARTICLE V

Certain Obligations of Purchaser

Section 5.1 Collection Practices. Purchaser will not violate any laws relating to unfair credit collection practices in connection with the Mortgage Loan(s). Purchaser hereby agrees to indemnify Seller and to hold it harmless from and against any and all claims, demands, losses, damages, penalties, fines, forfeitures, judgments, legal fees and any other costs, fees, and expenses incurred by Seller as a result of (1) a breach by Purchaser of the aforesaid warranty or (2) any claim, demand, or assertion that, after the Closing Date, Seller was in any way involved in or had in any way authorized any unlawful collection practices in connection with the Mortgage Loan(s) transferred to Purchaser pursuant to this Agreement. Purchaser agrees to notify Seller within two (2) Business Days of notice or knowledge of any such claim or demand.

Section 5.2 Reporting to or for the Internal Revenue Service. Purchaser agrees to submit all Internal Revenue Service Forms and Information Returns for the Mortgage Loan(s) for the period during which it owns the Mortgage Loan(s).

Section 5.3 Purchaser's Duties Regarding Litigation.

5.3.1 If the Mortgage Loans are the subject of pending litigation (the "Pending Litigation") on the Closing Date (including bankruptcy, arbitration and other alternate dispute resolution proceedings), Purchaser shall provide the attorney representing Seller, within five (5) days after Closing, the name of the attorney selected by Purchaser to represent Purchaser's interests in the litigation. Purchaser shall within ten (10) days after Closing notify the clerk of the court, all counsel of record and all arbitrators and mediators, as applicable, that ownership of the Mortgage Loan(s) was transferred from Seller to Purchaser. Purchaser shall have its attorney file appropriate pleadings with the court within twenty (20) days after the Closing substituting Purchaser's attorney for Seller's attorney and also removing Seller as a party to the litigation (except to the extent claims have been made against Seller separately and not as lender relating to

the Mortgage Loans) and substituting Purchaser as the real party in interest; provided, however, that Seller in its sole discretion may retain counsel to represent it relating to any continuing interest in any Pending Litigation. Seller may proceed unilaterally to have such matter dismissed, either with or without prejudice, in the event such substitution is not effected as prescribed by this Section 5.3.1. Purchaser shall assume any and all obligations and liabilities of Seller as set forth in any order of court issued in the Pending Litigation. In the case of any litigation with respect to the Mortgage Loan served on Seller after the Closing Date (including bankruptcy, arbitration and other alternate dispute resolution proceedings) (the "Future Litigation Service"), (i) Seller shall promptly notify Purchaser of any Future Litigation Service, and (ii) Purchaser shall within the time set for initial response to the Future Litigation Service, notify the clerk of the court, all counsel of record and all arbitrators and mediators, as applicable, that ownership of the Mortgage Loans have been transferred from Seller to Purchaser. Purchaser agrees to have its attorney file appropriate pleadings with the court within the time set for initial response to the Future Litigation Service, removing Seller as a party to the litigation (except to the extent claims have been made against Seller individually and not as owner of the Mortgaged Properties) and substituting Purchaser as the real party in interest.

5.3.2 Purchaser shall not litigate or prosecute any claim in the name of Seller, and Purchaser shall not intentionally or unintentionally, through misdisclosure or nondisclosure, mislead or conceal its identity or its ownership of the Mortgage Loan(s).

5.3.3 Seller in its sole discretion may terminate this Agreement if, following the date hereof but prior to the Closing Date, any of the Mortgage Loans become the subject of litigation between any debtor and Seller. In the event of such termination, the Deposit shall be returned to Purchaser, and this Agreement shall be of no further force and effect, except for the Surviving Provisions-Termination. Nothing contained herein shall be construed to obligate Seller to repurchase any of the Mortgage Loans in the event any litigation is commenced with respect to the Mortgage Loan(s) after the Closing Date.

Section 5.4 Purchaser's Duties Regarding Loan(s) in Bankruptcy. In accordance with Bankruptcy Rule 3001(e), the Purchaser shall take all actions necessary to timely file (i) proofs of claims in pending bankruptcy cases involving any Mortgage Loan(s) purchased for which the Seller has not already filed a proof of claim, and (ii) evidence of the terms of the purchase of such Mortgage Loan(s), both of the same to be filed with the appropriate bankruptcy court in cases in which the Seller has filed proofs of claims. Nothing contained in this Section shall relieve the Purchaser of its obligations set forth in Section 5.3 above.

ARTICLE VI

Closing

Purchaser must pay the Mortgage Loan Purchase Price to the Escrow Agent for the benefit of the Seller on the Closing Date no later than 11:00 a.m. Pacific Time. The Escrow Agent shall pay to Seller or its designee, by wire transfer in immediately available funds to the account specified by Seller, the Mortgage Loan Purchase Price upon its receipt from the Seller of the documents specified for delivery in section 2.3(b) hereof. The Escrow Agent may accept and rely solely on a certification from Seller that the documents delivered to it are the documents specified for delivery in section 2.3(b) hereof. Such documents shall not be recorded or released to the Purchaser until after Escrow Agent confirms the Seller's receipt of the wired funds, and the Seller shall promptly provide written confirmation of such receipt of wired funds when so received. Delivery of the Closing Documents required to be delivered by Seller will be made against delivery of the Mortgage Loan Purchase Price and the Closing Documents required to be delivered by Purchaser. The Closing will, at Seller's option, be either by telephone, confirmed by letter or wire, or conducted in person at the office of the Escrow Agent.

ARTICLE VII

Servicing of the Mortgage Loans

~~The Mortgage Loans are sold and conveyed to Purchaser on a servicing-released basis. All rights, obligations, liabilities and responsibilities with respect to the servicing of the Mortgage Loans pass to Purchaser on the Closing Date and Seller will be discharged from all liability therefore.~~

ARTICLE VIII

Notices

Unless otherwise provided for herein, all notices and other communications required or permitted hereunder must be in writing and will be deemed to have been duly given (a) on the 3rd following Business Day, if sent by registered or certified mail (return receipt requested), (b) when delivered, if delivered personally or by facsimile, or (c) on the following Business Day, if sent by overnight mail or overnight courier, in each case to the parties at the following addresses (or at such other addresses as are specified by like notice):
if to Purchaser:

Galt Valley, LLC
3073 W. Tompkins Ave.
Las Vegas, NV 89103

Attention: Greg Boree

If to Seller:

Ameris Bank
8705 Perimeter Park Blvd., Suite 4
Jacksonville, FL 32216
Attn: Robert W. Mullins

With a copy to:

William L. Thompson, Jr., P.A.
1590 Island Lane, Suite 26
Fleming Island, FL 32003

ARTICLE IX

Miscellaneous Provisions

Section 9.1 Severability. Each part of this Agreement is intended to be severable. If any term, covenant, condition or provision hereof is unlawful, invalid, or unenforceable for any reason whatsoever, and such illegality, invalidity, or unenforceability does not affect the remaining parts of this Agreement, then all such remaining parts hereof will be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.

Section 9.2 Headings. The headings of the Articles and Sections contained in this Agreement are inserted for convenience only and do not affect the meaning or interpretation of this Agreement or any provision hereof.

Section 9.3 Construction. Unless the context otherwise requires, singular nouns and pronouns, when used herein, are deemed to include the plural of such noun or pronoun and pronouns of one gender are deemed to include the equivalent pronoun of the other gender.

Section 9.4 Assignment. This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof, including the Exhibits hereto, are binding upon, and inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns. Notwithstanding anything to the contrary in this Agreement,

Section 9.5 Prior Understandings. This Agreement supersedes any and all prior discussions and agreements between Seller and Purchaser with respect to the purchase of the Mortgage Loans and other matters contained herein, and this Agreement contains the sole and entire understanding between the parties hereto with respect to the transactions contemplated herein.

Section 9.6 Integrated Agreement. This Agreement and all Exhibits hereto constitute the final complete expression of the intent and understanding of Purchaser and Seller. This Agreement may not be altered or modified except by a subsequent writing, signed by Purchaser and Seller.

Section 9.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which constitutes one and the same instrument, and either party hereto may execute this Agreement by signing any such counterpart.

Section 9.8 Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Florida, without giving effect to its choice of law doctrine.

Section 9.9 Survival. The Survival Provisions – Closing shall survive the consummation of the transaction contemplated by this Agreement and continue to be fully enforceable after such consummation. The Survival Provisions – Termination shall survive the termination of this Agreement as provided in this Agreement and continue to be fully enforceable after such termination.

Section 9.10 No Broker Seller and Purchaser each represent and warrant to the other that it has not dealt with any person that may be entitled to any commission or compensation in connection with the sale of the Mortgage Loans by Seller to Purchaser.

Section 9.11 Confidentiality. Purchaser agrees and acknowledges that a material inducement to Seller to enter into this Agreement is Purchaser's covenant and agreement to maintain complete and permanent confidentiality regarding this Agreement and all matters pertaining hereto except as may be required by a court of competent jurisdiction or permitted by the written consent of Seller. Seller and Purchaser have entered into a separate Confidentiality Agreement dated June 4, 2010, which continues in effect and applies to this Agreement and the Mortgage Loans, notwithstanding any other provisions in this Agreement.

Section 9.12 Litigation Costs. In the event that suit be brought to enforce the provisions of this Agreement or any remedy granted under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees,

Including attorneys' fees upon appeal, in bankruptcy and in any other proceeding, and to all costs incurred..

Section 9.13 Controlling Agreement. PURCHASER AGREES TO ACCEPT THE MORTGAGE LOANS IN THEIR PRESENT CONDITION AND ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS, WARRANTIES, OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER WITH RESPECT TO THE MORTGAGE LOANS, WHETHER EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THIS AGREEMENT. FURTHERMORE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE AND DOES NOT MAKE, AND PURCHASER HEREBY DISCLAIMS THE EXISTENCE OF OR RELIANCE UPON, ANY IMPLIED WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, MARKETABILITY, OR FITNESS FOR A PARTICULAR USE. PURCHASER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL CLAIMS AGAINST SELLER ARISING IN CONNECTION WITH THE MORTGAGE LOANS AND PURCHASER AGREES TO LOOK SOLELY TO THE BORROWER OF THE MORTGAGE NOTES AND MORTGAGED REAL PROPERTY REGARDING ANY CLAIMS ARISING IN CONNECTION WITH THE MORTGAGE LOANS.

Section 9.14. Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

Section 9.15. Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

ARTICLE X

Indemnification

Section 10.1 Indemnification and Payment Of Damages. Seller and Purchaser ("Indemnifying Party") shall indemnify and hold harmless Purchaser and Seller, respectively, and their successors, assigns, lawyers, accountants and other advisors (collectively, the "Indemnified Persons") for, and will pay to the Indemnified Persons the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable attorneys' fees) or diminution of value, whether or not involving a third-party claim (collectively, "Damages"), arising, directly or indirectly, from or in connection with:

- (a) any breach of any effective or surviving representation or warranty made by the Indemnifying Party in this Agreement;
- (b) any breach or failure to perform fully any effective or surviving covenant or obligation of the Indemnifying Party in this Agreement; and
- (c) any claim, payment, loss, liability or damage arising from or in connection with any effective or surviving indemnification by the Indemnifying Party in this Agreement, including expenses, costs and attorney fees (for advice, defense or other related representation).

Section 10.2 Third Party Claims. If any claim referred to in Section 10.1 is asserted or proceeding referred to in Section 10.1 is brought against an Indemnified Party and the Indemnified Party gives notice to the Indemnifying Party of the claim or the commencement of such proceeding, and further if Indemnifying Party provides reasonable assurance to the Indemnified Party of its financial capacity to defend such claim or proceeding and provide indemnification with respect to such claim or proceeding, Indemnifying Party will be entitled to participate in the payment or settlement of such claim or such proceeding and, to the extent that it wishes (unless the Indemnifying Party is also a party to such Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate), to assume the defense of such claim or proceeding with counsel satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to the Indemnified Party of its election to assume the defense of such claim or proceeding, the Indemnifying Party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under Section 10.1 for any fees of other counsel or any other expenses with respect to the defense of such claim or proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such claim or proceeding, other than reasonable costs of investigation. If The Indemnifying Party assumes the defense of a claim or proceeding, (i) it will be conclusively established for purposes of this Agreement that the claims and the proceeding are within the scope of and subject to indemnification; (ii) no compromise or settlement of such claims or proceeding may be effected by the Indemnifying Party without the

Indemnified Party's consent unless the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and (iii) the Indemnifying Party will have no liability with respect to any compromise or settlement of such claim or proceeding effected without its consent. If notice is given to the Indemnifying Party of any claim or the commencement of any proceeding and the Indemnifying Party does not, within ten days after notice is given, give notice to the Indemnified Party of its election to assume the defense of such claim or proceeding, or if the Indemnifying Party fails to provide reasonable assurances as provided in this Section 10.2, the Indemnifying Party will be bound by any settlement of the claim, any determination made in such proceeding or any other compromise or settlement effected by the Indemnified Party.

Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a claim or proceeding may adversely affect it or him other than as a result of monetary damages for which it or him would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnifying Party, assume the exclusive right to defend, compromise, or settle such claim or proceeding, but the Indemnifying Party will not be bound by any settlement or determination of in proceeding so defended, or any other compromise or settlement effected, without its consent (which may not be unreasonably withheld).

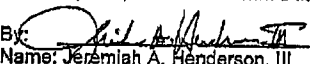
The Indemnifying Party hereby consents to the non-exclusive jurisdiction of any court in which a proceeding is brought against any Indemnified Person for purposes of any claim that an Indemnified Person may have under this Agreement with respect to such proceeding or the matters alleged therein, and agree that process may be served on The Indemnifying Party with respect to such a claim anywhere in the world.

Section 10.3 Procedure for Indemnification—Other Claims.


A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the Indemnifying Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

GALT VALLEY, LLC, an Nevada limited liability company

By: 
Name: Jeremiah A. Henderson, III
Title: Managing Member *Manager*

AMERIS BANK

By: 
Name: Scott E. Galpin
Title: Vice President

- Exhibit A: Form of Allonges
- Exhibit B: Assignment of Existing Mortgage
- Exhibit C: Form of Certification and Receipt
- Exhibit D: Description of Mortgages
- Exhibit E: Description of Mortgage Notes
- Exhibit F: Assignment of Loan Documents

**EXHIBIT A
FORM OF ALLONGE**

FOR VALUE RECEIVED, the undersigned, the original or successor payee under that Promissory Note dated _____, in the original amount of \$ _____, and payable to the order of _____ (the "Note"), made by _____, in favor of _____, to which this endorsement is affixed, absolutely assigns, transfers, endorses, negotiates, and sets over to and makes payable to the order of GALT VALLEY, LLC, an Nevada limited liability company ("Purchaser"), the Note, without recourse, representation or warranty of any kind, except as set forth in that certain Mortgage Loan Purchase Agreement, dated as of _____, 2010 (the "Purchase Agreement"), by and between Purchaser and _____, as seller. This assignment includes the Note, all interest, principal, and other sums due or to become due under the Note, and all other rights of any nature accrued or to accrue under the Note.

Dated: _____, 2010

By: _____
Name:
Title:

EXHIBIT B

PREPARED BY AND AFTER
RECORDING, RETURN TO:

ASSIGNMENT OF EXISTING MORTGAGE

THIS ASSIGNMENT OF EXISTING MORTGAGE (this "Assignment") made this ____ day of May, 2010, by AMERIS BANK, a Georgia banking corporation ("Assignor"), whose address is _____, in favor of GALT VALLEY, LLC, an Nevada limited liability company which address is _____

NOW THEREFORE, Assignor, the owner and holder of the instruments hereinafter described, in consideration of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration in hand paid by Assignee, receipt of which is hereby acknowledged, does hereby irrevocably, absolutely, and unconditionally assign, sell, transfer, pledge and convey unto the said Assignee all of the Assignor's right, title and interest in and to the following documents:

1. Mortgage _____ made by _____, in favor of _____, dated _____, and recorded in Official Records Book _____, page _____, of the current public records of _____ County, Florida.
2. List other documents

THIS ASSIGNMENT OF EXISTING MORTGAGE is made without recourse, representations or warranties, except that Assignor represents and warrants that it is the owner and holder of the instruments being assigned; that it has full right, title and authority to transfer same; and that it has not assigned, sold or encumbered all or any part thereof.

IN WITNESS WHEREOF, Assignor has executed this instrument as of this ____ day of _____, 20__.

AMERIS BANK
a Georgia banking corporation

By: _____
Name: _____
Title: _____

(all signatures must be acknowledged)

EXHIBIT C

FORM OF CERTIFICATION AND RECEIPT

The undersigned, _____, hereby certifies to GALT VALLEY, LLC, an Nevada limited liability company ("Customer") that attached hereto is a true and correct copy of that Promissory Note dated _____, in the original amount of \$ _____ made by _____ and payable to the order of _____ (the "Note"). The undersigned also certifies that it has in its possession the original of the Note and is holding the same as evidence of a loan to Customer.

Date: _____, 2010

By: _____
Name:
Title:

**EXHIBIT D
DESCRIPTION OF MORTGAGES**

Bank Loan Number:
Borrower's Name:
Mortgagor (if different):
State and County of Property:
Type of Property/Use:

**EXHIBIT E
MORTGAGE NOTES**

Bank Loan Number:
Borrower's Name:
Original Principal Balance: \$
Current Outstanding Principal Balance \$ as of , 2010
Note Interest Rate: %
Guarantors:
Collateral:

EXHIBIT F
ASSIGNMENT OF LOAN DOCUMENTS

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, _____ ("Assignor"), does hereby sell, transfer and assign to GALT VALLEY, LLC, an Nevada limited liability company ("Assignee"), without recourse, representation or warranty, whether express or implied, all of Assignor's right, title and interest in and to the documents, instruments and agreements listed on Exhibit "A", attached hereto and incorporated herein by this reference, (collectively, the "Loan Documents"), in accordance with and subject to the terms of that certain Mortgage Loan Sale Agreement between Assignor and Assignee of even date herewith ("Loan Sale Agreement"). It is the intention of Assignor to transfer and assign to Assignee all of the right, title and interest, benefits and obligations and duties held by Assignor in, to and under the Loan Documents and the loan evidenced thereby. The assignment made by Assignor hereby is "AS-IS", "WHERE IS" and WITHOUT ANY WARRANTIES EXPRESS OR IMPLIED, except as expressly set forth in the Loan Sale Agreement. All such terms and conditions of the Loan Sale Agreement are incorporated herein by this reference as if set forth in full.

IN CONNECTION THEREWITH, Assignee hereby accepts the foregoing assignment and hereby assumes all of the duties, obligations and liabilities of Assignor under and with respect to the loan as evidenced by the Loan Documents.

[SIGNATURE PAGE FOLLOWS]

Appendix 01738

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this
Assignment of Loan Documents to be effective as of the date set forth below.

Date: As of _____, 2010

ASSIGNOR:

By: _____
Name:
Title:

ASSIGNEE:

GALT VALLEY, LLC, an Nevada limited liability company

By: _____
Name: _____
Title: ~~Member/Member~~ *Manager*

EXHIBIT "A"
LOAN DOCUMENTS

- 1) All other instruments and agreements executed in connection with any of the foregoing in or under which _____ has any right, title or interest.
-

thanks.

rolando

ROLANDO V. VILLAVICENCIO
RE/MAX Professional Realty
9209 University Boulevard
North Charleston, South Carolina 29406
843-767-7777 Office
843-767-4006 Fax
800-633-9275 Toll Free
843-303-3411 Cell
rolandovillavicencio@remax.net

Subject: Heritage Seven
Date: Tue, 23 Oct 2007 14:47:51 -0400
From: Benjamin.Lanier@amerisbank.com
To: rolandovillavicencio@msn.com

Rolando,

Can you help answer a couple questions our guy in Columbia had about Linda's personal statement? He wanted to know if the assets listed on the personal financial statement were 100% owned by Linda or if she owned a portion of them with an LLC/Trust.

all real estate assets, as noted on PFS as of 093007, are owned solely by linda avinger gibson EXCEPT:

1. 3205 palm blvd; - owned by 3205 palm blvd llc which is 50% linda a. gibson, and 50% Paul William Gibson Estate, for which linda a. gibson is the personal representative and trustee - we are attaching supporting documents for this;

2. 109-111 s. hwy 52; - owned by heritage seven llc, which was originally 600 carolina blvd llc, which is also similar to 3205 palm blvd llc - this is included in supporting document as attached;

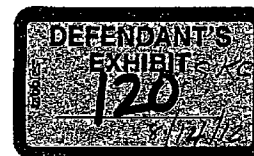
3. PLEASE HIGHLIGHT, VERY IMPORTANT NOTE:
linda a. gibson's real estate strategy is eventually to turn over all real estate holdings to one entity, which is heritage seven llc.

acquiring the apartment project under heritage seven llc is already a second property ownership after the 109-111 s. hwy 52 shopping center.

all other properties, from here on, to eventually follow suit;

4. daniel island 55 acres is owned by linda a. gibson at 50% and john avinger and shirley huggins at combined 50%.

PCARTIFF EX 11



Appendix 01741

tenancy in common agreement is currently being worked out by paul m. lynch, esquire.

STRICTLY CONFIDENTIAL: linda a. gibson would like to eventually buy out the 2 cousins, and doing this apartment project would place her in a much more strategic position, financially, and will also garner linda with a hands-on experience to "development".

STRICTLY CONFIDENTIAL: currently, drawings and plans are available for the 55 acres to build some 150 fee simple townhouse units, and some commercial development fronting clements ferry. we anticipate project development may well cost in excess of \$60 million.

but after more careful review, we end to lean towards developing the site for all commercial, like the mt pleasant town center, than as currently planned.

to buy out the 2 cousins would be the first step to achieve this ultimate goal.

if you need further info on this, please call me. otherwise, we trust you and the bank will keep this strictly confidential, as noted.

If you could find this out it would be a huge help. If they are not wholly owned by Linda can you please let me know what portion of ownership she does own the properties.

The other question was the location/valuation of the 55 acre parcel on Daniel Island. If possible can you give me the valuation determination for that parcel?

valuation determination was based on recent real estate transactions in the area of similar comparable acreage.

current active listings have asking prices as much as over \$1 million per acre.

mikasa, which sits on a little over 81 acres, with its current buildings and improvements, is already asking \$41 million for their property.

in addition, numerous inquiries and interest have been received stating values as much as as-stated.

fortunately, owners are not interested to sell, period.

It is valued on Linda's PFS as \$27,500,000. We just wanted to get a clarification on the value in case a Bank Examiner were to question us on this.

I have attached the PFS for you to reference. Once these questions are answered I believe we are in good shape for approval.

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

<<http://www.amerisbank.com/>>

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

--Forwarded Message Attachment--

Subject: Linda Gibson PFS

Date: Tue, 23 Oct 2007 14:46:08 -0400

From:

Benjamin.Lanier@amerisbank.com

To:

Benjamin.Lanier@amerisbank.com

Climb to the top of the charts! Play Star
Shuffle: the word scramble challenge with star power. Play Now!

<http://club.live.com/star_shuffle.aspx?icid=starshuffle_wlmailtextlink_oct>

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. It is not an offer or acceptance, and it is not intended to be all or part of an agreement. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any review, use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by return e-mail and delete this e-mail from your system. The sender does not accept liability for any damage caused by any virus transmitted by this e-mail or any errors or omissions in the contents of this message which arise as a result of e-mail transmission.

Windows Live Hotmail and Microsoft Office Outlook - together at last. Get it now!
<<http://office.microsoft.com/en-us/outlook/HA102225181033.aspx?pid=CL100626971033>>

Help yourself to FREE treats served up daily at the Messenger Café. Stop by today!
<http://www.cafemessenger.com/info/info_sweetstuff2.html?ocid=TXT_TAGLM_OctWltagline>

Help yourself to FREE treats served up daily at the Messenger Café. Stop by today!
<http://www.cafemessenger.com/info/info_sweetstuff2.html?ocid=TXT_TAGLM_OctWltagline>

Linda Ann Avinger Gibson

Personal Financial Statement September 30, 2007

Assets:

Personal Assets:

Primary - 133 Horse Trail Rd - 10 Acres w/ 6 Horse Barn)	\$ 500,000	
Appraisal Value as of 061207		
Supplemental - 171 Quarter Horse Rd - 78 Acres	1,380,000	
Cross Fencing, Running Track, 14 Stall Barn		
Automobiles	77,250	
Cato 2000 Trailer	60,500	
Other Personal Items	185,600	
Total Personal Assets:		\$ 2,203,350

Investment Assets:

Gibson Enterprises	\$275,000	
--------------------	-----------	--

Total Investment Assets:		\$ 275,000
---------------------------------	--	-------------------

Portfolio Assets:

Checking Account:	3205 Palm Blvd LLC	\$667,800
	Gibson Ranch	\$ 40,000

Total Portfolio Assets:		\$ 707,800
--------------------------------	--	-------------------

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
615 Klister Lane Crown Castle Cell Tower - 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 - Crown Castle Cell Tower Access 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 - Appraisal of 071107 571-10-00-140 - Vacation Rental Home	\$ 2,150,000
109-111 S. Hwy 52 Moncks Corner Plaza Blockbuster & Advance Auto Building Appraisal Value as of 120505	\$ 2,200,000
Total Real Estate Assets:	\$52,685,800

PLAINTIFF EX 11

Appendix 01746

GRAND TOTAL ASSETS: \$55,871,950

Liabilities:

Primary Residence	\$ 397,479
3205 Palm Blvd Loan	1,500,000
109-111 S. Hwy 52, Moncks Corner	\$1,232,980
Bank Loan	<u>58,725</u>

TOTAL LIABILITIES: \$ 3,189,184

NET WORTH : \$52,682,766

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

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 Or 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		

PC001177 EX 28



Appendix 01748

6 Rental Buildings	\$59,328.00	G&S Home Remodelng
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 1/2" 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	\$888.00	Precision Door Service

INDENTIFF EX 28

		803-359-9642
3.5 Kilowatt 20 Kyocera Solar Panels	\$33,250	SC Solar Inc. 803-980-4320
Recycled Glass Tiled Shower / Tub Enclosures / Fixtures		
Patented Shower Sprays with Fluidic Technology		
Kohler Dual Force Low consumption Toilet @ \$140 ea x 48	\$6,720.00*	Lowe's
On-Demand Bosch Power Star AB125 Tank-Less Water Heaters 4 gallons per minute at 200 amps; 95% efficiency rating 10 yr warranty; solid copper heat exchanger; flow sensor; Electronic flow switch; endless hot water supply; Weighs less than 25 lbs; no temp/pressure release valve @ \$650.00 each x 48	\$31,200.00	Bosch
Titan SCR2 Tankless Water Heater @ \$249.99 ea x 48	\$11,999.52*	www.titanheater.com
38 gallon 6 yr electric lowboy water heater #140425 @ \$199 ea	\$9,552	Lowe's
SC Solid Waster Disposal Fee @ \$2 ea x 48	\$96.00*	Lowe's
Bath Mirror 24 x 36 1/4" # 96675 @ \$18.99 ea x 48	\$911.52*	Lowe's
24 x 18 combo bath cabinet # 132143 @ \$79 ea x 48	\$3,792.00*	Lowe's
Seton Chrome 4 piece Kit # 198615 @ \$15 ea x 48	\$720.00*	Lowe's
Waldo Know T/S 2F SH Chrome # 188609 @ \$66 ea x 48	\$3,168.00*	Lowe's
Toilet To Go # 746 @ \$69 ea x 48	\$3,312.00	Lowe's
Wood Round Toilet Seat @ \$8 ea x 48	\$384.00*	Lowe's
Tub/Shower L/D Aglas # 29581 @ \$264 ea x 48	\$12,672*	Lowe's
Lav Faucet 4" no pop # 18631 @ \$15 ea x 48	\$720.00*	Lowe's
Disposer 1/3hp Badger @ \$55 ea x 48	\$2,640.00*	Lowe's
DB Sink with Faucet & Strainer @ \$88 ea x 48	\$4,224.00*	Lowe's
SBC Basic Fire Extinguisher @ \$9.50 ea x 48	\$456.00*	Lowe's
Life Saver Twin Pack Smoke Detector @ \$8.05/pack	\$386.40*	Lowe's
HVAC Digital Mechanical T-Stat @ \$19.99 ea x 48	\$959.52	Lowe's
Clubhouse/Wellness Center/Fitness Center		

FD-001 TYPED EX 28

Switch Plates/Phone Plates/Fans/Light Fixtures @ \$180.00	\$8,640.00*	Lowe's
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/o 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*	Lowe's
Interior/Hallway Doors/Hardware/Stoppers @ 759.77 tax/unit	\$36,468.96*	Lowe's
Molding: Baseboard & Quarter Round @ \$277.16 tax/unit	\$13,303.68*	Lowe's
47" Vinyl Shutter Blk Louver #8645 \$26.50 tax / pair x 72 Non-Toxic Paint	\$1,908.00*	Lowe's
12x12 Sahara Beige Ceramic Tile #188333 @ 459sqft x \$358.02	\$17,184.96*	Lowe's
31 5/16 3 x 5 Durock # 72779 @ \$247.69 x 24 units	\$5,944.56*	Lowe's
Highrise Carpet # 241836 @ \$329.28 x 336 sqft x 48 units	\$15,805.44*	Lowe's
6' Cushionaire Carpet Pad # 171537 @ \$134.40/56 pcs x 48 units	\$6,451.20*	Lowe's
Crown Moldings, Trims, Window Coverings		
Kitchen Cabinets Tacoma Oak Honey @ \$1,888.95 tax ea x 48	\$90,669.60*	Lowe's
36" bartop & 6' countertop @ \$219.95 tax/unit x 48	\$10,557.60*	Lowe's
White ReliaBilt Windows & Half-Screen @ \$738.44 tax/unit	\$35,445.12	Lowe's
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	Lowe's
Stairs, Railings, Wood Work, Floorings, Lighting		
Brick Entry Decorative Items / Lighting		

PLAINTIFF EX 28

Appendix 01751

VERDANA

2625 Otranto Road
North Charleston, South Carolina 29406

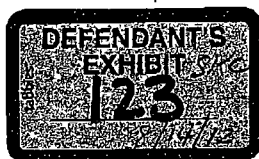
Presented By

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
BarthCraft House Multi-Family Program Consulting Costs	\$4,800*	BarthCraft House
Licensed Contractor/Structural Engineer/Architecture Fees Allowance up to _____ % of total project costs Or 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		



-1212-



Appendix 01752

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 1/2" type 1 hotmix Replace 3 existing speed bumps, stripe, 100' sidewalk	\$37,990.00	Howell & Simmons 843-747-3000
Owens Corning 50-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 Canvas 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	\$888.00	Precision Door Service

803-359-9642

3.5 Kilowatt 20 Kyocera Solar Panels

\$33,250

SC Solar Inc.
803-980-4320

Recycled Glass Tiled Shower / Tub Enclosures / Fixtures

Patented Shower Sprays with Fluidic Technology

Kohler Dual Force Low consumption Toilet @ \$140 ea x 48

\$6,720.00*

Lowe's

On-Demand Bosch Power Star AE125 Tank-Less Water Heaters
4 gallons per minute at 200 amps; 95% efficiency rating
10 yr warranty; solid copper heat exchanger; flow sensor;
Electronic flow switch; endless hot water supply;
Weighs less than 25 lbs; no temp/pressure release valve
@ \$650.00 each x 48

\$31,200.00

Bosch

Titan SCR2 Tankless Water Heater @ \$249.99 ea x 48

\$11,999.52*

www.titanheater.com

38 gallon 6 yr electric lowboy water heater #140425 @ \$199 ea

\$9,552

Lowe's

SC Solid Waste Disposal Fee @ \$2 ea x 48

\$96.00*

Lowe's

Bath Mirror 24 x 36 1/2" # 96675 @ \$18.99 ea x 48

\$911.52*

Lowe's

24 x 18 combo bath cabinet # 132143 @ \$79 ea x 48

\$3,792.00*

Lowe's

Seton Chrome 4 piece Kit # 198615 @ \$15 ea x 48

\$720.00*

Lowe's

Waldo Know TVS 2F SH Chrome # 188609 @ \$66 ea x 48

\$3,168.00*

Lowe's

Toilet To Go # 746 @ \$69 ea x 48

\$3,312.00

Lowe's

Wood Round Toilet Seat @ \$8 ea x 48

\$384.00*

Lowe's

Tub/Shower L/D Agias # 29581 @ \$264 ea x 48

\$12,672*

Lowe's

Lev Faucet 4" no pop # 18631 @ \$15 ea x 48

\$720.00*

Lowe's

Disposer 1/3hp Badger @ \$55 ea x 48

\$2,640.00*

Lowe's

DB Sink with Faucet & Strainer @ \$88 ea x 48

\$4,224.00*

Lowe's

5BC Basic Fire Extinguisher @ \$9.50 ea x 48

\$456.00*

Lowe's

Life Saver Twin Pack Smoke Detector @ \$8.05/pack

\$386.40*

Lowe's

HVAC Digital Mechanical T-Stat @ \$19.99 ea x 48

\$959.32

Lowe's

Clubhouse/Wellness Center/Fitness Center

Switch Plates/Phone Plates/Fans/Light Fixtures @ \$180:00	\$8,640.00 ^u	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 ^u	Lowes
Interior/Hallway Doors/Hardware/Stopppers @ 759.77 tax/unit	\$36,468.96 ^u	Lowes
Molding; Baseboard & Quarter Round @ \$277.16 tax/unit	\$13,303.68 ^u	Lowes
47" Vinyl Shutter Blk Louver #8645 \$26.50 tax / pair x 72 Non-Toxic Paint	\$1,908.00 ^u	Lowes
12x12 Sahara Beige Ceramic Tile #188333 @ 459sqft x \$358.02	\$17,184.96 ^u	Lowes
31 5/16 3 x 5 Durock # 72779 @ \$247.69 x 24 units	\$5,944.56 ^u	Lowes
Highrise Carpet # 241836 @ \$329.28 x 336 sqft x 48 units	\$15,805.44 ^u	Lowes
6" Cushionaire Carpet Pad # 171537 @ \$134.40/56 pcs x 48 units	\$6,451.20 ^u	Lowes
Crown Moldings, Trims, Window Coverings		
Kitchen Cabinets Tacoma Oak Honey @ \$1,888.95 tax ea x 48	\$90,669.60 ^u	Lowes
36" bartop & 6' countertop @ \$219.95 tax/unit x 48	\$10,557.60 ^u	Lowes
White ReitaBilt 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		

-1215-

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, including 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 reference 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 believe 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

		<u>TOTALS</u>
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	
<hr/>		
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

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

From: ROLANDO VILLAVICENCIO (rolandovillavicencio@msn.com)
To: bart knapp; The Verdi Company; Triton Group; AMGRolando Villavicencio
Date: Wednesday, November 14, 2007 10:41:00 AM
Subject: VERDANA - info as requested; paint price proposal; others

good morning to all.

bart, here is the info:

Heritage Seven, LLC
Linda A. Gibson, Member
c/o Rolando V. Villavicencio
RE/MAX Professional Realty
9209 University Boulevard
North Charleston, South Carolina 29406

i am also sending painting proposal for your consideration.

you are welcome to call wilfredo directly to see how else he can improve his services.

wilfredo is our personal professional painter and he is exceptional as far as we are concerned.

wilfredo's number is 843-270-2545.

also, can you email me your contract so i can make my recommendations, suggestions, etc. directly on to it.

also, i am attaching our renovation specifications and cost estimates that i have worked so hard to do for a year now.

this is our guideline of what VERDANA needs and wants done.

~~please reference to it in great detail, and continually, because it is as comprehensive as it can get.~~

any diversions/discussions, while critical and very important, are mainly for improvement/savings /economics/aesthetics/functionality/safety/benefits/codes purposes.

again, please refer to our guideline so we all know exactly where we are headed on this.

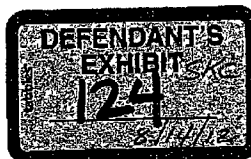
in our meetings, we have not discussed fencing of the rear of the buildings, driveway, walkway, pavement, landscaping, design of 2 columns at front of each buildings, shutters, mailboxes and others.

is this because it is too early in the game or should we consider these details now?

anyway, we talked about having a 40' container sit at the open space at the former pool area.

i believe this will end up being an eye sore and therefore would prefer;

V 768



Appendix 01759

1. a 20' instead of a 40' - even 2 x 20' side by side, would be better for easier access;
2. purpose is to store, temporarily, old and usable items such as refs, stoves, dishwashers, air handlers, compressors, water heaters, vents, garbage disposals, etc.;
3. although a safety and security issue, it may best be placed out of sight, at green space behind building 4 - plus, it is near the office and work area;
4. just in case this becomes a more permanent situation, then it can sit back there quietly;
5. plus, the contents may be of no real value;
6. we can start with 1 x 20' and go from there;
7. would like this to sit on top of a platform, to raise it up a little to prevent water from sipping in, and to prevent from sinking in;
8. can we have light to run in it?
9. your thoughts on this please.

otherwise, bart, still need the docs to start the rebate and process the tax credit.

will wait for your contract so i can respond as quickly as you can send same.

also, please include mike in the email loop - better yet, send me his email so i can include him in all our correspondence.

bart, hope your wife is doing well.

thanks.

rolando

ROLANDO V. VILLAVICENCIO

RE/MAX Professional Realty
9209 University Boulevard
North Charleston, South Carolina 29406
843-767-7777 Office
843-767-4006 Fax
800-633-9275 Toll Free
843-303-3411 Cell
rolandovillavicencio@remax.net

From: eccotemp@hotmail.com

To: mlester75@gmail.com; david@theverdcompany.com; markvanhaelst@gmail.com;

V 769

Appendix 01760

rolandovillavicencio@msn.com
Subject:
Date: Wed, 14 Nov 2007 09:45:07 -0500

Rolando,

Could you please forward the address for Heritage 7 LLC and the partners names to me. I would also request a copy of the owner's designation of you as the representative for Addendum B. Please send as a word document since I can not make changes to PDF.

Thanks,
Bart

Climb to the top of the charts! Play Star Shuffle: the word scramble challenge with star power. [Play Now!](#)

Peek-a-boo FREE Tricks & Treats for You! [Get 'em!](#)

V 770

Appendix 01761

Renaissance Painting, LLC
Proposal to Paint 2625 Otranto Road
Northwoods Apartments

October 5, 2007

Interior Painting

1. Spray paint all collings with 1 coat flat white ceiling paint.
2. Sand and Spray all walls with one coat flat paint.
3. Scuff sand, spot prime, and caulk all trim as required, then spray all trim with 1 coat semi-gloss or gloss white (owner's discretion)
4. Paint two columns outside with 1 coat exterior latex.

Price to do the above work is \$450.00 per apartment, \$800.00 for hallway.

No repairs are included in this estimate. Customer to cover the cost of all materials: Paint, caulking, sandpaper, painter's putty, tape, plastic and/or paper. If proposal is accepted, payment of 40% is due to schedule job, with balance due upon completion of work.

Proposal submitted by: Wilfredo Garcia Ruiz Date: 5/oct/07
Wilfredo Garcia Ruiz - Renaissance Painting, LLC

Accepted by: _____ Date: _____

Proposal may be withdrawn if not accepted within 14 days

V 771

Appendix 01762

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 at 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
Roofing/Fascia/Vinyl Siding/Gutters	\$66,301.00*	G&S Home Remodeling
Atlas Pinnacle 35 Year Architectural Shingles Labor, Materials, Permits, Disposal Included		

V 772

Appendix 01763

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, Prop and GemSeal, Re-Striping	\$15,100.00*	BGI Parking Lot Maintenance 843-797-5554
4000 square yards overlay @ parking, 1 1/2" 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 Umbrella Acrylic Canvass Covers Stapled to Frames 1 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
17" Fridge Ref 30"/Flattop Range 30"/MW 30'/Dishwasher		

V 773

Energy Star rated Frigidaire Brand @ \$1,291/unit	\$61,968.00	Lowes David Chandler
8' x 7' Steel Storage/Garage Door	\$888.00	Precision Door Service 803-359-9642
3.5 Kilowatt 20 Kyocera Solar Panels	\$33,250	SC Solar Inc. 803-980-4320
Recycled Glass Tiled Shower / Tub Enclosures / Fixtures		
Patented Shower Sprays with Fluidic Technology		
Kohler Dual Force Low consumption Toilet @ \$140 ea x 48	\$6,720.00*	Lowes
On-Demand Bosch Power Star AE125 Tank-Less Water Heaters 4 gallons per minute at 200 amps; 95% efficiency rating 10 yr warranty; solid copper heat exchanger; flow sensor; Electronic flow switch; endless hot water supply; Weighs less than 25 lbs; no temp/pressure release valve @ \$650.00 each x 48	\$31,200.00	Bosch
Titan SCR2 Tankless Water Heater @ \$249.99 ea x 48	\$11,999.52*	www.titanheater.com
SOS Tankless Water Heater AB-115 @ \$350 each	\$16,800.00	Lowes
SOS Tankless Water Heater AB-125 @ \$499 each	\$23,952.00	Lowes
38 gallon 6 yr electric lowboy water heater #140425 @ \$199 ea	\$9,552	Lowes
SC Solid Waster Disposal Fee @ \$2 ea x 48	\$96.00*	Lowes
Bath Mirror 24 x 36 1/4" # 96675 @ \$18.99 ea x 48	\$911.52*	Lowes
24 x 18 combo bath cabinet # 132143 @ \$79 ea x 48	\$3,792.00*	Lowes
Seton Chrome 4 piece Kit # 198615 @ \$15 ea x 48	\$720.00*	Lowes
Waldo Know T/S 2F SH Chrome # 188609 @ \$66 ea x 48	\$3,168.00*	Lowes
Toilet To Go # 746 @ \$69 ea x 48	\$3,312.00	Lowes
Wood Round Toilet Seat @ \$8 ea x 48	\$384.00*	Lowes
Tub/Shower L/D Aglas # 29581 @ \$264 ea x 48	\$12,672*	Lowes
Tub liner, seamless surround wall (flat high gloss white) corner Quad shelf, new Delta Valve & fixtures @ \$2,200 ea unit	\$105,600	Bath Fitter Tom Bryce
Lav Faucet 4" no pop # 18631 @ \$15 ea x 48	\$720.00*	Lowes
Disposer 1/3hp Badger @ \$55 ea x 48	\$2,640.00*	Lowes

V 774

Appendix 01765

DB Sink with Faucet & Strainer @ \$88 ea x 48	\$4,224.00*	Lowes
ABC Basic Fire Extinguisher @ \$9.50 ea x 48	\$456.00*	Lowes
Life Saver Twin Pack Smoke Detector @ \$8.05/pack	\$386.40*	Lowes
HVAC Digital Mechanical T-Stat @ \$19.99 ea x 48	\$959.52	Lowes
Clubhouse/Wellness Center/Fitness Center		
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	\$113,280.00
13 Seer RUUD @ \$1,300? per unit x 48	\$62,400*	Prestige Heating & Air
13 Seer Bryant By Carrier @ \$2533 w/ new line sets Demo units, recover refrigerants, split system heat pumps Energy Star Thermostats 1 yr warranty/ 5 yr parts	\$121,600	Lonzie & Sons Frank Allen
Recover refrigerant @ 48 units/demo; includes \$75/unit	\$119,354	Lonzie 100107
13 Seer 1.5 Ton @ \$1,868.33 ea x 24	\$44,840	Goose Creek Heating/Air
13 Seer 2.0 Ton @ \$1,965.00 ea x 24	\$47,160	\$92,000.00
Unit Doors 36" 6 Panel #21683 @ \$138.03 tax ea	\$6,625.44*	Lowes
Therma Tru Smooth Star Fiberglass Unit Door @ \$520 ea 20 Minute fire rating with 90 minute pressure rate	\$24,960	Lowes
Interior/Hallway Doors/Hardware/Stopppers @ 759.77 tax/unit	\$36,468.96*	Lowes
Molding: Baseboard & Quarter Round @ \$277.16 tax/unit	\$13,303.68*	Lowes
47" Vinyl Shutter Blk Louver #8645 \$26.50 tax / pair x 72 Non-Toxic Paint	\$1,908.00*	Lowes
12x12 Sahara Beige Ceramic Tile #188333 @ 459sqft x \$358.02	\$17,184.96*	Lowes

V 775

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 pos 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		
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, as 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, including 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 reference 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 believe 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, as a guideline, and should not be construed as final and/or in contractual form.

V 776

Appendix 01767

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY) IN THE NINTH JUDICIAL CIRCUIT

LINDA A. GIBSON, formerly known as) C.A. No. 2010-CP-08-2134
LINDA ANN AVIGNER, individually)
and as Trustee of the Paul William Gibson)
Family Trust, and HERITAGE SEVEN,)
LLC,)

Plaintiffs,)

vs.)

AMERIS BANK,)

Counterclaim Defendant.)

DEFENDANT'S BRIEF ON DAMAGES

FILED
NOV -3 AM 11:06
CLERK OF COURT
BERKELEY COUNTY, SC

As set forth in the proposed order submitted by Ameris Bank, the evidence before the Court establishes that Ameris Bank is not liable to Plaintiffs for the harm alleged. Nonetheless, Ameris Bank submits the following brief on damages for the Court to consider when evaluating the request for damages that is expected to be made by Plaintiffs in their proposed order.

I. Measure of Damages

Plaintiffs have asserted three causes of action: negligent misrepresentation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. Each of these causes of action sounds in tort. In a tort case “[a]ctual damages are such as will compensate the party for injuries suffered or losses sustained.” *Mellen v. Lane*, 377 S.C. 261, 287, 659 S.E.2d 236, 250 (Ct. App. 2008) (citing *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964)). “Actual damages are awarded to a litigant in compensation for his actual loss or injury.” *Id.* “They are such damages as will simply make good or replace the loss caused by the wrong or injury.” *Id.* “The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.” *Id.* (citing *Clark v.*

Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000)). “The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant’s wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury.” *Id.* (citing *Rogers v. Florence Printing Co.*, 233 S.C. 567, 578, 106 S.E.2d 258, 264 (1958); *Hutchinson v. Town of Summerville*, 66 S.C. 442, 448, 45 S.E. 8, 10 (1903)).

In the event the Court finds that Plaintiffs are entitled to recover damages in this case, the measure of damages would be the amount that would put Plaintiffs in the same position they would have been in had there been no wrongful injury. Assuming that the harm occurred upon the purchase of the apartment complex and the closing of the loan, the goal of a damages recovery in this case would be to put Plaintiffs in the position they were in prior to the transaction.

II. Plaintiffs’ Alleged Damages

Plaintiffs have alleged damages flowing from several different sources, including attorneys’ fees, that are not recoverable in this case as a matter of law. Accordingly, even if the Court were to find Ameris Bank liable for the harm alleged in this case, Plaintiffs are not entitled to recover damages for the items identified below, excluding the value of the cell tower lot on Klister Lane.

A. 3205 Palm Boulevard

Plaintiffs introduced evidence that Linda Gibson made a \$700,000 down payment to purchase the apartment complex. [Tr. 78:21-79:1; 84:15-19.] Gibson testified that she refinanced a beach house in order to obtain the money. [Tr. 84:15-19.] The record reflects that the beach house was not owned by Gibson but was instead owned by an entity named 3205 Palm

Boulevard, LLC. [Def.'s Ex. 10; Tr. 191:20-192:10.] Although Gibson had a 50% interest in the LLC, the proceeds of the refinance belonged to the LLC. [Tr. 191:14-192:18.] The record further reflects that after the refinance, the proceeds were placed in a checking account in the name of 3205 Palm Boulevard, LLC. [Def.'s Ex. 17; Tr. 193:15-194:14.] Gibson testified that she used the money to make the down payment on the apartment complex. [Tr. 194:15-19.] Gibson further testified that she did not borrow the money from 3205 Palm Boulevard, LLC, nor did she execute a promissory note in favor of the LLC. [Tr. 194:20-23.]

To put Plaintiffs in the position they would have been in had they never purchased the apartment complex, it would be logical to conclude that Plaintiffs should get the down payment back. But Plaintiffs did not make the \$700,000 down payment. 3205 Palm Boulevard LLC did, and that entity is not a party to this lawsuit. South Carolina law clearly provides that “[a] limited liability company is a legal entity distinct from its members.” S.C. Code Ann. § 33-44-201. A member of an LLC may not bring an individual action for a wrong committed to the LLC or its members. *See, e.g., Wasko v. Farley*, 947 A.2d 978 (Conn. Ct. App. 2008). *See also* S.C. Code Ann. § 33-44-1101, *et seq.* (setting forth the procedure by which a member of a limited liability company may bring a derivative action on behalf of the entity). ~~Because the \$700,000 belonged~~ to the LLC and not to Plaintiffs, and because the LLC is not a party to this case, Plaintiffs are not entitled to recover the \$700,000 down payment.

Plaintiffs also introduced evidence of damages sustained in connection with the beach house located at 3205 Palm Boulevard. For example, Plaintiffs introduced evidence concerning the interest paid on the mortgage taken out on the beach house in the refinance to obtain the \$700,000. [Pl. Ex. 4.] Plaintiffs introduced evidence that the beach house ended up in foreclosure [Tr. 82:23-83:5], and that pursuant to a forbearance agreement reached with First

Citizens Bank, Gibson agreed to be personally obligated to repay First Citizens \$450,000. [Pl. Ex. 2; Tr. 83:7-22.] Gibson testified about the interest she paid on the \$450,000 obligation. [Pl. Ex. 3; Tr. 84:3-11.] Plaintiffs also introduced evidence concerning attorneys' fees incurred in negotiating with First Citizens. [Pl. Ex. 5; Tr. 85:21-86:2.]

As explained above, these damages are not recoverable because they represent harm to the LLC and not to Plaintiffs, and the LLC is not a party to this action. Nevertheless, these damages would not be recoverable even if they were incurred by Plaintiffs. The refinance of 3205 Palm Boulevard is a transaction wholly unrelated to the transaction in this lawsuit. In order to make this loan, Ameris required a \$700,000 down payment. Gibson chose to refinance the beach house owned by a limited liability company in which she had an interest in order to satisfy this equity requirement. Ameris Bank is not responsible for the decision.

B. Cell Tower Lot

Plaintiffs pledged a piece of property located on Klister Lane as additional collateral for the purchase of the apartment complex. [Def.'s Exs. 26, 33; Tr. 89:17-25.] Gibson testified that after Ameris sold the loans to Galt Valley, she deeded the Klister Lane property to Galt Valley in connection with the settlement of the foreclosure action. [Def.'s Ex. 107; Tr. 90:1-5.] Plaintiffs' expert witness Tommy Hartnett testified as to the value of the Klister Lane property. [Pl.'s Ex. 40; Tr. 247:25-248:5.] According to Hartnett, the appraisal performed by C.S. McCall & Co., LLC, dated March 8, 2010, which valued the Klister Lane property at \$355,000 was proper. [Tr. 247:25-248:3.] This is the best evidence in the record concerning the value of the property. Hartnett testified: "I found Mr. McCall's appraisal of the tower to be properly done and his conclusions based on the information within that report properly reached. So I concurred in his value of \$355,000." *Id.* The C.S. McCall appraisal is the only probative evidence before the

Court concerning the value of the Klister Lane property. Although Plaintiffs introduced evidence that Galt Valley sold the Klister Lane property in or around April of 2011 for \$510,000 [Pl.'s Ex. 10; Tr. 255:17-256:9], the amount that the property sold for in 2011 is not probative of its value in 2007. As Hartnett conceded, there is no information in the record about the parties to the 2011 transaction, the circumstances under which the sale occurred, or whether the transaction was a fair market value transaction. [Tr. 257:23-259:5.]

Finally, although Plaintiffs introduced evidence concerning lost rental income on the Klister Lane property, C.S. McCall used an income approach in appraising the property, which takes rental income into account. [Tr. 259:6-20.] Accordingly, if anything, Plaintiffs would be entitled to the value as stated in the C.S. McCall appraisal. If the Court finds that Ameris is liable to Plaintiffs, Plaintiffs' damages would not exceed \$355,000, which is the best evidence of the value of the Klister Lane property.

C. Personal Funds Contributed by Gibson

Gibson testified that during the course of the apartment renovation project, she put \$75,000 of her own money into the project. [Tr. 94:16-25.] But Plaintiffs did not introduce bank records or cancelled checks to support Gibson's claim. Given the lack of evidence, the Court cannot conclude how much money Gibson contributed to the project, and certainly should not award damages based on her assertion alone.

In any event, to recover the \$75,000 against Ameris, Plaintiffs would have to show that Gibson contributed this money prior to or at the time the loan was made. Instead, Gibson testified that she used her own money when the renovations were not going well and she was struggling to satisfy her outstanding debts. [Tr. 94:16-25.] There is no evidence in the record that Ameris guaranteed to Plaintiffs that the \$700,000 construction loan would be sufficient to

complete the renovations or that Gibson would not have to use any of her own money to complete the project.

Accordingly, even if the Court finds Ameris is liable to Plaintiffs, the personal funds Gibson claims she put into the project are not recoverable as damages in this case.

D. Attorneys' Fees

Plaintiffs introduced a variety of evidence regarding attorneys' fees they allegedly incurred since 2008. [Pl.'s Exs. 5, 9, 11, 13, 15, 26; Tr. 85:13-88:1; 95:17-100:18; 101:7-102:2; 102:12-13:16; 104:4-16.] These fees fall into two separate categories: (1) attorneys' fees incurred in this case and (2) attorneys' fees incurred in other litigation. Neither is recoverable.

1. This Case

It is well settled in South Carolina that "[a]ttorney's fees are not recoverable unless authorized by contract or statute." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009). "Under the 'American Rule,' the parties to a lawsuit generally bear the responsibility of paying their own attorneys' fees." *Layman v. State*, 376 S.C. 434, 451, 658 S.E.2d 320, 329 (2008) (citing *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 561 (1986)).

Plaintiffs seek to recover \$566,000 in attorneys' fees paid or owed pursuant to an agreement entered into between Plaintiffs and their attorneys in this case. [Tr. 95:17-100:18; Pl.'s Ex. 9.] According to the agreement, Plaintiffs hired the attorneys for representation "in the defense of and pursuit of a counterclaim in a foreclosure action brought by Ameris Bank presently pending in Berkeley County, South Carolina, Case No. 2010-CP-08-2134," which is the present case. [Pl.'s Ex. 9.] Having introduced no evidence of any contract or statute that

would entitle them to recover their attorneys' fees in this case, Plaintiffs may not recover the \$566,000 fee.

2. Other Cases

Plaintiffs also seek to recover attorneys' fees allegedly incurred in the case against Plaintiffs' property manager, Rolando Villavicencio, as well as fees incurred in defending a foreclosure action filed against 3205 Palm Boulevard, LLC.

Under South Carolina law, a plaintiff may under limited circumstances recover attorneys' fees when the defendant's wrongful conduct has forced the plaintiff to protect her interests by bringing or defending an action against a third person. *See, e.g., Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 307 S.C. 128, 129, 414 S.E.2d 118, 119 (1992). Although some states consider such recovery to be an exception to the American Rule, South Carolina employs an equitable indemnity analysis in considering whether a plaintiff may recover attorneys' fees when a defendant's tortious conduct forces the plaintiff into separate litigation with a third party. *Id.*

To begin, the evidence in the record does not support a finding that Ameris' conduct forced Plaintiffs to protect their interests by bringing or defending an action against a third party.

There is no evidence that, but for Ameris' conduct, Plaintiffs would not have sued Rolando. Instead, the evidence shows that Plaintiffs sued Rolando nearly two years before counterclaiming against Ameris Bank, and asserted the counterclaims only after Ameris filed the action for foreclosure. Additionally, with respect to the foreclosure action filed against 3205 Palm Boulevard LLC, the evidence reflects that Gibson, with Rolando's advice, chose to refinance the beach house, and did so without any input from Ameris. Gibson also decided on her own not to use her substantial assets to satisfy the obligation owed to First Citizens Bank. There is no

evidence that Ameris' conduct forced the property to go into foreclosure or caused Plaintiffs to have to defend the foreclosure action.

Moreover, under an equitable indemnity analysis, a plaintiff's ability to recover damages from a tortfeasor incurred as a result of the defendant's actions "is subject to the proviso that no personal negligence of [the plaintiff's] own has joined in causing the injury." *First General Services of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 448 (1994); *Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983). As explained in one case:

Equitable indemnity cases involve a fact pattern in which the first party is at fault, but the second party is not. If the second party is also at fault, he comes to court without equity and has no right to indemnity. The most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault.

Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999) (citations omitted).

Here, the evidence in record shows that Plaintiffs' own conduct contributed to Plaintiffs' ~~alleged injury. Plaintiffs agreed to purchase the apartment complex for \$2.8 million without~~ negotiating the price or conducting any due diligence. [Tr. 181:24-182:15; 185:12-18.] Gibson testified that she did not read any of the loan documents or contracts that she signed. [Tr. 299:12-15.] She relied on someone (Rolando) to prepare the budget and manage the project who had no prior experience with a project of this size. [Ct. Ex. 10, Villavicencio Dep. 102:13-103:14.] She did not complete the renovations and in the end made the decision not to repay the notes she guaranteed, despite having the financial assets to do so. [Tr. 234:19-235:16.]

Because Plaintiffs are at fault for the harm alleged, they are not entitled to recover damages under an equitable theory of recovery. Accordingly, Plaintiffs are not entitled to the attorneys' fees incurred in other cases.

E. Conclusion

To put Plaintiffs in the position they were in prior to the alleged wrongful conduct, the Court should not award Plaintiffs any more than \$355,000, which represents the value of the Klister Lane property. This is the only measure of damages that is supported by the evidence, that is tied to Plaintiffs, and that could possibly be supported by the law. None of the other alleged damages are recoverable against Ameris. Additionally, Ameris is entitled to a set-off for the amount of proceeds Plaintiffs received in the case against Rolando as explained below. After the set-off, Plaintiffs are not entitled to recover any money damages in this case.

III. Additional Considerations

A. Set-Off

As discussed above, Plaintiffs are at best entitled to an award of \$355,000 in damages, which is the value of the cell tower lot on Klister Lane. But the Court must also consider the money Plaintiffs received in the litigation against Rolando regarding the same facts and the same injury.

In July 2008, Plaintiffs sued Rolando V. Villavicencio, RPV Investments, LLC, and Re/Max Professional Realty. [Def.'s Ex. 60.] In August 2010, Plaintiffs amended their Complaint to assert causes of action for negligent misrepresentation and breach of fiduciary duty, among others. [Def.'s Ex. 65.] In response to written discovery served in this case and in the case against Rolando, Plaintiffs listed the exact same injuries. *Compare* Def.'s Ex. 62 and Plaintiff's Supplemental Answers to Defendant's Interrogatories, attached hereto as Exhibit A.

By agreement dated February 16, 2012, Plaintiffs settled their claims against Rolando et al. for the sum of \$850,000. [Pl.'s Ex. 16.]

South Carolina law provides that “[w]hen a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury . . . it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater.” S.C. Code Ann. § 15-38-50 (2005).

The rationale for providing credit to a nonsettling defendant is to prevent a double recovery to the plaintiff. *Truesdale v. South Carolina Highway Dep't*, 264 S.C. 221, 235, 213 S.E.2d 740, 747 (1975) (internal citation omitted), *overruled on other grounds, McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). “When the settlement is for the same injury, the nonsettling defendant’s right to a setoff arises by operation of law.” *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (2012) (citing *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 271-72 (Ct. App. 1999)). The statute requires a setoff when the claims against the joint tortfeasors arose out of the same factual scenario. *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 272 (Ct. App. 1999). “Under this circumstance, [s]ection 15-38-50 grants the court no discretion . . . in applying a set-off.” *Smith*, 397 S.C. at 472, 724 S.E.2d at 190 (internal quotation marks omitted).

Here, Ameris is entitled to a set-off in the amount of \$850,000. Plaintiffs allege that both Rolando and Ameris negligently misrepresented to Gibson that the apartment complex was a suitable investment for her and that both Rolando’s and Ameris’ actions throughout the course of the renovation project caused Plaintiffs’ harm. The injury for which Plaintiffs seek to recover damages against Ameris is identical to the injury for which Plaintiffs recovered \$850,000 against

Rolando. [Def. Ex. 65.] To deny a set-off would result in a windfall to Plaintiffs, in direct contradiction to S.C. Code Ann. § 15-38-50.

Because the amount of the set-off exceeds the amount of damages to which Plaintiffs would be entitled to recover if Ameris were liable, Plaintiffs are not entitled to any damages in this case.

B. Comparative Fault

If the Court finds that Ameris is liable to Plaintiffs and Plaintiffs have suffered damages as a result of Ameris' conduct, the Court should reduce any recovery available to Plaintiffs by the amount of Plaintiffs' own comparative fault in causing the harm alleged. Gibson testified that she did no due diligence prior to purchasing the apartment complex. [Tr. 181:24-182:15; 185:12-18.] She did not read any of the loan documents or contracts prior to executing them. [Tr. 299:12-15.] She also testified that, despite having substantial personal assets with which to satisfy her outstanding obligations, she allowed the loans on the apartment complex and on the beach house to go into default. [Tr. 234:19-235:16.] Accordingly, the Court should find that Plaintiffs have contributed to any damages they have suffered. Plaintiffs' comparative negligence exceeds any negligence of Ameris and prevents any recovery against Ameris. In the event the

Court finds that Plaintiffs' negligence does not exceed any fault on the part of Ameris, the Court should find that Plaintiffs' own negligence reduces any recovery to which Plaintiffs are otherwise entitled.

C. Punitive Damages

Plaintiffs also seek to recover punitive damages. As an initial matter, Plaintiffs are not entitled to an award of punitive damages because they are not entitled to an award of actual

damages. Even if Plaintiffs were entitled to actual damages, there is no evidence in the record to support a finding that Plaintiffs are entitled to recover punitive damages.

Punitive damages are intended to “deter the wrongdoer and others from committing like offenses in the future.” *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964) (quoting *Bowers v. Charleston W.C. Ry. Co.*, 210 S.C. 367, 378, 42 S.E.2d 705, 709 (1947)). Punitive damages are allowed only when a defendant’s conduct is so shocking that punishment is justified. *McGee v. Bruce Hosp. Sys.*, 344 S.C. 466, 545 S.E.2d 286 (2001); *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). Stated differently, punitive damages are allowed when a defendant has acted in a “reckless, willful, or wanton” manner. *Clark*, 339 S.C. at 379, 529 S.E.2d at 534. A defendant acts willfully or with reckless indifference to the rights of others when the defendant acts in disregard of a high and excessive degree of danger about which he or she knows or which would be apparent to a reasonable person in his or her condition. *Carter v. R.L. Jordan Oil Co.*, 301 S.C. 84, 86, 390 S.E.2d 367, 368 (Ct. App. 1990). Usually there must be a present consciousness of wrongdoing to justify the assessment of punitive damages against the wrongdoer. *Martin v. Martin*, 262 S.C. 168, 174, 203 S.E.2d 385, 387 (1974).

In this case, there is no evidence in the record to support an award of punitive damages. Plaintiffs offered no evidence that Ameris acted in a reckless, willful, or wanton manner, and there is no evidence that Ameris engaged in any conduct that is so shocking that it justifies punishment. Plaintiffs’ claim for punitive damages must be denied.

IV. Conclusion

In the event the Court finds that Ameris is liable to Plaintiffs, the evidence before the Court establishes that Plaintiffs have suffered no recoverable damages. Accordingly, judgment should be entered in favor of Ameris.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Stepp (rstepp@sowellgray.com)
Tina Cundari (tcundari@sowellgray.com)
William H. Jordan (wjordan@sowellgray.com)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Ameris Bank

Columbia, South Carolina
September 28, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

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

Case No.: 2010-CP-08-2134

PLAINTIFF'S SUPPLEMENTAL
ANSWERS TO DEFENDANT'S
INTERROGATORIES

Plaintiffs,

Vs.

AMERIS BANK,

Defendant.

TO: ROBERT STEPP AND WILLIAM JORDAN, ATTORNEYS FOR AMERIS BANK

6. Set forth an itemized statement of all damages claimed to have been sustained by Plaintiffs in this lawsuit.

a. Identify all related documents.

ANSWER: Plaintiff lost property located at 3205 Palm Boulevard in foreclosure. This property was pledged as collateral for a \$700,000 loan Plaintiff obtained from First Citizens Bank and used for the down payment for the apartments. This property was already encumbered by a loan from First Citizens Bank in the approximate amount of \$800,000 before the addition of the \$700,000 for a total obligation \$1,500,000. Plaintiff paid interest on the 2nd mortgage to First Citizens in the approximate amount of \$66,000.

The \$1,500,000 loan was foreclosed by First Citizens. The total amount past due with interest and attorneys fees was approximately \$1,579,181.26. The property was sold during foreclosure for \$1.025 million with net proceeds of approximately \$950,000. Plaintiff was required to hire attorneys to negotiate a settlement of the deficiency of \$450,000 under the settlement, First Citizens financed the deficiency and Ms. Gibson signed a 2 year note to First



Citizens for \$450,000 and has paid monthly interest in the amount of \$11,250 since December 10, 2010. Plaintiff paid attorneys fees and costs in the amount of \$37,354.00 on account of the First Citizens settlement. These consist of Andrew K. Epting \$13,750; George J. Kefalos \$10,190.22; Robert Papa \$10,895; Paul Tecklenburg \$277.50; CPA \$2,142.44.

Ms. Gibson also lost the equity she would have had in the 3205 Palm Boulevard property, amounting to between \$100,000 to \$200,000.

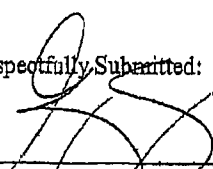
Plaintiff purchased the Otranto apartments with a loan from Ameris Bank. Plaintiff secured the loan with a first mortgage on the apartments as well as a mortgage on a track of land located on Klistler Lane, Berkeley County. The Klistler Lane property was valued at approximately \$338,000 and was free and clear of any encumbrances. Plaintiffs collected rent from this property in an amount of \$2,700.00 /month.

Plaintiff paid \$172,381.72 in interest payments during the time of the loan. Ameris Bank brought a foreclosure action against Plaintiff. Following institution of the suit, Ameris sold the loan to Galt Valley Mortgage, who sought a judgment from Plaintiff in the approximate amount of \$3 million. Plaintiff was required to hire counsel to defend the foreclosure action and negotiate a settlement. The settlement consisted of Plaintiffs agreement to deed the apartments and the Klyster Lane track to Galt in exchange for a waiver of deficiency.

Plaintiff has incurred attorney's fees in the defense of the apartment foreclosure action in the amount of \$566,666. These fees were calculated on the basis of 1/3 of all sums saved from the deficiency claimed by Galt Valley. For the purposes of the settlement with Galt Valley, as well as the calculation of attorneys fees, the apartments and the Klyster Lane properties were valued together at \$1.3 million. This value resulted in a savings of approximately \$1.7 million

and attorneys fees in the amount of \$566,666.00. Plaintiff also paid \$20,000 to attorney Lawrence Richter to represent her regarding the Ameris claim.

Respectfully Submitted:

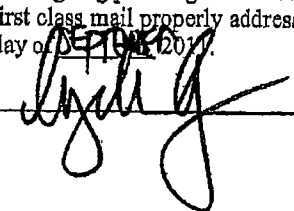

George J. Kefalos, Esquire
GEORGE J. KEFALOS, P.A.
3 State Street
Charleston, SC 29401
P: 843-722-6612
F: 843-377-1310
George@kefaloslaw.com

Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
ANDREW K. EPTING, JR., LLC
3 State Street
Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com

On this 27 day of Sept 2011
Charleston, SC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record via e-mail, facsimile, or first class mail properly addressed, with sufficient postage affixed thereto this 27 day of Sept 2011.



STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)
Case No. 2010-CP-08-2134)

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,)

v.)

Ameris Bank,)

Defendant.)

PLAINTIFFS' MEMORANDUM)
ON DAMAGES)

As requested by the Court, Plaintiff Linda Gibson submits this memorandum on the damages she sustained as a result of Ameris' conduct. Ms. Gibson's damages are set forth in the proposed order previously submitted to this Court and, in an effort to avoid duplication, she responds to the brief on damages submitted by Ameris in the order that the arguments appear in Ameris' brief.

I. Measure of Damages

Ms. Gibson agrees with Ameris that "the goal is to restore [Ms. Gibson], as nearly as possible through the payment of money, to the same position [s]he was in before the wrongful injury occurred." See Ameris Damages Brief pg 1.

II. Plaintiffs' Damages

Linda Gibson personally guaranteed the Ameris debt as well as the borrowed down payment, which took the form of a second mortgage on the beach house she formerly owned with her husband. As a consequence of the Defendant's conduct, every asset owned by Ms. Gibson was at risk. With the help of her attorneys, Ms. Gibson was able to mitigate her loss, which could have exceeded \$3,000,000.00. Despite Ms. Gibson's mitigation, her actual damages

total \$1,517,445.00.¹

A. 3205 Palm Boulevard

Ameris concedes that Ms. Gibson is entitled to a return of the down payment she made to purchase the apartment complex. Ameris states, "To put Plaintiffs in the position they would have been in had they never purchased the apartment complex, it would be logical to conclude Plaintiffs should get the down payment back." Ameris' Brief on Damages pg 3. However, Ameris argues that because Ms. Gibson borrowed the \$700,000.00 down payment through her LLC, 3205 Palm Boulevard, LLC, she is not entitled to a return of the down payment, rather the LLC would be entitled to a return of the down payment. Ameris' attempt at avoiding liability for the \$700,000.00 down payment, damages it concedes Ms. Gibson should be entitled to in order to return her to the position she was in before her purchase of the apartment complex, is misplaced. That 3205 Palm Boulevard, Ms. Gibson's LLC, signed the note and mortgage to borrow the down payment for the apartment complex is of no consequence as Ms. Gibson personally guaranteed the debt and repaid the debt. Ms. Gibson is also personally responsible for paying the interest on the deficiency and has paid monthly interest at 3% in the amount of \$1,125.00 per month since January of 2011 through September 30, 2012, totaling \$23,625.00.

(Plaintiff's Trial Exhibit 3).

B. Cell Tower Lot

Ameris concedes Ms. Gibson is entitled to recover "the value of the cell tower lot on Klister Lane." See Ameris' Brief on Damages pg 2. Ms. Gibson and Ameris agree the value of Klister Lane property is \$355,000.00 as reported in the appraisal performed by C.S. McCall &

¹ At trial Ms. Gibson presented evidence of her actual damages totaling \$1,613,053.26. However, Ms. Gibson concedes that the \$95,608.26 in interest paid on the down payment was paid by her LLC, 32 Palm Boulevard LLC and that the LLC and not Ms. Gibson personally would be entitled to a repayment of these sums. For a more complete explanation, please see Paragraph II.A. titled 3205 Palm Boulevard.

Co., LLC dated March 8, 2010. See Ameris' Brief on Damages pg 4.

C. Personal Funds Contributed by Gibson

Ms. Gibson testified that during the course of the apartment renovation, she injected \$75,000.00 of her own money into the project in an effort to avoid the collapse of the project. Ameris argues Ms. Gibson is not entitled to a return of these funds because "there is no evidence in the record that Ameris guaranteed to Plaintiffs that the \$700,000 construction loan would be sufficient to complete the renovations or that Gibson would not have to use any of her own money to complete the project." Ameris brief on damages pg 6. This is inconsistent as Karl Zerbst represented to Ms. Gibson that the cash flow from the apartments would satisfy the debt, both the down payment and the purchase and construction loan with Ameris, and that these representations resulted in the closing of the loan. This Court, in its preliminary holding stated it this way:

Before Gibson signed any loan documents with Ameris, she questioned Zerbst about whether it was a suitable investment for her (124), about the loan debt, rents, etc (220-224). Zerbst told Gibson that based on the loan package (that he structured) the cash flow from the apartments would be able to satisfy the second mortgage, as well as, cover the debt she had on the apartments.(317-318). Based on these and other representations by Zerbst Gibson moved forward with the purchase and loan.

December 19, 2012 memo from The Honorable Robert E. Watson, emphasis added.

Ameris further advances that Ms. Gibson's testimony regarding the amount of personal funds she advanced standing alone is insufficient. It is sufficient, but Ms. Gibson also entered into evidence tax forms 8825 (Plaintiff's Exhibit 8), which show all rental income collected by Ms. Gibson as well as the sums she injected into the property.

D. Attorneys' Fees

Ameris argues that Ms. Gibson is not entitled to a recovery of her attorneys fees incurred in negotiating a reduction of the deficiency sought against her by Ameris' successor Galt Valley

with regard to the apartment complex and the deficiency sought by First Citizen's with regard to 3205 Palm Boulevard, the collateral for the down payment of the apartment complex. However, most of this sum is not so much an issue of attorney's fees as it is the cost of mitigation. It is well settled that aggrieved Parties have a duty to mitigate their damages. *Chastain v. Owens Carolina, Inc.*, 310 S.C. 417, 420, 426 S.E.2d 834, 835 (Ct. App. 1993). Reasonable expenses incurred in a good faith attempt to do so are recoverable even if the effort to mitigate damages fails. *Brandon & Tibbs v. George Kevorkian Accountancy Corp.*, 226 Cal.App.3d 442 (1990).

Ameris' successor Galt Valley sought a \$3,000,000.00 deficiency judgment against Ms. Gibson. As a result of the efforts of her attorneys, Ms. Gibson was able to avoid the entire deficiency. However, this \$3,000,000.00 savings cost Ms. Gibson \$566,666.00 in attorney's fees. These fees were calculated on the basis of 1/3 of all sums saved from the deficiency claimed by Galt Valley. For the purposes of the settlement with Galt Valley, as well as the calculation of attorneys' fees, the apartments and the Klister Lane properties were valued together at \$1,300,000.00. This value resulted in a savings of approximately \$1,700,000.00 million on which Ms. Gibson paid attorneys' fees in the amount of \$566,666.00. Plaintiff also paid \$20,000.00 to attorney Lawrence Richter to represent her regarding the Otranto Apartments, bringing her total loss related to the apartments to \$661,666.00. But for the cost of litigation (attorney's fees) Ms. Gibson's damage claim against Ameris would have been approximately \$3 million.

Ms. Gibson further paid attorneys' fees and costs in the amount of \$37,354.00 on account of the defense and settlement of the First Citizens obligations (\$13,750.00 to Andrew K. Epting, \$10,190.22 to George J. Kefalos, \$10,895.00 to Robert Papa, \$277.50 to Paul Tecklenburg, and CPA fees in the amount of \$2,142.44). Ms. Gibson's attorneys, with the aid of a CPA, were able

to negotiate a \$200,000.00 reduction from First Citizen's of the deficiency judgment against her.

Ameris further argues that the attorneys' fees Ms. Gibson incurred in pursuing her lawsuit against Rolando Villavicencio are not recoverable and engages in a comparative fault/equitable indemnity analysis. This issue is dealt with in the following paragraph titled, "Set-Off".

III. Other Considerations

A. Set-Off

Ameris argues it is entitled to a set-off of the \$850,000.00 settlement reached in the suit against Rolando Villavicencio and his companies as the "injury for which Plaintiffs seek to recover damages against Ameris is identical to the injury for which Plaintiffs recovered \$850,000 against Rolando." Ameris' Brief on Damages pg 10. Ameris' mistake is the parties in the two suits, and the damages sought are not the same. The plaintiffs in the case against Rolando Villavicencio included Linda A. Gibson, Heritage Seven, LLC and Seven Oaks Apartments, LLC. The plaintiffs in the present case are Linda Gibson, individually and as trustee of the Paul William Gibson Family Trust, and Heritage Seven, LLC.

\$450,000.00 of the settlement proceeds were paid to Heritage Seven, LLC and Seven Oaks Apartments, LLC. Seven Oaks Apartments, LLC is not a plaintiff in the suit against Ameris. The only damages sought and proved in this case are for injuries sustained by Linda Gibson, individually, so a recovery by Heritage Seven, LLC or Seven Oaks Apartments, LLC cannot serve to set off Ms. Gibson's losses.

\$200,000.00 was paid to Ms. Gibson on her conversion and outrage claims; claims for which Ameris was not sued. Further, these damages were never claim from Ameris (e.g. Rolando's embezzled substantial funds from Ms. Gibson on projects unrelated to the apartment

complex).

Ameris is entitled to a setoff of \$200,000.00, reduced by her mitigation cost, \$70,000.00.²

B. Comparative Fault

Ameris claims that Ms. Gibson's alleged negligence in failing to do her own due diligence and review all of the loan documents prior to executing them bars her recovery.

Comparative fault is not applicable in breach of fiduciary duty cases. In *Scott v. Dime Savings Bank of New York, FSB*, 886 F. Supp. 1073 (S.D.N.Y. 1995), the court denied the use of comparative fault where the plaintiff was allegedly pressured by the defendant bank into taking a large loan and investing the money through a brokerage which split its commission fees with the bank. The court reasoned that comparative fault was allowed only in negligence cases, and cited authority regarding contributory fault's traditional inapplicability in intentional torts cases and the public policy concern with letting intentional wrongdoers shift the blame to the victim. Likewise, in *Conway v. Icahn & Co.*, 16 F.3d 504 (2d Cir. 1994), the Second Circuit (applying New York law) did not allow a comparative fault reduction for breach of fiduciary duty damages, indicating that, "[a] full award for breach of fiduciary duty could not be reduced for contributory negligence." *Id.* at 511; *see also Solutia Inc. v. FMC Corp.*, 456 F. Supp. 2d 429, 452 (S.D.N.Y. 2006) (discussing the different cases which have allowed or denied comparative fault in breach of fiduciary duty cases, and ultimately rejecting the defense).

Ms. Gibson relied on professionals, including Rolando Villavicencio, Benji Lanier, and Karl Zerbst in making decisions relating to the property, and this Court found Ms. Gibson's reliance was reasonable. As reasonable reliance is an element of negligent misrepresentation, comparative fault cannot apply.

² Plaintiffs' proposed order did not address the issue of set-off as, until a judgment in favor of Plaintiffs was entered, the issue would not be ripe. Plaintiffs are happy to amend the proposed order to include a section on set-off if the Court desires.

Further, Ameris attempt to funnel Ms. Gibson to Larry Richter in order to control her decision making and obtain more collateral is intentional, and conduct that is intentional is not comparable. *Berberich v. Jack*, 392 S.C. 278, 294, 709 S.E.2d 607, 615 (2011) (Conduct that is not comparable includes intentional torts as well as any other conduct intended to cause injury or damage).

C. Proximate Cause

In the proposed order Ameris submitted to this Court, Ameris argued that Ms. Gibson cannot establish that the representations Mr. Zerbst's made to induce Ms. Gibson to close the loan proximately caused Ms. Gibson's damages as Ms. Gibson was obligated to purchase the apartments before the representations were made because Ms. Gibson had already signed a contract to purchase the apartments. Plaintiffs take this opportunity to respond to Ameris' argument regarding proximate cause.

It is true that in early 2007, Mr. Villavicencio brought Mr. Zerbst a document that Ms. Gibson signed regarding the purchase of the Otranto apartments for \$2.8 million, but this document was illusory and not an enforceable contract.³ Ms. Gibson testified that she did not view the "contract" as a binding commitment on her part. Rather, it was a document she signed so that Mr. Villavicencio could try to put a deal together for her. Indeed, the \$2.8 million "contract" was unenforceable as it lacked consideration and essential terms. (See Plaintiff's Exhibit 19). While it was contingent on obtaining financing, it was silent on financing terms. The contract did not specify how much Ms. Gibson proposed to put down on the purchase, how

³ This illusory contract is evidence of Ameris' bad faith. Mr. Zerbst testified that he knew Rolando was accustomed to getting Linda involved in "deals" that she did not understand. A banker of Mr. Zerbst's experience would have known that the contract was unenforceable and this should have raised a red flag for Mr. Zerbst. Essentially, Ameris is giving Ms. Gibson the money to purchase apartments that she has not agreed to buy. Put another way, Ms. Gibson comes to the bank and says "I don't have to buy these apartments, what should I do?" And Ameris says, "this is a good deal, (undisputed) we'll loan you the money to buy them (undisputed) and this is how you should structure the purchase" (undisputed).

much she expected to finance and the financing terms. Further, according to the “contract” the remedies for the default of the buyer included forfeiture of the buyer’s earnest money – but no earnest money was ever paid or required. (See Plaintiff’s Exhibit 19, ¶ 32). As the “contract” was unenforceable and did not obligate Ms. Gibson, Ameris’ argument fails.

It was not until Ms. Gibson sought advice from Mr. Zerbst and Mr. Zerbst assured her that she had no reason for concern as the purchase was structured in a way that the projected rents would cover the debt service that Ms. Gibson decided to go through with the deal.

D. Punitive Damages

Ameris argues there is no evidence that Ameris acted in a reckless, willful, or wanton manner and that Ameris’ conduct does not justify an award of punitive damages. However, the evidence presented at trial and the findings of this court support an award of punitive damages. This case does not involve the isolated conduct of a few individuals rather; this case is about Ameris’ culture, policy, and upper management or lack thereof.

The factors set forth in *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991) are discussed at length in Ms. Gibson’s proposed order, but are summarized here.

1. DEGREE OF CULPABILITY

This was not an arms-length transaction. Ms. Gibson has no business background or sophistication, a fact not disputed by any witness to appear before the Court. She did not understand the financing, did not know the difference between recourse and non-recourse, and had never run or managed construction or low income housing. Ameris knew Mr. Villavicencio had total control and influence over Ms. Gibson, usually not even consulting with Ms. Gibson. Ameris knew that Mr. Villavicencio was taking advantage of Ms. Gibson and abusing his fiduciary relationship, and Ameris, serving its interest, aided Mr. Villavicencio in damaging Ms.

Gibson.

In this case, the fact that Ameris hides behind mountains of documents, disclaimers, and appraisals is what makes what happened so egregious. Mr. Lanier, Mr. Zerbst, Mr. Bogan, and Mr. Snipes are sophisticated in finance and banking. On this record, Ameris could not believe this property was worth near what was paid or that 100% financing is good for a widow with no business skills. Mr. Southard explained the values, at the time of the sale to Ms. Gibson, in a way I found compelling. Banks should not be allowed to insulate themselves through artifice and to allow them to do so here is to countenance conduct that is all too familiar in the most recent banking crisis.

2. DURATION

Ameris moved Ms. Gibson over with them in the fall of 2007, and as late as November of 2009 it was attempting to solve their problem through a surrogate, hoping to gain influence over Ms. Gibson's decision to turn over additional collateral to Ameris.

3. DEFENDANT'S AWARENESS

The Defendant was not only aware of what was occurring; the Defendant was the choreographer.

4. PAST CONDUCT

Mr. Zerbst and Ameris reached an accord in October, 2007. What was not resolved was how to "get around" the non-compete. Ultimately, a Murrell's Inlet office was used, yet Mr. Zerbst worked out of the Charleston office during the time of his non-compete. (Deposition of Lanier, Court Exhibit 7, pg 216). Ameris' upper management and culture induced this causative events leading to Ms. Gibson's loss.

5. **DETERRENCE**

Ameris' conduct is similar in character and quality to the conduct witnessed in the market generally over the past five years. It is excessive; it is not reasonably related to the pursuit of sound and stable business practice. It champions greed.

6. **HARM RESULTING**

Ms. Gibson nearly lost everything and testified except for her faith she would have taken her own life.


7. **ABILITY TO PAY**

Ameris does business in South Carolina, Georgia, Florida, and Alabama. Dr. Oliver Wood's report, which is uncontroverted, shows Ameris is a bank with \$3,000,000.00 in assets. Its stockholder equity is \$273,407.00. Its net cash flow is \$460,538.00 per week. Based on the Court's findings regarding Ameris' conduct, Ms. Gibson submits twelve (12) weeks of Ameris' net cash flow is an appropriate punitive award.

8. **OTHER FACTORS**

Ameris' effort to steer Ms. Gibson to the Richter Law Firm in order to influence her decision making corrupts the role of counsel. This conduct was invidious and meant to benefit Ameris alone.

Respectfully Submitted:



John S. West, Esq.
P.O. Box 1869
Moncks Corner, SC 29461
(843) 761-5626
jwestlaw@homesc.com

Andrew K. Epting, Esq.
46a State Street
Charleston, SC 29401

(843) 722-6612
ake@epting-law.com

George J. Kefalos, Esq.
46a State Street
Charleston, SC 29401
(843) 722-6612
george@kefaloslaw.com

ATTORNEYS FOR PLAINTIFFS

On this 7th day of February 2013
Charleston, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) IN THE NINTH JUDICIAL CIRCUIT

LINDA A. GIBSON, formerly known as) C.A. No. 2010-CP-08-2134
LINDA ANN AVIGNER, individually)
and as Trustee of the Paul William Gibson)
Family Trust, and HERITAGE SEVEN,)
LLC,)

Plaintiffs,)

vs.)

AMERIS BANK,)

Counterclaim Defendant.)

**DEFENDANT'S REPLY BRIEF
CONCERNING DAMAGES**

FILED
2013 FEB 27 PM 2:25
MATTY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

INTRODUCTION

Plaintiffs' proposed calculation of damages is not supported by the law or the record in this case. Plaintiffs are asking the Court to award damages: (a) that were incurred by a non-party; (b) that are undocumented and otherwise not supported by the evidence; (c) that include attorneys' fees not provided by statute or contract; and (d) that do not reflect the required setoff for other recoveries by Plaintiffs. The Court should decline to award such damages and should decline to adopt the methodology set forth in Plaintiffs' Memorandum on Damages. The proper methodology for calculating damages in this case has been fully set forth in Defendant's Brief on Damages, filed on October 3, 2012. The following reply brief is intended solely to address the points raised in Plaintiffs' Memorandum on Damages, and to reinforce the well established law on this topic. As explained more fully below, Plaintiffs are not entitled to recover any damages in this case because any award must be setoff by the \$850,000 that Plaintiffs recovered in other litigation regarding these same facts, and Plaintiffs have failed to prove damages here exceeding this amount.

ARGUMENT

1. 3205 Palm Boulevard

Plaintiffs seek to recover the \$700,000 down payment made to purchase the apartment complex. But Plaintiffs did not make the down payment. According to the record in this case the down payment was made by 3205 Palm Boulevard, LLC, which is not a plaintiff in this case. Plaintiffs cannot recover a loss that they did not incur and that was incurred by a non-party. Plaintiffs argue that they are entitled to recover the down payment made by 3205 Palm Boulevard, LLC because Ms. Gibson guaranteed the debt the LLC incurred when it borrowed money to finance the down payment. Ms. Gibson's guarantee of the debt is irrelevant. There is no evidence in the record that Ameris instructed Ms. Gibson to borrow the money to make the down payment or to personally guarantee a loan on a beach house owned by another entity. The evidence in this case is that Ms. Gibson made the decision, upon the advice of Rolando Villavicencio, to use the beach house owned by 3205 Palm Boulevard, LLC to finance the purchase of the apartment complex. [Tr. 189:10 – 191:1; 195:15 – 196:1] As the record makes clear, Ms. Gibson had the option of making the down payment without incurring any additional debt, but elected to do otherwise. She thereby put the assets of 3205 Palm Boulevard, LLC at risk. For that reason and because 3205 Palm Boulevard, LLC is not a plaintiff in this action, the \$700,000 down payment is not recoverable as damages.

2. Ms. Gibson's Personal Funds

Plaintiffs contend that they are entitled to recover \$75,000 for money that Ms. Gibson personally put into the project. But Plaintiffs introduced no evidence to support this assertion. Plaintiffs did not present any documentary evidence to support a finding that Ms. Gibson personally put any money at all into this project. Plaintiffs point to Plaintiffs' Trial Exhibit 8 as

support for the sums that Ms. Gibson allegedly put into the property. But Exhibit 8 consists of the Rental Real Estate Income and Expense tax forms for Heritage Seven, LLC for the years 2007 through 2010. Although those forms show Heritage Seven, LLC's income and expenses for the apartment complex project, they do not in any way corroborate Ms. Gibson's assertion that she personally put \$75,000 into the project. There is no line item or description showing that the money was contributed by Ms. Gibson personally.

Because there is no evidence in the record to support a finding that Ms. Gibson personally contributed \$75,000 into the apartment complex project, the Court should not award those damages to Plaintiffs.

3. Attorneys' Fees

Plaintiffs seek to recover attorneys' fees they have incurred in this case and in other related litigation. Such fees are not recoverable as a matter of law.

Under South Carolina law, "[a]ttorney's fees are not recoverable unless authorized by contract or statute." *Historic Charleston Holding, LLC v. Mallon*, 381 S.C. 417, 436, 673 S.E.2d 448, 458 (2009). Plaintiffs have not—and cannot—produce any contract or statute that entitles them to recover attorneys' fees in this case. Plaintiffs contend that the attorneys' fees incurred by Plaintiffs are costs incurred in mitigation of damages. But Plaintiffs do not cite any authority for the proposition that a party may recover attorneys' fees incurred in a lawsuit when it did so in mitigation of its damages, because no such authority exists. The well established law in this State is that attorneys' fees are not recoverable absent a contract or statute authorizing recovery. The Court should decline to award Plaintiffs \$566,000 in fees as a part of the damages in this case.

Plaintiffs also contend that they are entitled to recover attorneys' fees associated with other litigation. South Carolina employs an equitable indemnity analysis in considering whether

a plaintiff may recover attorneys' fees when a defendant's tortious conduct forces the plaintiff into separate litigation with a third party. *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 307 S.C. 128, 129, 414 S.E.2d 118, 119 (1992). Here, there is no evidence that Ameris' conduct forced Plaintiffs to sue Rolando Villavicencio and other parties. Plaintiffs chose to sue Rolando and did so nearly *two years before* ever asserting any misconduct on the part of Ameris. Similarly, Plaintiffs have failed to establish that it was Ameris' conduct that forced Ms. Gibson into litigation with First Citizens Bank over the beach house owned by 3205 Palm Boulevard, LLC. That litigation was a result of the manner in which Ms. Gibson chose to finance the transaction, and was a result of her decision to do what she did in this case, which is to stop making payments on the note.

Also, South Carolina law provides that, under an equitable indemnity analysis, a plaintiff cannot recover from a tortfeasor if the plaintiff's own negligence has joined in causing the injury. *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 448 (1994). As set forth in Ameris' initial brief on damages, there is substantial evidence that Plaintiffs' own conduct contributed to Plaintiffs' alleged injury in this case. Plaintiffs' own conduct bars relief ~~under an equitable indemnification analysis.~~

Because Plaintiffs have not cited any contract or statute entitling them to recover attorneys' fees, the request for fees should be denied.

4. Setoff

A defendant's right to setoff is well established in South Carolina and applies in this case. "When a release . . . is given in good faith to one of two or more persons liable in tort for the same injury . . . it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the

greater.” S.C. Code Ann. § 15-38-50 (2005). “When the settlement is for the same injury, the nonsettling defendant’s right to a setoff arises by operation of law.” *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (2012) (citations omitted). The statute requires a setoff when the claims against the joint tortfeasors arose out of the same factual scenario. *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 272 (Ct. App. 1999).

Here, Plaintiffs are attempting to recover twice for the same injury. Plaintiffs brought two separate lawsuits against two different sets of defendants regarding the same set of facts and the same injury. When Plaintiffs’ real estate project failed, Ms. Gibson and Heritage Seven, LLC sued Rolando Villavicencio (and other defendants) and later counterclaimed against Ameris in the foreclosure. In both lawsuits, Ms. Gibson and Heritage Seven LLC seek to recover damages for the exact same injuries arising out of the same facts. *Compare* Def.’s Ex. 62 with Plaintiff’s Supplemental Answers to Defendant’s Interrogatories, attached to Ameris’ initial damages brief. Because the actions arose out of the same factual scenario, the law requires a setoff. Any damages award entered against Ameris must be setoff by the \$850,000 Plaintiffs received in the other litigation. Plaintiffs contend that the damages recovered against Rolando Villavicencio should be allocated to certain parties and the damages to be recovered against Ameris should be allocated to others. But that is not how the law of setoff works. How the proceeds resulting from litigation are allocated does not matter. No plaintiff or plaintiffs are entitled to double and triple recoveries for the same injury.

Plaintiffs’ contention that the Court should ignore the fact that they have already recovered \$850,000 in litigation concerning this same apartment complex should be rejected. The law of setoff requires the Court to setoff any damages award entered against Ameris by the \$850,000 Plaintiffs have already recovered.

5. Comparative Fault

According to the evidence presented at trial, Plaintiffs' own conduct contributed to the harm alleged. Ms. Gibson admitted that she did not conduct any due diligence before purchasing the property. Ms. Gibson admitted that she failed to read any of the loan documents or construction contracts she signed. Ms. Gibson admitted that she allowed the loans to go into default despite having substantial assets from which to satisfy the outstanding obligations. Because Ms. Gibson's conduct contributed to the harm alleged, Ameris is entitled to a reduction in the damages award based on Plaintiffs' own fault.

Rather than point to evidence in the record showing that Ms. Gibson was not at fault, Plaintiffs make a legal argument that comparative fault is not a defense to a cause of action for breach of fiduciary duty. But Plaintiffs do not cite any South Carolina authority for this proposition. Instead, Plaintiffs cite two cases applying New York law. But a closer examination of New York law shows that even courts in New York are unsettled on this issue, as at least one court has indicated to the contrary. See *Coty v. Steigerwald*, 262 A.D2d 946, 946 (N.Y. App. Div. 1999) (acknowledging that "comparative fault principles may be applied to a cause of action for breach of fiduciary duty" and citing New York cases in support).

Even if comparative fault principles do not apply to breach of fiduciary duty claims, they do apply to negligence claims. Plaintiffs have asserted a negligent misrepresentation claim, and there is no basis for the Court to find that comparative negligence principles do not apply to that claim. Plaintiffs' own conduct in this case cannot be ignored. Plaintiffs' conduct contributed to the harm alleged and the damages award in this case, if any, should reflect that.

6. Punitive Damages

There is no evidence in the record to support an award of punitive damages. "Evidence of simple negligence alone will not support an award of punitive damages." *Carter v. R.L. Jordan Oil Co., Inc.*, 301 S.C. 84, 85, 390 S.E.2d 367, 368 (Ct. App. 1990). Instead, a plaintiff must present evidence that "the defendant's conduct was wilful, wanton, or in reckless disregard of the plaintiff's rights." *Id.* (quoting *Cohen v. Allendale Coca-Cola Bottling Co.*, 291 S.C. 35, 351 S.E.2d 897 (Ct.App.1986)). "Conduct is wilful, wanton, or reckless when it is committed with a deliberate intention under such circumstances that a person of ordinary prudence would be conscious of it as an invasion of another's rights." *Id.* "It is the present consciousness of wrongdoing that justifies the assessment of punitive damages against the tortfeasor." *Id.*

Here, there is no evidence in the record to support an award of punitive damages. Plaintiffs did not present any evidence that Ameris' conduct was done with a deliberate intention to invade another's rights. This case involved a multi-million dollar loan transaction between an LLC and a bank. Plaintiffs did not present any evidence that the transaction was conducted any differently than any other commercial loan transaction. An award of punitive damages is not only unsupported by the evidence, but would violate the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the Constitution of this State.

CONCLUSION

The only proper measure of damage in this case would be Plaintiffs' loss of the value of the Klister Lane property, which Plaintiffs argue is \$355,000. But when Plaintiffs' recovery of \$850,000 is taken into account, the value of the Klister Lane property is more than offset by Plaintiffs' previous recoveries. As a result, Plaintiffs have suffered no recoverable damages.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Stepp (rstepp@sowellgray.com)
Tina Cundari (tcundari@sowellgray.com)
William H. Jordan (wjordan@sowellgray.com)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Ameris Bank

Columbia, South Carolina
February 25, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No.: 2014-001487

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

Respondents,

v.

Ameris Bank,

Appellant.

CERTIFICATE OF COUNSEL

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

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Stepp (S.C. Bar #5335)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

Attorneys for Appellant

Appendix 01803

RECEIVED
via Hand-delivery 4.23.15

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No.: 2014-001487

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

Respondents,

v.

Ameris Bank,

Appellant.

FINAL BRIEF OF APPELLANT

Robert E. Stepp (S.C. Bar #5335)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

Attorneys for Appellant

RECEIVED

APR 23 2015

SC Court of Appeals

Appendix-01804

TABLE OF CONTENTS

Table of Authorities	iv
Statement of Issues on Appeal	vii
Statement of the Case.....	1
Statement of Facts.....	2
Standard of Review.....	14
Argument	15
I. The bank did not owe the borrower a fiduciary duty.....	15
A. South Carolina courts have never imposed a fiduciary duty on a bank in the commercial lending context	17
B. The statements made by the bank did not give rise to a fiduciary relationship	20
C. The parties' relationship was governed by the loan documents	22
D. Even if a fiduciary relationship existed, the evidence does not support a finding of breach	24
II. The bank did not misrepresent anything to the borrower	31
A. The statements were not false	32
B. The borrower did not have the right to rely	33
C. The statements did not cause the harm alleged.....	37
III. The bank did not aid and abet a breach of fiduciary duty by the borrower's agent	38
IV. The master erred in awarding actual and punitive damages, and the punitive damages award is excessive and violates due process.....	41
A. The actual damages award is incorrect as a matter of law.....	41
B. The facts do not justify an award of punitive damages	44

C. The punitive damages award is excessive and violates
due process.....46

Conclusion49

TABLE OF AUTHORITIES

Cases

<i>Altman v. PNC Mortg.</i> , 850 F. Supp. 2d 1057 (E.D. Cal. 2012)	25
<i>AMA Mgmt. Corp. v. Strasburger</i> , 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992).....	32
<i>Ardis v. Cox</i> , 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993).....	34
<i>Armstrong v. Collins</i> , 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005)	34
<i>Baxter v. Fairfield Fin. Servs., Inc.</i> , 704 S.E.2d 423 (Ga. Ct. App. 2010).....	21
<i>Bell v. Atl. Coast Line R. Co.</i> , 202 S.C. 160, 24 S.E.2d 177 (1943).....	44
<i>Berry v. First Nat'l Bank of Olney</i> , 894 S.W.2d 558 (Tex. Ct. App. 1995)	21
<i>Bishop Logging Co. v. John Deere Indus. Equip. Co.</i> , 317 S.C. 520, 455 S.E.2d 183 (Ct. App. 1995)	32
<i>BMW of N. Am. v. Gore</i> , 517 U.S. 559 (1996).....	47
<i>Brown v. C&S Real Estate Servs., Inc.</i> , 314 S.C. 463, 445 S.E.2d 463 (Ct. App. 1994)	17
<i>Burwell v. S.C. Nat'l Bank</i> , 288 S.C. 34, 340 S.E.2d 786 (1986).....	16, 17, 18, 24
<i>Carolina Chloride, Inc., v. Richland Cnty.</i> , 394 S.C. 154, 714 S.E.2d 869 (2011)	32, 33, 34
<i>Carter v. R.L. Jordan Oil Co., Inc.</i> , 301 S.C. 84, 390 S.E.2d 367 (Ct. App. 1990)	44
<i>Cohen v. Allendale Coca-Cola Bottling Co.</i> , 291 S.C. 35, 351 S.E.2d 897 (Ct. App. 1986)	44
<i>Cowburn v. Leventis</i> , 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005)	7, 17, 20, 21, 22, 25
<i>Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale</i> , 359 S.C. 635, 598 S.E.2d 717 (Ct. App. 2004).....	7
<i>Fifth Third Mortg. Co. v. Chicago Title Ins. Co.</i> , 758 F. Supp. 2d 476 (S.D. Ohio 2010).....	29

<i>First Fed. Sav. & Loan Assn. of S.C. v. Dangerfield</i> , 307 S.C. 260, 414 S.E.2d 590 (Ct. App. 1992)	27
<i>Florentine Corp. Inc. v. PEDA I, Inc.</i> , 287 S.C. 382, 339 S.E.2d 112 (1985).....	34
<i>Future Grp., II v. Nationsbank</i> , 324 S.C. 89, 478 S.E.2d 45 (1996)	39
<i>Gamble v. Stevenson</i> , 305 S.C. 104, 406 S.E.2d 350 (1991).....	47
<i>Gordon v. Busbee</i> , 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2012).....	39
<i>Harrington v. Mikell</i> , 321 S.C. 518, 469 S.E.2d 627 (Ct. App. 1996)	34
<i>Hendricks v. Clemson Univ.</i> , 353 S.C. 449, 578 S.E.2d 711 (2003)	16
<i>Jordan v. Atl. Neighborhood Hous. Servs. Inc.</i> , 320 S.E.2d 215 (Ga. Ct. App. 1984).....	30
<i>Keane v. Lowcountry Pediatrics, P.A.</i> , 372 S.C. 136, 641 S.E.2d 53 (Ct. App. 2007)	45
<i>Longshore v. Saber Sec. Servs., Inc.</i> , 365 S.C. 554, 619 S.E.2d 5 (Ct. App. 2005).....	14
<i>Mitchell v. Fortis Ins. Co.</i> , 385 S.C. 570, 686 S.E.2d 176 (2009).....	46, 47, 48, 49
<i>Moore v. Benson</i> , 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010)	45
<i>Moore v. Moore</i> , 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004).....	16, 24
<i>Quail Hill, LLC v. Cnty. of Richland</i> , 387 S.C. 223, 692 S.E.2d 499 (2010).....	31, 33
<i>Regions Bank v. Schmauch</i> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)	17, 18, 24, 34
<i>Robertson v. First Union Nat'l Bank</i> , 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2009)	36
<i>Roundtree Villas Assn., Inc. v. 4701 Kings Corp.</i> , 282 S.C. 415, 321 S.E.2d 46 (1984).....	30
<i>Rudolph v. First S. Fed. Sav. & Loan Assn.</i> , 414 So.2d 64 (Ala. 1982).....	30, 31
<i>Rush v. S.C. Nat'l Bank</i> , 288 S.C. 560, 343 S.E.2d 667, 668 (Ct. App. 1986).....	17
<i>S.C. Dept. of Transp. v. Horry Cnty.</i> , 391 S.C. 76, 705 S.E.2d 21 (2011)	14
<i>Silver v. Countryside Home Loans, Inc.</i> , 760 F. Supp. 2d 1330 (S.D. Fla. 2011).....	21

<i>State Farm v. Campbell</i> , 538 U.S. 408 (2003).....	48
<i>Steele v. Victory Sav. Bank</i> , 295 S.C. 290, 368 S.E.2d 91, 93 (Ct. App. 1988).....	17
<i>Taylor v. Medenica</i> , 324 S.C. 200, 479 S.E.2d 35 (1996).....	44
<i>Tippens v. Round Island Plantation LLC</i> , 2009 WL 2365347, *12 (S.D. Fl. 2009)	21
<i>Trotter v. First Fed. Sav. & Loan Ass'n</i> , 298 S.C. 85, 378 S.E.2d 267 (Ct. App. 1989) ..	23
<i>Turner v. Milliman</i> , 392 S.C. 116, 708 S.E.2d 766 (2011)	32
<i>U.S. Bank Trust Nat'l Ass'n v. Bell</i> , 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009)	14
<i>Vaught v. A.O. Hardee & Sons, Inc.</i> , 366 S.C. 475, 623 S.E.2d 373 (2005).....	41
<i>Vortex Sports & Entm't, Inc. v. Ware's</i> , 378 S.C. 197, 662 S.E.2d 444 (Ct. App. 2008)	39
<i>Wagner v. Benson</i> , 161 Cal. Rptr. 516, 520 (Cal. Ct. App. 1980).....	25
<i>Wasko v. Farley</i> , 947 A.2d 978 (Conn. Ct. App. 2008).....	43
<i>Whitley v. Taylor Bean & Whitaker Mortg. Corp.</i> , 607 F. Supp. 2d 885 (N.D. Ill. 2009)	28
<u>Statutes</u>	
S.C. Code Ann. § 15-33-135 (Supp. 2013).....	44
S.C. Code Ann. § 33-44-201 (2006).....	42

STATEMENT OF ISSUES ON APPEAL

- I. Did the master-in-equity err in concluding that the bank owed the borrower (a limited liability company) a fiduciary duty in a \$2.8 million dollar commercial loan transaction for a real estate venture that ultimately failed?
- II. Did the master-in-equity err in concluding that the bank was liable for negligent misrepresentation for telling the borrower that the transaction was a “good deal” and that the “rents would cover the debt”?
- III. Did the master-in-equity err in concluding that the bank knowingly aided and abetted the borrower’s real estate agent in breaching a fiduciary duty?
- IV. Did the master-in-equity err in awarding actual and punitive damages, and is the punitive damages award so excessive that it violates the due process clause of the United States and South Carolina Constitutions?

STATEMENT OF THE CASE

This is an appeal from an order entering judgment in favor of Heritage Seven LLC and Linda Gibson, individually and as Trustee of the Paul William Gibson Family Trust, (collectively, "Respondents") on causes of action for breach of fiduciary duty, negligent misrepresentation, and aiding and abetting a breach of fiduciary duty. [R. 1-55].

This case began as a foreclosure action. On June 14, 2010, Appellant Ameris Bank filed a foreclosure action against Respondents for failing to pay two notes: one for \$2,810,164.50 and the other for \$50,071.96. [R. 66-76]. On July 20, 2010, Respondents answered the complaint, asserting counterclaims of negligent misrepresentation, civil conspiracy, and equitable relief. [R. 77-76]. On September 27, 2011, Respondents amended the counterclaims, alleging counterclaims of negligent misrepresentation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. [R. 92-99]. On October 20, 2011, Ameris Bank answered the amended counterclaims, denying the allegations and asserting numerous affirmative defenses. [R. 100-08]. The foreclosure action settled on December 1, 2010, with Ameris Bank's assignee of the loan accepting a deed in lieu of foreclosure. [R. 1688-90]. The counterclaims remained, however, and were tried on May 22 and 23, 2012, and August 14, 2012 before the Berkeley County Master-in-Equity. [R. 1].

On August 8, 2013, the master entered judgment for Respondents on all causes of action and awarded actual damages of \$1,153,625 and punitive damages of \$3,551,232. [R. 55]. The master found Gibson 20% at fault for the harm alleged, and rather than apply the deduction to the actual damages only, applied it to the total award of actual and

punitive damages. [R. 53-55]. Additionally, the master applied an \$850,000 setoff to the total award (rather to the actual damages only), for the money received in the settlement of the case that Respondents filed against Rolando Villavicencio and others for the same injury. [R. 54-55, 1685-87]. The final judgment was for \$2,913,886. [R. 55]. On July 10, 2014, the bank served a notice of appeal.

STATEMENT OF FACTS

This case involves a \$2.8 million loan that Ameris Bank made to Heritage Seven LLC for the purchase and renovation of an apartment complex in North Charleston, South Carolina. [R.1095-110, 1120-22]. Linda Gibson is the sole managing member of Heritage Seven, LLC. [R. 203, 277]. Gibson guaranteed the loan in her individual capacity and as Trustee of the Paul William Gibson Family Trust. [R. 1089-94].

A. Linda Gibson

Linda Gibson is a multimillionaire. As of October 5, 2009, she had a net worth of \$18,341,915, with \$24,121,275 in assets. [R. 282, 1651]. Gibson's assets are primarily income-producing real estate. [R. 868-70, 894-96, 1036-38]. In 2009, she received \$478,775 in rental income. [R. 280, 1651]. Gibson attended two years of college. [R. 271]. She has formed and been a member of multiple LLCs. [R. 1688-703]. She has served as Trustee of the Paul William Gibson Family Trust since 2003, and has successfully managed the affairs of the trust since that time. [R. 278].

B. Rolando Villavicencio and Heritage Seven LLC

Rolando Villavicencio was a realtor for ReMax Professional Realty in Charleston. Linda Gibson met Villavicencio and his wife Portia at church in 2004, and they became friends soon after Gibson's husband died. [R. 223, 694-96]. In 2005, Gibson sold one of

the two beach houses she owned at the Isle of Palms (600 Carolina Boulevard). [R. 185]. Upon selling the beach house, Gibson executed a 1031 exchange to defer paying capital gains tax on the proceeds of the sale. [R. 186-86, 273-74, 747-48]. She asked Villavicencio and Portia to help her find a suitable commercial property for the exchange. [R. 747-48]. Villavicencio identified a shopping center in Moncks Corner. [R. 185, 272]. The purchase price was \$2.4 million. [R. 272, 853].

On November 20, 2005, Gibson formed Heritage Seven, LLC, to purchase the shopping center. [R. 1694-96]. Gibson obtained financing through First Reliance Bank. [R. 802-07, 847-51]. Karl Zerbst was the loan officer and Benjamin Lanier was the credit analyst. [R. 802-07]. The sale closed on December 15, 2005. [R. 852-58]. Heritage Seven LLC hired Villavicencio and ReMax Professional Realty to manage the shopping center for a ten-year term. [R. 291, 859-67].

C. Karl Zerbst

Karl Zerbst is a former employee of Ameris Bank. Gibson met Zerbst in late 2004 when he was working for First Reliance Bank. [R. 230]. Gibson opened a CD and a checking account through him. *Id.* When asked how often she met with Zerbst in 2004 and 2005, Gibson testified, "Probably two or three times." *Id.*

In November 2005, Zerbst was the loan officer who structured the loan made to Heritage Seven LLC to purchase the shopping center. [R. 230-31].

D. North Charleston Apartment Complex

In 2007, Villavicencio approached Gibson about purchasing a 48-unit apartment complex in North Charleston. [R. 750-58]. Villavicencio was familiar with the property because he was the property manager and the exclusive listing agent for the seller. [R. 748-49, 767-68, 886-90]. The property was listed for \$2.8 million. [R. 295]. Villavicencio painted “a great picture” for Gibson about converting the apartments into condominiums and selling them for \$90,000 - \$100,000 per unit.¹ [R.750-58]. He told her that he thought the price was a good deal and that it would be a good investment for her. [R. 750-51, 769-70]. Gibson considered Villavicencio to be her financial advisor and she was “relying on him heavily.” [R. 755]. Gibson asked Villavicencio if she should offer something less than the list price, and he said no, that the seller would not take anything less. [R. 295, 697-98]. On May 7, 2007, Gibson signed a contract to purchase the property for \$2.8 million. [R. 871-79].

Gibson decided not to sell any of the real estate she owned to generate cash to buy the apartments. [R. 303]. Instead, she chose to refinance the beach house owned by 3205 Palm Boulevard, LLC.² [R. 759-60, 1375]. The refinance closed on August 28, 2007, and generated approximately \$667,000 in cash, which Gibson used to purchase the apartment complex. [R. 304-05, 891-93].

In September 2007, Heritage Seven LLC submitted a loan application to First Reliance Bank, the same bank that financed the purchase of the shopping center. [R.

¹ Villavicencio was not able to find a bank that would finance the proposal to convert the apartments into condominiums and sell them. [R. 295-96]. So he suggested that the apartments be renovated and leased, which Gibson agreed to. [R. 295-96].

² Gibson formed 3205 Palm Boulevard, LLC, in 2002, and was a 50% owner. [R. 303-04, 1688-90].

1029-31]. As part of the application process, Villavicencio prepared and submitted multiple personal financial statements on Gibson's behalf.³ [R. 520-21, 746, 771-72]. One statement, dated April 30, 2007, shows Gibson having a net worth of \$53,797,162. [R. 868-70]. Another statement, dated August 30, 2007, shows Gibson having a net worth of \$53,005,766. [R. 894-96]. Yet another statement, dated September 30, 2007, shows a net worth of \$52,682,766.⁴ [R. 1036-38].

In connection with the loan application, First Reliance ordered an appraisal of the property. [898-1015]. The appraisal, dated September 12, 2007, showed an as-is value of the apartment complex of \$2,800,000, and the as-renovated value of \$3,700,000. [R. 900-01]. The appraisal also contains information about projected rental revenue upon completion of the renovations. [R. 986-90].

On September 17, 2007, Gibson (on behalf of Heritage Seven, LLC) signed a contract with an architectural firm, agreeing to pay \$20,000 for various architectural services, including oversight during the renovations. [R. 350-51, 1016-28]. The agreement states that the owner selected The Triton Group as the contractor. [R. 1028]. The contract with The Triton Group is dated September 26, 2007, and shows a contract price not to exceed \$700,000 for the renovations. [R. 1032-35].

³ Villavicencio played an active role in communications with the bank. [R. 1059-61, 1074-77, 1083-87]. He was the go-between between Gibson and the bank.

⁴ These numbers were much higher than Gibson's actual net worth at the time, primarily because the statements represented that the 55 acres that Gibson owned on Daniel Island were worth \$27.5 million. [R. 868-70, 894-96, 1036-38]. Gibson's 2010 financial statement showed the same property valued at \$5.5 million. [R. 1651]. Nonetheless, Gibson allowed the inflated statements to be submitted to both First Reliance and Ameris, and both banks relied upon the statements in processing the loan application for the apartment complex. [R. 1029-31, 1039-40, 1057-58].

On October 4, 2007, while the loan application was pending, Karl Zerbst left First Reliance Bank. [R 463-65]. At some point after leaving the bank, Zerbst received a call from Villavicencio. [R 487.] Villavicencio wanted to know where Benjamin Lanier, who also used to work at First Reliance, had gone to work, and Zerbst told him Ameris Bank. [R 487.] Zerbst notified Lanier that Villavicencio would be calling. [R. 495-96, 517]. Lanier set up a meeting with Villavicencio at the apartment complex. [R. 495-96]. Zerbst attended the meeting and gave Villavicencio certain of the loan application documents from First Reliance, including the appraisal, and Villavicencio in turn gave them to Lanier.⁵ [R. 495-96]. Zerbst did this without any instruction from Ameris Bank.⁶

After the meeting with Lanier and Zerbst, Villavicencio sent Lanier an email stating that he had received a call from Ben Brazell at First Reliance Bank, who said that he was not able to submit the loan package to the loan committee when promised. [R. 1704-07]. The email, dated October 19, 2007, states:

it also appears he has a lot more important stuff on his plate at the moment than our loan.

as you know, we no longer have time to waste.

we should have closed this project months ago.

anyway, with the above, let this be our official request for ameris bank to proceed with processing for above loan.

⁵ Lanier described the delivery of the documents as "staged." [R. 498]. By delivering the documents to Villavicencio instead of directly to Lanier, Zerbst was presumably trying to avoid violating a non-compete agreement he had with First Reliance Bank that prevented him from working in the Charleston area for a year. [R. 469].

⁶ Zerbst was not employed by Ameris Bank or any bank at this time. Although Zerbst had spoken to Ameris Bank about working there, he did not become an employee of the bank until January 11, 2008. [R. 422-23, 1151].

you had mentioned you may be able to provide us a commitment letter by early next week.

[R. 1706].

On or about October 25, 2007, Heritage Seven, LLC, submitted a commercial loan application to Ameris Bank. [R. 1078-79]. The application is signed by Gibson as managing member of Heritage Seven LLC. [R. 323, 1078-79]. The amount requested is \$2,800,000. [R. 1078].

Sometime in October 2007, prior to the loan closing, Gibson called Karl Zerbst. [R. 249-50]. Zerbst was no longer working for First Reliance Bank and had not yet begun working for Ameris Bank.⁷ [R. 249-50]. Gibson reached Zerbst on his cell phone. She did not know where he was when he accepted the call or what information he had in front of him. [R. 325-26, 328]. She testified that the call lasted approximately thirty minutes, and that she believed that they talked “a little bit about the appraisal,” about the location and the rents, and about whether Zerbst felt like the apartment complex was a good property for her “so that [she] could at least make a little money on it, that it was a better cash flow than the beach house that [she] had, and that [she] was going to be able to pay for it.” [R. 253]. Gibson testified:

⁷ Ameris Bank has maintained throughout this case that Zerbst was not an agent of the bank in October 2007; that the bank did nothing to represent to Gibson that Zerbst was authorized to act on the bank’s behalf; and that as a matter of law, Zerbst cannot create an agency relationship through his conduct alone. *See Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005) (“An agency relationship may not be established solely by the declarations and conduct of an alleged agent.”). *See also Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale*, 359 S.C. 635, 641-44, 598 S.E.2d 717, 721-22 (Ct. App. 2004) (holding that there is no relationship as a matter of law when the principal has not made any representations to a third party concerning whether someone is an agent). The master’s finding to the contrary is incorrect as a matter of law.

That was my main concern, was whether or not -- I was borrowing millions of dollars. I'm not -- I don't know a lot about business, but I do know that I cannot spend more money than I take in, and that was the bottom line for me. Is this going to be a suitable property where the rents would cover my debt? And hopefully this thing would -- once it was renovated, they assured me that the rents were going to increase because of the renovations. I mean, even the appraisal showed that, that they said it -- it went from 2.8 million to 3.7 million because of the renovations. So they said that the rents would come in at almost double and that would be taken care of. So that was my main concern and that was what I talked about with Karl.

[R. 253-54].

When asked what Zerbst told her, Gibson stated: "Well, he didn't disagree with that. He never once said any negative thing about that property, that it wouldn't fly, that it wouldn't do me a service, that it was all -- he and Mr. Villavicencio both assured me."

[R. 254]. She concluded that the apartments were a good deal because Zerbst did not say anything negative. [R. 331]. She testified that Zerbst "thought it was a good investment" and "always assured [her] that the rents would cover the debt." [R. 254, 268].

E. The Closing and Loan Documents

Ameris ultimately approved the loan, and the closing took place on November 2, 2007.⁸ [R. 1126]. Prior to the closing, on October 25, 2007, Ameris gave Gibson a commitment letter indicating the bank's intention to approve the loan. [R. 1080-82]. This was done at a grand opening party for Ameris's Charleston office. [R. 237-40]. The commitment letter outlined the terms of the loan agreement and explained the purpose of

⁸ The loan was also approved by First Reliance Bank. [Def.'s Ex. 22; Tr. 365:8-20.]

the loan, the rate and fees, the maturity, the terms, the collateral, and the conditions precedent.⁹ [R. 1080-82].

On November 2, 2007, the day of the closing, Gibson signed a Construction Loan Agreement with Ameris Bank, individually and on behalf of Heritage Seven LLC. [R. 319, 1095-1103]. The agreement contains numerous provisions regarding the responsibilities of the parties. [R. 1095-1103]. According to the agreement, Heritage Seven LLC was responsible for choosing an architect or other construction consultant to periodically inspect the project's progress to protect the borrower's interests. [R. 1096]. The agreement states that *the borrower* "will apply or cause Project contractors and suppliers to apply the Loan disbursements only to work actually done and materials actually incorporated in the Project and scheduled to be paid under the Disbursement Schedule." [R. 1100]. The agreement states that any inspections done by the bank are solely for the benefit of the bank. [R. 1097]. The agreement further states that the bank is "not obligated to inspect, supervise, prevent Construction Liens, or inform [the borrower] about the Project's progress or performance," and the bank and its consulting architect act for the protection of the bank. [R. 1100]. The agreement also contains an indemnity clause requiring the borrower to defend, indemnify, and hold harmless the bank for anything that anyone does or fails to do concerning the property. [R. 1099]. The agreement outlines events of default and remedies that the bank may pursue. [R.

⁹ Gibson testified that she signed the commitment letter at the grand opening party and that she was under the influence of alcohol when she did so. [R. 237-40]. She was not able to produce a signed copy of the letter, however, and the letter did not obligate her to close on the loan in any event. [R. 1080-82]. The commitment letter simply indicated the bank's intention to make the loan and stated that funding was contingent upon a successful closing, which was not scheduled to take place until November 2, a week after the party. [R. 1080-82].

1100-02]. Finally, the agreement states: “This Agreement and the other Loan Documents are the complete and final expression of the understanding between [the parties].” [R. 1102].

Prior to the closing, Gibson did not do any independent research or investigation to evaluate the property. [R. 293-94]. Although she understood that she could have obtained a second opinion about the purchase price, she never did. [R. 293-94, 336]. She did not review any cash flow statements or income statements for the property. [R. 293-94]. She never saw the rent rolls for the property. [R. 297]. She inspected only one of 48 units. [R. 293]. She did not hire an architect or a contractor to inspect the property. [R. 294]. She did not ask anyone (other than Villavicencio) to prepare an estimate of the cost necessary to convert the apartments into condominiums or to renovate them to generate higher rents. [R. 294, 297, 326].

F. Renovations of the North Charleston Apartment Complex

After the loan closed, the renovations began. Villavicencio was responsible for supervising the construction and visited the apartment complex almost every day. [Def.’s Ex. 39; Ct. Ex. 10, Villavicencio Dep. 194:25-195:13; 207:20-23.] Gibson did not visit the project during the first five months of construction because of health issues. [R. 216-17]. Nonetheless, she would call Villavicencio from time to time to see how things were going. [R. 219]. Villavicencio told her that everything was going fine and that the project was proceeding as planned. [R. 219]. On February 7, 2008, Villavicencio sent an email to Lanier at Ameris Bank stating that “we should start seeing units completed and ready for leasing next month.” [R. 1384]. He further stated, “we are moving along as planned.” [R. 1384].

At the end of March 2008, after the renovations had been underway for approximately five months, Gibson visited the property for the first time. [R.216-17]. Upon her arrival, she observed that “a lot of things” had gone wrong with the project. [R. 218, 220]. For instance, she saw that three buildings were being worked on instead of one, which was contrary to the plan to renovate one building at a time. [R. 218-19, 1399]. According to Gibson, each building was supposed to take four to six weeks to complete. [R. 218]. Instead, not a single building had been completed and the buildings were completely “demolished,” having no windows or doors. [R. 218].

On her drive home after visiting the property, Gibson testified that “a wave of fear came over [her]” and she “had to make a decision to go down there eventually.” [R. 220]. In May 2008, Gibson moved to the apartment complex to take over the day-to-day management and supervision of the project. [R. 220-22]. One of the first things she did was fire the crew that Villavicencio had hired. [R. 220]. Gibson said they were “young people” who “didn’t seem to be competent construction people.” [R. 220]. Gibson interviewed several people before hiring a crew, and officially replaced Triton Construction with a new contractor. [R. 220, 1398]. Under her supervision, two buildings were renovated and half of a third. [R. 221].

On June 3, 2008, Gibson formed Seven Oaks Apartments, LLC. [R. 1701-03]. Gibson intended to transfer the apartments into this LLC at a later date but never did. [R. 278-80].

G. Litigation against Villavicencio

By May 28, 2008, Gibson had officially terminated Villavicencio as the property manager for both the apartment complex and the shopping center. [R. 220-21, 1394]. On

July 28, 2008, Linda Gibson, Heritage Seven LLC, and Seven Oaks Apartments LLC filed an action against Villavicencio, ReMax, the appraiser, and others, asserting causes of action for breach of contract and an accounting. [R. 1406-20]. On August 11, 2010, the complaint was amended to allege causes of action for breach of contract, breach of contract accompanied by a fraudulent act, constructive fraud, conversion, negligence, negligent supervision, negligent misrepresentation, breach of fiduciary duty, civil conspiracy, and violation of the Unfair Trade Practices Act.¹⁰ [R. 1511-37]. The amended complaint alleged that Villavicencio and other defendants represented that the purchase price of the apartment complex was its market value and that it was a suitable investment for Gibson when in fact it was not. [R. 1515]. The complaint further alleged that Villavicencio and others breached fiduciary duties owed to Gibson and her entities. [R. 1531].

In February 2012, the case against Villavicencio and others settled. As a result of the settlement, Gibson and her entities received \$850,000. [R. 1685-87].

H. Negotiations with Ameris Bank and Default

At the end of the 2008, Gibson entered into negotiations with Ameris Bank to modify the terms of the loan. [R. 717, 1554-59, 1572-84, 1599-1606, 1609]. The construction loan contemplated a construction completion date of December 2, 2008, and because the renovations were not going to be completed by that time, Ameris worked

¹⁰ Gibson changed counsel between the filing of the initial complaint and the amended complaint. Andrew Epting and George Kefalos, who are among the counsel who represented Respondents at the trial in the present case, filed the amended complaint. [R. 1537]. John West and Gedney Howe also represented Respondents in this case. [R. 98]. Mr. Howe did not appear at trial.

with Gibson to extend the terms of the loan. [R. 717, 1095-1103, 1554-59, 1572-84, 1599-1606, 1609].

On January 9, 2009, Heritage Seven LLC executed a renewal note in the amount of \$2,809,681.86, with an interest rate of 6.0%, which was more favorable than the prior rate of 7.75%. [R. 1120-22, 1616-18]. Gibson guaranteed the renewal note personally and as Trustee of the Paul William Gibson Family Trust. [R. 1610-1615].

On June 2, 2009, Zerbst and Lanier met with Gibson at the apartment complex to discuss the fact that Heritage Seven LLC was behind on the loan. [R. 826]. Gibson reported that the apartment complex was 56% occupied, and that the vacant units included the eight units in building 3 that was still being renovated. [R. 826]. Gibson further reported that several of the tenants had either lost their income or did not have the money to pay their rents. [R. 826]. She had to evict tenants and find new ones. *Id.* Lanier memorialized the meeting in a memo, stating, "Getting the project completed is paramount to the success of this loan performing." [R. 827].

In addition to the renewal note, on October 1, 2009, Ameris Bank loaned Heritage Seven LLC \$50,071.96 to pay the property taxes that became due on the property. [R. 1646-50].

Gibson never fully completed the renovations and stopped making payments on the both loans. On June 14, 2010, Ameris Bank initiated foreclosure proceedings. [R. 66-76]. Prior to initiating the proceedings, Ameris met with Gibson and her attorney,

Robert Papa, to try to reach a resolution.¹¹ [R. 808, 829, 831]. Ameris even offered to defer \$300,000 of the amount due. [R.831]. Gibson declined all proposals. [R. 828].

On July 14, 2010, one month after initiating the foreclosure proceedings, Ameris Bank sold the mortgage loan to Galt Valley, LLC, for approximately \$975,000. [R. 720, 1708-34]. On December 1, 2010, Galt Valley and Respondents settled the foreclosure action. [R. 1662-84]. As part of the settlement, Heritage Seven LLC executed deeds in lieu conveying the apartment complex and other real property that served as collateral for the loan to Galt Valley. [R. 1663, 1668-75]. In exchange, the notes were deemed satisfied, the loan documents canceled, and all litigation pending between Respondents and Galt Valley was dismissed. [R. 1663].

Ameris lost approximately \$1.8 million on the transaction. [R. 721].

STANDARD OF REVIEW

“An action in tort for damages is an action at law.” *Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct. App. 2005). “In an action at law tried without a jury, an appellate court’s scope of review extends merely to the correction of errors of law.” *S.C. Dept. of Transp. v. Horry Cnty.*, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011). An appellate court “will not disturb the trial court’s factual findings unless they are without evidence reasonably supporting those findings.” *Id.* Questions of law, however, “may be decided with no particular deference to the trial court” *U.S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009).

¹¹ Prior to hiring Papa, Gibson was represented by The Richter Firm. The Richter Firm represented Gibson in the lawsuit against Villavicencio. [R. 197]. According to Gibson, the firm withdrew as counsel due to a conflict of interest. [R. 215]. Larry Richter had previously represented Karl Zerbst in connection with his non-compete agreement. [R. 462]. Neither Richter nor his law firm ever represented Ameris.

ARGUMENT

This case involves a \$2.8 million commercial loan for a real estate venture that ultimately failed. The parties to the transaction were an LLC and a bank. The master erred in four respects. First, the master erred in concluding that the bank owed the borrower a fiduciary duty of care. The bank did not undertake to advise the borrower as a part of the services offered by the bank and did not accept any confidence that the borrower may have placed in it. The relationship was arms-length. Second, the master erred in concluding that the bank was liable for negligent misrepresentation. The bank did not make any false representations to the borrower, and any reliance by the borrower was not justified given the arms-length nature of the transaction. Third, the master erred in concluding that the bank aided and abetted a breach of fiduciary duty by the borrower's real estate agent. This conclusion is wholly unsupported by the evidence and as a practical matter does not make sense. It was in the bank's financial interest for the real estate venture to be successful. It was not in the bank's interest to harm the borrower or to aid anyone in doing so. Fourth, the master erred in awarding actual and punitive damages, and the punitive damages award is so excessive that it violates due process and must be reversed.

Because of these errors, this Court should reverse the master's order and enter judgment in favor of Ameris Bank.

I. The bank did not owe the borrower a fiduciary duty.

To begin, Ameris Bank did not owe Linda Gibson or Heritage Seven LLC a fiduciary duty as a matter of law.

“Whether a fiduciary relationship exists between two people is an equitable issue for the judge to decide.” *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004). “A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another.” *Id.* at 250, 599 S.E.2d at 472. “A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence.” *Id.*; accord *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003).

“The term fiduciary implies that one party is in a superior position to the other and that such a position enables him to exercise influence over one who reposes special trust and confidence in him.” *Burwell v. S.C. Nat’l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986). “As a general rule, mere respect for another’s judgment or trust in his character is usually not sufficient to establish such a relationship.” *Id.* “The facts and circumstances must indicate that the one reposing the trust has foundation for his belief that the one giving advice or presenting arguments is acting not in his own behalf, but in the interests of the other party.” *Id.*

Accordingly, “a fiduciary relationship cannot be created by the unilateral action of one party.” *Moore*, 360 S.C. at 251, 599 S.E.2d at 472. “To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing.” *Id.* Further, “[t]he evidence must show the entrusted party actually accepted or induced the confidence placed in him.” *Id.*

A fiduciary relationship does not exist when the entrusted party is unaware of the special trust being reposed in it. *Burwell*, 288 S.C. at 40-41, 340 S.E.2d at 790; *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003); *Steele v. Victory Sav. Bank*, 295 S.C. 290, 294, 368 S.E.2d 91, 93 (Ct. App. 1988).

A. South Carolina courts have never imposed a fiduciary duty on a bank in the commercial lending context.

The general rule in South Carolina is that a bank does not owe fiduciary duties to its customers. *See, e.g., Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986); *Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Rush v. S.C. Nat'l Bank*, 288 S.C. 560, 343 S.E.2d 667 (Ct. App. 1986). The normal relationship between a bank and its customer is one of creditor-debtor and is not fiduciary in nature. *Burwell*, 288 S.C. at 40, 340 S.E.2d at 790. The same is true of the relationship between a mortgagee and mortgagor. *See Brown v. C&S Real Estate Servs., Inc.*, 314 S.C. 463, 445 S.E.2d 463 (Ct. App. 1994). In limited circumstances, however, a fiduciary relationship may arise between a bank and a customer when the bank “undertakes to advise the customer as a part of the services the bank offers.” *Burwell*, 288 S.C. at 40, 340 S.E.2d at 790.

There is not a single appellate court decision in South Carolina in which the court has found that a fiduciary relationship existed between a lender and a borrower, and certainly no case where the court found that a fiduciary relationship existed in the commercial lending context. For example, in *Burwell v. S.C. Natl. Bank*, the court rejected the plaintiff’s contention that he had a fiduciary relationship with the bank, finding that the fact that the customer bargained with the bank before signing various loan documents indicated that the customer knew that the transaction was an arms-length

transaction. 288 S.C. at 48, 340 S.E.2d at 790. Given these circumstances, the plaintiff could “not reasonably have believed that [the banker] was acting on his behalf instead of on behalf of [the bank].” *Id.* Additionally, the court found that there was no evidence that the bank was aware of the alleged trust being placed in it. *Id.*

In another case, the plaintiff claimed that the bank owed her a duty of care under a negligence standard because she was in a vulnerable position and was dependent on the bank for guidance. *Regions Bank*, 354 S.C. at 670, 582 S.E.2d at 443. The court rejected this contention, finding that the plaintiff was involved in the operation of a business, had loaned money in the past, and had guaranteed other loans. *Id.* Because of this prior experience, the court found that the plaintiff “was not in a vulnerable position, and the bank owed her no special duty of care.” *Id.* at 670, 582 S.E.2d at 443-44. The court also rejected the plaintiff’s contention that she had a fiduciary relationship with the bank. The plaintiff contended that she placed her trust in the bank and relied on the loan officer for information and advice. The court disagreed, finding no evidence that that the plaintiff placed a special trust in the bank or the loan officer, and no evidence that the plaintiff sought advice or asked questions of the bank prior to signing the documents. *Id.* at 671, 582 S.E.2d at 444.

Here, the master erred as a matter of law in concluding that a fiduciary relationship existed between the parties. This case involves a \$2.8 million commercial loan transaction between a limited liability company and a bank. The relationship between the parties was that of lender and borrower.

Respondents did not present any evidence that Ameris Bank undertook to advise Linda Gibson with respect to the soundness of the apartment complex as an investment.

The evidence presented was that at some point prior to the closing, Gibson called Zerbst. He did not call her. No one from Ameris reached out to Gibson to offer her real estate investment advice. In any event, Ameris Bank does not offer real estate investment advice as part of the services offered by the bank. Richard Sturm, President of Ameris Bank, South Carolina, testified that Ameris does not offer investment advice, does not act as a real estate broker, does not list properties owned by third parties for sale, does not advise people how much to pay for property or how much to sell property for, does not perform appraisals, does not do any real estate development, does not offer rental management services, and does not manage construction projects or act as a contractor. [R. 709-11]. Respondents did not present any evidence to refute this.

Further, the fact that Gibson respected and trusted Zerbst's judgment does not give rise to a fiduciary relationship as a matter of law. The fact that a person or company has previously conducted business with a banker and feels comfortable with that particular banker does not convert the relationship into a fiduciary one. Respondents did not present any evidence that the bank accepted or induced any trust that Gibson may have placed in it. The bank did not give Gibson any reason to believe that it was acting on her behalf instead of its own. The bank was the lender. As the lender, the bank's interests were naturally adverse to the borrower's. Gibson signed multiple documents acknowledging this. [R. 1089-94, 1104-10, 1120-22, 1610-1631, 1646-50]. In the event Heritage Seven LLC did not repay the loan, the bank had the right to file an action for foreclosure, which the bank eventually did.

Moreover, Gibson bargained with the bank. In 2008, Gibson successfully negotiated a loan modification with a lower interest rate than the prior loan. [R. 1616-

18]. The fact that Gibson bargained with the bank before signing the various renewal note documents indicates that she knew that the relationship was arms-length. Additionally, the bank was not in superior position with respect to transaction. Gibson was the person who best knew her financial affairs. The bank did not have any information about Gibson's finances or about the apartment complex that Gibson did not have.

Finally, the master's finding that Gibson was 20% at fault for the harm suffered undermines the conclusion that the parties had a fiduciary relationship. If the parties were truly in a fiduciary relationship, Gibson should have been able to rely on Zerst's advice. Instead, the master found that Gibson should *not* have "just relied on the advice of Mr. Zerst, Mr. Lanier, and Mr. Villavicencio." [R. 53]. The master found that she should *not* have "simply relied on the appraisal accepted by Ameris" and "could have obtained her own appraisal prior to closing on the loan but she did not." *Id.* The master found that she "did not independently determine if the rents from the apartment complex would pay for the loan and the loan on her beach house prior to purchasing the apartment complex." *Id.* These findings are contrary to a finding that the parties had a fiduciary relationship.

B. The statements made by the bank did not give rise to a fiduciary relationship.

Karl Zerst's statements that he thought the apartments were a good investment and that the rents would cover the debt did not give rise to a fiduciary relationship.

The South Carolina Court of Appeals addressed a similar question in the case of *Cowburn v. Leventis*, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005). In that case, a customer asked a bank employee for an opinion on an investment. The bank employee

stated: “I’ve been here two years, and these guys have never missed a payment, and they’re always on time, and it seems good to me.” 366 S.C. at 43, 619 S.E.2d at 450. The court found that the statement “it seems good to me” “does not amount to rendering advice such that [the customer] would rely on its authenticity for purposes of imposing a fiduciary duty on a bank.” *Id.* at 43-44, 619 S.E.2d at 450.

Courts in other jurisdictions have reached similar conclusions. In one case, the court held that the vice president’s statement to a customer that the purchase of a piece of property was a “good deal” did not create a fiduciary relationship between the bank and the customer. *Berry v. First Nat’l Bank of Olney*, 894 S.W.2d 558, 560 (Tex. Ct. App. 1995). In another case, the court held that “expressing an opinion on a business deal, where there is no reason to believe that the customer’s trust and confidence exceed that of an ordinary arms-length commercial transaction, cannot establish a fiduciary relationship.” *Tippens v. Round Island Plantation LLC*, 2009 WL 2365347, *12 (S.D. Fl. 2009). Even if the plaintiffs’ characterization of the relationship were true, the fact remained that the banker “was a loan officer, not an investment adviser.” *Id.* Further, “[o]ffering an opinion on occasion is not tantamount to accepting a role as a personal advisor.” *Id.*

“Further, no confidential relationship exists between a bank and its customers merely because the customer had advised with, relied upon, and trusted the bankers in the past.” *Baxter v. Fairfield Fin. Servs., Inc.*, 704 S.E.2d 423, 429 (Ga. Ct. App. 2010); *see also Silver v. Countryside Home Loans, Inc.*, 760 F. Supp. 2d 1330 (S.D. Fla. 2011) (finding allegations that lender and borrower had developed a friendship and had a number of telephone conversations were insufficient to establish a fiduciary relationship).

Here, the fact that Karl Zerbst did not say anything negative about the project, told Gibson that he thought the apartments were a good investment, and assured her that the rents would cover the debt does not give rise to a fiduciary relationship as a matter of law. By offering his opinion, Zerbst did not take on the role of a financial advisor. Zerbst was a loan officer. He was not a real estate investment advisor. Gibson asked him what he thought and, based on the information he had, which she had too, he offered his opinion. The conversation was casual. Zerbst was standing in his kitchen. [R. 405]. Gibson did not arrange to meet with him in person to go over the financial information in any detail. Zerbst was not even employed at the time.¹² [R. 465].

Further, Zerbst did not know anything more about the apartment complex than Gibson did. The statement was based on information contained in the appraisal, which Gibson had access to and could have evaluated on her own or with the assistance of a financial advisor or real estate agent who did not also represent the seller. Zerbst did not conduct any additional investigation that would have provided him with information that was unavailable to Gibson. The statement was not a guaranty that the project would be successful and did not create a fiduciary relationship as a matter of law.

C. The parties' relationship was governed by the loan documents.

Any suggestion that the parties had a fiduciary relationship is directly undermined by the loan documents.

In analyzing the nature of the relationship between the parties, courts look to the written agreements signed by the parties. *See Cowburn v. Leventis*, 366 S.C. 20, 619

¹² As noted above, Zerbst did not join Ameris Bank until January 8, 2011, and Ameris maintains that Zerbst was not acting as an agent for Ameris Bank when the conversation with Gibson took place.

S.E.2d 437 (Ct. App. 2005) (finding that the custodial agreement specifically limited the bank's duties); *Trotter v. First Fed. Sav. & Loan Ass'n*, 298 S.C. 85, 89, 378 S.E.2d 267, 269 (Ct. App. 1989) ("The relationship is usually defined by the contractual agreement between the depositor and the bank.").

Here, the loan documents signed by the parties show that their interests were adverse. Gibson signed multiple documents obligating Heritage Seven LLC to repay the debt and allowing the bank to use any and all remedies available under the law to collect the amount due, including filing a lawsuit for foreclosure, which the bank eventually did. Gibson signed promissory notes. [R. 1120-22, 1616-18, 1646-47]. She signed mortgage agreements. [R. 1104-10, 1619-25, 1626-31]. She signed guaranties. [R. 1089-91, 1092-94, 1610-12, 1613-15, 1648-50]. None of these documents evince a fiduciary relationship between Gibson, Heritage Seven LLC, and Ameris Bank, and Gibson never contested the enforceability of the loan documents.

The loan documents also show that the bank did not take on fiduciary responsibilities with respect to the renovations. The construction loan agreement signed by Gibson on November 2, 2007, individually and on behalf of the borrower, Heritage Seven LLC, states that the *borrower* was responsible for choosing an architect or other construction consultant to periodically inspect the project's progress and quality to protect the borrower's interests. [R. 1096]. The *borrower* was obligated to ensure that the loan disbursements went into the project. [R. 1100]. The bank was not obligated to inspect or supervise the project or inform the borrower of the progress. [R. 1100]. Any inspections done by the bank were *solely for the benefit of the bank*. [R. 1097]. Further, the agreement states that "[t]his Agreement and the other Loan Documents are the

complete and final expression of the understanding between you and me.” [R.1102].

Similar language appears in the other loan documents Gibson signed. [R. 1108, 1116, 1122, 1611, 1614, 1618, 1623, 1631].

Additionally, the commercial loan application that Gibson submitted after her conversation with Zerbst expressly states that Gibson was not relying on Ameris Bank or any of its agents or employees. [R. 1079]. The application states: “Loan Applicant represents that none of the parties named in this application have relied on advice from the Lender in applying for or receiving any credit.” *Id.*

D. Even if a fiduciary relationship existed, the evidence does not support a finding of breach.

Assuming, arguendo, the parties had a fiduciary relationship, Respondents did not present any evidence to support a finding of breach. Ameris Bank acted in good faith toward Gibson and Heritage Seven LLC at all times, and the master’s findings to the contrary are wholly unsupported by the evidence.

When a fiduciary relationship arises between a bank and a customer, the bank is charged with a duty to disclose material facts that may affect the customer’s interest. *Burwell v. S.C. Nat’l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986); *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003). “Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud.” *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004).

By way of comparison, in the broker-dealer context, where fiduciary duties are generally owed, the scope of the duty is limited. The duties owed “often include the duty

to account for all funds and property belonging to the buyer, to refrain from acting adversely to the buyer's interest, to avoid engaging in fraudulent conduct, and to communicate any information he or she may acquire that would be the buyer's advantage." *Cowburn v. Leventis*, 366 S.C. 20, 37-38, 619 S.E.2d 437, 447 (Ct. App. 2005). But the duties do not include a duty to "investigate for any unknown potential risks of [an] investment." *Id.* at 38, 619 S.E.2d at 447.

Similarly, banks are not guarantors of success for real estate investments made by their customers. Courts in other jurisdictions explicitly recognize that "[p]ublic policy does not impose upon the Bank absolute liability for the hardships which may befall the business venture it finances." *Wagner v. Benson*, 161 Cal. Rptr. 516, 520 (Cal. Ct. App. 1980). Stated another way, "the success of the [customer's] investment is not a benefit of the loan agreement which the Bank is under a duty to protect." *Id.* "A commercial lender is not to be regarded as the guarantor of a borrower's success and is not liable for the hardships which may befall a borrower." *Altman v. PNC Mortg.*, 850 F. Supp. 2d 1057, 1073 (E.D. Cal. 2012). "A commercial lender is entitled to pursue its own economic interest in a loan transaction." *Id.* at 1075.

Here, Ameris Bank did not do anything that would constitute a breach of a fiduciary duty. The bank did not fail to disclose any material facts to the borrower. Ameris did not have any information about the quality of the investment or the projected revenue that the borrower did not have. There is no evidence in the record that anyone at Ameris Bank knew that the revenues would not cover the debt, or knew that the apartment complex was not a good investment and yet failed to disclose that information

to Gibson. The statements made by Zerbst were supported by the third-party appraisal of the property, which Gibson had too.

Further, the master's findings concerning the bank's conduct extend far beyond the limited scope of duties that the bank would owe even if a fiduciary relationship existed. First, there was nothing wrong with way the loan was structured or approved. The project was not 100% financed. There was a significant equity contribution of approximately \$700,000 made with proceeds from the refinance of the beach house owned by 3205 Palm Boulevard LLC. Gibson chose to leverage another asset to make that contribution. Gibson knew that money had been obtained through a refinance, and she could assess the risks of that decision as well as anyone. Further, the fact that the loan was approved quickly does not support a finding of breach.

Second, the suggestion that the bank knew that the loan should not have been made but made it anyway does not make sense. Bill Barksdale, an expert witness who testified on behalf of Ameris Bank, testified that banks do not lend money for projects that they do not believe are going to be successful. [R. 628, 1041-42]. If a bank approves a loan, it means the bank "think[s] it's an acceptable and bankable risk" and there is no problem with telling that to the borrower. [R. 636-37]. The bank relies on the borrower's due diligence in making a decision whether to approve a loan. [R. 636]. In approving a loan, the bank is not guaranteeing that the project is going to perform in the way that the borrower thinks it is going to. [R. 629]. Barksdale further testified that it does not make sense for a bank to make a loan on a project that it thinks is going to fail. [R. 332-33]. It costs the bank more to try to pursue other remedies than it does just to get

repaid if the project's a success, it takes more time, and the bank generally does not come out ahead. *Id.*

Third, Ameris Bank did not breach any duty to the borrower with respect to the construction loan disbursements. Every check that the bank wrote for the project was made payable to a vendor or to Gibson. [R. 1224-1327]. Not a single check was made payable to Rolando Villavicencio. [R. 539, 1224-1327]. All requests for disbursements made by Villavicencio were supported by invoices, and the checks were made payable to the vendors. [R. 510]. After the money was disbursed, it was the borrower's responsibility to ensure that the money was going into the project and that the work was being done. [R. 1100]. *See also First Fed. Sav. & Loan Ass'n of S.C. v. Dangerfield*, 307 S.C. 260, 264, 414 S.E.2d 590, 593 (Ct. App. 1992) (finding that once the loan proceeds were disbursed in accordance with the loan agreement, the bank "had no duty to superintend the affairs of the corporation to see that the proceeds of the checks were applied to the corporation's business").

The only time that disbursements were not supported by invoices was when Linda Gibson took over the project. [R.539-42]. When Gibson took over, she would call-in to make a request for a draw, the money would be deposited into her checking account, and she would cut a check off the account without providing a supporting invoice. [R. 542]. Lanier, who handled the disbursements, had no knowledge of any money being withdrawn from the Heritage Seven LLC checking account without Gibson's knowledge. [R. 545]. Gibson was in complete control of the account and the only other person with authority to sign was her daughter, Elizabeth. [R. 546]. In fact, Gibson did not complain about the manner in which the funds were disbursed until the middle of 2009, long after

she took over the project, and when she did, her complaint was with Villavicencio and not Ameris. [R. 545].

The internal memo drafted by Karl Zerbst about the manner in which the disbursements were handled does not support a finding of breach. [R. 799-800]. The memo says nothing about breach of a duty owed to the borrower. Instead, the memo states that certain of Lanier's actions "have fallen short of giving the customer an exceptional experience while banking at Ameris." [R. 799]. The memo criticizes Lanier for not taking ownership of the project "to ensure the bank's interest is protected." *Id.* The memo also states that Lanier "must remember not to risk the bank during construction projects." [R. 800].

The memo states that the owner was not aware of \$378,000 in disbursements and that the requests for the advances were made by the project manager (Villavicencio) and that Lanier should have required Gibson to sign off on each advance. [R. 799]. But as established at trial, Gibson authorized Lanier to deal with Villavicencio during the initial months of the project, and all disbursements made during that time were supported by invoices and made payable to a vendor. [R. 510, 531-32, 539, 1224-1327]. Additionally, as for the \$290,000 in disbursements that Zerbst says were not supported by invoices, those distributions were made during the time that Gibson took over the project, and Gibson never complained about them. [R. 539, 541-42].

At best, the memo shows that the bank did not follow its own internal policies. But a bank's failure to follow its own internal lending does not establish liability with respect to the borrower as a matter of law. *See Whitley v. Taylor Bean & Whitaker Mortg. Corp.*, 607 F. Supp. 2d 885, 902 (N.D. Ill. 2009) ("Where the law does not

impose a duty, one will not generally be created by a defendant's rules or internal guidelines."); *Fifth Third Mortg. Co. v. Chicago Title Ins. Co.*, 758 F. Supp. 2d 476, 485 (S.D. Ohio 2010) ("There is not a general duty of care owed by lenders . . . especially not one that would create tort liability based on internal lending guidelines.").

Similarly, the internal email from Don Snipes, Senior Vice President at Ameris, does not establish breach of any duty owed by the bank. [R. 801]. Snipes wrote the email before the bank completed its analysis of the file. Once the analysis was performed, the bank determined that it was not responsible for Gibson's problems. When asked about the email in his deposition, Snipes testified as follows:

Q: Sure. And when you say that you might have some culpability in her problems – do you see that sentence?

A: Yes.

Q: -- does that mean that you think the bank contributed to her problems?

A: I don't – I don't -- at the time I was concerned – again, I have since gone back and looked at those advances, and after reviewing the advances, they do not – they appear to be appropriate. And most of the advances again were deposited into a checking account in the name of Heritage Seven or Seven Oaks.

Q: Okay. Are you saying that you think that you today don't have some culpability in the problems?

A: I do not.

Q: You do not think the bank has any culpability for her problems?

A: No.

Q: Well, that's what you wrote back in July 3, 2009.

A: Right. That was based on conversations with Karl, and since then I have verified specifically the draws and disbursements.

[R. 389-90].

Fourth, Ameris Bank did not have a duty to inspect the project for the borrower's protection. It was the borrower's responsibility to ensure that the vendors were doing

their job, and that the money disbursed was going into the project. The construction loan agreement plainly states that the borrower “will apply or cause Project contractors and suppliers to apply the Loan disbursement only to work actually done and materials actually incorporated in the Project” [R. 1100]. The agreement also states that the bank is “not obligated to inspect, supervise, prevent Construction Liens, or inform [the borrower] about the Project’s progress or performance” *Id.*

In any event, Ameris *did* inspect the project. Lanier testified that he visited the project two or three times and saw that work was being done. [R. 533]. He never saw a dead construction site. *Id.* Ameris Bank did not act with total disregard for the project or its progress. But any inspections done by the bank were for the benefit of the bank and not for the benefit of the borrower. This is consistent with the arrangement agreed upon by the parties in the construction loan documents.

Absent a contract, “the lender has no common law [duty] to protect the [borrower].” *Roundtree Villas Assn., Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984) (explaining that lenders traditionally “make periodic inspections to assure that the construction loan advancements are being applied appropriately,” and that such inspections are “fundamentally for the protection of the lending institution”); *see also Rudolph v. First S. Fed. Sav. & Loan Assn.*, 414 So.2d 64, 71 (Ala. 1982) (“The mere relationship of lender/borrower, including the lender’s right of inspection at the borrower’s cost, does not, of itself, give rise to a duty of due care to the borrower in the lender’s exercise of that right.”); *Jordan v. Atl. Neighborhood Hous. Servs. Inc.*, 320 S.E.2d 215, 216 (Ga. Ct. App. 1984) (explaining the general rule that there is no liability for damages by purchaser against a lender because the inspections are normally not made

for the benefit of the owner but are instead made for the benefit and protection of the lender). “[T]he burden is on the borrower, seeking to impose liability, to prove the lender’s voluntary assumption of activities beyond those traditionally associated with the normal role of a money lender.” *Rudolph*, 414 So.2d at 71.

Because the record does not contain any evidence to support a finding that the bank assumed any duties above and beyond those traditionally associated with a money lender, and because the bank did not owe any such duties as a matter of law, the master erred in concluding that Ameris was liable for breach of fiduciary duty.

II. The bank did not misrepresent anything to the borrower.

Ameris Bank did not misrepresent anything to Linda Gibson or to Heritage Seven LLC. The master’s finding of liability with respect to negligent misrepresentation is incorrect as a matter of law.

To prove negligent misrepresentation, a plaintiff must establish the following: “(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.” *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010).

In the case at hand, the master identified the following statements as giving rise to liability for negligent misrepresentation: (1) Zerbst’s statement that “the rents would cover the debt”; (2) Zerbst’s statement that the apartments were “a good deal”; and (3)

“the structuring of the loan to include borrowing the down payment of \$700,000” such that the apartments were purchased with “100% borrowed money.” [R. 38.]. None of these statements gives rise to a claim for negligent misrepresentation.

A. The statements were not false.

The first and most basic requirement of a claim for negligent misrepresentation is that the alleged representation must be false. *Carolina Chloride, Inc., v. Richland Cnty.*, 394 S.C. 154, 163-64 714 S.E.2d 869, 873 (2011). Without falsity, the statement is not actionable and does not give rise to liability in tort. *See id.*

“Not every statement made in the course of commercial dealings is actionable at law.” *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992). “A mere statement of opinion, commendation of goods or services, or expression of confidence that a bargain will be satisfactory does not give rise to liability in tort.” *Id.* Stated differently, “[t]he false representation must be predicated upon misstatements of fact rather than upon an expression of opinion, an expression of intention or an expression of confidence that a bargain will be satisfactory.” *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (Ct. App. 1995). “The distinction between a matter of fact and a matter of opinion is generally characterized by what is susceptible of exact knowledge when the statement is made.” *Id.* Further, a statement “cannot be predicated on unfulfilled promises or statements as to future events.” *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 770 (2011).

Here, the statements made by Karl Zerbst were not false. First, the statement that the “rents would cover the debt” is a statement about future events and is neither true nor

false. Indeed it was never determined in this case whether the rents would ultimately cover the debt because the borrower never completed the renovations. Even if the statements could be proven true or false, there is no evidence in the record that the bank had any information showing that the rents would *not* cover the debt. To the contrary, the bank had an appraisal that indicated a level of income to support the statement that the rents would cover the debt. Second, the statement that the apartments were “a good deal” is not false. It is a statement of opinion. As a statement of opinion, it cannot form the basis for a claim of negligent misrepresentation as a matter of law. Third, the manner in which the loan was structured is not a statement, and there is no evidence in the record that the bank misrepresented anything about the structure of the loan to Linda Gibson. Gibson signed multiple loan documents at the closing in 2007 and again in 2009 acknowledging the loan structure and promising to repay the debt.

B. The borrower did not have the right to rely.

Even if the statements were false, Gibson did not have the right to rely and any reliance was not justified.

In addition to proving falsity, a plaintiff must demonstrate that she justifiably relied on the statement. *Carolina Chloride, Inc., v. Richland Cnty.*, 394 S.C. 154, 163-64, 714 S.E.2d 869, 873 (2011). “A determination of justifiable reliance involves the evaluation of the totality of the circumstances, which includes the positions and relations of the parties.” *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 241, 692 S.E.2d 499, 508 (2010). “Reliance can be justified only if the relationship of the parties is such that the defendant occupies a superior position to the plaintiff with respect to knowledge of

the truth of the statement made.” *Harrington v. Mikell*, 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Ct. App. 1996).

“Where there is no confidential or fiduciary relationship and an arm’s length transaction between mature, educated people is involved, there is no right to rely.” *Florentine Corp. Inc. v. PEDA I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985). *See also Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) (same); *Ardis v. Cox*, 314 S.C. 512, 516, 431 S.E.2d 267, 270 (Ct. App. 1993) (same). “This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests.” *Id.* There can be no liability for “matters which plaintiff could ascertain on his own in the exercise of due diligence.” *Carolina Chloride*, 394 S.C. at 164, 714 S.E.2d at 874.

“The principle of the right of reliance upon representations is closely bound up with a duty on the part of the plaintiff to use some measure of protection and precaution to safeguard his own interest.” *Regions Bank*, 354 S.C. at 673, 582 S.E.2d at 445. “The right to rely must be determined in light of the plaintiff’s duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him.” *Armstrong v. Collins*, 366 S.C. 204, 219, 621 S.E.2d 368, 375 (Ct. App. 2005). “It is the policy of the courts not only to discourage fraud, but also to discourage negligence and inattention to one’s own interests.” *Id.*

Despite the master’s characterization of Gibson as an unsophisticated business person, she was engaged in a sophisticated transaction and had both the financial resources and the common sense to seek advice from any number of professionals before entering into the transaction. This was not the first \$2 million+ commercial property that

Gibson had purchased. In 2005, she purchased a commercial shopping center for \$2.4 million. [R. 271-72]. She did so by executing a 1031 tax exchange with proceeds she received from the sale of a beach house she had an interest in to defer paying capital gains taxes. [R. 273-74, 747-48].

Gibson's ability to handle sophisticated business matters is also supported by the fact that when she discovered that the renovations on the apartment complex were not going as planned, she took charge of the project with assistance from her daughter. [R. 286-89] Gibson hired a new contractor, oversaw the construction, and collected rents. [R. 284, 289]. She negotiated with contractors and subcontractors. [R. 288]. She obtained draws from the bank and disbursed in excess of \$200,000 to contractors and others. [R. 287-88]. She made decisions about how to pay the money and what documentation to require. [R. 288]. She maintained detailed handwritten notes about the work that had been done and that needed to be done. [R. 1425-1510]. In addition, she took over the management of the shopping center, collecting rents, paying bills, arranging for maintenance, and renewing leases as necessary. [R. 283-84].

Moreover, Gibson failed to protect herself and to ascertain whether the apartment complex was in fact a good investment. The master's finding that she was 20% at fault supports this. For starters, she failed to negotiate the \$2.8 million purchase price. [R. 295, 697-98, 871-79]. Further, she did nothing to independently ascertain the value of the property. She did not obtain an appraisal. [R. 293-95]. She did not review any cash flow statements or income statements for the property. [R. 293-94]. She never looked at the rent rolls for the property. [R. 297]. She inspected only one of 48 units. [R. 293]. She did not hire an architect or a contractor to inspect the property. [R. 294]. She did not ask

anyone (other than Villavicencio) to prepare an estimate of the cost necessary to convert the apartments to condominiums or to renovate them to generate higher rents. [R. 294, 297, 326].

This failure to negotiate the purchase price and to independently ascertain the value of the property forecloses relief as a matter of law. *See Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2009) (holding that the trial court properly granted summary judgment in favor of the bank because the plaintiffs did not negotiate the purchase price and made no effort to independently ascertain the value of the property before buying it).

On top of all this, when it came time to close, Gibson did not read any of the documents she signed. [R. 231]. She did not ask any questions of the closing attorney about the documents. *Id.* Nonetheless, she understood that the promissory note obligated the borrower to repay the debt on the terms set out in the note. [R. 232]. She understood that she owed the money regardless of whether the project was a success. *Id.* She understood how much money she had, what her assets were, what her income was, the loan amount, and the terms of the loan. [R. 333-34].

Finally, Gibson's reliance on Zerbst for advice about whether she should purchase the apartment complex was not reasonable. Zerbst was a loan officer. He was not in the business of buying and selling real estate. There was no evidence was presented to show that Zerbst had any expertise in the area of real estate or that he knew anything more about the apartment complex than Gibson or Villavicencio did. Gibson was in the best position to determine whether the apartments were a good investment and whether the rents would cover the debt. As a wealthy person with two years of college and multiple

real estate investments, she had the ability to seek advice to determine whether the apartment complex was a good investment. Gibson's failure to act with diligence to protect her interests precludes liability for negligent misrepresentation as a matter of law.

C. The statements did not cause the harm alleged.

Even if the statements could be considered misstatements of fact and Gibson was justified in relying on them, the master erred in concluding that the statements caused the harm alleged.

At the time Zerbst made the statements, Gibson had already done the following: (1) signed a contract agreeing to purchase the property for \$2.8 million [R. 871-79]; (2) signed an "Exclusive Right to Buy / Buyer Agency Contract" with Re/Max Professional Realty [R. 880-83]; (3) signed a "Dual Agency Agreement" with Re/Max Professional Realty and the seller [R. 884-85]; (4) caused 3205 Palm Boulevard LLC to refinance the beach house to obtain cash to put into the apartments [R. 891-93]; (5) signed a contract with an architectural firm [R. 1016-28]; (6) received a proposal from Triton Construction stating that the contract price for the construction will not exceed \$700,000 [R.1032-35]; (7) obtained a third-party appraisal [R. 898-1015]; and (8) applied for financing with First Reliance Bank [R. 1029-31]. In other words, the project was well underway at the time Gibson made the call to Zerbst.

Moreover, the success of this real estate venture was contingent upon a lot of things going well that were unrelated to the loan or to the bank. For example, evidence was presented that the price for the apartment complex was too high, and yet it is the price that Gibson agreed to pay. [R. 601-02]. Villavicencio, who was in charge of the project and who prepared the budget, had no prior experience with a project of this kind.

[R. 773-76]. The budget Villavicencio prepared showed the total cost of renovations as \$688,814.18, which did not include the cost of a licensed contractor, structural engineer, or architecture fees. [R. 1746-52]. Villavicencio began renovating three buildings at once, instead of one at a time, as he and Gibson had agreed, which prevented the units from being rented while the construction was taking place. [R. 218-19]. The contractor that Gibson hired (Triton Construction) did not do the work it said it was going to do. The windows that were ordered were the wrong size, causing a \$35,000 mistake. [R. 547-48].

These are just some of the things that went wrong with the project, and Ameris Bank was not responsible for any of them. Ameris did not set the listing price and did not hire Villavicencio to run the project. Ameris did not prepare the budget, hire the contractors, or supervise the work. Ameris was not responsible for whether the apartments ultimately rented or whether the rents covered the debt. Given these facts, and the fact that Gibson committed herself to the purchase price and the project long before she ever called Karl Zerbst, the statements by Zerbst could not have caused the harm alleged.

Accordingly, the master erred as matter of law in concluding that Ameris Bank was liable for negligent misrepresentation.

III. The bank did not aid or abet a breach of fiduciary duty by the borrower's agent.

The master erred in concluding that the bank aided and abetted a breach of fiduciary duty by Respondents' real estate agent and financial advisor, Rolando Villavicencio. There is no evidence in the record that Ameris Bank knew anything about a breach of fiduciary duty by Villavicencio or knowingly participated in any such breach.

“The elements for the cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant’s knowing participation in the breach; and (3) damages.” *Vortex Sports & Entm’t, Inc. v. Ware’s*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008). “The gravamen of the claim is the defendant’s knowing participation in the fiduciary’s breach.” *Id.* To prove this cause of action, the plaintiff must present evidence of actual knowledge of the third party’s breach of fiduciary duty. *See Gordon v. Busbee*, 397 S.C. 119, 133, 723 S.E.2d 822, 830 (Ct. App. 2012) (affirming the grant of directed verdict on a claim for aiding and abetting breach of fiduciary duty when the plaintiff “presented no evidence [the defendant] had actual knowledge” of the breach of fiduciary duty by the third party); *Future Grp., II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996) (reversing the trial judge’s verdict in favor of plaintiff on its claim for aiding and abetting breach of fiduciary duty when there was no evidence in the record that the defendant bank had actual knowledge of the breach of fiduciary duty by the third party).

Here, it was undisputed that Gibson and Villavicencio had a fiduciary relationship. Gibson and Villavicencio had done business together since 2005 when Gibson purchased the shopping center in Moncks Corner and hired Villavicencio to manage the property for a ten-year term. [R. 291, 859-67]. Gibson hired Villavicencio as the exclusive agent with respect to the purchase of the apartment complex, and gave him authority to purchase supplies and make repairs up to \$100,000 per month without Gibson’s express written consent. [R. 344, 880-83, 1141-50]. According to Gibson, she relied on Villavicencio heavily and regarded him as her real estate and financial advisor. [R. 297-98].

But there was no evidence presented that Ameris knew that Villavicencio breached any fiduciary duties owed to Gibson or that Ameris knowingly participated in any such breach. The only evidence in the record supporting a claim that Villavicencio breached a fiduciary duty was Gibson's testimony that Villavicencio stole "several hundred thousand dollars from managing the shopping center and the apartments." [R. 184, 224]. Later, when asked how Villavicencio was stealing from her, Gibson testified that "Villavicencio started writing checks to himself and to his wife paying themselves on commissions we had not agreed to." [R. 227-28]. Ameris Bank had nothing to do with the commission payments and was not the custodian of the account from which those checks were written. Further, Ameris had nothing to do with the shopping center, so to the extent Villavicencio stole money related to his management of the shopping center, Ameris Bank would have no knowledge of that either. With respect to the apartments, as discussed above, every check that was written for the project was either made payable to a vendor or made payable to Gibson. [R. 539, 1224-1327]. Not a single check was made payable to Villavicencio. [R. 539, 1224-1327]. Additionally, every check was supported by an invoice, except for when Gibson took over the project. [R. 539, 542].

Even if the record contained evidence of breach by Villavicencio with respect to the apartment complex, there was no evidence showing that Ameris knew about the alleged breach, or knowingly aided or abetted it. Although the internal email from Don Snipes states that Villavicencio *may have* "siphoned off some of the loan proceeds," the email does not indicate that anyone at Ameris *knew* that Villavicencio was doing so or knowingly assisted him. [R. 801]. Likewise, although the internal memo from Zerst criticizes Lanier for disbursing funds at Villavicencio's request, the memo does not

indicate that Lanier or anyone else at Ameris had reason to believe that Villavicencio was doing anything improper, particularly when Gibson authorized the bank to deal with him, and he had been acting on her behalf all along. [R. 510, 531-32, 799-800, 1053-56, 1059-61, 1074-77, 1083-87].

Finally, it does not make sense for the bank to aid and abet any alleged wrongdoing by Villavicencio. It was in Ameris's financial interest for the project to succeed. Ameris did not have any incentive to assist Villavicencio or to harm Respondents.

Because there is no evidence in the record establishing that Ameris knowingly participated in a breach of fiduciary duty by Villavicencio, the master erred as a matter of law in concluding that the bank was liable for aiding and abetting a breach of fiduciary duty.

IV. The master erred in awarding actual damages and punitive damages, and the punitive damages award is excessive and violates due process.

Even if the master's conclusions regarding liability were correct, the master erred in awarding actual and punitive damages, and the award should be reversed.

A. The actual damages award is incorrect as a matter of law.

"Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible." *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375-76 (2005). "The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred." *Id.*

Here, the actual damages award is incorrect as a matter of law because Respondents are not entitled to recover for harm they did not incur, and Respondents have been fully compensated through the settlement of the case against Villavicencio. The master awarded actual damages as follows: (1) \$700,000 from the refinance of 3205 Palm Boulevard, LLC, which was used to make an equity contribution toward the purchase of the apartment complex; (2) \$23,625 in interest from a \$450,000 loan that 3205 Palm Boulevard LLC acquired in 2010 from First Citizens Bank [R. 780-92]; (3) \$355,000 for the value of the Klistler Lane property that served as collateral for the apartment complex loan; and (4) \$75,000 in money that Gibson testified that she personally contributed to the apartment renovations. [R. 43-48].

First, the master erred in awarding Respondents the \$700,000 equity contribution and the \$23,625 in interest because those damages were incurred by 3205 Palm Boulevard, LLC, and not by Linda Gibson or Heritage Seven LLC. [R. 303-04, 891-93]. Linda Gibson's status as a member of 3205 Palm Boulevard LLC does not permit her to recover damages on behalf of the LLC. *See* S.C. Code Ann. § 33-44-201 (2006) (“[A] limited liability company is a legal entity distinct from its members.”); *Wasko v. Farley*, 947 A.2d 978 (Conn. Ct. App. 2008) (providing that a member of an LLC may not bring an individual action for a wrong committed to the LLC or its members). Additionally, the refinance of 3205 Palm Boulevard LLC and the loan obtained in 2010 are independent transactions wholly unrelated to the loan transaction in this case. Ameris Bank cannot be said to have caused this harm.

Second, the master erred in awarding the \$75,000 that Gibson testified that she put into the project¹³ because there is nothing in the record to support a finding that Ameris Bank represented to the borrower that the construction loan would be sufficient to complete the renovations or that Gibson would not have to use any of her own money to complete the project. The fact that Gibson chose to put her own money into the project should not have become the responsibility of the bank.

Accordingly, \$798,625 (\$700,000 + \$23,625 + \$75,000) of the \$1,153,625 in actual damages awarded was improper as a matter of law. The remaining \$355,000 in actual damages for the Klister Lane property that served as collateral for the apartment complex loan is set-off by Respondents' recovery of \$850,000 in the lawsuit against Villavicencio (as determined by the master), and is even further reduced by the master's finding that Gibson was 20% at fault. As a result, Respondents have suffered no recoverable actual damages.

Even if the actual damages award was proper, the master's calculation is incorrect. The actual damages award of \$1,153,625 should have first been reduced by the master's finding that Gibson was 20% at fault, and then reduced once again by the setoff of \$850,000, for a total of \$72,900 in actual damages. Instead, the master applied the 20% discount and the \$850,000 setoff to the entire award, including the punitive damages award, which resulted in the award being more than what Respondents were entitled to recover given the comparative fault finding and the purpose of setoff law to prevent double recovery.

¹³ Gibson did not introduce any bank records or cancelled checks to support this testimony.

B. The facts do not justify an award of punitive damages.

“In order for a plaintiff to recover punitive damages, there must be evidence the defendant’s conduct was willful, wanton, or in reckless disregard of the plaintiff’s rights.” *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). This standard requires that the conduct extend beyond even gross negligence. *See Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943) (“While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence.”).

“Conduct is wilful, wanton, or reckless when it is committed with a deliberate intention under such circumstances that a person of ordinary prudence would be conscious of it as an invasion of another’s rights.” *Carter v. R.L. Jordan Oil Co., Inc.*, 301 S.C. 84, 85, 390 S.E.2d 367, 368 (Ct. App. 1990). “It is the present consciousness of wrongdoing that justifies the assessment of punitive damages against the tortfeasor.” *Id.* Where there is no evidence of conscientious conduct that is willful, wanton, and in reckless disregard of the plaintiff’s rights, the appellate court must reverse the award of punitive damages. *See id.* (reversing the award of punitive damages, finding “no evidence from which to infer conscious wrongdoing” by the defendant); *Cohen v. Allendale Coca-Cola Bottling Co.*, 291 S.C. 35, 40-41, 351 S.E.2d 897, 900 (Ct. App. 1986) (reversing the award of punitive damages after determining there was “simply no proof of a present consciousness of wrongdoing on [the defendant]’s part”). Further, “the plaintiff has the burden of proving such damages by clear and convincing evidence.” S.C. Code Ann. § 15-33-135 (Supp. 2013).

When the trial court's award of actual damages is improper, an award of punitive damages must be reversed. *See Moore v. Benson*, 390 S.C. 153, 165, 700 S.E.2d 273, 279-80 (Ct. App. 2010) (reversing punitive damages award based on lack of actual damages); *Keane v. Lowcountry Pediatrics, P.A.*, 372 S.C. 136, 148-49, 641 S.E.2d 53, 60-61 (Ct. App. 2007) (same).

Here, this Court should reverse the punitive damages award for at least two reasons. First, as explained above, Respondents have suffered no actual damages. With no actual damages, Respondents are not entitled to punitive damages. The punitive damages award must be reversed on this basis alone.

Second, the record does not support a finding that the bank acted willfully, wantonly, or in reckless disregard of Respondents' rights. There is no evidence in the record that the bank acted with deliberate intention to harm Respondents or invaded their rights. This case involved a sophisticated commercial loan transaction between an LLC and a bank. There is no evidence in the record that the bank had a "present consciousness of wrongdoing." Respondents failed to present any evidence to support such a finding and failed to meet the high burden of proof of clear and convincing evidence.

Not only does the record not support a finding of willful and wanton conduct, but the exact opposite is true. Ameris Bank acted in good faith toward Linda Gibson and Heritage Seven LLC at all times. The fact that the apartment complex project did not become the profitable investment that Gibson hoped it would be is not because of the conduct of the bank. The bank was the lender. The bank was not Gibson's real estate agent, personal investment advisor, or project supervisor. The project ultimately belonged to Linda Gibson, and she was the one who was responsible for making it a

success. The bank's role was to lend money, and the borrower's role was to pay the money back.

There are several examples of the bank's good faith in the record. For instance, in 2008 when it became apparent that the renovations were not going to be completed on time, the bank worked with Gibson and agreed to a renewal note with a lower interest rate. [R. 1120-22, 1616-18]. In 2009, when Heritage Seven LLC got behind on the monthly payments, the bank offered to loan Gibson money to bring the loan current. [R. 826-27]. On October 1, 2009, the bank loaned Heritage Seven LLC \$50,000 to pay property taxes. [R. 1646-47]. Around this same time, the bank met with Gibson and her attorney, Robert Papa, to come up with a plan to repay the debt, even offering to defer \$300,000 of the amount due. [R. 829, 831]. But Gibson rejected these proposals and walked away from the project and the loan obligations, causing the bank to incur a \$1.8 million loss. [R. 721, 828].

Because the record does not support a finding of willful or wanton conduct on the part of the bank, the master erred in awarding punitive damages.

C. The award is excessive and violates due process.

Even if the record supported an award of punitive damages, which it does not, the award is excessive and violates due process.

The standard of review for a punitive damages award is de novo. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 583, 686 S.E.2d 176, 183 (2009). In determining whether a punitive damages award violates due process, courts consider "(1) the degree of reprehensibility of the defendant's conduct, (2) the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award,

(3) the difference between the punitive damages awarded and the civil penalties authorized or imposed in similar cases.” *Id.* at 587-589, 686 S.E.2d at 185-186. These factors stem from *BMW of N. Am. v. Gore*, 517 U.S. 559 (1996). Although the factors from *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991), remain relevant to the due process analysis, they are only relevant to the extent that they add substance to the *Gore* guideposts. *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185.

1. Reprehensibility

“Reprehensibility is ‘perhaps the most important indicium of the reasonableness of a punitive damages award.’” *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185 (quoting *BMW of N. Am. v. Gore*, 517 U.S. 559, 565 (1996)). “This principle reflects the view that some wrongs are more blameworthy than others.” *Id.* “In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.” *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185.

Here, the record does not support a finding that the bank’s conduct was reprehensible. To begin, the harm suffered by Gibson, if any, was economic in nature, which typically weighs against a finding of reprehensibility. Further, there is no evidence in the record that the bank demonstrated an indifference or reckless disregard for the health or safety of others. Moreover, Gibson was not a person of financial vulnerability. She is a multimillionaire who was engaged in multi-million dollar loan transaction for the

second time. She controlled entities that owned beach houses at the Isle of Palms, a commercial shopping center, and real property with tenants generating \$478,775 in rental income in 2009. [R. 280, 1651]. This case did not involve repeated actions or actions of malice, trickery, or deceit. Reprehensibility simply does not exist.

2. Ratio

Although the United States Supreme Court has “been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award,” and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185 (quoting *State Farm v. Campbell*, 538 U.S. 408, 425 (2003)). “[W]hen determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant’s ability to pay.” *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185. “Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive award.” *Id.*

In the case at hand, the punitive damages award goes outside the bounds of any acceptable ratio. Even if the calculation of \$1,153,625 in actual damages is correct, an award of \$3,551,232 in punitive damages is excessive. The actual damages amount must be reduced by the finding that Gibson was 20% at fault ($\$1,153,625 \times .20 = \$230,725$), and then set-off by the \$850,000 previously recovered for the same injury. Once those

considerations are taken into account, the actual damages award is reduced to \$72,902. This makes the award of \$3,551,232 in punitive damages *48 times the amount of actual damages*. The unreasonableness of this ratio forecloses the need for further analysis under this factor. In any event, there is no conduct to be deterred and there is no harm likely to result from any conduct by the bank with respect to the loan in this case or any other.

3. Comparative Penalty Awards

“When identifying ‘comparable cases’ a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant’s conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.” *Mitchell*, 385 S.C. at 588-89, 686 S.E.2d at 186.

The bank is not aware of any comparable cases. South Carolina courts have never found that a lender owes a borrower a fiduciary duty in a commercial lending context and have never found that a bank is liable for the failure of a real estate venture. Further, the harm suffered in this case was economic in nature and resulted from a variety of factors, including Respondents’ own negligence as determined by the master. In addition, the borrower walked away from the project and allowed the property to go into foreclosure, leaving Ameris Bank with a \$1.8 million loss.

The award of punitive damages should be reversed.

CONCLUSION

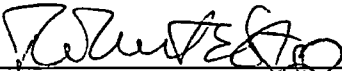
The master’s order should be reversed. The record does not support a finding of liability on any cause of action in the complaint. Ameris Bank did not owe the borrower

a fiduciary duty, did not misrepresent anything to the borrower, and did not knowingly aid or abet the borrower's agent in breaching a fiduciary duty.

If the judgment is not reversed, this case will set a dangerous precedent about the circumstances under which a bank may become liable to a borrower in the commercial lending context.

Judgment should be entered in favor of Ameris Bank.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 
Robert E. Stepp (S.C. Bar #5335)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

April 22, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No.: 2014-001487

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

Respondents,

v.

Ameris Bank,

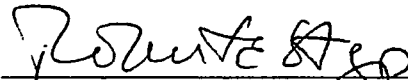
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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

By:



Robert E. Stepp (S.C. Bar #52335)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

April 22, 2015

Appendix 01861

RECEIVED
via Hand-delivery 4/23/15

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master in Equity

Appellate Case No.: 2014-001487

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

Respondents,

v.

Ameris Bank,

Appellant.

FINAL REPLY BRIEF OF APPELLANT

Robert E. Stepp (S.C. Bar #5335)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

Attorneys for Appellant

RECEIVED

APR 23 2015

SC Appendix 01862
Court of Appeals

TABLE OF CONTENTS

Table of Authorities iii

Argument 1

 1. Respondents’ theory of the case is illogical.....1

 2. The evidence does not support the existence of a fiduciary relationship2

 3. Gibson is not ignorant and unwary5

 4. Ameris Bank did not fail to disclose information to Respondents7

 5. Ameris Bank did not breach a duty to supervise the construction.....9

 6. The evidence does not establish negligent misrepresentation12

 7. Ameris Bank did not aid and abet a breach of fiduciary duty15

 8. Actual damages are improperly calculated17

 9. There is no basis for an award of punitive damages.....20

Conclusion23

TABLE OF AUTHORITIES

Cases

<i>AMA Mgmt. Corp. v. Strasburger</i> , 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992).....	12
<i>Austin v. Independent Life & Accident Ins. Co.</i> , 296 S.C. 156, 370 S.E.2d 918 (Ct. App. 1988)	6
<i>Bishop Logging Co. v. John Deere Indus. Equip. Co.</i> , 317 S.C. 520, 455 S.E.2d 183 (Ct. App. 1995)	13
<i>Burwell v. S.C. Nat’l Bank</i> , 288 S.C. 34, 340 S.E.2d 786 (1986).....	2, 5, 7
<i>Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale</i> , 359 S.C. 635, 598 S.E.2d 717 (Ct. App. 2004).....	4
<i>Clark v. Cantrell</i> , 339 S.C. 369, 529 S.E.2d 528 (2000)	19
<i>Cowburn v. Leventis</i> , 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005).....	3
<i>Doe ex rel. v. Wal-Mart Stores, Inc.</i> , 393 S.C. 240, 711 S.E.2d 908 (2011).....	10, 11
<i>Doub v. Weatherly-Breeland Ins. Agency</i> , 268 S.C. 319, 233 S.E.2d 111 (1977).....	6
<i>First Union Nat’l Bank of S.C. v. FCVS Commc’ns</i> , 321 S.C. 496, 469 S.E.2d 613 (Ct. App. 1996)	20
<i>Florentine Corp. Inc. v. PEDAI, Inc.</i> , 287 S.C. 382, 339 S.E.2d 112 (1985).....	14
<i>Future Group, II v. Nationsbank</i> , 324 S.C. 89, 478 S.E.2d 45 (1996)	16, 17
<i>Kerr v. Branch Banking & Trust Co.</i> , 408 S.C. 328, 759 S.E.2d 724 (2014).....	7, 20
<i>McCall by Andrews v. Batson</i> , 285 S.C. 243, 329 S.E.2d 741 (1985).....	19
<i>Mitchell, Jr. v. Fortis Ins. Co.</i> , 385 S.C. 570, 686 S.E.2d 176 (2009).....	22
<i>Moore v. Moore</i> , 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004).....	2
<i>Regions Bank v. Schmauch</i> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)	7
<i>Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.</i> , 282 S.C. 415, 321 S.E.2d 46 (1984)	10
<i>Smith v. Widener</i> , 397 S.C. 468, 724 S.E.2d 188 (2012).....	20

<i>Truesdale v. S.C. Highway Dep't</i> , 264 S.C. 221, 213 S.E.2d 740 (1975)	19
<i>TXO Prod. Corp. v. Alliance Res. Corp.</i> , 509 U.S. 443 (1993).....	22
<i>Vortex Sports & Entm't, Inc. v. Ware</i> , 378 S.C. 197, 662 S.E.2.d 444 (Ct. App. 2008)	16
<i>Wachovia Bank, Nat'l Ass'n v. Blackburn</i> , 407 S.C. 321, 755 S.E.2d 437 (2014).....	5
<u>Statutes</u>	
S.C. Code Ann. § 15-38-50 (2005).....	20
<u>Treatises</u>	
Restatement (Second) of Torts § 876(b) (1979)	16

ARGUMENT

The master's order should be reversed. As a matter of law, the relationship between the parties is contractual in nature and governed by the loan documents. Ameris Bank did not misrepresent anything to the borrower, did not aid and abet any breach of fiduciary duty by the borrower's agent, and did not become a guarantor of the project's success. Respondents have failed to set forth any evidence to support the master's findings. This case presents nothing more than a commercial real estate investment that ultimately failed through no fault of the lender. Respondents are not entitled to any relief under any theory of law, and the master's order should be reversed.

1. Respondents' theory of the case is illogical.

Respondents attempt to justify the relief granted by the master by arguing that Ameris Bank deliberately and maliciously sought to inflict harm on an ignorant and unwary Linda Gibson. Such a premise is necessary to support the inferences that Respondents seek to draw from the facts and to excuse Respondents' own inattention to and responsibility for their business affairs. But Respondents' overarching theory that Ameris Bank "orchestrated and implemented Gibson's financial downfall," is illogical at best. [Br. of Resp'ts 12].

The notion that a bank would orchestrate and implement a customer's financial downfall while the bank is at the same time lending that customer \$2.8 million does not make sense. It was in Ameris Bank's interest for the apartment complex project to succeed and for the loan to be repaid. It was not in the bank's best interest to make a loan on a project that it knew was overpriced and destined to fail, or to suffer a \$1.8 million

loss, which is what occurred in this case when Gibson walked away from the project and her loan obligations.

It is therefore not surprising that Respondents' theory, in addition to being illogical, is also not supported by the evidence. Ameris Bank did not plot Gibson's financial downfall, nor did a financial downfall occur. Gibson invested in a real estate venture that failed for a variety of reasons unrelated to anything Ameris Bank did or failed to do. Although the results of the project are unfortunate for all who were involved, there is no legal or factual basis to require Ameris Bank to make Respondents whole or to be punished for its conduct.

2. The evidence does not support the existence of a fiduciary relationship.

This case should not be the first appellate court case in South Carolina to hold that a fiduciary relationship existed between a lender and a borrower given that Respondents have failed to identify evidence showing that the relationship between the parties was anything other than contractual in nature and governed by the loan documents.

First, Respondents do not cite any evidence to show that the real estate investment advice allegedly given to Respondents in this case was "part of the services offered by the bank," as required under *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986). Without evidence showing that Ameris Bank was in the business of offering services in the area of real estate investments, Respondents cannot as a matter of law establish that a fiduciary relationship existed.

Second, Respondents do not cite any evidence showing that Linda Gibson had a foundation for believing Ameris Bank was acting on her behalf rather than on behalf of the bank, as required under *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App.

2004). On the contrary, the loan documents Gibson signed demonstrate that the relationship between the parties was that of lender and borrower. [R. 1078-79, 1089-91, 1092-94, 1095-1103]. Gibson herself testified that she did not believe the loan officer, Karl Zerbst, had put aside the interests of the bank, and was acting entirely on her behalf, without regard to the interests of the bank. [R. 337-38].

Third, Respondents fail to show that Ameris Bank was aware of any special trust being reposed in it. According to the loan documents, Ameris Bank did not assume any obligations above and beyond those of an ordinary commercial lender in a construction loan. The loan documents provided multiple rights and remedies in favor of the bank that could be exercised against the borrowers. The existence of these rights and remedies, which were expressly recognized and enforced by the master in the foreclosure phase of this case, is inimical to the existence of a fiduciary relationship in which Ameris Bank was required to act solely in the interest of the borrower.

Fourth, Respondents cannot show that Karl Zerbst was acting as an agent of Ameris Bank prior to the loan closing. During the entire period of time that Gibson says she met with or talked to Zerbst about whether she should purchase the apartments, Zerbst either worked for First Reliance Bank or he was unemployed. [R. 230; 249, 250]. Zerbst did not become an employee of Ameris Bank until January 11, 2008. [R. 422-23, 1151-1217]. There is no evidence in the record showing that Ameris Bank did anything prior to the loan closing to represent to Gibson that Zerbst was its agent.

As a matter of law, an agency relationship cannot be created by the conduct of the agent alone. *See Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005) (“An agency relationship may not be established solely by the declarations and

conduct of an alleged agent.”); *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale*, 359 S.C. 635, 641-44, 598 S.E.2d 717, 721-22 (Ct. App. 2004) (holding that there is no relationship as a matter of law when the principal has not made any representations to a third party concerning whether someone is an agent). This is fatal to Respondents’ argument that Ameris Bank is liable for statements made by Zerst prior to the loan closing. Even if statements made by Zerst prior to the loan closing could be attributed to Ameris Bank, the construction loan agreement Gibson signed states: “This Agreement and the other Loan Documents are the complete and final expression of the understanding between [the parties].” [R. 1102].

Finally, the evidence is substantively insufficient to create a fiduciary relationship regardless of these other issues. The fact that Zerst “structured”¹ the loan package while employed at another bank, transferred the loan package from one bank to another, and had a 30-minute conversation with Gibson by phone about the purchase of the apartment complex does not rise to the level of creating a fiduciary relationship. It is the job of loan officers to “structure” loans, to generate business, and to talk to their customers about their transactions. There is nothing about any of this conduct that supports a finding that Zerst, much less Ameris Bank, thereby knowingly undertook fiduciary duties to the borrower.²

¹ Respondents and the master never explain what is meant by the statement that Zerst “structured” the loan for Respondents. There is no evidence, however, that Ameris Bank did anything other offer to make the loan on certain terms, which were then accepted by the borrower. In this sense, every bank “structures” every loan it makes. This cannot be the basis for a finding that the bank undertook fiduciary duties by offering to make a loan on specified terms.

² The absence of evidence of a fiduciary relationship cannot be overcome by reference to the demeanor or credibility of the witnesses. Even if everything Gibson said were true,

3. **Gibson is not ignorant and unwary.**

Respondents devote a significant portion of their brief characterizing Linda Gibson as a helpless, unsophisticated business woman. They describe Gibson as “the consummate victim.” [Br. of Resp’ts 1]. This conclusion must be evaluated in light of the facts. Gibson is not ignorant or unwary, and is not relieved of her legal responsibility to read and understand the loan documents governing her relationship with the bank and to protect her own interests in the transaction.

“As early as 1924, [the Supreme Court has] recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.” *Burwell v. S.C. Nat’l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986). *See also Wachovia Bank, Nat’l Ass’n v. Blackburn*, 407 S.C. 321, 333, 755 S.E.2d 437, 443 (2014) (stating that “when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents”). “One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it.” *Burwell*, 288 S.C. at 39, 340 S.E.2d at 789. “This rule is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused.” *Id.* at 40, 340 S.E.2d at 789. “This exception is, however, very strictly interpreted by our Court.” *Id.* “In determining whether a party can be classified as ignorant and unwary, an individual’s education, business experience and intelligence are all considered.” *Id.* at 40, 340 S.E.2d at 789-90.

the evidence presented at trial still does not support a finding that Ameris Bank owed the borrower fiduciary duties as a matter of law. The parties’ relationship was contractual in nature and governed by the loan documents.

In one case, this Court found that an individual who had a high school education and fifteen years' experience operating his own business was not excused from his duty to read the contents of an insurance policy he signed. *Doub v. Weatherly-Breeland Ins. Agency*, 268 S.C. 319, 233 S.E.2d 111 (1977). In another case, the Court determined that a sharecropper with no formal education and who could not read or write was ignorant and unwary under the law. *Austin v. Indep. Life & Accident Ins. Co.*, 296 S.C. 156, 370 S.E.2d 918 (Ct. App. 1988).

Here, the borrower is an LLC, and Gibson, who signed the loan documents on behalf of the borrower, is not ignorant and unwary. Gibson attended two years of college. [R. 271]. She has formed and been a member of multiple LLCs. [R. 1688-1703]. She has served as Trustee of the Paul William Gibson Family Trust since 2003, and has successfully managed the affairs of the trust since that time. [R. 278]. She purchased two multimillion dollar commercial properties within the span of two years. [R. 271-72].

After terminating Villavicencio, she took over the management of the shopping center, collecting rents, paying bills, arranging for maintenance, and renewing leases as necessary. [R. 283-84]. In 2009, the shopping center generated \$192,000 in rents. [R. 1651]. Later, she took over the management and renovations of the 48-unit apartment complex. [R. 286-87]. She hired a new contractor, oversaw the construction, and collected rents. [R. 284, 289]. She negotiated with contractors and subcontractors. [R. 288]. She obtained draws from the bank and disbursed in excess of \$200,000 to contractors and others. [R. 287, 288].

Moreover, Gibson has managed her personal wealth. In 2009, she received rental income from various real estate holdings of \$478,775. [R. 280, 1651]. In addition, Gibson testified at trial that she had a 50-year lease on 40 acres of land for which she receives \$15,000 per month.³ [R. 200-01].

Because she is not ignorant and unwary, Gibson is bound by the loan documents she signed, which do not support a finding of a fiduciary relationship.

4. Ameris Bank did not fail to disclose information to Respondents.

Even if the Court were to find that a fiduciary relationship existed between the parties, the record does not support a finding that Ameris Bank breached any fiduciary duty owed to Respondents.

While broad, the duties of a fiduciary are not unlimited. A fiduciary must disclose material facts known to the fiduciary that may affect its customer's interest. *Kerr v. Branch Banking & Trust Co.*, 408 S.C. 328, 333, 759 S.E.2d 724, 726 (2014); *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986); *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003).

First, there is no evidence that Ameris Bank had any information about the value of the apartment complex that it did not share with Gibson. Ameris Bank and Gibson both had the same appraisal dated September 12, 2007, showing the as-is value of the apartment complex as \$2,800,000, and the as-renovated value as \$3,700,000. [R. 900-01]. Ameris Bank did not have any other information about the project's value or its projected cash flow. The witness who testified that the price paid for the apartment

³ This income appears nowhere on Gibson's personal financial statement, perhaps because it goes into the trust she manages.

complex was “incredible” and “truly ridiculous” and that “there is NO WAY that this property, in this location, in it’s [sic] condition at the time was worth anything near the price paid,” was not Ameris Bank’s expert witness as Respondents state in their brief. Rather, he was *Respondents’* expert witness, Geoffrey Southard, and he reached this conclusion in an email he wrote *two years after* Gibson purchased the apartment complex. [R. 603-04, 809-10]. This is not information that was known to Ameris Bank, or to anyone, at the time of the transaction. Nor did Respondents introduce any evidence at trial to show that reliance on the appraisal at the time of the transaction was unreasonable.

Second, Ameris Bank’s expert witness, Bill Barksdale, did not testify that Ameris Bank should have told Gibson the revenues from the apartment complex would not cover the debt. [Br. of Res. 17]. This argument is specious on several levels. Barksdale testified in response to a hypothetical question that banks generally have a duty to tell customers when a project will not cover the debt. Barksdale did *not* testify that Ameris Bank should have told Linda Gibson that the project *in this case* would not cover the debt. [R. 685-86]. Nor is there any evidence that the rents would not cover the debt service. The appraisal done at the time of the transaction in fact showed that the rents would cover the debt service. [R. 972-76]. The rents did not cover the debt service for this project during the construction phase because Villavicencio took more than one building out of service at a time, which caused the rents to be less than had been forecast. [R. 218-19].

Third, there was no evidence in the record showing that Ameris Bank was aware of risks that were unknown to Gibson. The transaction was not 100% financed as

Respondents repeatedly state.⁴ Respondents acknowledge the \$700,000 injection of cash into the purchase and even seek to recover the “down payment” of \$700,000. In any event, Gibson was certainly aware of where the money was coming from to purchase the apartments, and did not need Ameris Bank to tell her what she already knew.

Given the lack of evidence showing that Ameris Bank failed to disclose material facts to Respondents, the breach of fiduciary duty claim fails as a matter of law.

5. Ameris Bank did not breach a duty to supervise the construction.

There is no evidence in the record that Ameris Bank assumed or breached any fiduciary (or other) duties with regard to the management of the construction project and the disbursement of the loan proceeds. The loan documents, which provide the only evidence of the obligations of the parties, do not impose any duties on Ameris Bank beyond those of an ordinary lender. As stated in the documents, those duties are created for the benefit of the bank, and do not run to the borrower in any event. Nor were they violated by Ameris Bank.

The exhibits that Respondents cite related to disbursement of the loan proceeds do not support Respondents’ arguments. For example, Respondents’ argument that Ameris Bank disbursed large sums of money to contractors or other vendors without Gibson’s knowledge is not supported by Defendant’s Exhibit 42. [Br. of Res. 19]. Exhibit 42 is copies of checks and transfer requests.

Similarly, Plaintiff’s Exhibits 22, 23, and 30 do not support the statement that “Gibson was never made aware of the advances paid by Ameris, nor did Ameris even

⁴ Respondents suggest without explanation that if all of the money for the project were borrowed, the relationship between the parties is somehow altered and the rights of the lender are somehow compromised. There is no basis for such a conclusion.

request her approval before paying the draws.” [Br. of Res. 19]. Exhibit 22 is an email from Ameris Bank to Gibson’s daughter in response to a request for a list of transactions. Exhibit 23 is a handwritten memo from Gibson to the bank stating that no further distributions are to be made without written permission from her. Exhibit 30 is an internal memo at Ameris Bank disciplining Benjie Lanier for “several decisions by Benjie that have put the bank in jeopardy.” But as established at trial, Gibson expressly authorized Lanier to deal directly with her agent and the project manager, Villavicencio, during the initial months of the project, and all disbursements made during that time were supported by invoices and made payable to a vendor. [R. 514, 531-32, 539, 1224-1327].

Respondents argue that a lender may have an independent duty to protect a borrower by virtue of the relationship between the parties, citing *Roundtree Villas Ass’n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d 46 (1984). In *Roundtree Villas*, the court imposed an independent common law duty of due care (not a fiduciary duty) on the lender because the lender “took over the project[,] undertook to market the units through a corporation it had created[, and] undertook to repair defects which existed to promote sales.” *Id.* at 423, 321 S.E.2d at 51. In the present case, however, there is no evidence that Ameris Bank endeavored to take over the apartment complex project or engage in conduct approaching a similar level of involvement as the lender in *Roundtree Villas*. The documents signed by the parties control, and there is nothing in the documents creating an independent duty on the part of Ameris Bank to protect the borrower.

Respondents cite to *Doe ex rel. v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011), for the proposition that “the standard of care may be established and defined by a defendant’s own policies and guidelines.” [Br. of Res. 21]. But the *Doe*

opinion explains that internal policies are relevant to the standard of care only if the existence of a duty has already been established. *Doe*, 393 S.C. at 247, 711 S.E.2d at 912. Because no such duty has been independently established in this case, Ameris Bank's internal policies are irrelevant.

Further, the suggestion that the loan officer Benjie Lanier misrepresented the condition of the property during the construction phase is unfounded. Lanier had no reason to mislead Gibson about the condition of the property. The fact that Gibson was "immediately able to recognize issues during her first visit to the project," does not mean that Lanier misled her, although it does establish that Gibson was much more sophisticated in construction and development issues than Respondents otherwise admit. There is nothing in the record to support a finding that Ameris Bank undertook the responsibility "to relay necessary information to Gibson," nor is it clear what Respondents deem to be "necessary information." [Br. of Res. 20]. Moreover, as Respondents admit in their brief, Gibson's financial advisor and real estate agent, Rolando Villavicencio, told Gibson that "he would handle everything, from helping her obtain financing, to overseeing the renovations, to leasing and selling the renovated apartments; to managing the property." [Br. of Res. 4; R. 757]. He was the one who was responsible for relaying necessary information to Gibson.

Finally, the fact that Zerst recommended his personal lawyer to Gibson when she was contemplating suing Villavicencio is not evidence of a breach of a fiduciary duty on the part of Ameris Bank.

Because the record in this case does not support a finding that a fiduciary relationship existed between the parties, this Court should reverse the master's order.

6. **The evidence does not establish negligent misrepresentation.**

Respondents do not cite evidence to support the cause of action for negligent misrepresentation.

First, Ameris Bank did not know that the apartment complex was overpriced and fail to share that information with Gibson. As stated earlier, both parties had the same appraisal. [R. 898-1015]. Ameris Bank had no information about the value of the property or the projected cash flow that it did not convey to Gibson. Further, Villavicencio represented to Gibson that the fair market value of the apartment complex was \$2.8 million. [Br. of Res. 4; R. 295, 297-98, 300-01].

Second, Ameris Bank did not know the rents would not cover the debt. Again, the appraisal indicated that they would, and there was no other information or business records suggesting otherwise. Neither Respondents nor the master cite any so-called business records to support this finding.

Third, even Zerst (who was not Ameris Bank's agent at the time) did not know the apartment complex was not a sound investment. Zerst did not have any information regarding Gibson's finances or the rent projections that indicated the project would fail. Respondents cite nothing to support these statements. There is no evidence in the record to support a finding that Ameris Bank had any information or knew anything about the purchase price or the project as an investment that Gibson did not already know. In any event, the statement that something is a good investment is an opinion and not actionable. *See AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) ("A mere statement of opinion, commendation of goods or services, or expression of confidence that a bargain will be satisfactory does not give rise to liability in tort.").

Fourth, the fact that the bank may not have approved the loan had it known that the \$700,000 equity contribution came from the refinance of another property is not a misstatement of fact. There is no duty on the part of a bank to deny a loan request, and Respondents cannot point to any authority for such a proposition. The denial of the loan would have been for the protection of the bank and had nothing to do with whether the apartments were a good investment, and whether the rents would cover the debt. Further, Gibson was fully aware of the source of the \$700,000, and the obligations to 3205 Palm Boulevard LLC, having completed the refinance on August 28, 2007, two months before submitting the loan application to Ameris Bank. [R. 891-93, 1078-79].

Fifth, the statement that the rents would cover the debt are not actionable because they were projections based on an existing appraisal. The statement does not become actionable merely because it is a statement made about future events for the purpose of inducing another to act, as argued in Respondents' brief. Instead, there must first be a false representation, and the false representation "must be predicated upon misstatements of fact rather than upon an expression of opinion, an expression of intention or an expression of confidence that a bargain will be satisfactory." *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (Ct. App. 1995). Further, "[t]he distinction between a matter of fact and a matter of opinion is generally characterized by what is susceptible of exact knowledge when the statement is made." *Id.* at 526-27, 455 S.E.2d at 187.

Sixth, there is no evidence that Zerbst "repeatedly fed" Gibson misrepresentations related to the apartment complex. This is yet another statement in Respondents' brief that is made without any citations to the record.

Seventh, Gibson did not have the right to rely on any alleged misstatements because there was no fiduciary relationship between the parties, and this was an arm's length transaction between mature, educated people. *See Florentine Corp. Inc. v. PEDAI, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985). The law does not require Gibson to have the same experience as a loan officer with twenty-five years' experience to be considered a mature, educated person. Gibson's experience in business and the management of her properties and wealth qualify her as a mature, educated person.

The master apparently agreed, finding that Gibson was 20% at fault for the harm alleged in this case. The master found that Gibson should not have just relied on the advice of Zerbst, Lanier, or Villavicencio; that she could have obtained her own appraisal but did not; and that prior to purchasing the apartments she could have independently determined whether the rents would cover the debt to Ameris Bank and both the loan on her beach house. [R. 53].

Eighth, Ameris Bank did not argue that Gibson was "locked in" to buying the apartments in May 2007. Ameris Bank cited the purchase agreement as evidence that Gibson decided to purchase the apartments and agreed to the purchase price long before the phone call with Karl Zerbst in October 2007. Moreover, by the time she spoke to Zerbst, Gibson had caused 3205 Palm Boulevard LLC to undergo a refinance, signed a contract with an architectural firm, received a proposal from a contractor, and applied for financing through First Reliance Bank. [R. 891-93, 1016-35].

There are any number of reasons why the project did not result in the returns that Gibson expected, none of which was due to a misrepresentation by the bank. Because

Respondents are not able to identify a single false statement made by Ameris Bank (or Zerbst), and Gibson did not have the right to rely, the master's ruling should be reversed.

7. Ameris Bank did not aid and abet a breach of fiduciary duty.

Contrary to what Respondents argue in their brief, Ameris Bank does not contend Villavicencio never breached any fiduciary duties owed to Gibson. Rather, Ameris Bank contends that Respondents failed to present evidence at trial showing that Villavicencio breached fiduciary duties with respect to the apartment complex and that the bank knowingly aided and abetted the breach.

The conclusion made by Ameris Bank's expert witness, Bill Barksdale, that Villavicencio was a "con artist" was made after this case was filed, well after the close of the bank's dealings with Gibson, with the benefit of hindsight and a review of the entire file. It is not evidence that Ameris Bank knew at the time that Villavicencio breached any fiduciary duties to Gibson.

Similarly, the fact that Ameris Bank dealt with Villavicencio is not evidence of knowingly aiding and abetting a breach of fiduciary duty. Gibson and Villavicencio had done business together since 2005 when Gibson purchased the shopping center in Moncks Corner and hired Villavicencio to manage the property for a ten-year term. [R. 291, 859-67]. Gibson hired Villavicencio as the exclusive agent with respect to the purchase of the apartment complex, and gave him authority to purchase supplies and make repairs up to \$100,000 per month without Gibson's express written consent. [R. 344, 880-83, 1141-50]. Gibson testified she relied on Villavicencio heavily and regarded him as her real estate and financial advisor. [R. 297-298]. After the closing, Gibson expressly authorized the bank to deal with Villavicencio in her absence. [R. 531-532].

Rather than cite evidence to support a finding that Ameris Bank knowingly aided and abetted a breach of fiduciary duty, Respondents argue that Zerbst and Villavicencio worked “in combination” to convince [Gibson] the apartment complex was a good investment for her. But mere allegations of working “in combination” are not evidence of knowingly participating in a breach, if convincing someone to buy something is even a breach.

To support this argument, Respondents state that a defendant can be liable for aiding and abetting a breach of fiduciary duty when he “gives substantial assistance to the other in accomplishing tortious results and his own conduct, separately considered, constitutes a breach of duty to the third person.” [Br. of Resp’ts. 31]. This is an incorrect statement of the law. The language comes from Section 876 of the Second Restatement of Torts, which deals with tort liability arising from parties acting in concert. *See* Restatement (Second) of Torts § 876. It does not concern the tort of aiding and abetting the breach of fiduciary duty.

More importantly, in *Future Group, II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1996), where Respondents suggest our Supreme Court adopted Section 876’s provisions, the court cites to subsection (b) only, which states that a defendant is subject to liability where he “knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.” Restatement (Second) of Torts § 876(b) (1979). This is consistent with South Carolina law, which provides that the gravamen of such claims “is the defendant’s *knowing* participation in the fiduciary’s breach.” *Vortex Sports & Entm’t, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008) (emphasis added).

Accordingly, Respondents cannot rely on their other allegations of tortious conduct by Ameris Bank to establish a claim for aiding and abetting the breach of fiduciary duty. Instead, they must demonstrate that the bank was aware of Villavicencio's breaches of fiduciary duties at the time the breaches were taking place and that the bank knowingly participated in these breaches.⁵ Because Respondents cannot do this, the claim fails as a matter of law.

8. Actual damages are improperly calculated.

Respondents' arguments related to the actual damages award are flawed in several respects. First, the fact that Gibson personally guaranteed a commercial note dated August 28, 2007, from 3205 Palm Boulevard LLC to First Citizens Bank for \$1,500,000 [R. 780-92] does not entitle her to recover the \$700,000 down payment made to purchase the apartment complex. Respondents are not entitled to recover money that they did not themselves contribute. Had Gibson wanted to recover that money, she should have made 3205 Palm Boulevard a party to this case. Further, Ameris Bank did not cause Gibson to refinance the property. Gibson caused the refinance to take place on August 28 2007, two months before Gibson ever dealt with Ameris Bank.

Second, the \$23,625 in interest that accrued on a \$450,000 loan that 3205 Palm Boulevard LLC obtained to avoid a deficiency judgment after Gibson allowed 3205 Palm Boulevard to go into foreclosure, is likewise not attributable to the conduct of Ameris Bank. The interest did not, as Respondents state in their brief, accrue on the \$700,000

⁵ In *Future Group, II*, the Supreme Court reversed the verdict on the cause of action for aiding and abetting breach of fiduciary duty, finding that there was no evidence to support a finding that the defendant bank had actual knowledge of the breach of fiduciary duty by the third party. 324 S.C. at 99, 478 S.E.2d at 50.

down payment. The interest had no connection to the \$700,000 down payment or to the loan obtained from Ameris Bank to purchase the apartment complex. The interest accrued on a \$450,000 loan that Gibson obtained from First Citizens *three years after* she purchased the apartment complex to avoid a deficiency judgment after Gibson allowed 3205 Palm Boulevard to go into foreclosure. [R. 780-92].

Ameris Bank should not be responsible for reimbursing an entity that is not a party to this case for interest on a loan that the Ameris Bank did not cause the entity to obtain. 3205 Palm Boulevard did not go into foreclosure because of the commercial loan made by Ameris Bank. 3205 Palm Boulevard went into foreclosure because Gibson allowed it to. Gibson testified that she chose not to sell any of her other assets to create the liquidity necessary to continue making the mortgage payments on 3205 Palm Boulevard. [R. 346-47].

Third, as for the \$75,000 that Gibson allegedly put into the project, the tax documents Respondents cite do not support a finding that the money was paid. [R. 793-96]. Gibson testified that the money came out of her savings account and yet she did not introduce any bank records to support this testimony. [R. 206].

Moreover, Respondents contend that the money was put into the project because “rental income was insufficient.” [Br of Resp’ts. 35]. The insufficiency of rental income could have been caused by a variety of factors, none of which has been attributed to Ameris Bank. Nor did Ameris Bank tell Gibson “that the construction loan alone would suffice for the apartment renovations,” as Respondents state on page 36 of their brief. The portions of the transcript that Respondents cite, [R. 236-237, 253-55], do not support this statement.

Finally, Ameris Bank did not, as Respondents argue, abandon any issue related to the calculation of actual damages. Ameris Bank thoroughly addressed and provided case law supporting the proper methodology for calculating damages in this case. Ameris Bank's argument that the master erred in applying the 20% comparative fault and the \$850,000 setoff to the total award (both actual and punitive damages) is supported by the case law cited in Ameris Bank's brief discussing the purpose behind actual and punitive damages.

Because of the compensatory nature of actual damages, it necessarily follows that any fault attributed to the party seeking to recover actual damages must be deducted from the actual damages award only, and not the actual and punitive damages award combined, as the master did in this case. *See Clark v. Cantrell*, 339 S.C. 369, 381, 529 S.E.2d 528, 535 (2000) (stating that "punitive damages are not reduced by the proportion of the plaintiff's negligence under comparative negligence"). In other words, parties should not be compensated for harm that they themselves cause.

The same logic applies to the setoff. If the purpose of actual damages is to compensate, then the \$850,000 that Respondents received from the settlement of the lawsuit against Villavicencio compensated Respondents for the harm alleged here. Otherwise, Respondents would recover for the same harm twice. By deducting the setoff from the total award, the master misconstrued the purpose of compensatory damages to compensate, and misconstrued the purpose of setoff law to avoid double recovery, resulting in a windfall to Respondents. *See Truesdale v. S.C. Highway Dep't*, 264 S.C. 221, 235, 213 S.E.2d 740, 747 (1975), overruled on other grounds *McCall by Andrews v.*

Batson, 285 S.C. 243, 329 S.E.2d 741 (1985) (explaining that the rationale for providing this credit to a nonsettling defendant is to prevent a double recovery to the plaintiff).

To the extent that Respondents are now arguing the master erred in applying the setoff at all [see Br. of Resp'ts. 31 n.4], that issue is not properly before the Court. Respondents did not file an appeal challenging the master's application of the setoff, and therefore the master's decision to apply the setoff is the law of the case. *See Kerr v. Branch Banking & Trust Co.*, 408 S.C. 328, 332, 759 S.E.2d 724, 726 n. 3 (2014) (noting that an unappealed ruling becomes the law of the case). In any event, the master correctly determined that the injury for which Gibson sought to recover in this case was identical to the injury for which she sought to recover in the lawsuit against Villavicencio. *See Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (2012) ("When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law," and "[s]ection 15-38-50 grants the court no discretion . . . in applying a set-off"); S.C. Code Ann. § 15-38-50 (2005).

9. There is no basis for an award of punitive damages.

Respondents fail to cite any evidence to support an award of punitive damages. Respondents completely ignore whether punitive damages are warranted on the facts in this record, and proceed straight into the analysis of whether the *amount* of the award was justified. Because Respondents completely overlook and do not cite a single fact to support the awarding of punitive damages in the first instance, the Court may treat this failure to respond as a concession that the master's decision to award punitive damages is incorrect. *See First Union Nat'l Bank of S.C. v. FCVS Commc'ns*, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996), *rev'd in part on other grounds*, 328 S.C. 290, 494

S.E.2d 429 (1997) (noting that “failure to respond to an argument in a brief could amount to a concession that the trial court ruled incorrectly”). As demonstrated in Ameris Bank’s initial brief, there is no evidence to support an award of punitive damages.

As to the amount of the award, Respondents have failed to show that it was justified. First, Gibson was not financially vulnerable. As of October 5, 2009, two years after purchasing the apartment complex, Gibson had a net worth of \$18,341,915, with \$24,121,275 in assets. [R. 282, 1651]. Within two years she purchased two multimillion dollar commercial properties. She controlled multiple business entities and owned real property generating \$478,775 in rental income in 2009. [R. 280, 1651]. The fact that Gibson found herself living without a refrigerator eating canned tuna in 2008 was a choice.

Second, Respondents do not cite any evidence to support the argument that Ameris Bank’s conduct was repeated as opposed to isolated in nature. Literally, there is not a single reference to the record in this portion of Respondents’ brief. Respondents cite nothing to support the argument that “[t]he factual record is replete with multiple conversations over a period of months whereby Gibson was pressured and manipulated into entering into this transaction.” [Br. of Resp’ts 38]. The evidence simply does not exist. Further, Respondents fail to explain how any of this “benefitted” Ameris Bank. To the contrary, the record reflects that Ameris Bank lost \$1.8 million on this transaction. [R. 721].

Moreover, Respondents cite nothing to support the argument that the harm allegedly suffered by Gibson was “the result of deceit.” There is absolutely no evidence in the record that Ameris Bank was aware the rents would not cover the debt. In

addition, Ameris Bank was not the only bank that approved the loan. The loan was also approved by First Reliance Bank. [R. 1057-58]. Under Respondents' theory, First Reliance Bank is also guilty of deceit because it also approved the loan.

Finally, Respondents' argument that the ratio of actual to punitive damages is 1:1 is incorrect. This argument is based on the *potential* damages to Gibson, which Respondents argue was between \$3 and \$3.2 million, representing Gibson's "indebtedness and exposure at the time she resolved the foreclosure action." [Br. of Res. 39]. But these potential damages were never realized. Accordingly, it is wrong to use potential damages in evaluating the ratio between punitive and actual damages. See *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 591, 686 S.E.2d 176, 187 (2009) ("[I]t is appropriate to consider the magnitude of the potential harm that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded" (quoting *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 460 (1993))).

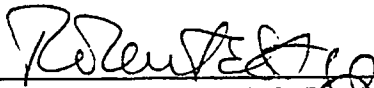
Here, Gibson walked away from the foreclosure without any damages whatsoever. As part of the settlement of the foreclosure action, Respondents executed deeds in lieu of foreclosure conveying the apartment complex and other real property that served as collateral for the loan to Galt Valley. [R. 1663, 1668-75]. In exchange, the notes were deemed satisfied, the loan documents canceled, and all litigation pending between Respondents and Galt Valley was dismissed. [R. 1663].

Because Respondents do not cite to any evidence supporting the awarding of punitive damages in the first instance, and do not explain how an award that is 48 times the amount of actual damages, if any, is justified, the punitive damages award should be reversed.

CONCLUSION

For these reasons and those set forth in Ameris Bank's opening brief, the master's order should be reversed and judgment entered in favor of Ameris Bank.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 
Robert E. Stepp (S.C. Bar #5335)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

April 22, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No.: 2014-001487

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

Respondents,

v.

Ameris Bank,

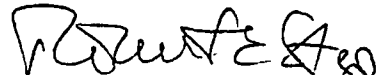
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

SOWELL GRAY STEPP & LAFFITTE, LLC

By:



Robert E. Stepp (S.C. Bar #5835)
Tina Cundari (S.C. Bar #71951)
Benjamin R. Gooding (S.C. Bar #100620)
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
803-929-1400
rstepp@sowellgray.com
tcundari@sowellgray.com
bgooding@sowellgray.com

April 22, 2015

Appendix 01889



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No. 2014-001487

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

Respondents

v.

Ameris Bank,

Appellant

FINAL BRIEF OF RESPONDENT

Harvey M. Watson III
Desa Ballard
BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
harvey@desaballard.com
desab@desaballard.com

ATTORNEYS FOR RESPONDENT

Appendix 01891

RECEIVED

APR 27 2015

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal	vi
Statement of the Case	1
Statement of the Facts.....	1
Argument	12
I. AMERIS ACCEPTED, THEN BREACHED, FIDUCIARY DUTIES TO ITS UNSOPHISTACATED CUSTOMER GIBSON	12
A. Ameris was not immune from establishing a fiduciary relationship in favor of Gibson under South Carolina law	12
B. Gibson placed special trust in Ameris and its agents, who accepted that trust and thereby established a fiduciary relationship in Gibson's benefit.....	13
C. Ameris breached its fiduciary duty owed to Gibson	17
D. Breach of duty continued after execution of the loan documents	19
E. Loan documents do not preclude a finding of a fiduciary relationship when Ameris agents were knowingly dealing with someone as completely unsophisticated as Gibson	22
II. AMERIS MISREPRESENTED FACTS REGARDING THE PROPOSED APARTMENT TRANSCATION AND CAUSED GIBSON TO SUFFER IN RELIANCE UPON THOSE STATEMENTS	26
A. Ameris Misrepresented Facts to Gibson	27
B. Gibson relied on Ameris' Statements	29
C. The False statements led directly to Gibson's suffered harm	29
III. VILLACENCIO'S BREACH OF FIDUCIARY DUTIES TO GIBSON WERE SUBSTANTIALLY ASSISTED BY AMERIS.....	30
A. Villavicencio breached his fiduciary duties	31
B. Ameris had knowledge of the breaches and substantially assisted them.....	32

IV. DAMAGES, BOTH ACTUAL AND PUNITIVE, WERE JUSTIFIED BY THE EVIDENCE BEFORE THE TRIAL COURT AND WITHIN THE CONFINES OF CONSTITUTIONAL RESTRAINTS ON SUCH AWARDS	34
A. Recovery of the down payment was proper	34
B. Gibson’s infusion of personal funds into the project is appropriate for inclusion in the award of actual damages	36
C. Ameris’ argument as to the calculation method is conclusory and thus abandoned	37
D. Punitive damages awarded are appropriate in all respects	38
1. Ameris’ actions were reprehensible	38
2. The ratio of actual and potential harm suffered and punitive damages awarded is within acceptable due process limits	39
Conclusion	42

TABLE OF AUTHORITIES

CASES

<u>Armstrong v. Collins,</u> 366 S.C. 204, 621 S.E.2d 368 (Ct.App. 2005)	26
<u>Austin v. Indep. Life & Accident Ins. Co.,</u> 296 S.C. 156, 160, 370 S.E.2d 918, 921 (Ct.App.1988)	22
<u>Austin v. Specialty Transp. Services.,</u> 358 S.C. 298, 317, 594 S.E.2d 867 (Ct.App. 2004)	38,40
<u>Bishop Logging Co. v. John Deere Indus. Equipment Co.,</u> 317 S.C. 520, 527, 455 S.E.2d 183, 187 (Ct.App. 1995)	27,28
<u>Burwell v. S.C. Nat'l Bank,</u> 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986)	13,14,17,22
<u>Carolina Chloride, Inc. v. Richland County,</u> 394 S.C. 154, 163-164, 714 S.E.2d 873 (2011)	27
<u>Clark v. Cantrell,</u> 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000)	34
<u>Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.,</u> 321 S.C. 1, 466 S.E.2d 727 (1996)	40
<u>Collins Entertainment Corp. v. Coats & Coats Rental Amusement,</u> 355 S.C. 125, 584 S.E.2d 120 (Ct.App.2003)	40
<u>Davis v. Greenwood Sch. Dist. 50,</u> 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005)	13
<u>Davis v. Upton,</u> 250 S.C. 288, 291, 157 S.E.2d 567, 568 (1967)	27
<u>Doe ex rel. Doe v. Wal-Mart Stores, Inc.,</u> 393 S.C. 240, 711 S.E.2d 908 (2011)	17,18, 21
<u>Eaddy v. Smurfit-Stone Container Corp.,</u> 355 S.C. 154, 584 S.E.2d 390 (Ct.App. 2003)	37
<u>Florentine Corp. Inc. v. PEDAI, Inc.,</u> 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985)	29

<u>Future Group, II v. NationsBank,</u> 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985).....	32
<u>Gamble v. Stevenson,</u> 305 S.C. 104, 406 S.E.2d 350 (1991).....	38
<u>Gilbert v. Mid-South Machinery Co., Inc.,</u> 267 S.C. 211, 227 S.E.2d 189 (1976).....	27
<u>Harrington v. Mikell,</u> 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Ct.App. 1996).....	29
<u>Island Car Wash, Inc. v. Norris,</u> 292 S.C. 595, 599; 358 S.E.2d 150, 152 (Ct.App. 1987).....	13
<u>James v. Horace Mann Ins. Co.,</u> 371 S.C. 187, 196-97, 638 S.E.2d 667, 671-72 (2006).....	40
<u>Koontz v. Thomas,</u> 333 S.C. 702, 511 S.E.2d 407 (Ct.App. 1999).....	26
<u>Mackela v. Bentley,</u> 365 S.C. 44, 614 S.E.2d 648 (Ct.App. 2005).....	40
<u>Madison ex rel. Bryant v. Babcock Center, Inc.,</u> 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006).....	17
<u>Mellen v. Lane,</u> 377 S.C. 261, 659 S.E.2d 236 (Ct.App. 2008).....	34
<u>Mitchell v. Fortis Ins. Co.,</u> 385 S.C. 570, 686 S.E.2d 176, 185 (2009).....	38,39, 40
<u>Moore v. Moore,</u> 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct.App. 2004).....	14,17
<u>Quail Hill, LLC v. Cnty. Of Richland,</u> 387 S.C. 223, 241, 692 S.E.2d 499, 508 (2010).....	29
<u>Redwend Ltd. P'ship v. Edwards,</u> 354 S.C. 456, 473-74, 581 S.E.2d 496, 504 (Ct.App. 2003).....	26
<u>Rickborn v. Liberty Life Ins. Co.,</u> 321 S.C. 291, 468 S.E.2d 292 (1996).....	26

<u>Roundtree Villas Assn., Inc. v. 4701 Kings Corp.</u> , 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984)	20
<u>State Farm v. Campbell</u> , 538 U.S. 408, 425-426 (2003)	39, 40
<u>Steele v. Victory Sav. Bank</u> , 295 S.C. 290, 368 S.E.2d 91 (Ct.App. 1988).	14
<u>Taylor v. Medenica</u> , 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996)	38
<u>Thomas v. Am. Workmen</u> , 197 S.C. 178, 182, 14 S.E.2d 886, 887 (1941)	22
<u>Trotter v. First Fed. Sav. & Loan Ass'n</u> , 298 S.C. 85, 89, 378 S.E.2d 267, 269 (Ct.App. 1989)	22
<u>Vortex Sports & Entm't, Inc. v. Ware's</u> , 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct.App. 2008)	30
<u>Winburn v. Ins. Co. of N. America</u> , 287 S.C. 435, 339 S.E.2d 142 (Ct.App 1985).	27

OTHER AUTHORITIES

Restatement (Second) of Torts § 876(b) and (c) (1979)	32
---	----

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err as in concluding that Ameris owed a fiduciary duty to Gibson in connection with the commercial loan?
- II. Did the trial court err in concluding that Ameris made negligent misrepresentations to Gibson, including that the transaction was suitable for her and that income would cover the full expense of the loan obligations which were used to finance the transaction?
- III. Did the trial court err in concluding that the bank knowingly aided and abetted the borrower's real estate agent in breaching a fiduciary duty?
- IV. Did the trial court err in its calculation of actual and punitive damages?

STATEMENT OF THE CASE

Respondents do not dispute the Statement of the Case contained in the Initial Brief of Appellant Ameris Bank.

STATEMENT OF FACTS RELEVANT TO ALL ISSUES

Ameris' factual recitation is a fanciful telling of the story it wishes had been the case, not the case that was presented. Ameris begins by trying to paint Linda Gibson (hereafter "Gibson") as a sophisticated business woman who is apparently responsible for her own wealth. "Linda Gibson is a multimillionaire." (App.BR.2). While that may be technically true, she is the consummate victim: a new widow with no business acumen yet with assets she had never managed, falling prey to men who sought to, and did, take advantage of her, misuse her money, and expect to walk away with no consequence for their actions. Almost every story of tragedy begins the same way, and this case is no different.

Trial of Gibson's counterclaims against Ameris was held over the course of three days before the Trial court. As noted in the final order, the evidence presented including three days of trial testimony, approximately 200 exhibits, and deposition testimony of several witnesses. [R. p. 1].

The Trial court concluded, in part, that Gibson is a 66 year old widow, having lost her husband of twenty-seven years around Christmas 2003. [R. p. 181, lines 9-23]. She is a high school graduate who did take some liberal arts courses briefly in college. From the time of the birth of her first child in 1980 until 2008, she worked to raise her two daughters and care for her mother after she developed breast and lung cancer. [R. p. 182, line 18 - p.

Appendix 01898

183, line 1]. In her words, she had relied upon her husband to handle all the “business and financial aspects of things” until his death, and was only passingly familiar with the term “1031” and that it was “some sort of tax devi[c]e” that could be used after the sale of property. [R. p. 183, lines 14-24; R. p. 185, line 20 – p. 186, line 5]. She did not know the meaning of terms such as “cash-out” or “refinance” and relied on others to know about such matters. [R. p. 315, lines 8-12].

The assets Gibson controlled were primarily in real estate, and inherited from her father and later her husband. [R. pp. 199-201, 868, 880, 894, 1036]. Following her inheritance of these assets, she was still primarily focused on her family, not her assets. [R. p. 184, lines 9-14]. Although she has had a crash course in business during the failure of the transaction that is the subject of this litigation, she was an unsophisticated party when entering the subject transactions, as determined by the Trial court. [R. pp. 6, 7]. Even Ameris does not seriously contend Gibson was a sophisticated businesswoman.

Gibson is a woman of faith, and met Rolando Villavicencio (Villavicencio) through her church, where Villavicencio and his wife were in leadership roles. [R. p. 223, line 11- p. 224, line 19]. Villavicencio was a real estate agent at Re/Max and in December 2005, Villavicencio suggested that Gibson purchase a shopping center for \$2.4 million. [R. p. 185, lines 10-19; R. p. 272, lines 12-20; R. p. 853]. Gibson later hired ReMax and Villavicencio to manage that property for a ten-year term. [R. 291, lines 1-7; R. p. 859].

Financing for that purchase was done with First Reliance Bank (Reliance) in Charleston. Karl H. Zerbst, Jr. was employed in the banking business for 26 years. [R. p. 468, line 6]. He worked on the shopping center transaction along with Benjamin R. Lanier (Lanier), a credit analyst at Reliance. Gibson had met Zerbst via introduction from a

Appendix 01899

tenant¹ “right after” her husband died. [R. p. 229, line 10 – p. 230, line 5]. At the time, Zerbst was employed at Reliance in Charleston, S.C. Zerbst and Gibson initially worked together to open a couple of accounts at Reliance, a CD account and checking account, and she met with him several times before the significant transaction involving the purchase of a shopping center. [R. p. 230, lines 12-20]. During those early interactions, Gibson already was asking Zerbst for advice for how she should invest her money at the bank and receiving advice in return. [R. p. 230, lines 21-24].

Zerbst and Lanier assisted and advised Gibson in the financing of the shopping center. [R. p. 186, line 18 – p. 187, line 5]. Mr. Lanier was the credit analyst for the shopping center transaction and Zerbst was his superior. In advising Gibson about this transaction, Zerbst and Lanier structured the transaction to involve Gibson placing a second mortgage on a home she owned on Isle of Palms to produce cash for the necessary down payment. [R. p. 234, lines 12-24, R. p. 802]. As a result, the shopping center was purchased with a hundred percent borrowed monies. The idea for and the entire structure of the deal came from Zerbst and Lanier, on whom Gibson relied. During the time of the purchasing and financing of the shopping center Gibson’s complete reliance upon her associates, Villavicencio and Zerbst and Lanier, became obvious.

Although the shopping center transaction is not directly the basis for the claims tried in this case, the Trial court correctly concluded that considerable and credible insight into the relationship between Gibson, Villavicencio, Zerbst and Lanier in terms of the fiduciary relationship between those parties could be gleaned. [R. p. 4, ¶ 1]. The involved

¹ This tenant had been secured by a lease negotiated by Gibson’s husband just before his death (R. p. 1, lines 3-9).

persons were the same between the shopping center transaction and the later purchase of the Northwoods Garden Apartments (hereinafter “apartments”) as well as the financing structure involving a primary loan and separate loan to secure additional funds for the primary aspect of the transaction (shopping center and apartments respectively). Clearly, the idea and structure did not originate with Gibson.

In 2007, Gibson was informed by Villavicencio of the existence of an apartment complex, and he encouraged her to purchase the complex many times, despite her protests that she did not have the money for such a transaction. [R. p. 315, lines 1-4]. Villavicencio was familiar with the apartment complex because he was the property manager and was the exclusive listing agent for the seller. [R. p. 744, R. p. 748, line 22 – p. 749, line 31; R. 886]. Villavicencio represented to Gibson that the fair market value of the apartment complex was \$2.8 million. [R. pp. 294-295, 297-298, 300-301]. The \$2.8 million in 2007 for the apartment complex was double what the previous owner, AbesPro, paid for the property in 2003. [R. p. 809]. Ameris’ own expert later characterized that price as “incredible” and “truly ridiculous” and “there is NO WAY that this property... was worth anything near the price paid.” (emphasis original) [R. p. 603, line 22 – p. 605, line 9; R. p. 809].

Villavicencio also told Gibson that he would handle everything, from helping her obtain financing, to overseeing the renovations, to leasing and selling the renovated apartments, to managing the property, [R. p. 757, lines 10-25]. Gibson acted on Villavicencio’s advice and signed a contract to purchase the apartments for \$2.8 million in May 2007. She had doubts over insufficient funds for the deal. [R. p. 236, lines 3-14]. She

Appendix 01901

nevertheless proceeded because Villavicencio (and later Zerbst) convinced her it was a good deal for her and rents would cover the debt. [R. p. 236, line 15 – p. 237, line 6].

When Villavicencio first reached out to Reliance bank and Zerbst about the proposed purchase of the apartment complex, Zerbst' very first question in response was to inquire whether Gibson even knew about the proposed transaction, evidencing a clear understanding of the extent to which Gibson was reliant on others when engaging in these transactions. [R. p. 419, lines 9-24]. As part of the ensuing loan application process, Reliance ordered an appraisal which was completed on September 12, 2007 and showed the as-is value of the apartment complex as \$2.8 million and the as renovated value as \$3.7 million. [R. p. 901].

The loan contemplated through Reliance was for \$2.8 million and required \$700,000 as a down payment. Lanier was aware of the loan being worked up for Gibson. [R. p. 552, lines 12-17]. The structure ultimately arranged by Zerbst in September 2007 involved a \$700,000 down payment towards the total loan amount. [R. p. 832]. But Gibson had no cash to make the \$700,000 down payment as a result of her repeated refusal to sell any other property to come up with those funds as part of the deal. [R. p. 312, line 25 – p. 313, line 22]. Zerbst advised Gibson that if Reliance was going to finance the purchase, she should get a loan on her beach house for the \$700,000 down payment. [R. p. 235, lines 8-23; R. p. 832]. Gibson followed that advice and refinanced the beach house with First Citizens bank to secure the necessary funds. This of course would have resulted in another 100% borrowed funds transaction, just as was done previously. The result was to eliminate any and all liquidity that Gibson might have had.

Appendix 01902

Zerbst met with the CEO of Reliance on October 4, 2007, the result of which was his termination the very next day. [R. p. 424, lines 2-9, R. p. 811]. Lanier left First Reliance on or about October 9-10, 2007, just a week after Zerbst's departure, and began work at Ameris on October 11, 2007. [R. p. 552, lines 3-11]. Zerbst was not officially hired by Ameris until January 11, 2008. [R. p. 1151]. Despite Zerbst's gap in official employment between the two banks, he was nevertheless instrumental in steering Gibson away from Reliance and having her follow himself and Lanier over to Ameris to complete the apartment purchase transactions. Gibson was the stick which Zerbst dangled in front of Ameris to cement Ameris' pursuit of him.

Zerbst had a non-compete agreement with Reliance that prevented his immediate transition to Ameris after his termination from Reliance, which he sought to negotiate away in exchange for his promises not to solicit existing customers of Reliance at any other banking institution. [R. p. 811]. The offer was rejected, and Reliance ultimately ended up engaged in litigation with Zerbst and Ameris regarding alleged violation of the non-compete agreement. [R. p. 431, lines 1-7]. A very reasonable inference made just on that information alone would be that just such solicitation (including Gibson) occurred at the direction of Zerbst, especially when Zerbst acknowledged that bringing new business in would be advantageous for someone looking for employment² in the banking industry. [R. p. 430, lines 22-25].

² Zerbst testimony at trial (R. p. 430, lines 22-25):

Q: Would you agree that any loan officer looking for a new job with a new bank would want to create new business for his new employer?

A: Absolutely.

Appendix 01903

Zerbst was in frequent contact with Ameris employees during this period, as to his own employment as well as regarding Gibson and her potential purchase of the apartment complex. During this time of negotiations with Reliance, Zerbst's email production shows he was actively corresponding with Mr. Bogan of Ameris who was keeping the bank's attorney informed. [R. p. 814]. Ameris' employee Lanier testified that Zerbst maintained an office in the Ameris building on Archdale Street and made calls and checked emails during the non-compete period. [R. p. 763, lines 3-13].

Of significance, it was also during this time that Zerbst was working diligently with Lanier (who was now directly employed with Ameris) to have Gibson's loan moved from Reliance to Ameris. Zerbst represented to Gibson that Reliance was not going to give her a loan but assured her that Ameris would help her. Zerbst told her that he had given the loan documents from Reliance to Lanier at Ameris. [R. p. 241, lines 15-23]. Zerbst also assured Gibson that he would ultimately be handing the matter for her at Ameris. [R. p. 249]. Both of these assurances by Zerbst came to be true.

Shortly after Lanier began to work at Ameris on October 11, 2007 (within 5 to 10 days) he received a phone call from his former superior, Zerbst. [R. p. 494, lines 10-12; R. p. 559, lines 24 – p. 560, line 1]. Zerbst told Lanier that he was sending Gibson to him to process the loan application for the apartments through Ameris. [R. 495-496]. Lanier was aware that the loan was initially being processed at Reliance when he and Zerbst were employed there. [R. p. 552, lines 12-17]. Approximately the day or day after Lanier received the call, Zerbst made arrangements to have Lanier pick him up at a Publix store and travel together to the apartment complex. [R. pp. 495-498]. As they traveled to the site, Zerbst had with him a package of documents relating to Gibson's loan deal with

Appendix 01904

Reliance. Id. He did not hand the package to Lanier during that travel or discussed their contents. Id. Instead, after arrival at the apartment complex, Zerbst made an elaborate show of delivering the package to Villavicencio, including an announcement as to what he was doing. [R. p. 497, line 21 – p. 498, line 14]. Villavicencio then in turn told Lanier that he wanted Ameris to handle this transaction. Id. Gibson was not at this meeting.

Lanier never questioned the package transfer, despite the fact that he thought it seemed "staged." [R. p. 498, lines 9-14]. He simply took the package as if handed to him directly by his superior Zerbst and used information in that package as a guide for the loan application and the rental cash flow analysis at Ameris. He admitted that the loan application he put together at Ameris was very similar to the one structured by Zerbst at Reliance. [R. p. 501, lines 15-17]. That loan committee application was dated October 22, 2007. [R. p. 501, lines 1-2]. The very next day, October 23, 2007, that \$2.8 million loan application for a new customer of the bank was already approved by John Hipp, state president for Ameris. [R. p. 501, lines 8-13]. Lanier admitted the "fast turnaround" was likely a product of Ameris being in a "growth strategy" with the new opening of the Charleston office. [R. p. 501, line 21 – p. 502, line 9]. At the time it was submitted and approved, it had not been reviewed by Gibson. [R. p. 502, lines 10-18].

But Gibson had personally communicated with Zerbst during October 2007 about this loan to express her concerns about the transaction, having a thirty minute conversation with Zerbst. [R. p. 249, line 24 – p. 250, line 19]. Zerbst testified that he was in his kitchen during this phone call. [R. p. 405, lines 18-20]. The content of that communication differs when Gibson or Zerbst are asked to recall the nature of their discussion, and ultimately the Trial court accepted Gibson's recollection that the conversation was wide ranging

discussion, against the acknowledged background of her inexperience in such matters, whether the transaction as a whole was appropriate for her and whether the rents would cover debt maintenance. [R. p. 252, line 25 – p. 255, line 1].

At the request of Ameris, Gibson attended the grand opening gala for the new Charleston branch of Ameris on October 25, 2007 where she was made to feel like a celebrity by being paraded around and introduced. [R. p. 237, line 25 – p. 239, line 11]. A \$2.8 million dollar loan was a large loan for a market like Charleston. [R. p. 430, lines 19-21]. Gibson was offered alcohol, which she does not normally consume, but it was a “special night” so she accepted. [R. p. 239, lines 12-18]. It was only as the party was winding down that Villavicencio (and Villavicencio’s wife) and Gibson were ushered by Lanier into an office and Gibson was asked to sign loan documentation which she likely would not have understood even if she had not been drinking wine that evening. [R. p. 239, line 23 – p. 241, line 2]. It was there that she first learned of certain other property she owned, known as the Klister Lane which contained a cell phone tower, being required collateral for the loan. Id. That Klister Lane property would be among the assets Gibson lost following the failure of the apartment transaction. Gibson later signed the Construction Loan Agreement on November 2, 2007 – the day of the closing, just under two weeks after the “staged” meeting and start of the loan process. [R. p. 1095].

Shortly after the loan closing, Gibson was admitted to the hospital and remained ill for a period of four or five months, which prevented her from personal attention to the apartment complex. [R. p. 217, lines 2-19]. This period was while renovation of the apartments was ongoing. Prior to Gibson’s first personal visit to the site becoming possible, she talked to Villavicencio who assured her everything was fine on schedule and

Appendix 01906

on budget. [R. p. 219, lines 1-6]. Gibson also talked to Lanier during this period, who visited the apartment several times during Gibson's time away for health reasons [R. p. 219, lines 9-25; p. 532, line 22 – p. 533, line 5]. Based on those reports, Gibson believed everything was going fine with the renovations.

When Gibson was able to view the progress of the work in late February early March 2008, she found that everything was completely opposite to what she had been told. [R. p. 219, lines 20-25]. She called the bank about the accounting of the money and discovered that about half of the renovation money was gone and not one of the apartment buildings had been completed. [R. p. 220, lines 10-24]. Ameris disbursed large sums to contractors or other vendors, including, ReMax. [R. p. 1275]. Gibson was never made aware of the advances paid by Ameris, nor did Ameris ever request her approval before paying the draws. [R. pp. 797, 798, 799].

Ameris failed to inspect the project to ensure the improvements and draw requests were consistent with the project costs. [R. p. 799; R. pp. 478-491]. Ameris never verified the contractor on the project and did not require a contract or AIA document or any other information in support of work being completed. [R. p. 799; R. p. 510, lines 1-8]. There are no disbursement requests in the Ameris file as required by the loan agreement. Ameris' own records reflect that it paid \$290,000 in construction draws that are not supported by invoices. [R. p. 799]. Ameris' records do include a memorandum from May 2009 placing Lanier on probation for "lack of judgment" for his actions in relation to handling of the renovations. Id.

When her health permitted, Gibson personally moved to the apartment complex in May 2008 to take over daily management and supervision. [R. 220, line 25 – p. 222, line 7].

She saved money as best she could, living in the office at the apartments, and at one point living off of tuna fish out of a can, peanut butter and protein bars because she gave a tenant her refrigerator. [R. p. 220, line 1 – p. 222, line 9]. Gibson injected \$75,000 in personal funds towards the project. [R. p. 206, lines 16-25]. Despite her efforts, the apartment loan was in default by November 2008. [R. p. 717, line 24 – p. 718, line 1]. Gibson sued Villavicencio in July 2008. [R. p. 1406]. In 2012, that case was resolved via settlement with a total recovery from the defendants of \$850,000.

Gibson reworked the loan with Ameris for a lower interest rate in January 2009 and personally guaranteed the note as well as provided a guarantee by her husband's family trust [R. p. 1120]. Zerbst later began asking for more collateral as security for the apartment loan, but Gibson was suspicious of doing so. [R. p. 264, lines 7-13]. Zerbst steered her into seeking counsel of a lawyer who Zerbst considered his personal attorney, but never bothered to tell Gibson this was Zerbst's own attorney, the one representing Zerbst in the non-compete suit brought by Reliance [R. p. 215, line 24 – p. 216, line 2; R. p. 262, line 7 – p. 263, line 4; R. p. 433, line 18 – p. 434, line 15]. Gibson was led into a meeting with that lawyer by Zerbst under the guise of receiving legal counsel regarding her troubled loans, only to be surprised and set upon by various parties seeking to obtain her financial assets for their own benefit. [R. p. 264, line 15 – p. 266, line 13]. As the parties were leaving that meeting, Zerbst told Gibson that the apartments were overpriced, rents were not going to cover the debts owed, and the loan was a mistake. [R. p. 269, lines 5-16]. It was only upon her lawyers' withdrawal on November 2009, citing a conflict of interest, that Gibson learned of Zerbst's connection with the lawyer he had referred Gibson to. [R. p. 830, R. p. 215, line 24 – p. 216, line 2].

Appendix 01908

On June 14, 2010, Ameris initiated foreclosure proceedings. [R. p. 66]. Ameris later sold the debt to Galt Valley, LLC (hereinafter Galt) for \$975,000. [R. p. 1708; R. p. 720, lines 9-13]. On December 1, 2010, Galt settled the foreclosure action. [R. p. 1662]. Gibson was forced to convey the apartments and other collateral by executing deeds in lieu, with all litigation dismissed and the loan documents cancelled in return. [R. p. 1708.]. These proceedings follows.

Issue One

Ameris accepted, then breached, fiduciary duties to its unsophisticated customer Gibson.

The relationship between Ameris with Gibson was much more than a mere creditor-debtor relationship typical of most banking transactions and daily business. Ameris orchestrated and implemented Gibson's financial downfall by jumping on the Zerbst bandwagon and facilitating his scheme, holding Gibson up as its case study initial splash into the Charleston market. Recognition of that unusual relationship, coupled with Ameris' failure to honor even its basic attendant obligations (given that special relationship that directly lead to damages suffered by Gibson) does not require any modification or expansion of existing South Carolina law. Ameris cannot insulate itself from the obligations it undertook to Gibson by suggesting it was not acting as a fiduciary. The evidence is completely contrary.

A. Ameris was not immune from establishing a fiduciary relationship in favor of Gibson under South Carolina law.

A fiduciary relationship "exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and 01909

regard to the interests of the one imposing the confidence." Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005). The exact boundaries of such relationships have never been defined, and intentionally left elastic to address new or peculiar situations. "Courts of equity have carefully refrained from defining the particular instances of fiduciary relationship in such a manner that other and perhaps new cases might be excluded and have refused to set any bounds to the circumstances out of which a fiduciary relationship may spring." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 599; 358 S.E.2d 150, 152 (Ct.App.1987).

Ameris contends that there is no decision from South Carolina that has found a fiduciary relationship in the context of a lender and borrower (App.BR. 17). However, Ameris cannot cite to any opinion that has precluded the formation in the context of a bank and its customer. In fact, our Supreme Court has recognized that while the "normal" relationship between a bank and its depositor is a creditor-debtor relationship rather than a fiduciary one, it has nevertheless expressly stated and recognized that in certain "limited circumstances" such a "fiduciary relationship may be created between a bank and a customer." Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986). Just because those circumstances have not yet been confirmed in an appellate opinion does not preclude a proper finding of such a relationship, as was made in this matter and as discussed infra. Ameris' dealings with Gibson are precisely that case.

B. Gibson placed special trust in Ameris and its agents, who accepted that trust and thereby established a fiduciary relationship for Gibson's benefit.

The "limited circumstances" wherein a fiduciary relationship may be formed between bank and customer includes when "the bank undertakes to act for the customer as

a part of the services the bank offers. Such a relationship charges the bank with a duty to disclose material facts which may affect its customers' interest." Burwell at 40-41, 790. A fiduciary relationship is more than a casual one, and as a general rule it cannot be created unilaterally, but requires that the fiduciary must have actually accepted or induced the confidence placed in him or her. Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct.App.1988). "Whether a fiduciary relationship exists between two people is an equitable issue for the judge to decide." Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct.App.2004). As noted by the trial court, with regards to cases previously decided by the appellate court in which the Court did not find the existence of a fiduciary relationship, "the facts of those cases are clearly different and are not even close to the circumstances and facts of this case." [R. p. 19].

As referenced in the statement of facts and discussed *infra*, Gibson was a very unsophisticated party to the transactions being proposed and executed with her funds and guarantees. Her history of the apartment transaction necessary starts before with her history on the shopping center transaction, which was structured by Zerbst and Lanier and Villavicencio to be a 100% borrowed transaction. Gibson started relying upon Zerbst for his evaluation of her deals when discussing this shopping center, and started receiving his evaluation of potential transactions beyond mere loan terms. [R. p. 231, lines 10-20]. The entire reason she sought advice from Zerbst initially, and not just her real estate agent Villavicencio, was because Villavicencio was just a realtor looking to buy and sell, while Gibson "was interested in talking to a banker that would know about the transactions and also for his advice on whether this was, you know, good for me." [R. p. 186, line 18-p.

Appendix 01911

187, line 5]. And Zerbst from the very beginning gave her that advice, acting as an Ameris agent at the critical points in time. Id.

Later, with regards to the apartment complex, Lanier and Zerbst worked together first while employed at Reliance, and then later on behalf of Ameris, to work up the loans necessary to complete the transaction. Of course this transaction was similar to the shopping center structure, and the documents bridged the transition between Reliance and Ameris without significant change. And Gibson's reliance and unusual dealings with Lanier and Zerbst, on behalf of their respective employers (or, in the case of Zerbst, potential employer), bridged that gap as well.

Zerbst, while ostensibly unemployed but as determined by the Trial court already clearly acting in the interests of Ameris by steering business its way, evidenced his special personal relationship with Gibson by conducting his elaborate transfer of documents to Lanier. And everyone there at that meeting, which Lanier later characterized as "staged," were there with knowledge that they were all acting on behalf of Gibson. Within just a few days, Lanier submitted the loan application up the chain of command at Ameris before Gibson had even seen or signed the documentation. [R. p. 502, lines 10-18].

Between the time of signing the contract in May for the purchase and the actual closing at the beginning of November, Gibson had several conversations with Zerbst about the nature of the deal itself, not restricted merely to explanation of mere terms. That included a personal meeting with Gibson and Villavicencio in Zerbst's office at Reliance. Zerbst's own recollection and description of that meeting shows it went well beyond what loan terms would be available, and explored the entire business strategy for the apartments; to wit, how he viewed the property as a "B" property, and how it could be changed to a B

Appendix 01912-B

plus” or “A” with a different targeted group of tenants. [R. p. 450, line 5 – p. 452, line 22]. Zerbst told Gibson she should be safe in covering both debts related to the transaction with the rental income. [R. p. 412, line 17 – p. 413, line 20].

Those communications continued right up until the closing, even after Zerbst’ departure from Reliance and during the period he was determined to be selling himself to Ameris by working on behalf its behalf before his official start of employment. Zerbst orchestrated Gibson’s move to Ameris by telling her there were problems at Reliance and she “would be better served” at Ameris. [R. p. 241, lines 8-22]. Communications continued later, involving at one point a 30 minute phone call with Zerbst during which Zerbst spoke to Gibson from his own kitchen. [R. p. 249, line 24 – p. 250, line 19; R. p. 252, line 25 – p. 255, line 1; R. p. 405, lines 14-20]. They discussed the appraisal and the rents among other general aspects of the transaction, and specifically through the lens of reliance on how the prior shopping center transaction had been done. [R. p. 332, lines 8-25]. Ameris’ brief refers to that conversation as “casual,” but that casualness is in stark contrast to the formality typically expected with an arm’s length transaction. Under Ameris’ theory, while Zerbst was supposedly unemployed, his engagement in such a communication distinguishes itself as atypical of a normal arm’s length commercial transaction as Ameris portrays them to be. It is instead indicative of a special trust placed in Zerbst³ and special trust accepted by Zerbst while acting on behalf of Ameris.

Further, as noted by the Trial court, Ameris introduced zero credible evidence that Gibson negotiated any term of the initial loan or the collateral that was to be used to secure

³ This trust extended past the closing on this loan of course; as evidenced in part by Gibson’s heeding of Zerbst’ recommendation that she hire a particular lawyer to help her address issues with Villaluce. Only later did Gibson find out that lawyer already represented Zerbst. [R. 262, lines 7-18].

the loans. [R. p. 24]. The only credible evidence is that Gibson was very reluctant to enter into the transaction, and only proceeded after assurances from those, at Ameris, she believed to be acting with her best interests in mind as well. All negotiation cited by Ameris concerns mitigation efforts engaged in by Gibson after the apartment transaction was in place and floundering. Zerbst, as agent of Ameris, induced and advised Gibson regarding the loan, thereby creating a fiduciary relationship between Ameris and Gibson.

C. Ameris Breached Its Fiduciary Duty Owed to Gibson.

A party in a fiduciary relationship with another subjects itself to liability to the other for harm resulting from a breach of its duties. Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct.App.2004). When a fiduciary relationship exists with respect to a bank and its customer, the bank must disclose material facts that may affect the customer's interest. Burwell v. S.C. Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986). There must be a disclosure of "all known information that is significant and material" and "silence may constitute fraud." Moore at 251, 472 (Ct.App.2004). Such facts requiring disclosure are those that "may affect [that borrower's]. interests." Burwell at 40-41, 340 S.E.2d at 790.

It is the function of the court to determine and formulate the standard of conduct to which the duty requires the defendant to conform. Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 711 S.E.2d 908 (2011). The court may consider relevant standards of care from various sources in determining whether a defendant breached a duty owed to an injured person. Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006). "The standard of care in a given case may be established and defined by the common law, statutes, administrative regulations, industry standards, or a

Appendix 01914

defendant's own policies and guidelines." Doe ex rel. Doe at 247, 912 (internal citations omitted). Ameris' own expert witness admitted Ameris had a duty to tell Gibson that the project revenue would not carry the loan. [R. p. 685, lines 11-24]. The fiduciary obligations owed by Ameris and its agents to Gibson as established by the court were breached by Ameris, and resulted in damages sustained by Gibson.

Throughout the loan origination and project construction processes, Ameris and its agents assumed the duty of advising Gibson to undertake the project, and how to finance the project. Gibson made clear her doubts about the project and desire to only enter it if it were safe. Ameris had a duty to advise her that it was not only not "safe" or "good" but in fact was risky given the 100% effective financing of the project split across two loans.

Zerbst himself admitted the transaction was not good and should never have occurred as the rental proceeds would not cover debt service. [R. 269, lines 10-14]. Yet that was exactly how the loan was intentionally structured, considered and pitched to Gibson. [R. p. 412, lines 23 – p. 413, line 14; R. p. 140, line 25 – p. 142, line 12.]. It is clear from Gibson's testimony that had she been told that information sooner, that it was being set up in a way that was inconsistent with what Zerbst knew about the rental income, she would not have gone through with the transaction given her doubts even while being told the deal was a good one.

Ameris' own expert stated that there was "NO WAY" (emphasis original) that the property was worth anything near the price paid, and "a look at the income/expense statements will reveal this." [R. p. 809]. Given the duty assumed by Ameris, it at least had a duty to tell Gibson how easily the price could be potentially demonstrated to be inflated, yet there is no evidence it did so. It was a failure to advise Gibson about information she

Appendix 01915

needed, and a failure of Ameris to review the documentation itself to find the obvious information that it knew was so important to Gibson; documentation they knew she was not looking for or even aware existed given her unsophistication.

Further, the 100% financing of the transaction was not disclosed as risky and itself sufficient to call into question the entire transaction. Lanier disclaimed knowledge of the source of the \$700,000 down payment, which Zerst disputed. [R. p. 444, line 19 – p. 445, line 2]. Lanier acknowledged it would have made a big difference in the consideration of the loan, however. [R. p. 548, line 15 – p. 549, line 2]. Don Snipes, regional credit officer and senior V.P. of Ameris, testified that if he had known the \$700,000 was sourced from another loan, he would have looked less favorably on the loan, and strongly doubted it would have been approved. [R. p. 379, line 13 – p. 381, line 2]. If it would have made a big difference to Lanier and Snipes in terms of analyzing the prospects for the success of the transaction, it certainly was “material” for purposes of explaining to Gibson the effect it had on the transaction in full. Again, given Gibson’s doubts about the transaction, it is obvious the risks involved with 100% financing were not fully disclosed to her, or the loan would not have gone forward.

D. Breach of Duty continued after execution of the loan documents.

Ameris and its agents let down Gibson after execution of the loan documents, and in doing so further breached their duties that arose as a result of the unique relationship discussed supra. Ameris disbursed large sums to contractors or other vendors, including, REMAX, on its own, without any knowledge of or input from Gibson. [R. p. 1275]. Gibson was never made aware of the advances paid by Ameris, nor did Ameris ever request her approval before paying the draws. [R. pp. 798, 797, 799]. Zerst and Iper both knew of

Appendix 01916

the hospitalization of Gibson soon after the loan was closed and during the time the renovation was to take place, and Zerbst agreed that Lanier did not exercise that control properly. [R. p. 487, line 21 – p. 488, line 4; R. p. 491, lines 14-19]. Despite that control, Zerbst stated that “it became apparent that not all the money did go into the project.” [R. p. 490, lines 15-19]. Ameris never verified the contractor on the project and did not require a contract or AIA document or any other information in support of work being completed. [R. p. 799; R. p. 510]. There are no disbursement requests in the Ameris file as required by the loan agreement. Ameris simply disbursed loan proceeds with no protection whatsoever. Gibson contended at trial, and Zerbst agreed, that Gibson should have been advised, and had her approval obtained, for advances made. [R. p. 490, lines 14-21]. Zerbst testified regarding a lack of documentation in the file. [R. p. 490, line 25 – p. 491, line 19].

Ameris cites authority stating that “the lender has no common law [duty] to protect the borrower” even when inspections are completed. Roundtree Villas Assn., Inc. v. 4701 Kings Corp., 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984); [App.BR. 30]. However, that opinion acknowledges an exception where there is an independent obligation, such as by virtue of the relationship of the parties. Id. Of course in this instance, as discussed supra, there was a special trust and relationship, a fiduciary one, which required more of Ameris than a free flow of money to contractors.

Lanier did visit the project site on several occasions. [R. p. 219, lines 9-25; p. 532, line 22 – p. 533, line 5]. And while he explained away his failure to recognize failures in the process while there on those visits, the barely recuperated Gibson, a documented neophyte in such matters, was immediately able to recognize issues during her first visit. [R. pp. 218-219]. Additionally, what he had reported to her and what she observed were

Appendix 01917

“opposite” which is evidence the information communicated was false, not just missing. Having undertaken a special relationship and engaged in an opportunity to relay necessary information to the beneficiary of that relationship, Lanier and Ameris failed to meet their obligations.

Ameris has internal documentation that evidences an acknowledgment that they had undertaken special duties and failed to meet those obligations. Lanier was the subject of a memo in May 2009 that cited him for “lack of judgment” regarding the disbursements. [R. p. 799]. While Don Snipes, Ameris’ Regional Credit Officer and Senior V.P, stated in an email that “we have some culpability in [Gibson’s] problems as we did not manage the construction loan as we should have and potentially aided in her former property manager at REMAX may have siphoned off some of the loan proceeds.” (emphasis added) [R. p. 801].

Ameris contends that “at best, the [Lanier disciplinary]. memo shows that the bank did not follow its own internal policies.” [App.BR. 28]. However, as stated above, the standard of care may be established and defined by a defendant’s own policies and guidelines. Doe ex rel. Doe. Ameris’ admission that it and its employees deviated from its own policies and guidelines with regard to the apartment loan is evidence of a breach of the standard of care.

Additionally, the Trial court found that Zerbst’ actions, while openly employed by Ameris, in steering Gibson to legal counsel that was already personal counsel for Zerbst was a further breach of fiduciary duty. [R. p. 262, line 7 – p. 263, line 4]. Gibson had no knowledge of that counsel’s connection to Zerbst. [R. p. 215, line 24 – p. 216, line 2]. She was led into a meeting in August 2009 by Zerbst under the guise of receiving legal counsel

Appendix 01918

regarding her troubled loans, only to be surprised and set upon by various parties seeking to obtain her financial assets for their own benefit. [R. p. 264, line 15 – p. 266, line 13]. Gibson felt betrayed by those actions, evidence they were contrary to the duty of loyalty and full disclosure owed by a fiduciary.

E. Loan documents do not preclude a finding of a fiduciary relationship when Ameris' agents were knowingly dealing with someone as completely unsophisticated as Gibson.

A relationship between a customer and her bank is “usually” defined by the contractual agreement between them. Trotter v. First Fed. Sav. & Loan Ass'n, 298 S.C. 85, 89, 378 S.E.2d 267, 269 (Ct.App.1989). A borrower is normally responsible for reading loan documents related to the borrower’s transaction if the contents thereof would reveal contrary information. Burwell at 40, 340 S.E.2d at 789. However, “usually” allows for exceptions to the norm, as does the Burwell case, which specifically recognizes an exception if a party is “ignorant and unwary,” in which case the failure to read the document may be excused.” Id., Thomas v. Am. Workmen, 197 S.C. 178, 182, 14 S.E.2d 886, 887 (1941); Austin v. Indep. Life & Accident Ins. Co., 296 S.C. 156, 160, 370 S.E.2d 918, 921 (Ct.App.1988). “In determining whether a party can be classified as ignorant and unwary, an individual's education, business experience and intelligence are all considered.” Id.

In Burwell, the party claiming ignorance was a graduate of the Wharton School of Business at the University of Pennsylvania, had held directorship positions with national and international companies, and negotiated over the use of collateral on the day the loan

guarantees were executed. *Id.* at 790. That party was clearly not “ignorant and unwary” and stands in stark contrast to Gibson’s lack of sophistication.

To wit, Gibson is a 66 year old widow, having lost her husband of twenty-seven years around Christmas 2003. (R. p. 181, lines 9-23). She graduated high school, and took some liberal arts courses briefly in college. From the time of the birth of her first child in 1980 until 2008, she was not employed, and instead worked to raise her two daughters and care for her mother after she developed breast and lung cancer. (R. p. 182, line 18 – p. 183, line 1). She had relied upon her husband to handle all the “business and financial aspects of things” until his death, and was only passingly familiar with the term “1031” and that it was “some sort of tax devi[c]e” that could be used after the sale of property. (R. p. 183, lines 14-24; R. p. 185, line 20 – p. 86, line 5). Her assets were primarily in real estate, and inherited from family: her father and later her husband. (R. pp. 199-201; R. p. 868, R. p. 880, R. p. 894, R. p. 1036). At the time, she was still primarily focused on her family, not her assets. (R. p. 184, lines 9-14). Zerbst admitted at trial that “she was not well experienced like many customers” he met with through his employment with a bank. (R. p. 402, lines 18-23). She was the classic “sitting duck” for manipulation and exploitation.

Ameris portrays Gibson as a sophisticated millionaire, but those assets were not acquired through her skill or business acumen, but rather landed in her lap. Net worth is not a proxy for sophistication. The sudden assumption of responsibility for such assets serves to highlight her *vulnerability* after the death of her husband, not how secure or savvy she was. To wit, Ameris’ brief catalogs Gibson’s mistakes that it agrees justify the 20% comparative fault determination: she failed to negotiate the purchase price of the apartments, failed to independently ascertain the value of the property, and failed to

Appendix 01920

appraisal, review cash flow statements or income statements for the property, look at the rent rolls, inspect more than one (1) of the 48 units, or hire an architect. [App.BR. 35-36, with citations to the record].

While Ameris holds Gibson up as a pitiful businesswoman, it ignores the very point those failures underscore – that she was in near complete reliance upon other trusted parties, and openly made that reliance known, because of her unsophistication. [R. p. 338, lines 8-11]. That reliance manifested itself throughout, but was obvious from the beginning. Zerbst' very first question in response to learning about the potential purchase of the apartment was to inquire whether Gibson even knew about the proposed transaction, evidencing a clear understanding of the extent to which Gibson was reliant on others when engaging in these transactions. [R. p. 419, lines 9-24].

As to the loan documents themselves and whether they put Gibson on notice or should have been controlling to defeat any fiduciary obligations, trial testimony is informative. When questioned at trial about her failure to read and understand the loan documents, the following exchange occurred:

Q. Is it your testimony that they should have told you that you should read the documents that you were signing for a \$2.8 million loan?

A. Mr. Stepp, this really was the first -- they knew that I was inexperienced in buying -- doing this. And I trusted them, and they knew I trusted them. In so many words they knew that I did not know what I was doing, and both of those boys knew that. And if they thought in any way that this was not good for me, they should have expressed that and not had me sign pages of documents that I don't think anybody ever reads or can understand with the verbiage.

I don't even know what half of this stuff is that you're asking me about now that I've signed it. I don't know any of these things.

Appendix 01921

THE WITNESS: Judge Watson, I just don't -- they knew that I relied on their opinion and their advice on this.

Q. To the point that you didn't even have to read the loan documents; is that right?

A. Well, I know from what you're telling me that there are a lot of things in here that I have guaranteed and signed off on and such, but I don't understand those things, and they knew that.

[R. p. 338, line 3-p. 339, line 3].

It was not merely that Gibson was ignorant and unwary as required to excuse disclaimers written into the loan documents; she openly communicated that condition leading up to the loan execution and continuing afterwards as a plea for assistance. She did so to an extent that it was obvious to those at Ameris that she was proceeding in reliance on its agents. Willingness to proceed in the face of that knowledge is the sort of situation that justifies recognition of the exception to the general rule.

Further, as Lanier admitted during his testimony, the loan documents use "boilerplate" language that may or may not be applicable to the instant transaction, the determining factor being solely at the whim of the bank. [R. p. 508, line 8 – p. 509, line 25]. The Trial court, as noted in the final order, had "carefully observed the demeanor and manner in which each witness testified. I noticed such things as their tone of voice, gestures, hesitation or readiness to answer questions, their sincerity, and other mannerisms, all of which assisted in my evaluation of their credibility." [R. p. 1, ¶ 2]. The Trial court concluded, based on all those factors that give context and depth to the bare documents and transcript record, that Ameris' efforts to enforce the loan documents was selective, and whenever it suited Ameris, which was inappropriate given the personal and fiduciary nature

Appendix 01922

of the relationship between Gibson and Ameris' agents. [R. p. 25]. The Trial court found Gibson's testimony "much more sincere and credible," confirming that this was a situation in which the usual deference to contractual language was not appropriate or equitable. [R. p. 26].

This issue is without merit.

Issue Two

AMERIS MISREPRESENTED FACTS REGARDING THE PROPOSED APARTMENT TRANSACTION AND CAUSED GIBSON TO SUFFER IN RELIANCE UPON THOSE STATEMENTS.

Where damage is pecuniary in nature, the tort of negligent misrepresentation requires six elements be met: "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated the truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation." Redwend Ltd. P'ship v. Edwards, 354 S.C. 456, 473-74, 581 S.E.2d 496, 504 (Ct.App.2003) (citing Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996); Koontz v. Thomas, 333 S.C. 702, 511 S.E.2d 407 (Ct.App.1999)). Further, the tort claim is allowed when the misrepresented facts cause the plaintiff to transact business. Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct.App.2005). Ameris' agents and expert testified that Ameris had a duty not to mislead and that if it undertook to give advice, the advice should be accurate, complete and honest. [R. pp. 680-685].

Appendix 01923

A. Ameris Misrepresented Facts to Gibson.

The most basic threshold inquiry is whether the representations made were false. Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 163-164, 714 S.E.2d 873 (2011). Ordinarily, a claim will not arise unless the statements relate to a present or preexisting fact, not predicated on future events. Davis v. Upton, 250 S.C. 288, 291, 157 S.E.2d 567, 568 (1967). Further, a claim cannot be predicated on expression of opinion. Winburn v. Ins. Co. of N. America, 287 S.C. 435, 339 S.E.2d 142 (Ct.App.1985). The dividing line between matters of fact and matters of opinion is typically decided by what can be shown as exact knowledge when the statement is made. Bishop Logging Co. v. John Deere Indus. Equipment Co., 317 S.C. 520, 527, 455 S.E.2d 183, 187 (Ct.App.1995).

A statement of fact may be found given the existence of business records. Gilbert v. Mid-South Machinery Co., Inc. 267 S.C. 211, 227 S.E.2d 189 (1976). Assessing the first element of negligent misrepresentation, Ameris argues that the false representations were made based on opinions or future events, and thus not actionable. However, the statements were actionable for two reasons. First, where facts are known to the contrary of statements made, the individual making the statements is liable for misrepresentation. See Gilbert v. Mid-South Machinery Co., Inc., 267 S.C. 211, 227 S.E.2d 189 (1976) (statement about profitability of business actionable as statement of fact if based on existing business records).

Gibson was told the purchase price could be sustained by rental income, despite a price more than double the prior purchase price just 4 years prior, and “NO WAY” that the property was worth the purchase price in the words of Ameris’ own expert as looking at the income/expense statements would reveal. [R. p. 603, line 22 - p. 605, line 9] **Appendix 01924**

809]. Zerbst's statements regarding the loan being sound and the apartment being a good investment were misrepresentations because Zerbst knew that his statement was not true, for any investor, but especially for Gibson, based on his knowledge of Gibson's finances, the project's rent projection and how it had not changed significantly since the prior complex sale for half the cost, and projected debt service. It was factually, certainly, false that this transaction was within Gibson's clearly defined parameters of needing to be self-funding and not supported by disposal of other assets. [R. p. 312, line 25 – p. 313, line 18]. Ameris' own employees confirmed that 100% financing as used in this apartment purchase was not safe or "good" as it would have resulted in denial of the loan when properly considered. [R. p. 379, line 13 – p. 381, line 2]. The Trial court determined the statements were made based on existing business records, and therefore are statements of fact, shown by subsequent events to be demonstrably inaccurate when made.

Further, even assuming the statements were mere projections, if such a statement about the future is made to induce another's act, and whereby the other would not have acted if not for that statement, the statements are again actionable. See Bishop Logging Co. v. John Deere Indus. Equipment Co.; 317 S.C. 520, 455 S.E.2d 183 (S.C. Ann. 1995). Ameris wished to loan Gibson the money for the apartment complex; regardless of the project's success, the collateral for the loan would cover, exceedingly, and default by Gibson. Gibson explained her consistent reluctance to take on this purchase, which was assuaged by those representations made by Villavicencio and Zerbst that reassured her. That was the reason she communicated so often with Zerbst, and therefore Ameris, to ask the same questions about suitability of investment, signaling an obvious reliance that made the misrepresentations actionable even if deemed to be about future projections.

Appendix 01925

B. Gibson Relied on Ameris' Statements.

Ameris contends that Gibson did not have the right to rely upon the misrepresentations repeatedly fed to her regarding the apartment purchase. But reliance is justified where the defendant was in a superior position to the one who relied on the statements. Harrington v. Mikell, 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Ct.App.1996). The totality of the circumstances, including the positions and relations of the parties, must be considered. Quail Hill, LLC v. Cnty. Of Richland, 387 S.C. 223, 241, 692 S.E.2d 499, 508 (2010). The positions of the parties includes a requirement that the court look to whether the relationship was confidential or fiduciary, not just arms-length. Florentine Corp. Inc. v. PEDA I, Inc., 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985).

Ameris cites authority that states where there is the absence of a fiduciary relationship, there is no right to rely, which is a correct statement of law, but irrelevant. As discussed extensively supra, this was certainly a fiduciary relationship. Likewise, this was not an interaction between educated, experienced equals, as Gibson's undisputed lack of sophistication makes clear. Zerbst and his quarter-century of banking familiarity dwarfed Gibson's openly acknowledged ignorance and inexperience. Contrary to Ameris' critique of her failures to uncover the falsity of the representations, Gibson was trying to be diligent. She just had the misfortune of falling prey to unscrupulous professionals at every turn, all of whom were serving Ameris' interests, not hers.

C. The false statements led directly to Gibson's suffered harm.

Ameris argues that Gibson was locked in to the transaction notwithstanding the false representations. (App.BR. 37). However, the contract agreeing to purchase the

Appendix 01926

apartments signed in May was done with Gibson clearly indicating she was not ready or sure about closing. [R. p. 236, lines 6-10]. The contract lacked consideration, and was contingent on financing, but did not mention financing details. No escrow funds were put down when that contract was signed. The referenced refinance of the beach house was done in anticipation of this transaction, but had only shifted debt, not accumulated more, and thus would have been equally useful even without subsequent addition of the apartment complex debt.

This issue is without merit.

Issue Three

VILLACENCIO'S BREACH OF FIDUCIARY DUTIES TO GIBSON WERE SUBSTANTIALLY ASSISTED BY AMERIS.

The trial court awarded recovery for Gibson's third cause of action, aiding and abetting breach of fiduciary duty. Recovery requires (1) a fiduciary duty owed to a person; (2) a third party's knowing participation in the breach of that duty; and (3) damages. Vortex Sports & Entm't. Inc. v. Ware's, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct.App.2008). "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." Id. There was ample evidence supporting the trial court's finding of the existence of a fiduciary relationship between Gibson and Villavicencio, and Ameris conceded that threshold issue in its brief. [App. Brief p. 39]. Despite that concession, Ameris alleges two errors in the trial court's examination of the requisite elements for a finding of liability as to this claim, neither of which have merit.

Appendix 01927

A. Villavicencio breached his fiduciary duties.

Ameris contends that there was insufficient evidence in the record that Villavicencio had ever breached his duties that arose as a result of the acknowledged fiduciary relationship between himself and Gibson. However, that was not really ever disputed; it was the elephant in the room. Gibson first testified that she terminated Villavicencio as “a result of the mismanagement of properties, stealing – I discovered that he had stole several hundred thousand dollars from managing the shopping center and the apartments.” [R. p. 183, line 25 – p. 184, line 8]. She later elaborated that in addition to stealing from her, Villavicencio “along with Mr. Zerbst put me into some investments that were good for them but bad for me.” [R. p. 224, lines 20-25]. Gibson’s testimony did not minimize Villavicencio’s misconduct to theft, as Ameris claims. The term “mismanagement” and reference to acting in his own self-interest with respect to investments (including the apartment complex) is more than adequate description from a lay witness as to the breaches of fiduciary duty committed by Villavicencio. That is especially true when those breaches are so fully revealed via other testimony and documentation contained within the record on appeal, including Villavicencio’s mismanagement of the renovation efforts and related construction loan proceeds during Gibson’s illness, as well as the earliest relevant breach related to Villavicencio’s scheming with Lánier and Zerbst to push through this apartment investment despite contrary best interests of Gibson⁴. Villavicencio’s breach of fiduciary duty was obvious to everyone but Ameris, apparently.

⁴ Ameris is also seeking a full off-set of funds recovered by Gibson against Villavicencio in separate litigation. Since that recovery was for breaches unrelated to the apartment complex, it is legally distinguished from claims against Ameris in this litigation, then the off-set would be inappropriate.

B. Ameris had knowledge of the breaches and substantially assisted them.

Ameris also argues that despite evidence of breach by Villavicencio with respect to the apartment complex, there was no evidence that Ameris knew about the alleged breach or knowingly aided or abetted it. The record demonstrates otherwise.

Under South Carolina law, one is liable for harm resulting to a third person from the tortious conduct of another if one “knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself” or “gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.” See Restatement (Second) of Torts § 876(b) and (c) (1979) as cited by the South Carolina Supreme Court in Future Group, II v. NationsBank, 324 S.C. 89, 97, 478 S.E.2d 45, 49 (1996).

Ameris’ own tortious conduct is explored extensively supra, and a great many of the acts and omissions committed by its agents and employees directly involved Villavicencio, while many of the others substantially assisted him in his own breaches of duty. Mr. Barksdale concluded after his review of the file that Villavicencio was a con artist. [R. p. 681, lines 1-9]. And Zerst admitted they had their suspicions about Villavicencio. [R. p. 419, lines 9-24]. When Villavicencio first reached out to Reliance bank and Zerst about the proposed purchase of the apartment complex, Zerst’ very first question in response was to inquire whether Gibson even knew about the proposed transaction. Id.

Yet from the record it is apparent that Villavicencio excluded Gibson from much of the discussion with Ameris. Ameris obliged by dealing directly with Villavicencio in

Appendix.01929.

the transfer of the loan documents from First Reliance to Ameris, allowing the use of an appraisal meant for another bank at Villavicencio's request, and accepting a wildly-inflated financial statement from Villavicencio. The financing, with the risky 100% loan structure, was worked out between Villavicencio, Lanier and Zerbst in a joint effort noticeably lacking involvement of Gibson, who had not even seen the loan application by the time it had already been approved by the state president of Ameris. [R. p. 502, lines 10-18].

Actions linking Ameris and Villavicencio that did involve Gibson were no less damning for this claim. Gibson relied on Villavicencio heavily and regarded him as her real estate and financial advisor. [R. p. 297, line 25 – p. 298, line 16]. But she also wanted to know the advice of Zerbst. [R. p. 187, lines 1-3]. Gibson then repeatedly referenced how “they,” meaning Villavicencio and Ameris employees or agents, had worked in combination to convince her of the falsity that the apartment transaction was a wise investment for her. [R. p. 236, lines 6-21; R. p. 254, lines 7- 12].⁵ Villavicencio (and his wife) participated in the surprise document execution at the gala event. [R. p. 239, line 23 – p. 241, line 2].

The purchase of the apartments, at their inflated price that further benefitted Villavicencio as both buyer and seller’s agent on the transaction⁶, could not have been done without the bolstering, substantial assistance of Zerbst, acting on behalf of Ameris.

This issue is without merit.

⁵ “[Zerbst], and Mr. Villavicencio both assured me.. I trusted what they said and I relied on what they said, and that's why I bought that apartment complex.” [R. p. 254, lines 7-12].

⁶ Realtor commission on the purchase was \$155,000, not including another \$8,000 line item paid to Villavicencio for “Exch. Invest Planning Consult.”

Appendix 01930

Issue Four

Damages, both actual and punitive, were justified by the evidence before the trial court and within the confines of constitutional restraints on such awards.

“Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible.” Mellen v. Lane, 377 S.C. 261, 659 S.E.2d 236 (S.C. App., 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000)). These damages are awarded to compensate a litigant “for his actual loss or injury,” and the damages “will compensate the party for injuries suffered of losses sustained.” Id. The ultimate goal in awarding actual damages is “to restore the injured party... to the same position he was in before the wrongful injury occurred.” Id.

The Master attempted to make Gibson whole with an award of actual damages in the total amount of \$1,153,625, the sum of the following amounts:

- \$700,000 down payment on the loan to purchase the apartments;
- \$23,625 in interest paid by Gibson on that borrowed money;
- \$355,000 as the value of the Klister Lane property used as collateral for the loan that was subsequently transferred by Gibson to resolve the foreclosure action; and
- \$75,000 in personal funds that Gibson invested in the apartments in an attempt to keep the project from failing.

[R. p. 55].

A. Recovery of the down payment was proper.

Ameris first challenges the award of actual damages and asserts that Gibson should not be compensated for the down payment towards the apartment purchase. **Appendix 01931**

procured via refinance of another piece of property titled in the name of an LLC that was not a party to this action, and that loan was an “independent transaction[] wholly unrelated” to the apartment purchase. [App.BR 42-43].

Ameris’ loan to Gibson required a significant down payment amount of \$700,000. To procure the necessary funds for the down payment, Gibson used her 50 percent interest in 3205 Palm Boulevard LLC to refinance a beach house held in the LLC’s name. [R. p. 190, line 14 – p. 191, line 1; R. p. 832; R. p. 304, lines 11-13]. This was done just as she had used a second mortgage to accomplish the shopping center purchase that was structured by the same parties as the later apartment transaction. [R. p. 802]. Zerbst knew about the true source of that money for the down payment on the apartments, even though the refinance was originally done in anticipation of the loan being done through Reliance. Thereafter, Zerbst spoke with Villavicencio and Gibson about the refinance in connection with the down payment for the apartments. [R. p. 412, lines 17-22]. He also testified that Lanier knew Gibson was paying the down payment from borrowed money. [R. p. 444, line 19 – p. 445, line 2].

Ultimately, however, the important fact that Ameris fails to mention is that Gibson personally guaranteed the loan by 3205 Palm Boulevard LLC, paid back interest on a loan associated with the property, and ultimately lost the encumbered property as a result of the foreclosure. [R. p. 193, lines 11-18; R. p. 780]. Additionally, Gibson had a 50% interest in 3205 Palm Boulevard LLC. [R. p. 304, lines 11-13]. Encumbering that property, a half interest of which was an asset of Gibson, diminished Gibson’s resources. It made her more vulnerable as it weakened her ability to leverage her assets to meet obligations on the apartment complex (as she had done by using \$75,000 in cash as discussed *infra*). And

Appendix 01932

thus to fully unwind the apartment transaction and “restore her to the same position” Gibson must be afforded an award that replaces the \$700,000 down payment and interest accrued thereon (\$23,625) regardless of the intermediary LLC involvement.

B. Gibson’s infusion of personal funds into the project is appropriate for inclusion in the award of actual damages.

Ameris challenges inclusion of an award of \$75,000 because “there is nothing in the record” that constituted a guarantee to Gibson that her personal funds would not be necessary on the transaction. [App.BR. 43].

Gibson testified that she used \$75,000 in personal funds from her savings account as an infusion of cash into the struggling project since rental income was insufficient. [R. p. 206, lines 16-25]. Ameris notes Gibson failed to introduce bank records or cancelled checks to support her testimony. [App.BR. 43, footnote 13]. That is irrelevant because Gibson introduced tax documents that supported this testimony. [R. pp. 793-796]. Further, no law was cited that would require anything other than testimony to be sufficient evidence to justify an award. That is especially true since the Master noted in the final order, specifically about this claimed infusion of cash, that

In observing Ms. Gibson, this Court was impressed with her sincerity, her demeanor and the manner in which she testified. Her credibility was not in doubt. This is sufficient evidence to entitle Ms. Gibson to recover the \$75,000 of her personal funds that she contributed to try to keep the project alive.

[R. 45, ¶ 3].

Ameris’ agents represented to Gibson that the construction loan alone would suffice for the apartment renovations. [R. p. 236, line 15 – p. 237, line 6; R. pp. 253 – 255, line

Appendix 01933

1]. But for her being stuck with a floundering transaction despite her best efforts, Gibson would never have had to spend that \$75,000. The failures by Ameris and its agents that pushed Gibson into this transaction are thoroughly discussed within the breach of fiduciary portion supra. Accordingly, to “restore her to the same position” demands inclusion of this amount in full.

C. Ameris’ argument as to the calculation method is conclusory and thus abandoned.

Ameris’ final alleged error as to actual damages regards the manner in which the Master calculated the 20% discount for comparative fault and the \$850,000 offset, claiming that those discounts should be taken prior to any calculation of punitive damages. Absolutely no statutory or case law is cited to support this contention; not even non-binding authority. It simply is a conclusory allegation that the calculation should have been done in an alternative manner preferred by Ameris. Interestingly, this Court does not yet need to answer the question whether comparative negligence should be used to reduce punitive damages at all.

This Court has previously been clear, however, that “short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.” Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E.2d 390 (Ct.App.2003). Ameris here offers an alternative calculation method, but no authority or argument as to the necessity of its alternative, and thus this point is not preserved for review.

D. Punitive damages awarded are appropriate in all respects.

Ameris contends that the punitive damage award should be reversed for two reasons. The first is that Ameris contends the award of actual damages was improper. As established supra, however, the award and calculation thereof was without reversible error as alleged. Secondly, Ameris contends that the record does not support a finding that the bank acted willfully, wantonly or in reckless disregard of Gibson's rights. Such a record is required to justify a punitive damage award. Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). In doing so, Ameris has the audacity to claim good faith in all its interactions with Gibson, despite only citing self-serving loss mitigation efforts it undertook for its own benefit. [App.BR. 46].

The trial judge is vested with considerable discretion over the amount of a punitive damage award. Austin v. Specialty Transp. Services, 358 S.C. 298, 317, 594 S.E.2d 867 (Ct.App.2004). The Master used the factors outlined in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991) to aid in his consideration of the wrongful conduct by Ameris and consideration of punitive damages award. Those factors are still relevant to the extent they add substance to other primary guideposts for punitive damage awards recognized by the South Carolina Supreme Court. Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176, 185 (2009). Those three guideposts are the degree of reprehensibility of the conduct, ratio between actual/potential harm and amount of punitive damages, and awards in "comparable cases." Id.

1. Ameris' actions were reprehensible.

Three sub-factors related to the guidepost for reprehensibility were evidenced in the record. Specifically whether "the target had financial vulnerability" is relevant for

Appendix 01935

consideration. Id. Ameris portrays Gibson as a pampered millionaire, but Gibson's testimony showed that the assets she did have (as opposed to the grossly inflated list created by Villavicencio and blindly accepted by Ameris in connection with the apartment loan [R. p. 894].) were real estate holdings that provided no assistance when she was living without a refrigerator and eating canned tuna shortly after she had emerged from the hospital with health ailments that left her unable to visit her investment for months. [R. p. 220, line 1 – 222, line 9].

Secondly, a recognized aspect of reprehensibility is whether the conduct involved repeated actions or was isolated. Mitchell at 185. The factual record is replete with multiple conversations over a period of months whereby Gibson was pressured and manipulated into entering this transaction, all leveraged on the basis of fiduciary relationships that were long in their creation. Ameris benefitted from that long history, and it is rightly attributed to them despite their involvement only halfway through the apartment transaction consideration by Gibson.

Thirdly, the harm was the result of deceit, as Gibson was repeatedly advised that the rental income would sustain all debts used to finance the transaction, when the truth was obvious and known to the seasoned banking and real estate professionals who were breaching their duties to Gibson for their own individual and collective financial interest.

2. The ratio of actual and potential harm suffered and punitive damages awarded is within acceptable due process limits.

"There are no rigid benchmarks that a punitive damages award may not surpass," so long as "the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered." State Farm v. ~~Appendix 01936~~

Campbell, 538 U.S. 408, 425-426 (2003). Further, “A court need not always compare the punitive damages award to the actual damages awarded, but in certain cases may compare it to the *potential* harm suffered by the plaintiff.” Mitchell, at 187 (emphasis original).

There was ample evidence that Gibson mitigated her damages to a great extent. She infused \$75,000 cash into the project from her savings. [R. p. 206, lines 16-25]. She lived on site in the office and managing affairs to cut out the expense of property management services. [R. pp. 220 – p. 222, line 9]. She later renegotiated loan terms to extend hope for a successful conclusion. Her indebtedness and exposure at the time she resolved the foreclosure action was between \$3 million and \$3.2 million. [R. p. 203, lines 3-7].

The ratio between that \$3.2 million figure and punitive award is thus only approximately 1:1, certainly well below thresholds repeatedly referenced in case law. State Farm v. Campbell, at 425. (“in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”); See Mitchell at 188 (remitting punitive damage award to ratio of 9.2 to 1); James v. Horace Mann Ins. Co., 371 S.C. 187, 196-97, 638 S.E.2d 667, 671-72 (2006), (upholding a 6.82 to 1 ratio); Mackela v. Bentley, 365 S.C. 44, 614 S.E.2d 648 (Ct.App.2005) (upholding a 3.75 to 1 ratio); Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct.App.2004) (upholding a 2.54 to 1 ratio); Collins Entertainment Corp. v. Coats & Coats Rental Amusement, 355 S.C. 125, 584 S.E.2d 120 (Ct.App.2003) (upholding a 9.96 to 1 ratio); Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996) (upholding a 28 to 1 ratio).

Appendix 01937

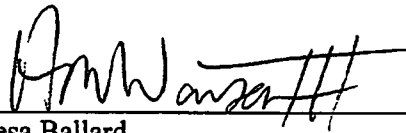
Ameris uses its unjustified calculation methods to contort the calculation of the ratio between Gibson's actual and the ultimate award figure for punitive damages by the trial court. [App.BR. 49]. It also ignores the potential damages as discussed supra. As stated, that alternative calculation is flawed and without authoritative support.

Ameris undertook its dealings with Gibson the same way it began its brief to this Court: "Gibson is a multimillionaire." During the transaction, that attitude flourished with reckless and cavalier behavior toward Ameris' obligations to Gibson. She was the perfect victim, and was so victimized. During this appeal, Ameris unavailingly attempts to paint this "multimillionaire" as the architect of her own misfortune.

CONCLUSION

Even now, Ameris argues to shift the blame for its own misconduct to others. Its own records establish its obligation to Gibson, as well as its internal acknowledgement and admission that it is at fault in causing her losses. Yet it looks to this Court to escape responsibility for the damage it caused.

The evidence in the record more than clearly supports the trial court's findings of fact and judgment against Ameris. In the whole of this record, large as it is, Ameris can point to nothing that establishes any honesty or good faith in its dealings with Gibson, while it overlooks the repeated, and acknowledged, incidents of calculated ignorance and greed which motivated its entirety of dealings with Gibson. The judgment of the trial court should be affirmed in its entirety.



Desa Ballard
Harvey M. Watson III
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR RESPONDENTS
LINDA GIBSON *et al.*

April 27, 2015

Appendix 01939

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No. 2014-001487

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

Respondents

v.

Ameris Bank,

Appellant.

RECEIVED
APR 27 2015
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



Harvey M. Watson III
Desa Ballard
BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
harvey@desaballard.com
desab@desaballard.com

ATTORNEYS FOR RESPONDENT

April 27, 2015

Appendix 01940



**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

Ameris Bank, Appellant.

Appellate Case No: 2014-001487

Appeal From Berkeley County
Robert E. Watson, Master-in-Equity

Opinion No. 5488
Heard February 17, 2016 – Filed May 24, 2017

REVERSED

Robert E. Stepp, Tina Marie Cundari, and Benjamin
Rogers Gooding, of Sowell Gray Stepp & Laffitte, LLC,
of Columbia, for Appellant.

Desa Ballard and Harvey M. Watson, III, of Ballard &
Watson, Attorneys at Law, of West Columbia, for
Respondents.

LOCKEMY, C.J.: A master-in-equity entered judgment in the amount of \$2,913,866.00 against Ameris Bank (Ameris) for breach of fiduciary duty, negligent misrepresentation, and aiding and abetting a breach of fiduciary duty claims asserted by Linda Gibson, individually and as trustee of the Paul William

Appendix 01942

Gibson Family Trust (the Trust), and Heritage Seven, LLC (collectively, Respondents). On appeal, Ameris argues the master erred (1) in concluding Ameris owed Respondents a fiduciary duty in a \$2.8 million commercial loan transaction for a real estate venture that ultimately failed; (2) in concluding Ameris was liable for negligent misrepresentation because one of Ameris's future employees told Gibson that the transaction was a "good deal" and that the "rents would cover the debt" and because Ameris structured the loan "to include borrowing the down payment of \$700,000" such that the apartments were purchased with "100% borrowed money"; (3) in concluding Ameris aided and abetted Gibson's real estate agent in breaching his fiduciary duty; and (4) in awarding actual damages and excessive punitive damages. We reverse.

FACTS/PROCEDURAL HISTORY

Ameris commenced this foreclosure action when Respondents failed to repay a \$2.8 million loan that Ameris made to Heritage Seven¹ for the purchase and renovation of an apartment complex in North Charleston. Respondents answered the complaint and asserted counterclaims of negligent misrepresentation, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty. The foreclosure action settled, and Galt Valley, LLC—the entity to which Ameris assigned the loan—accepted deeds to the apartment complex and collateral in lieu of foreclosure. Respondents' counterclaims remained, however, and were tried before a master.

In deciding to purchase the apartment complex, Gibson first consulted her real estate and financial advisor, Rolando Villavicencio. On August 28, 2007, Gibson signed a contract to purchase the apartment complex and sought financing from First Reliance Bank (First Reliance). Gibson previously worked with First Reliance in 2005 when First Reliance financed Heritage Seven's purchase of a \$2.4 million shopping center in Moncks Corner. Karl Zerbst was the loan officer and Benji Lanier was the analyst for the 2005 shopping center loan from First Reliance.

After seeking financing from First Reliance for the apartment complex, Villavicencio complained to Zerbst that he and Gibson were not being served at

¹ Gibson personally owned a 50% interest in Heritage Seven, and the Trust owned the remaining 50% interest. Gibson guaranteed the loan in her individual capacity and as trustee of the Trust.

First Reliance and wanted to know who could help them obtain financing. According to Gibson, Zerbst told her that she would be better served at Ameris and that he had given her loan documents to Lanier, who had left First Reliance and had begun working at Ameris on October 11, 2007. Gibson decided to seek financing from Ameris. Her understanding was that Lanier would handle the loan at Ameris and Zerbst would ultimately handle the transaction for her. However, Zerbst testified he never told Gibson or Villavicencio that he was going to work for Ameris.

Zerbst ended his employment with First Reliance on October 5, 2007. Although Zerbst spoke with other banks, including Ameris, regarding potential employment, he remained unemployed from October 5, 2007, until January 11, 2008, when he accepted a written employment offer from Ameris. Zerbst testified he did not work for Ameris and did nothing on Ameris's behalf before January 11, 2008. Marc Bogan, an executive at Ameris, testified Ameris did not encourage Zerbst to refer customers to it or authorize Zerbst to do anything on its behalf before hiring Zerbst in January 2008. Bogan stated no one at Ameris had the ability or right to control Zerbst's conduct before Zerbst formally accepted the employment offer on January 11, 2008. Further, Richard Sturm, the President of Ameris, testified Ameris never told Gibson that Zerbst was acting on Ameris's behalf prior to January 2008.

In mid-October 2007, Gibson spoke with Zerbst about the apartment complex transaction. At that time, Gibson believed Zerbst had left First Reliance but had not yet joined Ameris. Gibson testified she and Zerbst discussed "the wisdom" of her closing the apartment transaction, the appraisal, the location, and the rents she would charge. According to Gibson, Zerbst thought the apartment complex was a "good investment," and Zerbst assured her that the rents would cover the debt.

On November 2, 2007, Respondents and Ameris closed the apartment complex loan. Gibson underwent surgery soon after the loan closing. While Gibson was recuperating, Ameris disbursed funds to Villavicencio when he submitted invoices for work performed in the renovation of the apartment complex. Gibson testified that while she was unable to visit the apartment complex because of her health problems, Villavicencio assured her that "everything was fine, on schedule, on budget." On February 7, 2008, Villavicencio sent an email to Lanier, stating that the project was "moving along as planned" and that he expected the units to be completed and ready for leasing by the next month. When Gibson visited the apartments in March 2008 after recovering from her surgery, however, she

discovered Villavicencio and the contractor were not on speaking terms, Villavicencio had lied to her about the status of the project, and all three apartment buildings were being renovated at once, instead of one at a time as originally planned. In May 2008, Gibson fired Villavicencio because she believed he had mismanaged her properties and stolen several hundred thousand dollars from her while managing her shopping center and apartment complex. After firing Villavicencio, Gibson managed the apartment complex herself. Gibson also took control of the loan proceeds and arranged for Ameris to place the disbursements in her checking account without receiving invoices.

After Gibson began renting the units, several tenants lost their jobs and were unable to pay rent. Gibson allowed many of the tenants to remain in the apartments and pay a lower rate. Gibson testified the rental income from the apartment complex was insufficient to cover the interest payments on the loan, so she had to use funds from her savings account to pay the remaining interest.

The master determined the relationship between Zerbst and Gibson was more than a creditor and debtor relationship. The master found Zerbst accepted Gibson's trust, Zerbst advised Gibson about the apartment complex transaction, Zerbst was Ameris's agent when Respondents purchased the apartment complex, and Zerbst and Ameris breached their fiduciary duties to Respondents. The master also found Appellant liable for breach of fiduciary duty, negligent misrepresentation, and aiding and abetting Villavicencio's breach of fiduciary duty. The master awarded Respondents actual damages of \$1,153,625.00 and punitive damages of \$3,551,232.00, for a total damages award of \$4,704,857.00. The master found Respondents comparatively at fault for 20% of their damages and reduced the total award of actual and punitive damages by 20%. The master then applied an \$850,000.00 set-off to the reduced total award for the money received in the settlement of the case Respondents had filed against Villavicencio and others for the same injury. The final judgment was \$2,913,886.00.

STANDARD OF REVIEW

"An action in tort for damages is an action at law." *Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct. App. 2005). "Our scope of review for a case heard by a Master-in-Equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the

correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "[Q]uestions of law may be decided with no particular deference to the trial court . . ." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "In an action at law, '[this court] will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" *Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006) (quoting *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 101-02, 552 S.E.2d 778, 781 (Ct. App. 2001)).

LAW/ANALYSIS

A. Breach of Fiduciary Duty and Negligent Misrepresentation

Before the master and again before this court, Ameris maintained that Zerbst was not its agent in October 2007 and Ameris cannot, therefore, be held liable for any damages resulting from Zerbst's conduct.² We agree.

² Appellants asserted during oral argument that there were no factual issues presented to this court for our review. We disagree. We find Ameris adequately raised the issue of whether Zerbst was Ameris's agent such that it can be reviewed on appeal. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 75 (2d ed. 2002) (noting our courts have broadly construed the requirements that parties specifically state their issues on appeal where it is "reasonably clear from appellant's arguments" that the issue is in dispute); *Eubank v. Eubank*, 347 S.C. 367, 373 n.2, 555 S.E.2d 413, 416 n.2 (Ct. App. 2001) (noting wife contended husband had not sufficiently raised an issue as required by Rule 208 (b)(1)(B), SCACR, but considering the issue because a statement within the brief "when read in conjunction with [h]usband's argument, adequately raised the issue"); *Southern Welding Works, Inc. v. K & S Const. Co.*, 286 S.C. 158, 160, 332 S.E.2d 102, 104 (Ct. App. 1985) (finding a party failed to comply with the supreme court rules requiring exceptions to "contain a complete assignment of error," but considering the issues because they "are reasonably clear from K & S's argument and . . . were ruled on by the trial court").

Here, Ameris's statement of issue on appeal questions, "Did the master-in-equity err in concluding that the bank owed the borrower (a limited liability company) a fiduciary duty in a \$2.8 million dollar commercial loan transaction for a real estate venture that ultimately failed?" Additionally, Ameris argued several times in its

"Generally, agency is a question of fact." *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct. App. 2000). "In an action at law, '[this court] will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" *Query*, 371 S.C. at 410, 639 S.E.2d at 456 (quoting *Lowcountry Open Land Trust*, 347 S.C. at 101-02, 552 S.E.2d at 781). "The test to determine agency is whether or not the purported principal has the *right to control* the conduct of his alleged agent." *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982). "[A]n agency may not be established solely by the declarations and conduct of an alleged agent." *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996)).

We find no evidence to support the master's finding that Zerbst was Ameris's agent prior to January 11, 2008. Specifically, we find there was no evidence presented that Zerbst was employed by Ameris before he accepted Ameris's written offer on January 11, 2008, or that Ameris had a right to control Zerbst's conduct in October 2007. Additionally, there is no evidence in the record that Ameris ever represented to Respondents that Zerbst was its agent. *See id.* at 244-45, 473 S.E.2d at 868 ("Apparent authority to do an act is created as to a third person by written or spoken words *or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him."); *id.* at 245, 473 S.E.2d at 868 ("Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.").

In response to questioning by Respondents' attorney, Zerbst testified he kept a calendar in 2007. Zerbst explained the calendar was produced in litigation with First Reliance in which First Reliance alleged he violated his covenant not to compete by going to work for Ameris. First Reliance, Ameris, and Zerbst ultimately settled that case. Ameris could not produce that calendar after Gibson requested it in discovery.

brief and at oral argument that "Zerbst was not employed by Ameris Bank or any bank" at the time he made representations to Gibson regarding the wisdom of the transaction. While the word "agency" was not included in Ameris's statement of issues on appeal, it is reasonably clear from the brief that Ameris challenged the master's findings that Zerbst was Ameris's agent.

The master found,

The parties' filings in the litigation between First Reliance and [Zerbst] and Ameris state that Ameris was in possession of [Zerbst's] 2007 day planner, which presumably would have shown exactly when [Zerbst] and Ameris met to discuss Zerbst[']s employment. However, Ameris has failed to produce the 2007 calendar, claiming it has been lost." . . . Based on the other evidence presented, it is likely that the 2007 calendar would contain further evidence that [Zerbst] was acting as Ameris'[s] agent before he was formally employed by Ameris.

We find Zerbst's lost calendar could not have contained evidence that Zerbst was Ameris's agent. The fact that the calendar might have shown that Zerbst discussed employment with Ameris before accepting its written employment offer on January 11, 2008, is of no consequence because Zerbst admitted he discussed employment with Ameris before January 2008. More importantly, however, the calendar would not have contained any representations by Ameris that Zerbst was acting as its agent. *See id.* at 244-45, 473 S.E.2d at 868 ("Apparent authority to do an act is created as to a third person by written or spoken words *or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him.")

Accordingly, we hold Zerbst was not Ameris's agent in October 2007 and reverse the master's decision finding Ameris liable for breach of fiduciary duty and negligent misrepresentation.

B. Aiding and Abetting a Breach of Fiduciary Duty

Ameris argues the master erred in finding it aided and abetted Villavicencio in breaching his fiduciary duty to Respondents. Ameris asserts there was no evidence that it knew about, or knowingly participated in, Villavicencio's breach. We agree.

"The elements for the cause of action of aiding and abetting a breach of fiduciary duty are[] (1) a breach of a fiduciary duty owed to the plaintiff[,] (2) the

defendant's knowing participation in the breach[,] and (3) damages." *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008). "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). To prove this cause of action, the plaintiff must present evidence that the defendant had actual knowledge of the third party's breach of fiduciary duty. *See id.* (reversing the trial court's verdict in favor of the plaintiff on the plaintiff's claim for aiding and abetting a breach of fiduciary duty where there was no evidence that the defendant bank had actual knowledge of the third party's breach of fiduciary duty).

We hold the master erred in finding Ameris aided and abetted Villavicencio's breach of fiduciary duty because there was no evidence that Ameris had actual knowledge of Villavicencio's breach when it disbursed loan proceeds to him. The record on appeal contains no evidence that, while Villavicencio was involved with the apartment project from November 2007 until May 2008, Ameris's employees had actual knowledge that Villavicencio was breaching his fiduciary duty to Respondents. Zerbst testified Gibson authorized Villavicencio to receive loan disbursements. Further Zerbst stated Gibson never told him, or anyone at Ameris, not to disburse money according to Villavicencio's instructions during the construction phase

The record on appeal shows Zerbst was the first Ameris employee to express concerns about Ameris's administration of the loan disbursements. Zerbst testified he worked in Ameris's Murrell's Inlet office when Ameris first hired him in January 2008 and he was not involved with making advancements on Respondents' loan while he worked in Murrell's Inlet. Zerbst testified he did not learn about the disbursements on Respondents' loan until October 2008—five months after Gibson fired Villavicencio in May 2008. Zerbst communicated his concerns to Don Snipes, a regional credit officer at Ameris, in May 2009. On July 3, 2009—more than a year after Gibson fired Villavicencio—Snipes emailed another Ameris employee and expressed concerns that Ameris had mismanaged the loan and had potentially aided Villavicencio in siphoning off some of the loan proceeds. Because the evidence does not show that Ameris had actual knowledge of Villavicencio's breach of fiduciary duty while Villavicencio was committing his breach, we hold the master erred in finding Ameris knowingly participated in Villavicencio's breach.

C. Damages

Ameris argues the master erred in awarding actual and punitive damages and in calculating the damages award. Because we reverse the master's finding of liability as to all three causes of action, there is no basis for awarding actual or punitive damages. Accordingly, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when the disposition of a prior issue is dispositive).

CONCLUSION

For the foregoing reasons, the decision of the master is

REVERSED.

HUFF, J., concurs.

KONDUROUS, J., concurs in result only.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No. 2014-001487

RECEIVED
JUN 08 2017
SC Court of Appeals

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

Respondent,

v.

Ameris Bank

Appellant

PETITION FOR REHEARING

Linda Gibson, formerly known as Linda Ann Avinger Individually and as Trustee of the Paul William Gibson Family Trust, and Heritage Seven, LLC, (hereinafter "Respondents") respectfully petition the Court for rehearing pursuant to Rule 221(a), SCACR of Opinion No. 5488 (S.C.Ct.App. filed May 24, 2017) (Shearouse Adv. Sh. No. 21 at 34). This petition is submitted on the grounds that this Court addressed a legal argument that was not preserved by Appellant for review, as well as overlooking or misapprehending evidence within the record under the properly applicable "any evidence" standard of review for the factual findings of the trial court. For the reasons set forth below, Respondent respectfully asks this Court to grant this Petition for Rehearing and affirm the judgment in favor of Respondent against Appellant in the trial court below.

OVERLOOKED OR MISAPPREHENDED MATTERS

A petition for rehearing shall “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221, SCACR. Accordingly, Respondent respectfully submits that in reversing the decision of the Master-in-Equity, this Court overlooked or misapprehended certain material matters as follows:

I. AGENCY WAS NOT PRESERVED AS AN ISSUE FOR REVIEW.

The Law/Analysis portion of Opinion No. 5488 begins with the statement that Appellant had challenged the agency of Zerbst, which is respectfully submitted as a misapprehension of the law and record before this Court. Op. No. 5488, p. 38. As the Court then immediately declares, with legal citation in support, generally agency is a question of fact. *Id.* at p. 39 (citing *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct. App. 2000)). Yet as the footnote to that initial sentence in the opinion acknowledges, “Appellants asserted during oral argument that there were no factual issues presented to this court for our review.” The footnote also acknowledges “agency” was not mentioned or addressed by Appellant’s statement of issues on appeal, even though under Rule 208(b)(1)(B), SCACR “Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.” That rule also states that with respect to the issues on appeal, “Broad general statements may be disregarded by the appellate court.” The rules therefore directly require pointed reference to all substantive issues to be considered, neither allowing meaningless, uninformatively broad statements, nor allowing for the wholesale omission as occurred in this matter.

As to the issues articulated in this matter, Appellant instead referenced a dispute as to whether Ameris could owe a fiduciary duty to a borrower, and was similarly focused at oral argument on that issue after the written briefing in this matter. That written briefing matched the

Appendix 01952

focus of Appellant in its statement of issues and discussion at oral argument, as in the full 50 pages constituting Appellant's brief, a reference to a dispute over agency is merely referenced in two footnotes. In the 23 pages of Appellant's reply brief, agency is referenced in just a few conclusory sentences.

Far from adequately raising such an issue and preserving it pursuant to Rule 208, SCACR and associated caselaw, those minor inclusions in the briefs did not suffice to raise the issue for purposes of reversing the trial judge's factual findings. The incidental references, coupled with failure to include in the statement of issues on appeal, reinforces Appellant's abandonment of those issues as substantive, preserved grounds upon which this Court should engage in a review to justify reversal of the trial court's final order.

II. EVIDENCE WAS PRESENT WITHIN THE RECORD TO SUPPORT THE UNDERLYING DETERMINATION OF AGENCY.

Trial of Respondent's counterclaims against Ameris was held over the course of three days, during which extensive evidence was introduced, including three days' worth of trial testimony, approximately 200 exhibits, and deposition testimony of several witnesses. [R. p. 1]. The trial court eventually produced a final order that contained a significant number of findings of facts supporting his judgment. Accordingly, despite addressing an issue that was not preserved as discussed *supra*, Respondent respectfully submits that the Court overlooked evidence within the record that surpasses the deferential "any evidence" threshold upon which the Court of Appeals should have affirmed, not reversed, the proceedings under review.

In doing so, the Court overlooks extensive evidence establishing the relevant players in the inducement of the loan taken out by Gibson as sufficiently associated with Ameris to hold them accountable for the actions of their agents. To wit:

Appendix 01953

1. The Trial court correctly concluded that considerable and credible insight into the relationship between Gibson, Villavicencio, Zerbst and Lanier in terms of the fiduciary relationship between those parties could be gleaned from an earlier shopping center transaction, even though it was not directly the basis for the claims tried in this case. [R. p. 4, ¶ 1].
2. In the shopping center transaction, Zerbst and Lanier assisted and advised Gibson, with Lanier acting as credit analyst and Zerbst his superior. [R. p. 186, line 18 – p. 187, line 5].
3. They structured the transaction to involve Gibson placing a second mortgage on a home she owned to produce cash for the necessary down payment, resulting in a 100% financed transaction. [R. p. 234, lines 12-24, R. p. 802]. This matched the later apartment complex loan structuring. [R. p. 235, lines 8-23; R. p. 832].
4. Lanier left First Reliance on or about October 9-10, 2007, just a week after Zerbst's departure, and began work at Ameris on October 11, 2007. [R. p. 552, lines 3-11].
5. Shortly after Lanier began to work at Ameris on October 11, 2007 (within 5 to 10 days) he received a phone call from his former superior, Zerbst. [R. p. 494, lines 10-12; R. p. 559, lines 24 – p. 560, line 1]. Zerbst told Lanier that he was sending Gibson to him to process the loan application for the apartments through Ameris. [R. 495-496]. Lanier was aware that the loan was initially being processed at Reliance when he and Zerbst were employed there. [R. p. 552, lines 12-17]. At that point, Zerbst became an agent of Ameris, and the trial judge concluded accordingly.
6. Ameris' actions confirmed that they were allowing Zerbst to act as their agent and handle the matter, despite no formal employment until months later. That includes Zerbst not

Appendix 01954

merely sending Gibson over to Ameris, but one day later personally arranged a strange meeting between he, Lanier and Villavicencio. Lanier eventually picked up Zerbst from a grocery store and travelled together to the apartment complex. [R. pp. 495-498]. Zerbst had with him a package of documents relating to Gibson's loan dealings with Reliance, but did not deliver them until making an elaborate show of delivering the package to Villavicencio. [R. p. 497, line 21 – p. 498, line 14]. Villavicencio then in turn told Lanier that he wanted Ameris to handle this transaction. *Id.* It was solely because of Lanier's direct agency with Ameris, and Zerbst bringing the loan to Ameris, that Ameris was able to foist the loan upon Gibson.

7. Lanier never questioned the package transfer, even though he thought it seemed "staged." [R. p. 498, lines 9-14]. Instead Lanier, the Ameris employee, simply took the package and dutifully used it as a guide for the loan application and the rental cash flow analysis at Ameris, continuing to work under the directive of Zerbst despite no formal employment of Zerbst. Lanier admitted that the loan application he put together at Ameris was very similar to the one structured by Zerbst at Reliance. [R. p. 501, lines 15-17]. Lanier is indisputably Ameris' agent.
8. Ameris acted so decisively in manifest reliance upon its agent Zerbst (and its agent Lanier) that the \$2.8 million dollar loan committee application dated October 22, 2007 was approved the very next day by John Hipp, state president for Ameris. [R. p. 501, lines 1-2; 8-13].
9. Ameris therefore had employees taking instruction from Zerbst and Lanier, and was rubber-stamping multi-million dollar loan applications from Zerbst, via Lanier, ample

evidence from which it could be concluded that they had endorsed and ratified his actions to the extent necessary to establish Zerbst as its agent.

10. As noted by the trial court, Zerbst had a non-compete agreement with Reliance that prevented his immediate formal transition to Ameris after his termination from Reliance, which he sought to negotiate away in exchange for his promises not to solicit existing customers of Reliance at any other banking institution. [R. p. 811].
11. During this time of negotiations with Reliance, Zerbst's email production shows he was actively corresponding with Mr. Bogan of Ameris who was keeping the bank's attorney informed. [R. p. 814]. Zerbst used Gibson as the carrot to dangle before Ameris to hire him, and to work with him, despite pretending that the non-compete was being honored.
12. Ameris' employee Lanier testified that Zerbst maintained an office in the Ameris building on Archdale Street and made calls and checked emails during the non-compete period. [R. p. 763, lines 3-13]. Ameris actively assisted Zerbst in procuring Gibson as a borrower at Ameris.
13. Reliance ultimately ended up engaged in litigation with Zerbst and Ameris regarding alleged violation of the non-compete agreement. [R. p. 431, lines 1-7].
14. A very reasonable inference made just on the existence of that litigation alone, even without the further evidence regarding coordination by and between Zerbst and Ameris presented in this action, would be that just such solicitation (including Gibson) occurred at the direction of Zerbst in coordination with Ameris' willing and purposeful ratification and encouragement.

15. Just because Ameris never exerted directional control over Zerbst does not mean it did not have such control, even without formal employment, as Zerbst acknowledged that bringing new business in would be advantageous for someone looking for employment in the banking industry. [R. p. 430, lines 22-25]. Zerbst therefore surely would have followed the will of Ameris, with whom he was already acting in concert to the extent he was allowed by his non-compete (and likely beyond).

16. By negotiating to hire Zerbst while Zerbst (with Lanier's active assistance) actively offered up Gibson as a representative customer that Zerbst ostensibly would continue to produce to Ameris, Ameris ratified the actions of Zerbst when it foisted the loan upon Gibson.

Thus, Respondents respectfully submit that the determination that "We find no evidence to support the master's finding that Zerbst was Ameris' agent prior to January 11, 2008" was based on a misapprehension of the relevant record available for the Court's review.

III. EVIDENCE EXISTS TO ESTABLISH THAT AMERIS DID KNOWINGLY PARTICIPATE IN THE BREACH OF FIDUCIARY DUTY.

Respondent further submits that the determination that the record lacks "any evidence" of knowing participation in the breach of fiduciary duty, an element of Respondents claim for aiding and abetting a breach of fiduciary duty, was also the product of evidence being overlooked and misapplication of the law.

First, the cited authority requires "knowing participation" in the breach for an actionable claim, but Opinion No. 5488 repeated refers to the supposed absence of any "actual knowledge" on the part of Ameris employees. It is respectfully submitted that "actual knowledge" is a narrower category of "knowing" than that which could sustain a viable cause of action. Limitation to

Appendix 01957

“actual” precludes the possibility of “imputed” or “constructive” knowledge, neither of which are deemed insufficient in the cited authority listed in the opinion.

Given the reckless manner in which Ameris and its employees conducted themselves before, during and after the transaction at issue, there is ample evidence upon which the trial court appropriately used to justify imputed knowledge. Ameris should not be rewarded for the willful blinders employed, and incompetence displayed, by its employees from low level credit analyst all the way up to a president to defeat any claim on the basis of lack of knowledge.

Secondly, even if limited to “actual knowledge,” there still exists evidence within the record that is sufficient to sustain the trial court’s finding that Ameris should be found liable for aiding and abetting a breach of fiduciary duty by knowingly participating in the same. To wit:

1. Lanier, an undisputed direct agent of Ameris, visited the apartment several times during Gibson’s time away for health reasons and spoke with Gibson about those visits. [R. p. 219, lines 9-25; p. 532, line 22 – p. 533, line 5].
2. When the unsophisticated Gibson was first able to view the progress of the work, even she immediately realized that everything was completely *opposite* to what she had been told, and therefore at odds with duties owed to her by all involved. [R. p. 219, lines 20-25].
3. Ameris made advances without notice to, let alone approval by, Gibson. [R. pp. 797, 798, 799].
4. Ameris failed to inspect the project to ensure the improvements and draw requests were consistent with the project costs. [R. p. 799; R. pp. 478-491].

HW

5. Ameris never verified the contractor on the project and did not require a contract or AIA document or any other information in support of work being completed. [R. p. 799; R. p. 510, lines 1-8].
6. There are no disbursement requests in the Ameris file as required by the loan agreement. Ameris' own records reflect that it paid \$290,000 in construction draws that are not supported by invoices. [R. p. 799; R. p. 510].
7. Ameris' records do include a memorandum from May 2009 placing Lanier on probation for "lack of judgment" for his actions in relation to handling of the renovations. [R. p. 799].

CONCLUSION

WHEREFORE, for the foregoing reasons, Respondents respectfully ask this Court to grant this Petition for Rehearing and issue a substituted opinion affirming the judgment in favor of Respondents by the trial court below.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

June 7, 2017

ATTORNEYS FOR RESPONDENT

Appendix 01959

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No. 2014-001487

RECEIVED

JUN 08 2017

SC Court of Appeals

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

Respondents

v.

Ameris Bank,

Appellant.

CERTIFICATE OF SERVICE

I, Mara Ballard, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on June 8, 2017, I served a copy of the **Petition for Rehearing** in the above-captioned case on the following individual by electronic mail and by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Robert E. Stepp, Esquire
rstepp@sowellgray.com

Tina M. Cundari, Esquire
tcundari@sowellgray.com

Benjamin R. Gooding, Esquire
bgooding@sowellgray.com

all at

Appendix 01960

Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211


Mara Ballard, CFE, CMA, FA

June 8, 2017
West Columbia, South Carolina

Appendix 01961

The South Carolina Court of Appeals

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

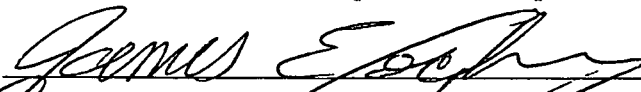
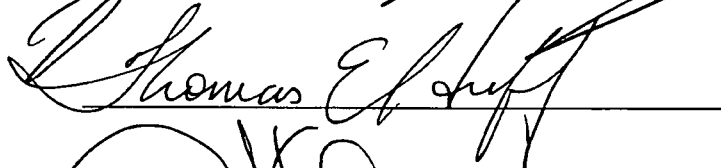

v.

Ameris Bank, Appellant.

Appellate Case No. 2014-001487

ORDER

Respondents filed a petition for rehearing and Appellant filed a return in opposition. After careful consideration, we deny the petition for rehearing, withdraw the former opinion, and substitute the attached opinion in its place.


_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

FILED

cc:

Robert E. Stepp, Esquire
Desa Ballard, Esquire
Tina Marie Cundari, Esquire
Harvey M. Watson, III, Esquire

August 23, 2017

Appendix 01962

Benjamin Rogers Gooding, Esquire
The Honorable Robert E. Watson

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

Ameris Bank, Appellant.

Appellate Case No. 2014-001487

Appeal From Berkeley County
Robert E. Watson, Master in Equity

Opinion No. 5488
Heard February 17, 2016 – Filed May 24, 2017
Withdrawn, Substituted, and Refiled August 23, 2017

REVERSED

Robert E. Stepp, Tina Marie Cundari, and Benjamin
Rogers Gooding, of Sowell Gray Stepp & Laffitte, LLC,
of Columbia, for Appellant.

Desa Ballard and Harvey M. Watson, III, of Ballard &
Watson, Attorneys at Law, of West Columbia, for
Respondents.

LOCKEMY, C.J.: A master-in-equity entered judgment in the amount of \$2,913,866.00 against Ameris Bank (Ameris) for breach of fiduciary duty, negligent misrepresentation, and aiding and abetting a breach of fiduciary duty claims asserted by Linda Gibson, individually and as trustee of the Paul William Gibson Family Trust (the Trust), and Heritage Seven, LLC (collectively, Respondents). On appeal, Ameris argues the master erred (1) in concluding Ameris owed Respondents a fiduciary duty in a \$2.8 million commercial loan transaction for a real estate venture that ultimately failed; (2) in concluding Ameris was liable for negligent misrepresentation because one of Ameris's future employees told Gibson that the transaction was a "good deal" and that the "rents would cover the debt" and because Ameris structured the loan "to include borrowing the down payment of \$700,000" such that the apartments were purchased with "100% borrowed money"; (3) in concluding Ameris aided and abetted Gibson's real estate agent in breaching his fiduciary duty; and (4) in awarding actual damages and excessive punitive damages. We reverse.

FACTS/PROCEDURAL HISTORY

Ameris commenced this foreclosure action when Respondents failed to repay a \$2.8 million loan that Ameris made to Heritage Seven¹ for the purchase and renovation of an apartment complex in North Charleston. Respondents answered the complaint and asserted counterclaims of negligent misrepresentation, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty. The foreclosure action settled, and Galt Valley, LLC—the entity to which Ameris assigned the loan—accepted deeds to the apartment complex and collateral in lieu of foreclosure. Respondents' counterclaims remained, however, and were tried before a master.

In deciding to purchase the apartment complex, Gibson first consulted her real estate and financial advisor, Rolando Villavicencio. On August 28, 2007, Gibson signed a contract to purchase the apartment complex and sought financing from First Reliance Bank (First Reliance). Gibson previously worked with First Reliance in 2005 when First Reliance financed Heritage Seven's purchase of a \$2.4

¹ Gibson personally owned a 50% interest in Heritage Seven, and the Trust owned the remaining 50% interest. Gibson guaranteed the loan in her individual capacity and as trustee of the Trust.

million shopping center in Moncks Corner. Karl Zerbst was the loan officer and Benji Lanier was the analyst for the 2005 shopping center loan from First Reliance.

After seeking financing from First Reliance for the apartment complex, Villavicencio complained to Zerbst that he and Gibson were not being served at First Reliance and wanted to know who could help them obtain financing. According to Gibson, Zerbst told her that she would be better served at Ameris and that he had given her loan documents to Lanier, who had left First Reliance and had begun working at Ameris on October 11, 2007. Gibson decided to seek financing from Ameris. Her understanding was that Lanier would handle the loan at Ameris and Zerbst would ultimately handle the transaction for her. However, Zerbst testified he never told Gibson or Villavicencio that he was going to work for Ameris.

Zerbst ended his employment with First Reliance on October 5, 2007. Although Zerbst spoke with other banks, including Ameris, regarding potential employment, he remained unemployed from October 5, 2007, until January 11, 2008, when he accepted a written employment offer from Ameris. Zerbst testified he did not work for Ameris and did nothing on Ameris's behalf before January 11, 2008. Marc Bogan, an executive at Ameris, testified Ameris did not encourage Zerbst to refer customers to it or authorize Zerbst to do anything on its behalf before hiring Zerbst in January 2008. Bogan stated no one at Ameris had the ability or right to control Zerbst's conduct before Zerbst formally accepted the employment offer on January 11, 2008. Further, Richard Sturm, the President of Ameris, testified Ameris never told Gibson that Zerbst was acting on Ameris's behalf prior to January 2008.

In mid-October 2007, Gibson spoke with Zerbst about the apartment complex transaction. At that time, Gibson believed Zerbst had left First Reliance but had not yet joined Ameris. Gibson testified she and Zerbst discussed "the wisdom" of her closing the apartment transaction, the appraisal, the location, and the rents she would charge. According to Gibson, Zerbst thought the apartment complex was a "good investment," and Zerbst assured her that the rents would cover the debt.

On November 2, 2007, Respondents and Ameris closed the apartment complex loan. Gibson underwent surgery soon after the loan closing. While Gibson was

recuperating, Ameris disbursed funds to Villavicencio when he submitted invoices for work performed in the renovation of the apartment complex. Gibson testified that while she was unable to visit the apartment complex because of her health problems, Villavicencio assured her that "everything was fine, on schedule, on budget." On February 7, 2008, Villavicencio sent an email to Lanier, stating that the project was "moving along as planned" and that he expected the units to be completed and ready for leasing by the next month. When Gibson visited the apartments in March 2008 after recovering from her surgery, however, she discovered Villavicencio and the contractor were not on speaking terms, Villavicencio had lied to her about the status of the project, and all three apartment buildings were being renovated at once, instead of one at a time as originally planned. In May 2008, Gibson fired Villavicencio because she believed he had mismanaged her properties and stolen several hundred thousand dollars from her while managing her shopping center and apartment complex. After firing Villavicencio, Gibson managed the apartment complex herself. Gibson also took control of the loan proceeds and arranged for Ameris to place the disbursements in her checking account without receiving invoices.

After Gibson began renting the units, several tenants lost their jobs and were unable to pay rent. Gibson allowed many of the tenants to remain in the apartments and pay a lower rate. Gibson testified the rental income from the apartment complex was insufficient to cover the interest payments on the loan, so she had to use funds from her savings account to pay the remaining interest.

The master determined the relationship between Zerbst and Gibson was more than a creditor and debtor relationship. The master found Zerbst accepted Gibson's trust, Zerbst advised Gibson about the apartment complex transaction, Zerbst was Ameris's agent when Respondents purchased the apartment complex, and Zerbst and Ameris breached their fiduciary duties to Respondents. The master also found Appellant liable for breach of fiduciary duty, negligent misrepresentation, and aiding and abetting Villavicencio's breach of fiduciary duty. The master awarded Respondents actual damages of \$1,153,625.00 and punitive damages of \$3,551,232.00, for a total damages award of \$4,704,857.00. The master found Respondents comparatively at fault for 20% of their damages and reduced the total award of actual and punitive damages by 20%. The master then applied an \$850,000.00 set-off to the reduced total award for the money received in the

settlement of the case Respondents had filed against Villavicencio and others for the same injury. The final judgment was \$2,913,886.00.

STANDARD OF REVIEW

"An action in tort for damages is an action at law." *Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct. App. 2005). "Our scope of review for a case heard by a Master-in-Equity who enters a final judgment is the same as that for review of a case heard by a circuit court without a jury." *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "[Q]uestions of law may be decided with no particular deference to the trial court . . ." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "In an action at law, '[this court] will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" *Query v. Burgess*, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006) (quoting *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 101-02, 552 S.E.2d 778, 781 (Ct. App. 2001)).

LAW/ANALYSIS

A. Breach of Fiduciary Duty and Negligent Misrepresentation

Before the master and again before this court, Ameris maintained that Zerbst was not its agent in October 2007 and Ameris cannot, therefore, be held liable for any damages resulting from Zerbst's conduct.² We agree.

² Respondents asserted during oral argument that there were no factual issues presented to this court for our review. We disagree. We find Ameris adequately raised the issue of whether Zerbst was Ameris's agent such that it can be reviewed on appeal. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 75 (2d ed. 2002) (noting our courts have broadly construed the requirements that parties specifically state their issues on appeal where it is "reasonably clear from appellant's arguments" that the issue is in dispute); *Eubank v. Eubank*, 347 S.C. 367, 373 n.2, 555 S.E.2d

"Generally, agency is a question of fact." *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct. App. 2000). "In an action at law, '[this court] will affirm the master's factual findings if there is any evidence in the record which reasonably supports them.'" *Query*, 371 S.C. at 410, 639 S.E.2d at 456 (quoting *Lowcountry Open Land Trust*, 347 S.C. at 101-02, 552 S.E.2d at 781). "The test to determine agency is whether or not the purported principal has the *right to control* the conduct of his alleged agent." *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982). "[A]n agency may not be established solely by the declarations and conduct of an alleged agent." *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996)).

We find no evidence to support the master's finding that Zerbst was Ameris's agent prior to January 11, 2008. Specifically, we find there was no evidence presented that Zerbst was employed by Ameris before he accepted Ameris's written offer on January 11, 2008, or that Ameris had a right to control Zerbst's conduct in October

413, 416 n.2 (Ct. App. 2001) (noting wife contended husband had not sufficiently raised an issue as required by Rule 208 (b)(1)(B), SCACR, but considering the issue because a statement within the brief "when read in conjunction with [h]usband's argument, adequately raised the issue"); *Southern Welding Works, Inc. v. K & S Const. Co.*, 286 S.C. 158, 160, 332 S.E.2d 102, 104 (Ct. App. 1985) (finding a party failed to comply with the supreme court rules requiring exceptions to "contain a complete assignment of error," but considering the issues because they "are reasonably clear from K & S's argument and . . . were ruled on by the trial court").

Here, Ameris's statement of issue on appeal questions, "Did the master-in-equity err in concluding that the bank owed the borrower (a limited liability company) a fiduciary duty in a \$2.8 million dollar commercial loan transaction for a real estate venture that ultimately failed?" Additionally, Ameris argued several times in its brief and at oral argument that "Zerbst was not employed by Ameris Bank or any bank" at the time he made representations to Gibson regarding the wisdom of the transaction. While the word "agency" was not included in Ameris's statement of issues on appeal, it is reasonably clear from the brief that Ameris challenged the master's findings that Zerbst was Ameris's agent.

2007. Additionally, there is no evidence in the record that Ameris ever represented to Respondents that Zerbst was its agent. *See id.* at 244-45, 473 S.E.2d at 868 ("Apparent authority to do an act is created as to a third person by written or spoken words *or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him."); *id.* at 245, 473 S.E.2d at 868 ("Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.").

In response to questioning by Respondents' attorney, Zerbst testified he kept a calendar in 2007. Zerbst explained the calendar was produced in litigation with First Reliance in which First Reliance alleged he violated his covenant not to compete by going to work for Ameris. First Reliance, Ameris, and Zerbst ultimately settled that case. Ameris could not produce that calendar after Gibson requested it in discovery.

The master found,

The parties' filings in the litigation between First Reliance and [Zerbst] and Ameris state that Ameris was in possession of [Zerbst's] 2007 day planner, which presumably would have shown exactly when [Zerbst] and Ameris met to discuss Zerbst['s] employment. However, Ameris has failed to produce the 2007 calendar, claiming it has been lost." . . . Based on the other evidence presented, it is likely that the 2007 calendar would contain further evidence that [Zerbst] was acting as Ameris'[s] agent before he was formally employed by Ameris.

We find Zerbst's lost calendar could not have contained evidence that Zerbst was Ameris's agent. The fact that the calendar might have shown that Zerbst discussed employment with Ameris before accepting its written employment offer on January 11, 2008, is of no consequence because Zerbst admitted he discussed employment with Ameris before January 2008. More importantly, however, the calendar would not have contained any representations by Ameris that Zerbst was

acting as its agent. *See id.* at 244-45, 473 S.E.2d at 868 ("Apparent authority to do an act is created as to a third person by written or spoken words *or any other conduct of the principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him.")

Accordingly, we hold Zerbst was not Ameris's agent in October 2007 and reverse the master's decision finding Ameris liable for breach of fiduciary duty and negligent misrepresentation.

B. Aiding and Abetting a Breach of Fiduciary Duty

Ameris argues the master erred in finding it aided and abetted Villavicencio in breaching his fiduciary duty to Respondents. Ameris asserts there was no evidence that it knew about, or knowingly participated in, Villavicencio's breach. We agree.

"The elements for the cause of action of aiding and abetting a breach of fiduciary duty are[] (1) a breach of a fiduciary duty owed to the plaintiff[,] (2) the defendant's knowing participation in the breach[,] and (3) damages." *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008).

"The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). To prove this cause of action, the plaintiff must present evidence that the defendant had actual knowledge of the third party's breach of fiduciary duty. *See id.* (reversing the trial court's verdict in favor of the plaintiff on the plaintiff's claim for aiding and abetting a breach of fiduciary duty where there was no evidence that the defendant bank had actual knowledge of the third party's breach of fiduciary duty).

We hold the master erred in finding Ameris aided and abetted Villavicencio's breach of fiduciary duty because there was no evidence that Ameris had actual knowledge of Villavicencio's breach when it disbursed loan proceeds to him. The record on appeal contains no evidence that, while Villavicencio was involved with the apartment project from November 2007 until May 2008, Ameris's employees had actual knowledge that Villavicencio was breaching his fiduciary duty to Respondents. Zerbst testified Gibson authorized Villavicencio to receive loan disbursements. Further Zerbst stated Gibson never told him, or anyone at Ameris,

not to disburse money according to Villavicencio's instructions during the construction phase

The record on appeal shows Zerbst was the first Ameris employee to express concerns about Ameris's administration of the loan disbursements. Zerbst testified he worked in Ameris's Murrell's Inlet office when Ameris first hired him in January 2008 and he was not involved with making advancements on Respondents' loan while he worked in Murrell's Inlet. Zerbst testified he did not learn about the disbursements on Respondents' loan until October 2008—five months after Gibson fired Villavicencio in May 2008. Zerbst communicated his concerns to Don Snipes, a regional credit officer at Ameris, in May 2009. On July 3, 2009—more than a year after Gibson fired Villavicencio—Snipes emailed another Ameris employee and expressed concerns that Ameris had mismanaged the loan and had potentially aided Villavicencio in siphoning off some of the loan proceeds. Because the evidence does not show that Ameris had actual knowledge of Villavicencio's breach of fiduciary duty while Villavicencio was committing his breach, we hold the master erred in finding Ameris knowingly participated in Villavicencio's breach.

C. Damages

Ameris argues the master erred in awarding actual and punitive damages and in calculating the damages award. Because we reverse the master's finding of liability as to all three causes of action, there is no basis for awarding actual or punitive damages. Accordingly, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when the disposition of a prior issue is dispositive).

CONCLUSION

For the foregoing reasons, the decision of the master is

REVERSED.

HUFF, J., concurs.

KONDUROS, J., concurs in result only.