

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

RECEIVED

The Honorable Freank R. Addy, Circuit Court Judge

DEC 28 2022

SC Court of Appeals

Appellate Case No. 2021-001400
Case No. 2012-CP-24-00576

IOS, LLC, ...Appellant-Respondent,

v.

Lander University, ...Respondent-Appellant.

**AMENDED RECORD ON APPEAL
VOLUME I**

James E. Smith, Jr.
Nelson Mullins Riley & Scarborough LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Lena Y. Meredith
Nicholson, Meredith & Anderson, LLC
P.O. Box 457
Greenwood, SC 29468
(864) 229-7241

*Attorneys for Appellant-Respondent
IOS, LLC*

*Attorneys for Respondent-Appellant
Lander University*

**AMENDED RECORD ON APPEAL
INDEX**

VOLUME I

ORDERS

Form 4 Order dated March 7, 2019	1
Order dated November 2, 2021	3
Form 4 Order dated December 2, 2021	22

PLEADINGS

Complaint filed	25
Answer filed August 12, 2016	34

TRANSCRIPTS

Transcript of Summary Judgment Hearing before Judge Frank R. Addy, November 17, 2017	40

MOTIONS AND MEMORANDA

Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment and exhibits, dated September 9, 2014	91
Exhibit A – Governmental Real Estate Lease Standard Office	105
Exhibit B-1, Mortgage of Real Estate recorded Mortgage Book 1453 at Page 87	115
Exhibit B-2, Assignment of Leases and Rents in Mortgage Book 1453 at Page 97	125
Exhibit B-3, Certified copies of Title to Real Estate in Deed Book 895 at Page 90	132
Exhibit B-4, Quitclaim Deed recorded in Deed Book 999 at Page 294	134
Exhibit B-5, Loan Modification Agreement	136
Exhibit B-6, Certified copy of Summons Case No. 2011-CP-24-818	142
Exhibit B-7, Certified copies of legal advertisement of Special Referee's Notice of Sale	143
Exhibit B-8, Special Referee's deed recorded in Deed Book 1315 at Page 16	146
Exhibit B-9, Order for Deficiency Judgment dated April 20, 2012	151
Exhibit B-10, Supplemental Order dated September 6, 2012	152
Exhibit C, Affidavit of Ms. Newton with exhibit	165
Exhibit D, Journal Index	168
 IOS, LLC's Brief in Opposition to Lander's Motion for Summary Judgment, with exhibits, filed November 21, 2017 and corresponding email from counsel regarding abandonment of two causes of action	178
Exhibit 1 – Deposition of John Huffman dtd September 3, 2015	200

Exhibit 2 – Excerpts from Deposition of Louis Smith	220
Exhibit 3 – July 11, 2011 Letter from Huffman to Douglas Bell	225
Exhibit 4 – Governmental Real Estate Lease -Standard Office.....	230
Exhibit 5 – September 2009 email between Newton and Huffman re. Escrow agreement and purchase.....	241
Exhibit 6 – November 2009 email between Newton and Huffman re Inn on the Square	243
Exhibit 7 – December 2009 email between Huffman and Lucas re. Inn.....	246
Exhibit 8 – January 2010 email between Huffman and Covar re. Inn on the Square	249
Exhibit 9 – January 2010 email between Bell and Jordan re. IOS	252
Exhibit 10 – March 2010 emails between Cover, Calalanotto, Bouknight, Taylor and Teal re. Inn on the Square Lease Option Letter.....	254
Exhibit 11 – April 2010 email between Covar, Huffman, Smith, Bell, Bali and Bouknight re. Inn on the Square	256
Exhibit 12 – February 24, 2011 Douglas Bell letter to Leonard Jordan re. IOS Lease with Lander University	258
Exhibit 13 – March 7, 2011 Leonard Jordan letter to Douglas Bell re. Lander University and IOS 104 East Court Ave, Greenwood, SC.....	260
Exhibit 14 – June 2011 email between Huffman, Bell, Jordan Carter and Lucan re: Inn	263
Exhibit 15 – Damage Photos.....	266

Lander University’s Reply Brief in Support of Summary Judgment, with exhibits filed September 18, 2018	298
Exhibit 1 - Email from Diane Newton to Lisa Catalanotto and Gary Glenn, 7/31/2009	325
Exhibit 2 - Emails between John Huffman, Diane Newton. and Tom Covar.....	329
Exhibit 3-	336
(a.) Articles of Organization and Operating Agreement of Palmetto Inns, LLC, 12/23/2002.....	337
(b.) Business Carolina. Inc. Loan Agreement dated 12/31/2002	341
(c.) Business Carolina Promissory Note dated 12/31/2002	364
(d.) Business Carolina Mortgage of Real Estate dated 12/31/2002	370
(e.) Business Carolina, Inc. Unconditional Guaranty dated 12/31/2002	381
(f.) Assignment of Leases and Rents dated 12/31/2002	388
(g.) UCC-3 dated 2/13/2003 and continuation filed 2/12/2008	396
Exhibit 4 - S.C. Secretary of State search result re: Emerald Inn, LLC	399
Exhibit 5 - Allegient/Telerent Financing documents and UCC's	401
Exhibit 6 - Greenwood Cty Eighth Judicial Circuit Public Index re. Palmetto Inns	413
Exhibit 7 - Excerpts from the Deposition of Louis Smith. pages 19-21.....	415
Exhibit 8 - Excerpts from the Deposition of John Huffman. page 282	419
Exhibit 9	422
(a.) IOS, LLC Operating Agreement. Unsigned.....	422

(b.)IOS, LLC Operating Agreement, Amended, signed 3/29/2005, ...	452
(c) IOS, LLC First addendum to Operating Agreement of IOS. LLC, 2006, unsigned	486
Exhibit 10 - Stipulation of Dismissal. Business Carolina, Inc. v. Palmetto Inn ...	490

VOLUME II

Exhibit 11 - Forbearance Agreement, Loan Modification.....	492
Exhibit 12 - Deposition of John Huffman. page 316	516
Exhibit 13 - Greenwood County Public Index and Greenwood Cty Legacy	518
Exhibit 14 - Allegiant/Telerent Complaint	523
Exhibit 15 - Allegiant/Telerent Check, Itemization.....	543
Exhibit 16 - Huffman Deposition, Day 2, page 17	548
Exhibit 17 - Handwritten Invoice, Federal Asset Report and Federal Tax Liens 2010/2011	550
Exhibit 18 - Greenwood County, Eight Circuit Public Index. IOS. LLC	557
Exhibit 19 - Mortgage from IOS, LLC to Misty Huffman, Book 1883, Page 269	561
Exhibit 20 - Mortgage Record, IOS, LLC, Clerk of Court for Greenwood Cty	566
Exhibit 21 - UCC's to Uptown Development Corp. and Upper Savannah Council	594
Exhibit 22 - New Mortgage from IOS, LLC to Lonestar Ventures, LLC (Misty Huffman's LLC).....	597
Exhibit 23 - Confessions of Judgment from IOS, LLC executed by Louis Smith for \$632,419.82 and \$277,154.22, 2014-CP-24-1429 and 2014-CP-24-1430	604
Exhibit 24 - Business Carolina Loan Transcript	610
Exhibit 25 - IOS, LLC Greenwood County Eighth Judicial Circuit Public Index	615
Exhibit 26 - August and November 2007 Letters from Todd Lucas to John Huffman.....	617
Exhibit 27 - Banc Capital contract.....	620
Exhibit 28 - Business Carolina Credit Notes	629
Exhibit 29 - August 31, 2009 Forbearance Agreement, Subordination/Non-Disturbance and Escrow Agreement.....	631
Exhibit 30 - Order of Foreclosure and Deficiency Judgment for \$425,218.84	652
Exhibit 31 - Bill of Sale for Personal Property 104 East Court. L.L.P. and Tax Asset Detail Sheets from 2008-2010, showing depreciation.....	675
 IOS, LLC's Motion to Reconsider dated November 12, 2021	681

EXHIBITS AND OTHER MATERIALS OR DOCUMENTS

Original Executed Lease	686
Deposition of Louis Smith dated March 14, 2016	697

Deposition of John Huffman:.....	727
Huffman dated September 3, 2015	727
Huffman dated September 25, 2015	821
Huffman dated October 9, 2015.....	865
Certificate of Counsel	

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-24-576

IOS, LLC,

LANDER UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This matter comes before the Court on Defendant's motion for summary judgment. Having reviewed Defendant's motion, Plaintiff's memorandum in opposition, Defendant's reply memorandum, and considered the applicable law, the Court finds as follows:

As to all causes of action related to breach of contract, breach of oral promise to purchase, promissory estoppel, negligent misrepresentation, and negligence, the Court grants summary judgment to Defendant. Based upon the specific, undisputed facts, none of these theories offer a viable theory of recovery for Plaintiff. Essentially, Defendant's lease of the Inn offered a lifeline which delayed the ultimate foreclosure. Although Plaintiff and Defendant may have entertained the possibility of Defendant purchasing the property, at no time did Defendant enter into any valid or legally enforceable contract of sale. Additionally, any alleged oral side agreement is simply unenforceable as a matter of law. Finally, one may not recover in tort where the underlying basis for the action is breach of contract.

However, the Court does find that Plaintiff's cause of action for property damage under the lease survives Defendant's motion for summary judgment. Defendant maintains that Plaintiff's assignment of any lease proceeds to Plaintiff's lender negated the possibility of Plaintiff recovering from Defendant for any alleged damages to the property. The Court notes that the bank's foreclosure on the property resulted in a deficiency judgement against Plaintiff,



ROA_0001

and this foreclosure took place after Defendant vacated the property. Accordingly, an issue of fact exists as to whether Plaintiff may recover for any alleged damage to the Inn after Lander vacated the property and prior to the lender's foreclosure of any interest which Plaintiff may have had in the property. Defendant may renew its assignment argument, however, at the directed verdict stage.

Defense counsel is requested to prepare a more formal, detailed order within the sixty (60) days, and the parties shall consult with each other and the Chief Administrative Judge for Common Pleas concerning a scheduling order.

IT IS SO ORDERED.

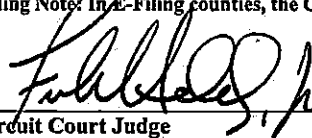
ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


 Circuit Court Judge

2159
 Judge Code

3/7/19
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

James E. Smith, Esq., Christopher James Moore, Esq.

Lena Meredith, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	CIVIL ACTION NO. 2012-CP-24-576
	)	
IOS, LLC,	)	
	)	
Plaintiff,	)	ORDER GRANTING PARTIAL
	)	SUMMARY JUDGMENT
vs.	)	
	)	
Lander University,	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court upon the Motion of the Defendant, Lander University, formerly represented by Douglas Lamar Bell, of the Greenwood County firm, McDonald Patrick. During the pendency of this action, Lena Y. Meredith of Nicholson, Meredith and Anderson, LLC was substituted for Mr. Bell as counsel for the University. James Emerson Smith, Jr. of Columbia, South Carolina represents the Plaintiff, IOS, LLC. During Attorney Smith's bid for governor, he was assisted by co-counsel, Christopher James Moore, who has since been relieved in this matter.

As a matter of housekeeping, Lander College, an entity previously listed as a separate Co-Defendant, was the Defendant's name before it was formally changed to Lander University by action of the Board of Trustees on June 9, 1992. As Lander College was subsumed by Lander University prior any cause of action arose in this matter, it is not proper party to this action. The caption is therefore amended to IOS, LLC v. Lander University.

At a prior hearing before me, the parties consented to the dismissal of the Lander Foundation as a party to this action and to the dismissal of any causes of action predicated upon an alleged breach of an oral contract to purchase the Inn including breach of contract to purchase, and specific performance. This Order will address the remaining causes of action, including

promissory estoppel, negligent misrepresentation, negligence and breach of the lease agreement. It will also address Defendant's argument that Plaintiff lacks standing to pursue contract damages by virtue of an assignment of all leases and rents to the purchase money lender, Business Carolina, whose deficiency judgment was filed following a foreclosure of the property and remains unsatisfied, which Defendant argues bars the Plaintiff from recovery.

FACTUAL BACKGROUND

The Defendant has provided exhibits in its supplemental memorandum which set out the following facts regarding the ownership history of the property and the associated debt which led up to Plaintiff's offer to lease the property to Lander. It illuminates the lack of evidence which is fatal to nearly all of Plaintiff's claims.

The Inn on the Square was initially purchased on December 31, 2002, by Palmetto Inns from Business Carolina, following the foreclosure of a previous owner. According to loan documents obtained, S. Craig White, the sole member of Palmetto Inns, personally guaranteed the \$1,000,000.00 purchase money Note and Mortgage. Exhibit D of said Loan Agreement contains a "Certificate and Affidavit of Ownership of Palmetto Inns", executed by S. Craig White, as well as an Unconditional Guaranty and UCC-1, filed 2/13/2003, and UCC-3 continuation filed 2/12/2008.

As a crucial part of this transaction, Business Carolina obtained from Palmetto Inns an Assignment of Leases and Rents which granted to the commercial lender an absolute assignment of leases and rents which was recorded on February 13, 2003, at Book 1453, Page 97, OCC for Greenwood. The UCC-1 filing further secured an interest in all furniture, fixtures and equipment as well as any tangible personal property, renewals or replacements thereof, including but not limited to, ranges, refrigerators, HVAC systems, telephones, televisions, and computers.

Public record reflects that following Palmetto Inns' purchase of the hotel in 2002, Palmetto Inns went into default, and in October 2004, less than two years after the purchase, Business Carolina filed foreclosure pleadings.

Louis Smith, a member of IOS, LLC, testified that his employer, John Huffman, became interested in the distressed hotel after visiting Greenwood and staying there as a guest. Huffman partnered with Smith to negotiate a purchase of the Note (Ex. 7 to Defendant's Supplemental Memorandum, Depo. of Smith, p. 19, 20). Huffman testified that he had been involved with similar distressed properties, as a "turnaround artist" (Ex. 8, Defendant's Supplemental Memorandum Depo. of John Huffman, p. 282). Smith testified that an agreement was struck with Palmetto Inns guarantor, Craig White, that would allow White to "come back in at a certain percentage" if they were unable to refinance the existing indebtedness and remove his guarantee. *Id.*

Per Smith, he and Huffman were not able to borrow the funds necessary to purchase the Note (Ex. 7, Defendant's Supplemental Memorandum). Instead, they purchased the property subject to the existing Note and Mortgage, which required Craig White to remain pledged as personal guarantor. *Id.* Smith and Huffman's wife, Misty, formed IOS, LLC, which took title to the property in 2005 (Ex. 9 a-c., Defendant's Supplemental Memorandum, IOS, Corporate Documents.) According to the Operating Agreement, each member made an initial \$1.00 capital contribution and Louis Smith was named manager. *Id.* A subsequent amendment appointed John Huffman as manager, replacing Louis Smith (Ex. 9b., Defendant's Supplemental Memorandum, IOS, LLC Amended Operating Agreement). A second addendum in 2006, (a signed copy of which has not been provided to the Defendant) designated White's separate LLC, Chesterfield Express, as the owner of 75% of IOS, by virtue of a "purchase of ownership interest." (Ex. 9c. Defendant's Supplemental Memorandum, IOS, LLC First Addendum to Amended Operating Agreement).

At the time IOS, LLC purchased the property in 2005, Business Carolina agreed to a dismissal without prejudice of the 2004 Foreclosure (Ex. 10, Defendant's Supplemental Memorandum, Dismissal of Business Carolina Foreclosure of Palmetto Inns, without Prejudice). Business Carolina further entered into a Forbearance and Loan Modification with Palmetto Inns and White, which acknowledged IOS, LLC as the current titleholder of the property. The agreement allowed interest only payments for a certain period and extended the maturity date of the Note to March 29, 2011 (Ex. 11, Defendant's Supplemental Memorandum, Forbearance executed between Palmetto Inns and Business Carolina, Inc. on 3/29/2005 and Loan Modification Agreement, recorded at Book 1833, Page 136 in the Office of the Clerk of Court for Greenwood County). **An Addendum to the Forbearance Agreement, executed by Smith on behalf of IOS, LLC, affirmed the debt and stipulated that while IOS, LLC had not assumed the Note, it took title subject to Business Carolina, Inc.'s security interests. *Id.* In these documents, IOS, LLC acknowledged it had no right of recoupment or set off of any kind with respect to the indebtedness, loan or loan documents, and further waived appraisal, stay, valuation, extension or redemption. *Id.***

Based upon the testimony of both Louis Smith and John Huffman, there was controversy with White immediately after Plaintiff purchased the property. Huffman claims when he initially met him, White threatened to kill him, and Huffman reciprocated (Ex.12, Defendant's Supplemental Memorandum, p. 316, Depo. of Huffman). Neither Smith nor Huffman elaborated as to the exact reason for the dispute, only that it was fair to say the two never got along. *Id.*

During their due diligence and the pendency of this action, Defendant Lander argues it discovered multiple additional liens and lawsuits filed against Emerald Inns, of which it wasn't previously aware, including a Complaint for Claim and Delivery filed by Allegiant/Telerent

against White and his company, Emerald Inn, which he had used to finance upgraded furnishings for the hotel shortly before Palmetto Inns' transfer to IOS, LLC (Ex. 13, Defendant's Supplemental Memorandum, Greenwood County Public Index). The suit sought a money judgment against White and Emerald Inn, as well as the return of the hotel's furniture and fixtures for non-payment (Ex. 14, Defendant's Supplemental Memorandum, Telerent Complaint). Although Huffman indicated the property was purchased in the name of IOS, LLC so he could "walk in debt free" without assuming Palmetto Inns' liabilities (which he estimated totaled at least \$200,000.00 over the mortgage debt), Huffman agreed to the payment of \$5,000.00 for a release and possession of the furniture and personal property sought by Allegiant's Claim and Delivery (Ex. 15, Defendant's Supplemental Memorandum, Telerent handwritten agreement, check and itemization and Ex. 16, Huffman, Day 2, p. 17, l. 21-24). Lander argues that Huffman subsequently sold most of these furnishings to Defendant Lander when the lease commenced (Ex. 17., Defendant's Supplemental Memorandum, Handwritten Bill of Sale from IOS, LLC to Diane Newton on behalf of Lander University and Exhibit to Plaintiff's federal tax return indicating mass sale of assets on 12/31/2009).

A review of the Greenwood County Public Index reflects additional claims filed against Palmetto Inns and IOS, LLC, during the first year Huffman was in operation (Ex. 18, Defendant's Supplemental Memorandum, Greenwood County Public Index, IOS, LLC the Inn on the Square).

Around this time frame, a junior mortgage from IOS, LLC to Misty Huffman, individually, in the amount of \$200,000.00 was filed with the Greenwood County Clerk of Court (Ex. 19, Defendant's Supplemental Memorandum, 7/18/05 IOS, LLC mortgage to Misty Huffman, Book 1883, Page 269, OCC Greenwood County). According to the Plaintiff, this Mortgage represents a loan to reimburse Mr. and Mrs. Huffman expenses they claim were put on personal credit cards or

lines of credit but paid on behalf of IOS, LLC. Defendant claims no matching documentation to substantiate the debt has been produced by the Plaintiff. Defendant Lander has argued that this served to secure future profit via a second mortgage position to the exclusion of any other unsecured creditors which threatened to attach as a judgment in the interim.

Over the next two years, the following mortgages were additionally recorded against the property: Bridge Financial, LLC for \$115,475.00 (recorded 9/12/06), Cornerstone Capital Funding for \$230,000.00 (recorded 1/8/07), Upper Savannah Council of Governments for \$250,000.00 (recorded 1/25/07), Uptown Development Corporation for \$50,000.00 (recorded 1/25/07) and Upper Savannah Council of Governments for \$50,000.00 (recorded 1/9/09) (Ex. 20 Mortgage and Lien record, and mortgages filed in the OCC Greenwood County). An additional Assignment of Leases and Rents was recorded on behalf of Upper Savannah Council of Governments. UCC's securing the furniture, fixtures and equipment were also filed on behalf of both Uptown Greenwood Development Corporation and Upper Savannah Council of Governments (Ex. 21, Defendant's Supplemental Memorandum, Uptown Greenwood Development Corporation and Upper Savannah Council of Governments UCC's).

Lonestar Ventures, LLC (an entity solely owned by Misty Huffman) also recorded a subsequent additional mortgage in the amount of \$200,000.00 on 4/2/07 (Ex. 22, Defendant's Supplemental Memorandum, Mortgage from IOS, LLC to Lonestar Ventures, LLC, Bk. 2158, p. 228, Subordinated to Bridge Financial, Bk., 2158, p. 232). It is unclear whether this is a restatement of the original mortgage to Misty Huffman, refiled due to the subordination of her previous mortgage, or new debt. Defendant claims that as with the first mortgage to Misty Huffman, no documentation has been produced which substantiates additional debt.

Defendant points out that after this case was filed, Louis Smith executed two confessions of judgment on behalf of IOS, LLC to Lonestar Ventures, one in the amount of \$632,419.82, (Civil Action No.: 2014-CP-24-1429) and a second in the amount of \$277,154.22 (Civil Action No.: 2014-CP-24-1430) (Ex. 23, Confessions of Judgment by IOS, LLC). These amounts far exceed the total of either mortgage to either Misty Huffman or Lonestar Ventures, LLC. There is also no corresponding complaint in the Court's record setting forth a debt, only the entry of the confession. Both of these confessions were filed in 2014, after the subsequent 2012 foreclosure proceeding wiped out any junior lienholders.

Despite the substantial influx of capital from 2006-2009 from documented third-party lenders, (i.e. not associated IOS, LLC in any way) the Plaintiff was never current with Business Carolina. Defendant points out that the Business Carolina file contains extensive documentation regarding late or missing payments (Ex. 24, Defendant's Supplemental Memorandum, Business Carolina Palmetto Inns, Loan Transcript). In October and November of 2007, Business Carolina threatened foreclosure and filed a Lis Pendens against both Palmetto Inns and IOS, LLC (Ex. 25, Defendant's Supplemental Memorandum, Greenwood County Public Index for IOS, LLC). A letter from Business Carolina indicates that foreclosure would only be deferred if IOS, LLC escrowed funds totaling \$26,156.25, to be applied monthly to interest until March 1, 2008. In its November 2007 letter, Business Carolina indicated that if IOS successfully refinanced on or before March 1, 2008, the amount escrowed would be applied to reduce principal. After that date, the payment would revert to principal and interest in the amount of \$7,071.39 per month. Throughout the history of the IOS purchase/forbearance, Business Carolina repeatedly agreed to extend Plaintiff's interest only payments, only to be forced to later demand that IOS and Mr. Huffman

refinance the property or face foreclosure (Ex. 26, Defendant's Supplemental Memorandum, Letters of Todd Lucas to John Huffman, August 16, 2007 and November 8, 2007).

Based on the payment summary received from Business Carolina, Inc., it appears this default was never cured, and Palmetto Inns/IOS, LLC remained in arrears despite additional forbearance. (Ex. 24, Defendant's Supplemental Memorandum, Loan Transcript).

After four years of delinquency, Business Carolina finally signed an agreement on June 29, 2009, to sell the Note to Banc Capital and Financial Services (Exhibit 27, Defendant's Supplemental Memorandum, Banc Capital contract). Closing was initially to take place on or before June 29, 2009, but was extended at the buyer's request, who stated it needed more time to complete the transaction. *Id.* The Business Carolina file indicates that when Business Carolina negotiated the sale of the Note, Huffman reportedly went in search of an alternative use for the property to avoid the sale, being displaced as manager, and losing the property.

According to Business Carolina employee Todd Lucas's notes, Huffman contacted the bank after the agreement was reached with Banc Capital to discuss "performance of the hotel," indicating for the first time that he could no longer fund it (Exhibit 28, Defendant's Supplemental Memorandum, Business Carolina Credit Notes). On August 3rd, representatives of the bank met with Huffman and his attorney, Leonard Jordan, during which Huffman stated the hotel was suffering and he could no longer subsidize it every month. *Id.* Huffman reported that he was negotiating with Lander to lease the hotel, to which the bank objected, stating that they had already sold the Note and the buyer did not want "the Lander deal or to the hotel to be shut down." *Id.* On August 5, 2009, Business Carolina loan officer Todd Lucas documented a conversation with Huffman, who reportedly indicated that he would be forced to begin shutting the hotel down on August 8th, and would be completely closed by August 15, 2009, if Business Carolina did not agree

to the lease. This tug of war continued until ultimately Huffman refused to keep the hotel open, over the prospective purchaser's objection, because "his line of credit had been canceled." *Id.* The Business Carolina file further indicates that the prospective buyer of the Note recommended replacing Huffman with the original borrower, Craig White, as interim manager.

Discovery indicates that Business Carolina finally tabled the sale of the Note and agreed to the Lease to Lander in August 2009. Additional security in the form of a Forbearance Agreement from IOS, LLC, itself, was required as part of the approval. This agreement reaffirmed IOS, LLC's ownership was subject to the Palmetto Inns debt, and reiterated its previous waiver of all defenses in the event of a future foreclosure (Ex. 29, Defendant's Supplemental Memorandum, Forbearance Agreement, IOS, LLC 2009). In addition, the bank required any rent paid by Lander go through an escrow agent and be applied to the indebtedness pursuant to a schedule mandated by the bank. It is clear from both the Business Carolina credit history notes as well as the Forbearance Agreement that a contract of sale had not been entered by IOS, LLC, as there is an acknowledged contractual waiver of any and all claims, defenses or set-offs as to Business Carolina in the event that future negotiations during the pendency of the lease did not result in a sale. IOS, LLC further agreed to assist in the orderly liquidation of the property in the event a contract of sale could not be reached (Ex. 29, Defendant's Supplemental Memorandum, p. 3, paragraph 1).

Further, the original assignment of leases and rents to Business Carolina, subject to which IOS, LLC took title provided (in pertinent part) that:

"for good and valuable consideration, Assignor absolutely (emphasis added) assigns and transfers to assignee" the following:

- (a). The income, rents, receivables, security or other similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents,

issue and profits") together with the right, power and authority to collect same;

(b.) All leases, **written or oral, now in existence or hereafter arising** (emphasis added) all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof (individually collectively, the "Lease" or "Leases" together with the right, power and authority of the Assignor to alter, modify, or change the terms thereof, or surrender, cancel or terminate same; and

(c.) Any and all guarantees of any obligations of any Lessee (the "lessee") under each of the leases.

Assignor **irrevocably** (emphasis added) appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of the Assignee to demand, receive and enforce payment of rents, to give receipts, releases and satisfactions, and to sue, in the name of the Assignor or the Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured; provided however, that Assignor shall have the right and license to collect the rents, issues and profits prior to or at any time there is no continuing default hereunder or under any of the other loan documents evidencing and securing the Note (as defined herein) ("Loan Documents"). The assignment of rents, issues and profits is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

"Upon payment in full of the indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent, or attorney of the Assignee showing any part of the Indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor, as the lessor under any Lease, hereby authorizes and directs the lessee named in any such Lease or any other or future lessee or occupant of the premises described therein upon receipt from the Assignee is then the holder of the Note to pay over to the Assignee all rents, and profits or accruing under such Leases or from the premises described therein and to continue to do until otherwise notified by the Assignee."

The Forbearance Agreement contemporaneously executed by IOS with the Lender Lease/Option included an acknowledgement of default, and agreement to stay any foreclosure until

the end of the lease term or the exercise of the Option. As set forth above, Paragraph 6 of the Forbearance Agreement further acknowledged that Business Carolina had an “absolute assignment” in and to the Lander Lease, as set forth in the Assignment of Leases and Rents executed by Palmetto Inns. Acceptance of the Forbearance Agreement by IOS, LLC specifically excluded acceptance of rent pursuant to the lease as a waiver of default.

In addition, a Subordination/Non-Disturbance agreement further provided in paragraph 9 that the Lender would be entitled, but not obligated, to exercise the claims, rights, power, privileges and remedies of the Landlord under the Lease, and shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Tenant under the lease as though the Lender were named therein as the Landlord.

Ultimately, Lander declined to exercise the option to purchase the property and Business Carolina refiled its foreclosure against Palmetto Inns and IOS, and obtained a deficiency judgment in the amount of \$425,218.84 (Ex. 30, Defendant’s Supplemental Memorandum, Foreclosure Order and Judgment). After Lander vacated the property, Huffman began asserting that items were missing, although as was discussed above, he had given a bill of sale for items sold to Lander at the beginning of the lease term. There is also indication that other items stored on the property during the lease were sold to the buyer who purchased the property at the foreclosure sale, 104 East Court, LLP. (Ex. 31, Defendant’s Supplemental Memorandum, Bill of Sale from Business Carolina, Inc. to 104 East Court, LLP).

In addition, despite his earlier assertion that he was unable to continue to operate the property as a hotel, following the expiration of the lease in June of 2011, Huffman submitted a demand for payment of \$339,262.00, which he claimed was necessary to place the property back

in “serviceable and operational condition” and replace items necessary to reopen as a hotel (See Plaintiff’s Memo in Opposition to Summary Judgment. Demand).

A. SUMMARY JUDGMENT IS GRANTED TO DEFENDANT AS TO PLAINTIFF’S CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

It is undisputed that at the time Plaintiff IOS, LLC purchased the failing hotel that it was teetering on the brink of insolvency. Leasing the property to Lander was a lifeline which delayed the ultimate foreclosure. Despite Plaintiff’s assertion that it was a ‘profitable venture’ for a time, the loan payment history does not support these claims. Based on the documents submitted, IOS, LLC was simply unable to service the debt associated with the property and that this prompted the negotiation of the Lander lease. There is no evidence of a firm sales contract. To the contrary, IOS, LLC marketed the property to potential buyers both before and after the execution of the lease. As Defendant points out, the amount of debt associated with IOS, LLC, which by April 10, 2010, also included federal tax liens for unpaid withholding on employee wages totaling \$295,513.25, was a serious impediment to any contract of sale.

To establish a claim for promissory estoppel under South Carolina law, a plaintiff must demonstrate that: (1) a party made a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relied on the promise; (3) the reliance was expected and foreseeable by the party who made the promise; and (4) the party to whom the promise is made sustained injury in reliance on the promise. *Anthony v. Atlantic Group, Inc.*, 909 F. Supp. 2d 455 (D.S.C. 2012). Under promissory estoppel, the promise to be enforced must be unambiguous with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition by the promisor, particularly because promissory estoppel applies without a contract; the presence of either an ambiguous promise or an injury not arising out of the inconsistent disposition precludes promissory estoppel’s application, though perceived inequities may exist. *Barnes v. Johnson*, 402

SC 458, 742 S.E.2d 6 (Ct. App. 2013). Because one may properly invoke promissory estoppel absent elements typically required for a contract, such a meeting of the minds or exchanged consideration, the doctrine requires, **by clear and convincing evidence**, a promise unambiguous in its terms (emphasis added). *Id.* An inability to clearly articulate the terms of an alleged oral contract, including how an existing capital contribution would be treated and specifically how the parties would settle up, renders an agreement ambiguous, and any loss is not recoverable under a theory of promissory estoppel. *Id.* Although the doctrine of promissory estoppel may be used to avoid the statute of frauds' writing requirement in South Carolina, it may not be used to create a legally enforceable promise when it would not otherwise be binding under ordinary contract principles. *Trident Construction Co., Inc. v. Austin Co.*, 272 F. Supp. 2d 566 (D.S.C. 2003). The doctrine of promissory estoppel, although equitable, has limitations. *See e.g., Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct.App. 2006) (holding absence of clearly articulated terms between parties precludes recovery in promissory estoppel). "Specifically, the doctrine's elements represent a balancing between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." *Barnes v. Johnson*, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct.App. 2013).

Plaintiff has not alleged any facts from which an unambiguous promise can be inferred by clear and convincing evidence. Defendants have previously submitted the Affidavit from Diane Newton in support of its motion for Summary Judgment. Ms. Newton was the Vice-President for Business and Administration at Lander University from 2003, through December 2009. In her affidavit, Ms. Newton stated that she did not enter into an agreement for the Defendants to purchase the Inn nor did she make any unambiguous representations to Plaintiff that the Defendants would purchase the Inn.

Additional communications between the parties are also void of any unambiguous promise to purchase. Plaintiff has specifically failed to provide any evidence of an agreed upon purchase price or terms which would have been crucial to any contract of sale.

An examination of the lease entered by the parties' shows that it includes an article titled "Option to Purchase," which granted the Defendant the exclusive option to purchase the property, but which did not contain an explicit agreement to purchase. As Defendant points out, Article 21 of the Lease specifically sets forth a requirement of written notice to the Landlord and provided that "Tenant may cancel its exercise of the option to purchase at any time prior to the day of closing."

Further, Article 21 sets forth that "purchase of the Land and Building is subject to any required approvals by the South Carolina Joint Bond Review Committee, the South Carolina Budget and Control Board and General Services Division" which Defendant would argue invalidates any assertion that statements made by agents or employees of the Defendant could have been interpreted to guarantee that the Defendant would purchase the Inn in the future.

This requirement of third-party approval, set forth explicitly in the lease between the parties, makes it impossible for the Plaintiff to assert any reasonable reliance on alleged statements made by any agent or employee of the Defendant regarding the possibility of future purchase, as it is clear from the contract itself that they were incapable of consent to such a sale, even if terms had been agreed upon and all other requirements of due diligence had been met.

In addition, it is clear from the exchange of correspondence between the parties at the beginning of the Lease, that the Plaintiff was well aware that Lander did not have the authority to make an offer to purchase without Budget and Control Board investigation and approval. Lander Representatives clearly advised the Plaintiff that the Budget and Control Board procedure formerly

used, that a series of petitions and approvals were necessary at the State level before any decision could be made to exercise the Option. This process included seeking authorization to fund due diligence studies, including appraisals, environmental studies and engineering/code compliance investigations and without favorable results, the University could not go forward (Ex. 2, Defendant's Supplemental Memorandum, Huffman emails).

Finally, correspondence from the Plaintiff's manager, John Huffman, indicates that he marketed the property to other potential buyers during the pendency of the lease. In November 2009, and again in March 2010, Huffman emailed Lander representatives to notify them he would be marketing the property to other prospective buyers from Columbia, Charleston and Atlanta and would need access to the property for site visits so these individuals could perform inspections.

B. SUMMARY JUDGMENT IS GRANTED TO DEFENDANT AS TO PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

South Carolina law recognizes an action in tort for negligent misrepresentation. The doctrine of negligent misrepresentation is an equitable maxim that provides a duty for information negligently supplied for the guidance of others in business transactions. *S.C. Elec. & Gas Co. v. Westinghouse Elec. Corp.*, 826 F. Supp. 1549, 1557 (D.S.C. 1993). The essential elements of this tort are: (1) that 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 a proximate result of his reliance on the representation. *Gilliland v. Elmwood Properties*, 301 SC 295, 391 S.E.2d 577 (1990) and *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). To be actionable, the representation must relate to

a present or pre-existing fact and be false when made. *Fields v. Melrose, Ltd. Partnership*, 312 SC 102, 439 S.E.2d 283 (Ct. App. 1993). The representation cannot ordinarily be based upon unfulfilled promises or a statement as to future events. *Id.* Plaintiff alleges that Defendants made false representations to Plaintiff regarding the intent and/or willingness to purchase the Inn. “Evidence of a mere broken promise is not sufficient to prove negligent misrepresentation.” *Winburn v. Insurance Co. of N. Am.*, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct. App. 1985). While issues of reliance are ordinarily resolved by the finder of fact, there can be no reasonable reliance to show negligent misrepresentation based on a misstatement if the plaintiff knows the truth of the matter; thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact to preclude summary judgment in an action for negligent misrepresentation. *Quail Hill, LLC v. County of Richland*, 692 S.E.2d 499 (SC 2010).

The Plaintiff has not alleged facts to establish any of the six elements of this cause of action. Namely, Plaintiff has failed to show any false statement upon which it reasonably relied. It is clear from the lease that Plaintiff was well aware that Defendant had merely an option, and that purchase would require substantial due diligence and approval by third parties which were outside of the Defendant’s control. Further, any inferred promise of a future purchase would not be a pre-existing fact, as required by *Fields*. Finally, Plaintiff cannot show reasonable reliance, as it was clear from the lease itself that Defendant could not unilaterally approve the purchase.

In addition, Plaintiff cannot show that Defendants had a pecuniary interest in making any representation. Plaintiff alleges Defendants had a pecuniary interest in inducing Plaintiff to sign a lease by representing that it would purchase the Inn. The Plaintiff suffered no pecuniary loss resulting from the lease, as income from the lease paid the mortgage and essentially prevented the

sale of the Note and foreclosure of the property during the pendency of the lease, which was to the Plaintiff's benefit.

Plaintiff has argued it suffered economic loss as the result of its reliance on such representations. The economic loss rule is founded on the theory that parties to a contract may allocate their risks by agreement and do not need the special protections of tort law to recover for damages caused by a breach of the contract. *East River Steamship v. TransAmerica Delaval*, 476 U.S. 858, 106 S.Ct. 2295 (1986). In *Westinghouse*, the Court concluded that in a commercial transaction where the loss alleged is purely economic and the cause of action is for mere negligent misrepresentation, the economic loss rule bars recovery. 826 F.Supp. at 1557. The Plaintiff in the case at bar availed itself of protection of a contract which provides an adequate remedy at law. Plaintiff's cause of action for negligent misrepresentation is therefore barred by the economic loss rule, and Defendants are entitled to summary judgment.

D. SUMMARY JUDGMENT IS GRANTED AS TO PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENCE

Under South Carolina law, an action for tort does not lie if the cause of action is predicated on the alleged breach, or even negligent breach of a contract between the parties. *Welborn v. Dixon*, 70 SC 177-118, 49 S.E.2d 232, 235 (1904), *Toney v. LaSalle Bank Nat. Ass'n*, 896 F. Supp. 2d 455 (D.S.C. 2012).

In general, the Plaintiff's remedy is for breach of contract where there is no duty except as the contract creates. However, a tort cause of action may exist when the duty arises out of liability, independently of the personal obligation undertaken by the contract. *Gilliland v. Elmwood Properties*, 301 SC 295, 391 S.E.2d 577 (1990).

The allegations of item "46" of Plaintiff's complaint are that Defendant breached the duty of care in surrendering the Inn to Plaintiff at the conclusion of the Lease. As there exists a contract

entered by the parties on August 12, 2009, which provides for a remedy under those circumstances, Defendant correctly argues that any “duties” owed to the Plaintiff would arise solely of that contract and are improperly brought in tort. In order for any cause of action in tort to lie, the Plaintiff would be required to show a duty of care outside of the lease contract. Inasmuch as Plaintiff’s cause of action sounds in contract, summary judgment for the fifth cause of action, titled “Negligence” is appropriate.

The Court finds that Plaintiff’s cause of action for alleged property damage under the lease agreement (Plaintiff’s Six Cause of Action) is the only cause of action which survives Defendant’s Motion for Summary Judgment. Additionally, as the property was subject to the irrevocable assignments to the Lender and was foreclosed after the Defendant’s lease terminated, there is an issue of fact which remains as to whether Plaintiff may recover for any alleged damage to the Inn after Lender vacated the property and prior to the lender’s foreclosure of any interest which Plaintiff may have had in the property.

AND IT IS SO ORDERED!

Frank R. Addy, Jr.
Eighth Judicial Circuit
Court of Common Pleas for South Carolina

October __, 2021



Greenwood Common Pleas

Case Caption: IOS, LLC VS Lander University , defendant, et al
Case Number: 2012CP2400576
Type: Order/Summary Judgment

So Ordered

s/Frank R. Addy, Jr., 2159

Electronically signed on 2021-11-01 18:17:47 page 19 of 19

ROA_0021

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
IN THE COURT OF COMMON PLEAS

AMENDED FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-24-0576

ISO, LLC

LANDER UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS MATTER COMES BEFORE THE COURT on Plaintiff's motion for reconsideration of the Court's order granting partial summary judgment. Pursuant subsection (d) to the Chief Justice's Order of November 23, 2021, the Court finds that a hearing in this matter is unnecessary. Having reviewed the motions and fully reconsidered the order of November 2, 2021, the Court concurs with Defendant's arguments and denies Plaintiff's motion to alter or amend the order.

The Court reminds the parties that this matter is first up for trial on Monday, December 6th for a non-jury trial.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

		\$	
		\$	
If applicable, describe the property, including tax map information and address, referenced in the order:			

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/Frank R. Addy, Jr., Circuit Judge
Circuit Court Judge

2159

Judge Code

12-2-21

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

James Smith, Esq.

Lena Meredith, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD) IN THE EIGHTH JUDICIAL CIRCUIT

IOS, LLC.

Plaintiffs,

vs.

LANDER UNIVERSITY, LANDER
COLLEGE and THE LANDER
FOUNDATION,

Defendants.

Civil Action No. 2012-CP-24D-576e

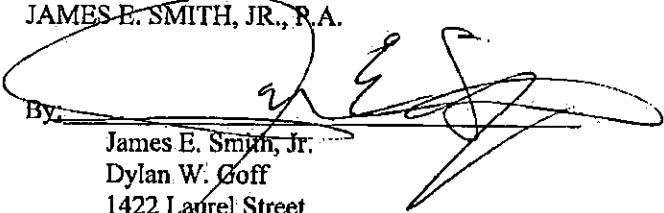
SUMMONS

FILED
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2012 MAY 29 PM 1 17

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers at their offices, 1422 Laurel Street, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.

JAMES E. SMITH, JR., P.A.

By: 

James E. Smith, Jr.
Dylan W. Goff
1422 Laurel Street
Columbia, SC 29201
Telephone (803) 933-9800
Facsimile (803) 933-9801

Attorneys for Plaintiff

Columbia, South Carolina

May 29, 2012

IOS, LLC,

Civil Action No. 2012-CF

COMPLAINT

Defendants.

PARTIES

- ROA 0025**

5. That all acts complained of herein and performed by the Defendants were done so by and through their agents, officers, employees and/or servants while they were acting within the course and scope of their employment and/or agency relationship with Defendants.

6. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.

7. Venue in this action is properly before this Court.

GENERAL ALLEGATIONS

8. Plaintiff re-alleges paragraphs 1 through 7 as if stated herein verbatim.

9. In August 2009, Diane Newton was employed by Lander as Lander University Vice President of Business and Administration.

10. Also in August 2009, Douglas Bell was Lander's attorney as well as he and Ms. Newton was represented to be members of the Foundation board.

11. In August 2009, the Inn on the Square, located at 104 East Court Avenue, Greenwood, South Carolina 29646 (hereinafter referred to as the "Inn") was owned and operated by IOS. IOS had the Inn listed for sale at a price of \$3,300,000.00.

12. Lander, by and through its authorized representative, Diane Newton entered into negotiations with IOS' representative John Huffman, to purchase the Inn from IOS. An oral contract for the sale of the Inn from IOS to Lander was agreed upon at a sales price of \$2,300,000.00 (hereinafter referred to as the "Sale").

13. It was further agreed between Lander and IOS those monies to purchase the Inn would either come through the approval of the South Carolina Budget and Control Board ("SCBCB") or the Foundation. Ms. Newton and Mr. Bell assured IOS that regardless of the outcome before the

SCBCB, Lander was committed to purchase the Inn. It was stated by Ms. Newton and Mr. Bell that if the SCBCB did not approve the sale, the Foundation agreed to fund the purchase price at \$2,300,000.00.

14. It was further agreed that the Sale closing date would be no later than April 2010 after SCBCB approvals of first reading December 2009, another reading by March 2010 with final approval and closing April 2010.

15. IOS was talking with other parties who were also interested in purchasing the Inn and in reliance on the oral agreement made by Lander and the Foundation to purchase the Inn, IOS agreed to enter into a temporary lease agreement at the request of Lander so that student could move in immediately.

16. In further reliance upon Lander's and the Foundation's oral contract for the purchase of the Inn, IOS cancelled all booked and pending events at the Inn as well as closed the Pub on the first floor of the Inn.

17. In further and additional reliance upon Lander's and the Foundation's oral contract for the purchase of the Inn, IOS allowed significant modifications to the Inn converting it from a boutique Inn and Pub into student dormitories, Lander's intended use of the property.

18. It was at Lander's insistence that a lease agreement be entered into before the contract for sale could be approved because Lander needed the space for student housing immediately.

19. In reliance upon the representations made by Lander and the Foundation that they would purchase the Inn regardless of SCBCB approval, IOS entered into a lease with Lander University dated August 12, 2009 (hereinafter "Lease").

20. The initial Lease term ran from August 15, 2009 to June 14, 2010 to only accommodate the time necessary for SCBCB Sale approval process. The contract for sale was anticipated to be delivered in September 2009.

21. During the lease term and after the Defendants took possession of the Inn, IOS suffered significant damages and loss to the Inn.

FOR A FIRST CAUSE OF ACTION
(BREACH OF ORAL CONTRACT FOR THE SALE OF PROPERTY)

22. Plaintiff reiterates and re-alleges paragraphs 1 through 21 above as if set forth herein verbatim, and further alleges;

23. Defendants' statements to Plaintiff as set forth above constituted an unambiguous oral contract for the sale of the Inn establishing specific terms for the sale that include the purchase price, the property to be purchased and the date of closing on the sale.

24. Plaintiff reasonably relied on Defendants oral contract for sale and indeed it was the reason IOS was induced into the Lease.

25. This reliance on the part of Plaintiff was reasonable, justifiable, expected and encouraged by Defendants.

26. Indeed, the Defendants have partly performed the sale of the Inn inasmuch (1) as they have taken possession of the Inn; (2) made significant alterations to the Inn, which would not have approved by Plaintiff, if Defendants were not going to purchase the Inn; (3) paid a portion of the purchase price; and (4) told the public that the Defendants had purchased the Inn from the Plaintiff.

27. Plaintiff was injured by relying on Defendant's promise and oral contract for sale in the loss of the Inn as a result of foreclosure, loss of business, unnecessary expenses and in other such particulars in an amount to be shown at the trial of this matter. Plaintiff is seeking specific

performance of the oral contract or damages including the benefit of its bargain with the Defendants.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT AND SPECIFIC PERFORMANCE)

28. Plaintiff reiterates and re-alleges paragraphs 1 through 27 above as if set forth herein verbatim and further alleges.

29. The offer made by the Defendants and part performance on behalf of the Plaintiff establish an enforceable contract for the sale of the Inn.

30. The real property at issue, the Inn, is unique and it further has hundreds of thousands of dollars of investment and work by Plaintiff which was altered changed by Defendants so significantly that an action for damages at law is inadequate and thereby entitles Plaintiff to equitable relief.

31. Plaintiff is informed and believes that it is entitled to an Order of this Court providing for specific performance of the Oral Contract.

32. In the event that it is shown that Defendants' failure to perform on the Contract was accompanied by fraud, Plaintiff is informed and believes that it is entitled to punitive damages in an amount to be determined by the trier of fact and attorneys' fees.

FOR A THIRD CAUSE OF ACTION
(PROMISSORY ESTOPPEL)

33. Plaintiff reiterates and re-alleges paragraphs 1 through 32 above as if set forth herein verbatim, and further alleges;

34. Defendants' statements to Plaintiff as set forth above, constituted an unambiguous promise to purchase the Inn.

35. Plaintiff reasonably relied on Defendants' promise by entering into a Lease

Agreement, foregoing other sale opportunities, closing the Inn and Pub to other bookings and events and allowing Defendants to alter the property in significant ways to convert a boutique Inn into a college dormitory.

36. This reliance on the part of Plaintiff was reasonable, justifiable, expected and encouraged by Defendants.

37. Plaintiff was injured by relying on Defendant's promise in loss of business, damage to the Inn, unnecessary expenses and in other such particulars in an amount to be shown at the trial of this matter.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

38. Plaintiff reiterates and re-alleges paragraphs 1 through 37 above as if set forth herein verbatim, and further allege;

39. Defendants made a false representation to Plaintiff regarding the intent and/or willingness to purchase the Inn.

40. Defendants had a pecuniary interest in making the statement to Plaintiff in order to induce Plaintiff into signing the Lease thereby ensuring Defendants had dormitory space available to students that was needed immediately.

41. Defendants owed a duty to Plaintiff to use due care to see that Defendants communicated truthful information to the Plaintiff.

42. Defendants breached that duty by failing to exercise due care.

43. Plaintiff justifiably relied on Defendants' representations and Defendants offered assurances and encouraged Plaintiff to rely on Defendants' statements.

44. The Plaintiff suffered significant pecuniary loss as the proximate result of its reliance

upon the Defendants representation.

FOR A FIFTH CAUSE OF ACTION
(NEGLIGENCE)

45. Plaintiff repeats and reiterates the allegations contained above as though fully repeated herein verbatim.

46. Defendants owed Plaintiff a duty of due care in surrendering the Inn to Plaintiff at the conclusion of the Lease.

47. Defendants breached that duty in one or more of the following particulars:

- a. Failing to restore alterations to the Inn;
- b. Failing to surrender the Inn and instead abandoning the Inn leaving it open and unsecure;
- c. Failing protect the Inn from damage and loss to furniture; rooms; facilities and equipment;
- d. Failing to surrender the Inn in good order and condition.

48. The Inn suffered several hundreds of thousands of dollars in damages and property loss all proximately caused by the Defendants' negligence and abandonment of the Inn.

FOR A SIXTH CAUSE OF ACTION
(BREACH OF LEASE AGREEMENT)

49. Plaintiff repeats and reiterates the allegations contained above as though fully repeated herein verbatim.

50. Defendants Lease of the Inn provided in pertinent part that the "Tenant shall surrender the Demised Premises to Landlord in good order and condition..."

51. Defendants breached the Lease agreement in one or more of the following particulars:

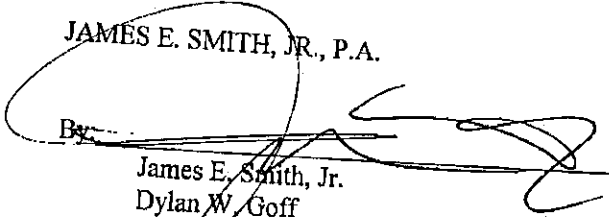
- a. Failing to restore alterations to the Inn;
 - b. Failing to surrender the Inn and instead abandoning the Inn leaving it open and unsecure;
 - c. Failing protect the Inn from damage and loss to furniture; rooms; facilities and equipment;
 - d. Failing to surrender the Inn in good order and condition.
52. As a direct and proximate result of Defendants' breach, Plaintiff has suffered actual and consequential damages to be proven at a trial of this matter.

DAMAGES

53. Plaintiff has suffered significant damages proximately caused by the Defendants through various actions of omission and commission to include but not limited to damages to the Inn facility, equipment, furniture, real and personal property, loss of economic advantage and opportunities, denial of the benefit of his bargain, actual and consequential damages, punitive damages and attorneys' fees and costs and such other and further damages as may be proven at a trial of this matter.

WHEREFORE, having fully set forth in its Complaint, Plaintiff respectfully prays for the following relief: Judgment against the Defendants and in favor of Plaintiff for all of the foregoing causes of action to include but not limited to specific performance, actual, consequential and punitive damages as proven at trial and attorneys' fees and costs and for such other and further relief as the Court deems just and proper.

JAMES E. SMITH, JR., P.A.

By: 

James E. Smith, Jr.
Dylan W. Goff
1422 Laurel Street
Columbia, SC 29201
Telephone (803) 933-9800
Facsimile (803) 933-9801
Attorneys for Plaintiff

Columbia, South Carolina
May 29, 2012

FILED TO COURT
8TH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD) EIGHTH JUDICIAL CIRCUIT
6 PM 3) CIVIL ACTION NO. 2012-CP-24-576

IOS, LLC,

Plaintiff(s),

vs.

LANDER UNIVERSITY, LANDER
COLLEGE, AND THE LANDER
FOUNDATION,

Defendants.

ANSWER OF DEFENDANTS LANDER
UNIVERSITY, LANDER COLLEGE
AND THE LANDER FOUNDATION

TO: JAMES E. SMITH, JR., ESQUIRE, AS ATTORNEY FOR PLAINTIFF IOS, LLC
("IOS"):

Defendants Lander University and Lander College (collectively referred to herein as "Lander") and The Lander Foundation ("Foundation") ("Lander" and the "Foundation" sometimes collectively referred to herein as "Defendants"), hereby answer the allegations of Plaintiff IOS's Complaint and would respectfully show unto the Court as follows:

1. Each and every allegation of IOS's Complaint not specifically admitted, qualified, or explained is denied, and strict proof demanded thereof.

FOR A FIRST DEFENSE

2. In response to Paragraph 1 of IOS's Complaint, Defendants would admit that IOS is a limited liability company organized in the State of South Carolina.

3. In response to Paragraph 2 of IOS's Complaint, Defendants would admit that Lander University is the same entity as Lander College, which formally changed its name by action of the Board of Trustees on June 9, 1992, effective July 1, 1992, pursuant to authority granted by the South Carolina Legislature under South Carolina Code Section 59-135-15 (1992), and is a body corporate and politic governed under Chapter 135 of Title 59 of the South Carolina Code of Laws.

4. In response to Paragraph 3 of IOS's Complaint, Defendants would crave reference to as if fully restated the response set forth in Paragraph 3 of this Answer.

5. Defendants would admit the allegations of Paragraph 4 of IOS's Complaint.

6. That Defendants deny the acts complained of in IOS's Complaint occurred and would therefore deny the allegations of Paragraph 5 of Plaintiff's Complaint.

7. That Defendants admit the allegations of Paragraphs 6 and 7 of IOS's Complaint.

8. In response to Paragraph 8 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

9. That Defendants admit the allegations of Paragraph 9 of IOS's Complaint.

10. That, in response to Paragraph 10 of IOS's Complaint, Defendants would admit that Douglas Bell, among others, represented Lander as outside legal counsel, but would deny that Douglas Bell was or was represented to be a member of the Board of Trustees of Lander University or The Lander Foundation. Defendants would state that Diane Newton was a non-voting appointee of the Board of Trustees of the Lander Foundation acting as Treasurer. All remaining allegations of Paragraph 10 of IOS's Complaint are denied and strict proof thereof demanded.

11. That, in response to Paragraph 11 of IOS's Complaint, upon information and belief, IOS owned the Inn (as defined in IOS's Complaint), but ceased operations as a hotel in August 2009. Defendants do not have sufficient information or belief as to whether IOS listed the Inn for sale or the price and therefore would deny the remaining allegations of Paragraph 11 and demand strict proof thereof.

12. That Defendants deny the allegations of Paragraph 12 of IOS's Complaint.

13. That Defendants deny the allegations of Paragraph 13 of IOS's Complaint.

14. That Defendants deny the allegations of Paragraph 14 of IOS's Complaint.

15. That, in response to the allegations of Paragraph 15 of IOS's Complaint, Defendants would admit that Lander University, as Tenant, entered into a Lease Agreement for the Inn with IOS, as Landlord, which Lease included an option to purchase, but denies all remaining allegations of Paragraph 15 of IOS's Complaint.

16. That Defendants deny the allegations of Paragraph 16 of IOS's Complaint.

17. That Defendants deny the allegations of Paragraph 17 of IOS's Complaint.

18. That Defendants deny the allegations of Paragraph 18 of IOS's Complaint.

19. That, in response to the allegations of Paragraph 19 of IOS's Complaint, Defendants

would admit that Lander University, as Tenant, entered into a Lease Agreement for the Inn with IOS, as Landlord, which Lease included an option to purchase, but would deny the remaining allegations of IOS's Complaint.

20. That, in response to Paragraph 20 of IOS's Complaint, Defendants would admit the initial term of the Lease began August 15, 2009 and ended June 14, 2010, but all remaining allegations of Paragraph 20 are denied and strict proof thereof demanded.

21. That Defendants deny the allegations of Paragraph 21 of IOS's Complaint.

22. That, in response to Paragraph 22 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

23. That Defendants deny the allegations of Paragraph 23 of IOS's Complaint.

24. That Defendants deny the allegations of Paragraph 24 of IOS's Complaint.

25. That Defendants deny the allegations of Paragraph 25 of IOS's Complaint.

26. That, in response to the allegations of Paragraph 26 of IOS's Complaint, Defendants would state that Lander University maintained possession of the Inn pursuant to a Lease agreement from August 15, 2009, through June 14, 2011, and specifically deny that Defendants partly performed under a sale and all other allegations are denied and strict proof thereof demanded.

27. That Defendants deny the allegations of Paragraph 27 of IOS's Complaint.

28. That in response to Paragraph 28 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

29. That Defendants deny the allegations of Paragraph 29 of IOS's Complaint.

30. That Defendants deny the allegations of Paragraph 30 of IOS's Complaint.

31. That Defendants deny the allegations of Paragraph 31 of IOS's Complaint.

32. That Defendants deny the allegations of Paragraph 32 of IOS's Complaint.

33. That in response to Paragraph 33 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

34. That Defendants deny the allegations of Paragraph 34 of IOS's Complaint.

35. That Defendants deny the allegations of Paragraph 35 of IOS's Complaint.

36. That Defendants deny the allegations of Paragraph 36 of IOS's Complaint.

37. That Defendants deny the allegations of Paragraph 37 of IOS's Complaint.

38. That in response to Paragraph 38 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

39. That Defendants deny the allegations of Paragraph 39 of IOS's Complaint.

40. That Defendants deny the allegations of Paragraph 40 of IOS's Complaint.

41. That Defendants deny the allegations of Paragraph 41 of IOS's Complaint.

42. That Defendants deny the allegations of Paragraph 42 of IOS's Complaint.

43. That Defendants deny the allegations of Paragraph 43 of IOS's Complaint.

44. That Defendants deny the allegations of Paragraph 44 of IOS's Complaint.

45. That in response to Paragraph 45 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

46. That Defendants deny the allegations of Paragraph 46 of IOS's Complaint.

47. That Defendants deny the allegations of Paragraph 47 of IOS's Complaint.

48. That Defendants deny the allegations of Paragraph 48 of IOS's Complaint.

49. That in response to Paragraph 49 of IOS's Complaint, Defendants reallege each and every allegation above, as if set forth herein verbatim.

50. That in response to Paragraph 50 of IOS's Complaint, Defendants would state that the Lease was entered into between Lander University, as Tenant, and IOS, as Landlord, and would crave reference to the Lease.

51. That Defendants deny the allegations of Paragraph 51 of IOS's Complaint.

52. That Defendants deny the allegations of Paragraph 52 of IOS's Complaint.

53. That Defendants deny the allegations of Paragraph 53 of IOS's Complaint.

FOR A SECOND DEFENSE

(Statute of Frauds)

54. That Defendant reallege each and every allegation above, as if set forth herein verbatim.

55. That IOS, as Landlord, entered into a Lease agreement dated August 12, 2009 with Lander University, as Tenant, for the Inn property.

56. That Defendants did not enter into a contract for sale of the Inn property with IOS.

57. That the statute of frauds, S.C. Code Section 32-3-10 (2006), requires that a contract for the sale of land be in writing; and signed by the party against whom enforcement is sought.

58. That IOS's causes of action are barred by the applicable statute of frauds.

FOR A THIRD DEFENSE

(Standing)

59. That Defendants reallege each and every allegation above, as if set forth herein verbatim.

60. That IOS is not the owner of the Inn property.

61. That IOS lacks standing to allege the causes of action alleged in IOS's Complaint and the Complaint should be dismissed as to Defendants.

FOR A FOURTH DEFENSE

(Failure To State A Cause Of Action)

62. That Defendants reallege each and every allegation above, as if set forth herein verbatim.

63. That IOS's Complaint fails to set forth a cause of action against Defendants, and should be dismissed.

FOR A FIFTH DEFENSE

(Integration/Merger)

64. That Defendants reallege each and every allegation above, as if set forth herein verbatim.

65. That all terms of the agreement between Lander University and IOS were integrated and merged into the written Lease agreement with option to purchase.

66. That Lander University did not exercise its option to purchase the Inn property during the initial term or extended term of the Lease.

67. That IOS claims based on oral agreements alleged to be made prior to the Lease agreement should be dismissed because all prior negotiations merged and were integrated into the Lease agreement.

FOR A SIXTH DEFENSE

(Failure of Essential Elements of Contract)

68. That Defendants reallege each and every allegation above, as if set forth herein

verbatim.

69. That IOS has not alleged the essential elements of an enforceable contract and IOS's Complaint should be dismissed as to Defendants.

FOR A SEVENTH DEFENSE
(Statutes Of Limitation)

70. That Defendant reallege each and every allegation above, as if set forth herein verbatim.

71. That IOS's claims are barred against Defendants by applicable statutes of limitation.

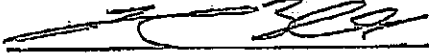
FOR AN EIGHTH DEFENSE AND FIRST COUNTERCLAIM
(Frivolous Lawsuit)

72. That Defendant reallege each and every allegation above, as if set forth herein verbatim.

73. That IOS's Complaint is frivolous and erroneous, and as such, the Complaint should be dismissed and the Defendants should be awarded attorney fees and costs under Section 15-36-10 et seq. of the South Carolina Code of Laws.

WHEREFORE, having fully answered the allegations of IOS's Complaint, Defendants pray that the same be dismissed with prejudice as to Defendants and for such other and further relief as the Court deems just and proper.

MCDONALD PATRICK POSTON HEMPHILL & ROPER, LLC

By: 

Roy R. Hemphill
Douglas L. Bell
Post Office Box 1547
Greenwood, South Carolina 29648
(864) 229-2511
ATTORNEYS FOR PLAINTIFFS

Greenwood, South Carolina
August 3, 2012

State of South Carolina)
) Court of General Sessions
County of Greenwood)
) 2012-CP-24-00576

IOS, LLC)
) vs.) Transcript of Record
)
)
Lander University, et al)
) Defendant)

November 17, 2017
Newberry, South Carolina

B E F O R E:

Honorable Frank R. Addy, Jr., Judge

A P P E A R A N C E S:

Chris Moore, Esq.
Attorney for the Plaintiff

Lena Y. Meredith, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: We will move forward on the Lander case.
2 This is, I believe, the Defendant's motion for summary
3 judgment, if I am not mistaken?

4 MS. MEREDITH: Yes, Your Honor.

5 THE COURT: Go ahead, Ms. Meredith. And I got your
6 email last evening about the situation. Apparently the
7 Plaintiff in the case has agreed to go with just the pure
8 property damage claim and not moving forward with the lost
9 business opportunity allegations. Is that accurate?

10 MR. MOORE: That's correct, Your Honor.

11 THE COURT: That makes the matter a little bit
12 simpler. Ms. Meredith, go ahead, please.

13 MS. MEREDITH: Yes, Your Honor. And I say that I
14 have talked with Chris before the hearing about his brief.
15 And I brought some additional submissions. I know you
16 probably haven't had an opportunity to get through his
17 brief.

18 THE COURT: A very first brief glance this morning.
19 I didn't log on last night.

20 MS. MEREDITH: So what we have talked about is if at
21 the conclusion of our argument, I think there is any
22 additional pertinent information that has already been
23 produced in discovery, which would go to my assertion that
24 there is no material issue of fact, that I would submit it
25 with your permission, if that is necessary. What I am

1 going to try to do, so that I don't become circular in
2 this argument, is go through the complaint. And I realize
3 that there has been a concession that they are not going
4 to go forward on the issue of a sales contract. And I
5 guess at the risk of beating a dead horse, in looking at
6 Chris' brief, there have been arguments made with regard
7 to what Mr. Huffman referred to as, "a side deal", that
8 was outside of the lease, it was actually signed by the
9 parties. And I think what I have to argue with regard to
10 that is that there is no side deal at least in the context
11 of how it was presented in his testimony during his
12 deposition that would not, by definition, have presumed
13 that there was a purchase contract in the way that it has
14 been argued. So that I will address sort of at the end.
15 But I think for the time being, what I wanted to do is to
16 basically go through what I thought, I don't necessarily
17 have to go through the statute of frauds except as to that
18 agreement which he claims there is a side deal which exist
19 between the parties. And I guess going back to basic
20 contract law, we have an agreement and that agreement is
21 that there was a lease with an option and there was no
22 purchase price that was identified and there was no other
23 agreement that was reduced to writing. The Defendant's
24 take the position or the Defendant, I guess as Lander, I
25 guess, would be the only Defendant in at this point, if he

1 has let the other argument go; is that there could not be
2 any side lease without there being some sort of ambiguity
3 within the lease itself that gets you outside of the four
4 corners of the contract. Then it is just going back to
5 basic contract law. It would appear to me that you have
6 got to have an actual ambiguity in the contract for there
7 to be any evidence or otherwise to come in. And cases
8 that have held that absence of a term is not necessarily
9 an ambiguity. So if we are talking about the absence of
10 the purchase price or absence of some other kind of, you
11 know, specific term without a specific agreement or
12 meeting of the minds, you do not give rise to a contract
13 that is enforceable. What we have is an enforceable
14 contract which was negotiated at arms length between the
15 parties. And just to give you a little foundation for
16 this. I believe that the testimony that Chris has
17 submitted for Mr. Huffman indicates that he admitted in
18 his deposition that due to the downturn and the economy at
19 the end was struggling. In fact, prior to the
20 negotiations with Lander he had already determined that he
21 was going to close the hotel portion of the property and
22 he also testified in his deposition that he was in
23 arrears. In fact, I have a payment history from the
24 lender. And he testified that he was three months behind
25 and then in another part of his deposition he said he was

1 three months behind, had been three months behind for a
2 couple of years. I think if you look at the payment
3 history that you have a significant arrearage. And at the
4 time what I understand was actually going on was that the
5 lender itself had lost other properties and that the
6 downturn in the economy was affecting their business quite
7 significantly. And that they were actually marketing the
8 note and had a potential buyer for the note. And that in
9 addition there was not an agreement necessarily between
10 the bank and the owner or IOS as to what was to happen. I
11 don't think the bank wanted a sale. I think they wanted
12 to sell the note, they wanted to get out. But you will
13 see from what we have submitted that, that there was
14 newspaper articles, I mean, and Huffman who was not an
15 actual member of the LLC but was a manager of the hotel,
16 actually Lewis Smith was the manager of the LLC and he was
17 the person that executed all of the documents. Huffman
18 testified that he was the person who was the pointman who
19 was authorized to negotiate. But when all of the
20 agreements were signed, Smith, and the parties are
21 basically aligned like this. Craig White from Columbia
22 who originally owned the property as Palmetto Inn and
23 there was a loan that was given by Business Carolina that
24 he was unable to service. In 2004 he went into
25 foreclosure. When that foreclosure was filed and

1 subsequently dismissed, IOS came in with Lewis Smith and
2 Misty Huffman and they borrowed and refinanced the note so
3 that Craig ultimately and Palmetto Inn's not lose the
4 property. They bought the property subject to the note in
5 the indebtedness. And I have got, what had been filed at
6 the time, which were UCC's from Palmetto Inn's and I
7 provided these to Chris. I have got UCC's that were filed
8 and I have got them being renewed in 2008. So what you
9 have in 2005 is purchased by IOS, subject to the note and
10 mortgage; assignment of leases and rents which is in my
11 package that I presented as part of our motion for summary
12 judgment, and these UCC's. So as I understand it, the
13 bank had first priority and at the time that all of this
14 negotiation was taking place they were in arrears, he was
15 closing the hotel portion, everybody was broke, he
16 couldn't keep it open, he couldn't service the debt. The
17 agreement that was reached was actually drawn up by the
18 Budget and Control Board. And I think the arguments that
19 had been made with regard to a side note, which I can
20 flesh out now or I can go through what I think my standing
21 argument is first because if standing is not there then I
22 don't think we get to all the rest of this stuff. My
23 issue with regard to standing is that by virtue of the
24 assignment of leases and rents, as well as the UCC's and
25 the subordination and forbearance agreements, which are

1 also in our package, that it is clear that the bank
2 retained the first priority interest in both the building
3 as well as all of the contents. The UCC's refer to any
4 and all furniture, fixtures and equipment; now or
5 hereafter required. And there were seven junior mortgages
6 in addition to this one, most of which were in arrears as
7 well. So in negotiating this lease, leaving aside whether
8 it is the true representation of the agreement of the
9 parties. What the scribner had to do which was the
10 attorney from Lander, Doug Bell with McDonald Patrick; was
11 contact the bank and make sure that because of the
12 assignment, leases and rents that the bank was in
13 agreement. Upon doing so it became apparent that the
14 assignment, leases and rents, which had been entered into
15 in February of 2003, that the debt service had been in
16 arrears for quite some time. Property taxes were coming
17 due, it was going to be sold for taxes in October if
18 property tax was not paid. There is information in the
19 Business Carolina file, which I would like to submit, that
20 indicates that Huffman went to the bank and told the bank
21 that he had been feeding this animal for basically so long
22 that he just couldn't do it anymore. And that in that
23 file there is a statement that he makes to the banker,
24 that my line of credit has been canceled, so I can't do it
25 anymore, I just don't have the money. The bank basically

1 agreed through these subordination agreements to the
2 lease. And there was a payment in debt service on the
3 lease throughout the period of time that Lander was in
4 possession of the building. So my first argument, when I
5 began looking at this was, what happened to the building
6 afterwards. Because as you can tell from the submissions
7 that I have given you, the foreclosure was entered because
8 it went forward, Lander occupied the building from August
9 of 2009 until June of 2011. They had a ten month lease to
10 begin with which they renewed. And in June of 2011, when
11 they released possession of the building, the bank
12 immediately began foreclosure proceedings. As I
13 understand it, had the lease not been entered the
14 foreclosure would have been filed imminently, had the note
15 not been sold. So I don't know that the change of
16 position that the Plaintiff is arguing is really a change
17 of position if they would have lost it sooner versus
18 later. But the argument that we have as to standing,
19 getting back to my point, was that by virtue of the
20 assignment of leases and rents as well as the
21 subordination agreements, anything disposition or
22 otherwise of any personnel property or real property came
23 under the auspices of those agreements. And at the time
24 that this suit was filed the foreclosure had already been
25 concluded. The hearing was held in February of '12; the

1 order was entered in March. The deficiency was entered on
2 May the 12th and this suit was filed May the 29th.

3 THE COURT: Did the bank merely bid, at the time of
4 the foreclosure, did the bank merely bid the, it has been
5 a couple of weeks since I have looked through this. But
6 did they simply bid the mortgage so it is not like a
7 situation where there was some deficiency that could be
8 attritted, (phonetic), to the damage, the property?

9 MS. MEREDITH: They bid in 805; which I understand
10 was, Huffman testified that he had an agreement with them
11 on basically a liquidated damages had he been able to sell
12 the building, and, or by the note, either one. Now,
13 throughout the course of the lease his testimony changes
14 and I can get to that in a minute, because like I said, I
15 don't want to jump all over the place. But they had the
16 foreclosure filed, finalized and before this case is on
17 the books, any interest that IOS had in the building; the
18 furniture, the fixtures has been divested from them. And
19 there is a deficiency of \$400 and some thousand dollars.
20 And what I basically have come up with is a case called
21 Jones. And it basically dealt with a lender who had a
22 loan and during the period of time that the foreclosure
23 was pending there was property insurance, the property
24 burned. And the question was whether or not the owner
25 could sue for the, it is a little bit different than our

1 situation because there was not a deficiency, but there
2 was language in the agreement that indicated that the
3 bank's interest in the insurance proceeds was primary to
4 that of the owner. And the Court held in that situation
5 that even without a deficiency that they had a right to
6 the interest of proceeds of policy. And there are other
7 cases which indicate clearly that in the event of a
8 deficiency, that any damages that would flow from the
9 collateral or agreements between the lender and the
10 borrower would affect the interest as to the collateral.
11 So my argument is basically that, because we have a
12 subordination agreement that mirrors the assignment of
13 leases and rents and --

14 THE COURT: That IOS has absolutely no interest in
15 the property that is enforceable at law, is what your
16 argument is.

17 MS. MEREDITH: Well, I would say that the real party
18 at interest --

19 THE COURT: -- would be the bank.

20 MS. MEREDITH: Would be the bank. And that the bank,
21 by virtue of the forbearance agreement and the
22 subordination has, there are agreements that were entered
23 into contemporaneously with the lease which indicate that
24 there can be no change to the lease without the approval
25 of the lender. That mirrors the language in the actual

1 lease itself that was prepared by the Budget and Control
2 Board. The lender has not released its interest in any
3 type of, and this is not insurance proceeds but if there
4 was an argument as to damage to the property then the bank
5 is the one who had standing to make it and still does
6 because of the deficiency. Because any damage flowing
7 from breach of the lease, there is specifically in the
8 language of the subordination agreement, in paragraph nine
9 which I am trying to put my hands on so I can hand up to
10 you; a statement that indicates that they do not release
11 any of the property, they do not release any of the
12 personal property and that at the time that those
13 agreements were entered into that they retain the right to
14 enforce the covenants of the lease against the tenant.
15 And that was signed off on by Lewis Smith who was the
16 manager of IOS in connection with all of the other
17 documents that were executed at closing. I realize that
18 there are other arguments that they made and I can move on
19 to those. But I believe that if you have got a true
20 breach of contract case and then an assignment of the
21 rights under that contract by virtue of the forbearance
22 and the subordination agreement, which is contained in
23 both the assignment of leases and rents which is a
24 document that preexist any of these agreements as well as
25 the additional forbearance and subordination, that you

1 don't get to damages by the owner without the lender
2 seeking the remedy. And at the time of the foreclosure,
3 if they are divested in any interest and there is still a
4 deficiency, that the lender would be the only one that
5 could, and it may be that, that the argument that they are
6 going to make is outside of that as to the actual lease
7 itself. But my first priority was to address the lease
8 and the signing of the lease and that all of the documents
9 match, that Lewis Smith had the authority, even though
10 Huffman has testified, and I believe, you know, I realize
11 this is a summary judgment motion and credibility may not
12 be necessarily an issue. But I believe there is
13 definitely interest that Huffman has that he is trying to
14 protect in that his wife had lent money as a junior lien
15 holder to IOS. And there is some indication after the
16 fact that they are jockeying for position in filing after
17 the foreclosure is complete in 2014, they are filing some
18 kind of confession to judgment. And if you look up the
19 IOS, Loan Star of Interest versus IOS, there are no
20 pleadings in the file. There is basically just a
21 confession.

22 THE COURT: Let me ask you this. Let's take this
23 from a different angle. If the, let's assume that during
24 the time this ten month lease was in existence, through
25 some negligence of Lander or one of their agent's, the

1 entire hotel burned, okay, rendering the property
2 completely destroyed at which point the Plaintiff makes a
3 business judgment. You know, hey, we had hopes for this
4 building, obviously it is going to take more time to
5 reconstruct it, to put another hotel there. We are going
6 to allow the foreclosure to go forward but obviously we
7 have lost an asset that we were hoping to maintain. I
8 understand your argument that all of this happened during
9 a difficult economic time, that Lander in many respects
10 was somewhat of a white night for the Plaintiff, came in,
11 put a bandaid on the situation for a period of time. But
12 if Lander had completely destroyed the building, I would
13 still say that or my initial reaction would be that the
14 Plaintiff still has a cause of action against Lander for
15 their negligent destruction. What we are getting at, now
16 that we are dealing with merely a property damage claim,
17 it is simply a lessor degree of pure destruction. You
18 would disagree with me on that?

19 MS. MEREDITH: I would disagree in that, I believe
20 that under the actual agreements themselves, that any
21 interest that the owner had in enforcing the lease or any
22 duties that arise under the lease were assigned to the
23 lender in writing.

24 THE COURT: Okay. You want to respond briefly to
25 that first point about standing and then we will move onto

1 other.

2 MR. MOORE: Thank you, Your Honor. As an initial
3 note, I appreciate your patience with me in getting caught
4 up --

5 THE COURT: Not at all.

6 MR. MOORE: Taking the Court's analogy, the way that
7 I was thinking about it, as I was sitting here listening
8 to the argument, is that it is, an assignment, similar to
9 like a subrogation claim in some respects. I mean, if I,
10 you know, get in a, I get in a car wreck my insurance
11 company pays the property damage, takes salvage title to
12 my vehicle, they own my vehicle. There is nothing that
13 says that I can't sue the person that hit me for my
14 property damage. While it is true that the insurance
15 company might have a subrogation claim, that still makes
16 me the party of interest. In fact, often times in a
17 subrogation context the insurance company, if they
18 actually take it over and litigate it, will do in the same
19 of the Plaintiff. So just because there may be an
20 assignment of the rights to the proceeds from the cause of
21 action or, you know, you are subrogated to the proceeds of
22 the cause of action due to some, you know, contract, that
23 does not divest a Plaintiff from being a named party with
24 a personal stake in the litigation or, you know, an
25 interest at least in name of the outcome of the

1 litigation.

2 THE COURT: And if the bank wanted to they could
3 intervene in this and try to collect any proceeds or what
4 have you that the Plaintiff recovers from the Defendant in
5 its underlying action because of, because of their
6 interest per the documents that she cites.

7 MR. MOORE: That's correct, Your Honor, I mean my
8 expectation would be that if the bank, you know, finds out
9 about this and if the Plaintiff is successful in securing
10 some type of recovery for the breach of lease agreement or
11 some, an oral agreement that we are going to get to, that
12 they would certainly have the ability to come in and
13 intervene in that manner or at least demand further
14 satisfaction. And as Ms. Meredith indicated, there are an
15 addition, some other judgments out there, not only the one
16 from the Loan Star Interest. I think that Clarion Hotels
17 has a judgment against the LLC for their failure to
18 continue operating at the hotel under franchise agreement
19 which some of the testimony in the case indicates that
20 that really only came about because the LLC was unable to
21 continue as a hotel following retaking possession of the
22 hotel from Lander at the end of the, at the lease term.
23 But I think I am getting farther than the Court wanted to
24 right now. So that would be my very brief response on the
25 standing issue.

1 THE COURT: Ms. Meredith, you have some additional
2 grounds. You want to proceed to those?

3 MS. MEREDITH: My first observation is, is that the
4 property damage context is a tort claim as opposed to a
5 contract claim. And that we have a contract in this
6 instance which was reduced to writing and contains
7 assignments of the various interest to the parties which
8 would be binding upon them. And one of those was an
9 assignment to the lender of the rights to enforce the
10 lease as to the tenant. So absence some kind of -- if the
11 contract were not a remedy, and if you have a remedy in
12 contract then there is a contract between the parties then
13 the contract controls. I only get to an argument outside
14 of the contract if the contract does not control for some
15 reason or another. And I have actual agreements that were
16 entered into by authorized representatives on behalf of
17 the LLC. The fact that Huffman had an interest of virtue
18 of his wife's investment in the property and wanted to
19 claim that they made some kind of deal with him that was
20 going to amount to a purchase, I don't see how we get to
21 any of the arguments if they are truly leaving aside the
22 issue of whether there was a purchase agreement. I think
23 the argument that he has to make and that he made on
24 whether there was a side deal or not; number one, he
25 acknowledges in his deposition because he was there. In

1 fact his statement was, when I asked him did Diane Newton
2 have the authority to enter into a side agreement and
3 didn't he realize that Lisa Catalanotto from the Budget
4 and Control Board would be in complete control of any
5 agreements that were reached and that nothing could be,
6 you know, executed or agreed upon that was outside of her
7 curfew, basically. And he said, yes, I mean she
8 controlled every comma in the agreement.

9 THE COURT: I don't disagree. But here's, here's,
10 the agreement between the Plaintiff and Lander satisfied
11 the immediate need for both parties. Okay. Lander needed
12 some more student housing, IOS was in trouble. And as I
13 recall, there was some discussion about Lander purchasing
14 the property outright. I mean, am I mistaken, it is, I
15 think both sides do agree that --

16 MS. MEREDITH: -- absolutely. They wanted it if they
17 could get it under the -- there was no agreed upon
18 purchase price.

19 THE COURT: Right.

20 MS. MEREDITH: They had not done seismic evaluations,
21 appraisals. And the Budget and Control Board, as was
22 acknowledged by Lewis Smith who was the manager as well as
23 Huffman in his deposition, they knew that Lander could not
24 enter into any other agreements without Budget and Control
25 Board approval as was apparent at the time that all of the

1 documents were executed. And the fact that they did want
2 to buy it and I don't want to appear to state that they
3 didn't. If it had worked out it would have been a benefit
4 to both parties. But they are trying to bootstrap what we
5 consider to be due diligence and actual emails between the
6 parties that indicated there had never been an agreed upon
7 purchase price. Because they can't get around the statute
8 of frauds on the purchase agreement and because there is a
9 problem in not actually having the terms required for
10 there to be a purchase agreement, they have to go to
11 promissory estoppel, some sort of negligent
12 misrepresentation. And this new argument, which is very
13 good but I think the problem I have with it is, Huffman is
14 trying to find a way around the fact that there was no
15 agreed upon purchase price. And it is clear through all
16 of the emails and the testimony that they had a range that
17 he wanted people to be in but he is all over the map. He
18 doesn't say, I will take no less than what for it. In any
19 of the conversations that are had, he is talking about it
20 being a moving target basically. And at the time that all
21 of these things are being discussed you have the
22 additional problem --

23 THE COURT: -- the people that financed it, maybe you
24 got to deal with that.

25 MS. MEREDITH: Well, you have got debt that has not

1 yet been discovered. They had not paid their withholding
2 taxes to the Federal Government since 2005. And there was
3 a \$300,000.00 dollar tax lien that hit in April of 2010
4 which is when Huffman basically said in his deposition, he
5 wanted it closed, he was asking how long does this process
6 take, I know you have to get Budget and Control Board
7 approval, bla, bla, bla. I think in order for them to
8 bootstrap the argument that they want to argue to get
9 around the statute of frauds, they have the same problem.
10 They don't have a purchase price, you can't enforce an
11 agreement if there never was one. And the fact that they
12 contemplated doing due diligence and then determined after
13 due diligence that they could not afford to buy it.
14 Because what actually happened, was they got approval from
15 the Budget and Control Board to do the due diligence.
16 They determined that each individual room had to have a
17 sprinkler installed in it.

18 THE COURT: And Lander backed out on any sort of
19 discussions at that point in time. There was a letter
20 somewhere I saw by somebody with McDonald Patrick.

21 MS. MEREDITH: And even after that Huffman starts
22 negotiating, he says in emails that are in discovery that,
23 okay, if y'all aren't going to do this on or before
24 whatever date I have to go to the buyer that I have
25 waiting in the wings. I mean he basically says, I have

1 got somebody from Atlanta that wants it. Then he says I
2 have got somebody that wants a five year lease. Do y'all
3 want it before I give it to him. So throughout the course
4 of all of the communication between the parties you have
5 got no agreement as to purchase price, whether it is going
6 to be a lease or a purchase. And they are basically just
7 trying to figure it out as they went along. And I agree
8 with you, they were about to lose it, there is no doubt
9 about it. And we needed housing but I don't see that you
10 parlay that into an enforceable promise, because in order
11 for there to be any kind of promissory estoppel you have
12 to have an unambiguous promise. And the only unambiguous
13 promise that they can tell me that there is, is we will
14 buy it. There is no unambiguous promise for anything else
15 that is contained in any of the other discussions. I
16 don't see how they get to some sort of promissory estoppel
17 argument if you, if the cases --

18 THE COURT: -- you are basically saying, the best
19 that they have is an expectancy or hopes of some desire
20 that never amounted to assurances from Defendant Lander.
21 But, yeah, we are going to buy it for X dollars on X day
22 under the terms of X,Y and Z. How do you, you are suing
23 under a breach of contract and we are now dealing with
24 property damage. I mean, she sort of has a point.

25 MR. MOORE: Well, so the way that I view it, Judge,

1 is that there are, the way that we have set it up in
2 briefs, there is three briefs. There is what we would
3 contend is an oral contract for sell, \$2.3 million
4 dollars. Mr. Huffman testified that Lander told me they
5 would buy the property for \$2.3 million dollars. I have
6 to concede that if we come in here and try this case in
7 front of Your Honor that he is all over the map on that.
8 Even if he is not all over the map and is steadfast in his
9 belief that the documentary evidence in the case would
10 seem to suggest that definite terms were not coming to.
11 His allegation is that the Budget and Control Board had to
12 go through approvals. But that if the Budget and Control
13 Board wouldn't come up with the money for it the
14 Foundation would pay for it. None of that is born out
15 really by the documents that I have seen in this case.
16 And so I, you know, I am going to have a big problem. I
17 mean, I could still sit here and say, Judge, Rule 56, I
18 have got a guy that is saying this stuff so we have got a
19 fact dispute. And if we want to, you know, Your Honor
20 wants to see his ten hour deposition.

21 THE COURT: Right, which just means we go through the
22 trial of it and you lose in summary judgment.

23 MR. MOORE: Correct. Correct, Your Honor. So, you
24 know, I don't want to be a wilting violent on that but,
25 you know, I do believe that she has got a point. The

1 second agreement that I would take issue that you can kind
2 of lump that in with the sale piece is, and here is the, I
3 don't want to bore you with facts but I think it is
4 important. The way that this all went down is that Lander
5 had a need for student housing that was pretty immediate.
6 They got word that this thing was going up for sale or
7 could potentially be going up for sale. I would, just to
8 take a step back pretty quickly, I guess I would kind of
9 contest the suggestion that it was about to be foreclosed
10 on, they were shutting down the hotel portion to eliminate
11 that overhead in the hopes that their profit center at the
12 bar and the restaurant would --

13 THE COURT: -- would be sufficient --

14 MR. MOORE: -- to service the debt.

15 THE COURT: Right.

16 MR. MOORE: That's right and to kind of ride out the
17 economic downturn. So that was his plan but then got word
18 that Lander might be interested. And he says, well, I
19 have got a great idea. I will rent you those top two
20 floors and we will keep the bar and everything going
21 downstairs and maybe I can stay afloat with my investors.
22 And allegedly, according to Mr. Huffman, he and Diane
23 Newton work out a lease agreement orally for ten months,
24 that Lander is going to pay \$48,000.00 dollars, I think, a
25 month is the ultimate number that he testified to in his

1 deposition, over a ten month term to \$480,000.00 dollars.
2 And as, the other conditions of that would be that Lander
3 would be totally responsible for all maintenance because
4 he knew that if he had a problem, with his water heaters
5 or something else, that he couldn't afford to fix it. And
6 that Lander would also escrow the ad valorem taxes on the
7 real property for that calendar year. And according to
8 him that was a good, that was a deal, that Diane Newton on
9 behalf of Lander says, we have got a deal, that works.
10 And that will give us some time to do our due diligence,
11 to cut through the red tape and hopefully get you an offer
12 for purchase soon, you know, April and then it kind of
13 kept getting backed out.

14 THE COURT: But did the lease specify all of that?

15 MR. MOORE: Well, so the lease, so then she submits
16 it, Ms. Newton submits it to Budget and Control Board and
17 the Budget and Control Board says, no dice. They come to
18 the property one day, they go through it and basically
19 say, we are not agreeing to maintenance, we are not
20 agreeing to that price and we are not agreeing to pay the
21 taxes. And so the testimony in the case is that Mr.
22 Huffman said, well, then you don't have a deal. I can't
23 lease it to you for that because that is not going to help
24 me service the debt where my margin is going to be
25 non-existence such that if we have any problems on the

1 maintenance this thing is going to play out. So he says,
2 no deal. And then he testified, that at that point Ms.
3 Newton said, no, no, no, we can work this out, we can work
4 this out. Let's come to this side agreement, which I have
5 called this side agreement or side lease agreement, that
6 the Budget and Control Board lawyer allegedly said, I
7 don't want any part of this. And then they caucused
8 allegedly with one of the attorneys for Lander at the time
9 or somebody that was representing them in negotiations,
10 and the deal that they came up with is that, we are going
11 to pay you that additional \$17,000.00 a month in rent, you
12 know, we owe you that. We will also pay you the taxes.
13 And even though the lease says that you are responsible
14 for maintenance, we are going to reimburse you for any
15 maintenance costs that you incur during this ten month
16 lease. Well, how are we going to pay you that extra
17 \$170,000.00, \$34,000.00 property taxes, is that when we
18 buy it we are going to lump it in on the back end and add
19 it to a sales price. So my position would be they
20 acknowledged that they owed back rent and they promised to
21 pay it at a future date. Now, commercial leases are
22 governed by statutes in South Carolina, there is a statute
23 that I cited in my brief that says, any lease for a term
24 of less than a year does not have to be --

25 THE COURT: Yes.

1 MR. MOORE: So based on that promise, Mr. Huffman
2 says, okay, we can do this deal. I will sign the lease
3 from the Budget and Control Board based on an
4 understanding you are going to take care of this, you are
5 going to pay the maintenance and you are going to pay us
6 this money on the back end. I think I can sell that to my
7 lenders which evidently he did. Lander paid the
8 maintenance, he testified to that. I am still getting
9 through the file to see if I can see where that
10 transaction occurred. But allegedly they incurred
11 mountenance of ten months, he had a maintenance man that
12 he employed that Lander essentially paid, according to his
13 testimony. So they were partially performing on that side
14 kind of promise that they gave him to induce him into, you
15 know, not backing out of this lease deal. Now, he hadn't
16 signed the lease. We can speculate all day as to what
17 would have happened to the LLC. But the fact is, is that
18 he did enter the lease and that he also agreed to this
19 kind of side oral promise that Ms. Newton made to him to
20 kind of get the thing going. And that makes sense, I mean
21 she had students that she had to house, you know, within
22 weeks. And then once that transpired everything went
23 really quickly from there, that kind of goes into some
24 other issues. But that, that's my, I guess my argument is
25 that, I think I probably do have problems with enforcing

1 the alleged purchase for \$2.3 million. But that I think
2 that it is a closer call, certainly a fact dispute on
3 whether or not we can enforce it, especially if you treat
4 it as a lease or an agreement that, you know, is capable
5 of being performed in less than a year. And then
6 certainly the written lease agreement is what it is. And
7 I think --

8 THE COURT: The written lease agreement so far and
9 just refresh my memory on this. The written lease
10 agreement itself, was that the one that the Budget and
11 Control Board shot down?

12 MR. MOORE: That is the one that Budget and Control
13 Board said, yes, this is how it has got to go.

14 MS. MEREDITH: And they signed it.

15 THE COURT: Okay.

16 MR. MOORE: They did, they did. But he testified and
17 Mr. Smith testified too, the manager of the LLC, that no,
18 there is no way we signed that lease, the one that is
19 signed, without this other promise or this other side
20 agreement.

21 THE COURT: Side deal.

22 MR. MOORE: Because we just can't make that work.

23 THE COURT: Okay. What hotel, Ms. Meredith, and this
24 goes to the question of, I mean maybe this goes to the
25 heart of it. What hotel is looking at going out of

1 business is going to cut a deal; you are putting a bunch
2 of college students in a hotel and you are putting them up
3 in a hotel. And I am assuming that the hotel does not
4 want to have to provide daily maid service to a whole
5 bunch of college students for ten months.

6 MS. MEREDITH: And I don't believe that they did.

7 THE COURT: Right. Clearly there was a side deal,
8 right?

9 MS. MEREDITH: No. And I think that if you have any
10 kind of lease that sets forth terms that the parties
11 agreed upon and actually performed under, I don't have
12 anything that amounts to part performance that has been
13 presented. And I think I have to have clear and
14 convincing evidence of any type of promise that would be
15 something that they could rely on. I mean, I have several
16 issues that I can take one at a time with it. Number one,
17 is that there is not clear and convincing evidence of it.
18 There is nothing except Huffman's bare assertion that that
19 is the case.

20 THE COURT: Did Lander, they were talking about the
21 maintenance cost --

22 MS. MEREDITH: -- he paid his maintenance guy up
23 until he fired him.

24 THE COURT: Say again.

25 MS. MEREDITH: He paid his maintenance guy, whose

1 name was Clayton Smith.

2 THE COURT: But he was never reimbursed by Lander?

3 MS. MEREDITH: I haven't seen it if it was.

4 THE COURT: Is there any evidence that it was
5 reimbursed by Lander?

6 MR. MOORE: He testified that it was reimbursed by
7 Lander.

8 THE COURT: Is there a canceled check that he was
9 reimbursed by Lander.

10 MR. MOORE: That would be one of the things that I am
11 going to be asking Lander in a 30(b)(6) deposition that we
12 are working on. I don't, I cannot present you right now,
13 Judge, with a canceled check.

14 THE COURT: Is there a deposit notification in his
15 bank account, his operating account that there was a
16 \$17,000.00 dollar payment to cover maintenance?

17 MR. MOORE: I will certainly endeavor to find it and
18 if Ms. Meredith is allowed to supplement with additional
19 materials that she was referencing earlier. I would add
20 that in there and just say, hey, here is what I am talking
21 about. For purposes for today, Your Honor, we don't have
22 it.

23 THE COURT: All right. When are we, I don't mean to
24 hurry this because I know you want to respond to what he
25 submitted yesterday. And out of deference to the other

1 people who are here, maybe it would be best, the discovery
2 is still ongoing, he still has got a deposition to take
3 perhaps. And I know that we have mediation set.

4 MS. MEREDITH: Actually I think the mediator had
5 double booked us.

6 THE COURT: Double booked?

7 MS. MEREDITH: So we have got to find another date.
8 And my purpose, because this has been going on for five
9 years now, is to try to do whatever I can to eliminate
10 anything that is not essential for the University moving
11 forward.

12 THE COURT: I understand.

13 MS. MEREDITH: So I think the problem that I have is,
14 as to any type of promissory estoppel, that there isn't
15 any clear and convincing evidence; that they could not
16 rely on Diane Newton by their own testimony to make that
17 assertion because they admit in the same sentence --

18 THE COURT: -- that they are dealing with the Budget
19 and Control Board.

20 MS. MEREDITH: Budget and Control Board controls and
21 you don't get to that agreement, the side agreement does
22 not actually ever come into play unless you believe that
23 there was a promised purchase. There was obviously
24 interest and they basically threw it against the wall to
25 see what they could do with it because that was the option

1 that they explored. There were other options that were
2 explored as well. This one didn't work out. The problem
3 that I have with the side agreement is, if you have,
4 moving to the next argument that I think that he has got,
5 negligence misrepresentation. I have two issues with
6 that. And most of the cases that I have read you
7 basically have two threshold issues. The first one is
8 whether or not you have got the right to rely on what you
9 allege that someone is representing to you. And I would
10 show that in this case that they knew they didn't have the
11 right to rely on anything that Diane said because they
12 knew the Budget and Control Board was in control. And if
13 they are abandoning the purchase agreement argument, that
14 the only way they get to a side deal is in the context of
15 some sort of alleged purchase agreement. And if you don't
16 have, if you have an integrated agreement that is written
17 that has an option with no purchase price in it, to get
18 outside of that you have got to have some, something more
19 than they have. They admit they can't rely on that, that
20 the Budget and Control Board controls. They agree that --

21 THE COURT: -- that the Budget and Control Board
22 doesn't control the Lander Foundation though. That
23 operates independent of the Budget and Control Board.
24 Right?

25 MS. MEREDITH: But he just said that he agreed they

1 didn't have a purchase contract or a promise to purchase.
2 All he said is, we had a separate lease that we were
3 operating under that was different than the one that was
4 in writing, which there is not evidence of as far as I can
5 tell. I mean, the only thing in fairness to him that I
6 can find, is that the place was about to get sold for
7 taxes. And I agree, this all happened very quickly. And
8 you know, I think the people that are trying to draft
9 these documents are doing the best they can under the
10 circumstances to come up with the information that they
11 need to do it. So when his manager of the LLC executes
12 the forbearance agreement that admits they are in default,
13 it wasn't just that we say that they were in default.
14 They signed an agreement admitting they were in default
15 and waiving defenses. And if there is some sort of
16 negligent misrepresentation, I take issue with the Tort
17 Claims Act having a gross negligence standard against any
18 type of governmental employee on any kind of discretionary
19 decisions. I don't even think I get there though. And in
20 the other cases that I have looked at, if you have a, an
21 argument that you are being asked to rely on a
22 representation, you have to be able to reasonably rely on
23 it to start with. If you can't reasonably rely on it then
24 you cannot make the argument that you are taking a
25 position to your detriment if you knew you couldn't rely

1 on it in the first place. If the Budget and Control Board
2 had to approve any lease terms there is no way that John
3 Huffman can say, but she told me she would pay me on the
4 back end. He knew she couldn't do that. There is no way
5 that he could know that she could, that if he admitted in
6 his own deposition that he knew that the Budget and
7 Control Board was going to run the show. I mean, they
8 reached an agreement allegedly that the Budget and Control
9 Board shot down. I don't know that that was how it
10 happened.

11 THE COURT: How quickly did the Budget and Control
12 Board shoot it down?

13 MS. MEREDITH: Before the agreements were signed. I
14 mean, we are talking about there being negotiation rather
15 than an agreement. They signed the agreement that they
16 arrived upon because the Budget and Control Board was in
17 charge. If they are in negotiations and it becomes clear
18 at the time that the agreements have to be signed that
19 this is how it has got to be, then you can't say after
20 that point that you can rely on anything that somebody
21 said prior to that agreement. And if you have got any
22 kind of promissory estoppel argument it cannot be based on
23 something that is suppose to happen in the future. It has
24 to be, there has to be a past representation.

25 THE COURT: Help me out with the timing. Let me get

1 the timing of all of this straight. Okay. I thought I
2 had it straight in my mind. I must not have. They signed
3 the agreement.

4 MS. MEREDITH: August 17th is the lease and the
5 forbearance agreements and the attornment and
6 non-disturbance and subordination are within ten days, I
7 believe.

8 THE COURT: The Budget and Control Board is not a
9 party to that agreement, is a party to the agreement?

10 MS. MEREDITH: The Budget and Control Board --

11 THE COURT: -- or the agreement is subject to their
12 approval.

13 MS. MEREDITH: It is subject to their approval and it
14 is also subject to the lender's approval.

15 THE COURT: So August 17th they signed the lease,
16 agreement subject to Budget and Control Board.

17 MS. MEREDITH: And honestly I think all of this came
18 about because when they started looking into the
19 forbearance agreements this mound of debt came crashing
20 down and they realized that they hadn't been servicing it.
21 And they were afraid that all of this was going to amount
22 to an immediate default under the lease because all of the
23 lease provisions required that they maintain good standing
24 with the lender.

25 THE COURT: Right. Here is my point. August the

1 17th the lease is signed, subject to everybody's approval.
2 Students moved in when, the next week?

3 MS. MEREDITH: 29th.

4 THE COURT: Okay. At this point in time the Budget
5 and Control Board says, okay or no-kay?

6 MS. MEREDITH: They had to say okay at the time that
7 the lease was executed. What is contained in the written
8 lease is what is the, the sum total of the negotiations
9 that he has discussed, while I don't agree with the facts,
10 it resulted in the written lease. After that point there
11 is no other Budget and Control Board shooting anything
12 down. They shot it down, they signed the lease, end of
13 story. If you take the facts in the light most favorable
14 to the Plaintiff. We say that that is not how it
15 happened. That he wasn't happy with the agreement and
16 that he was trying to find a way after the fact to work
17 around it. But he didn't, unfortunately, have the
18 authority to sign the agreements, Lewis Smith did. Lewis
19 Smith was the manager of the LLC and he is the one who
20 actually executed all of the lease documents, the
21 forbearance agreements, the bank signed off on all of it.
22 Getting back to my standing argument, all of those
23 documents that were signed at the time of the lease, not
24 before, at the time of the lease the lender signed the
25 agreement that said we have the right and the owner's

1 right because they are in default to anything is
2 subordinate to ours.

3 MR. MOORE: So a couple of things. The contention
4 that we should have known that whatever Diane Newton said
5 was bogus because we knew that the Budget and Control
6 Board ultimately had to sign off on a sale or sign off on
7 the formal lease agreement. That doesn't mean we couldn't
8 trust Diane Newton to, as an apparent agent of the
9 University, to make this side deal which, you know, we,
10 the testimony is that it clearly indicated they were
11 trying to save the deal because we weren't going to take
12 it. That is fine if the Budget and Control Board had
13 final say. We weren't going to sign that lease, we were
14 going to wash our hands of it and see what else we could
15 do to try to make the thing work. The thing that got us
16 into the deal were these, I guess, outside of the written
17 lease, these oral promises. Now, whether or not those
18 promises have to be a present sense or an existing fact, I
19 think that is the negligent misrepresentation frame work.
20 And admittedly, when we get to the elements of negligent
21 misrepresentation it requires a false representation that
22 is not a broken promise for the future or, it has to be
23 something that is preexisting. And I think that, I mean
24 even if I can present the facts that I would have trouble
25 convincing Your Honor that we could meet our elements of

1 that. So I think, her point is well taken on that. But
2 promissory estoppel, I mean that is what that is all
3 about. I mean, it seems inequitable in hindsight that, in
4 the speed of trying to get this deal done in the face of
5 the need for the housing; the face of the IOS or at least
6 the apparent agent of the IOS, LLC; the guy that has been
7 doing all of the negotiations thus far, running the
8 operation. You know, he is about to back out and they
9 say, look, we are going to take care of this. We are
10 going to make this up to you, we are going to make sure
11 you get paid because we need this hotel and we want to do
12 this. So you know, just because there is something, I
13 mean, I think the understanding, at least according to the
14 testimony, is that we were actually renting outside of the
15 BCB. We were doing something separate so that the BCB
16 deal was palatable because we knew we were going to get
17 subsidized by the University. So I don't know that it is
18 fair to criticize us for believing the University, just
19 because we knew that the BCB played a role in this. So
20 that would be my one response. I want to go back just one
21 second because Your Honor asked the question about the
22 maintenance. And it occurred to me after I sat down that
23 when they renewed the lease for the second term they took
24 over the maintenance but the lease was not ever modified.
25 So there is some partial performance there. I mean,

1 obviously we have remained responsible for the maintenance
2 under the lease agreement because it never changed in the
3 second term when they renewed it. And they took over the
4 maintenance whole cloth. I mean, we fired our maintenance
5 man, we never went back out there. In fact, for a year we
6 had no idea what was really going on in the facility, I
7 think. So while I may not have a canceled check to show
8 that the University, I mean I haven't yet to show that the
9 University paid IOS, LLC; or paid this maintenance man to
10 reimburse them for the cost in that initial few months. I
11 don't think they dispute the fact that they took over the
12 maintenance in contradiction to the terms of the lease
13 during the second, during the renewal term. So I just
14 wanted to kind of supplement the record.

15 THE COURT: Ms. Meredith, we are going to have to
16 take a break on this in a moment so I can address some
17 other matters. And, of course, I am going to give you an
18 opportunity to respond to what was filed. But I am just
19 flipping through the emails here and it looks like we have
20 a lease, you are right, August the 17th, signed by the
21 attorneys for the Budget and Control Board. Then we have
22 a series of subsequent emails from Tom Covar on December
23 15th, Budget and Control Board gave us approval to proceed
24 with the building conditions assessment, building
25 appraisal, impact study. It looks to me that there was

1 more to this deal than just merely this lease. And if he
2 is correct that when the lease was re-up'd, subsequently
3 if there is evidence that the parties changed who was
4 responsible for the maintenance, et cetera, that would
5 seem to be some evidence of a side deal or some evidence
6 of the parties desire to alter the original lease of
7 August the 17th. Maybe I am weighing a little bit too
8 much into the facts but it does not seem terribly
9 equitable that the Court should hold the parties to the
10 explicit terms of the lease if in fact there was some
11 understanding there was some, presumably, that the
12 Plaintiff can prove, prove some writing. They have got
13 emails, that might satisfy under the statute of frauds. I
14 realize that this, the whole thing, you still have
15 students that are living there, there are benefits being
16 conferred on both parties. With that, assuming for the
17 moment the Court were to find some evidence, perhaps the
18 original lease was altered wouldn't the Court be obliged;
19 how I am still, I will put it to you this way. How are
20 you still entitled to summary judgment if there is some
21 evidence, a scintilla of evidence that maybe there was a
22 side deal, a side lease?

23 MS. MEREDITH: I think the promissory estoppel
24 standard is clear and convincing. And if we are under
25 strict contract law, I think if you have got an integrated

1 agreement that the parties have signed that is a
2 combination of negotiations and is actually mirrored by
3 the other agreements that are signed at the time. Because
4 what I represent happened is Huffman wanted to close a
5 deal, if he was going to close a deal by a certain
6 deadline that he had in his mind. And he knew that his
7 opportunity to make this happen was going to be in that
8 window. This is, you know, after having been involved
9 with this case for this length of time and somehow he
10 picked a timeframe that was on or before tax day in 2010
11 which is right around the time that all of these
12 \$300,000.00 dollars worth of withholding tax liens were
13 filed against IOS, that we did not even know about. So
14 you have got, the course of conduct of the parties is that
15 he is in default, he admits he is in default. We have to
16 enter into the lease, we have to get the approval of the
17 lender to the lease, we have to get the approval of the
18 Budget and Control Board. He is the only one with a side
19 deal. And what I am trying, I guess, to convey is that
20 there are often times, I have one child in particular that
21 I can't ever say maybe to because and I have told my
22 husband, if you tell her we might go to the park, you are
23 never going to convince her that you didn't say yes.

24 THE COURT: Right.

25 MS. MEREDITH: This is Huffman --

1 THE COURT: Consider yourself lucky, I have got two
2 of those.

3 MS. MEREDITH: Well, I have more, probably have more
4 than that. But there is nothing about a side lease that I
5 can find that isn't already integrated in actual written
6 lease. And what I think is trying to happen is Huffman is
7 trying to bootstrap a purchase and by extension, if you
8 can't meet the statute of frauds on a promised purchase
9 because you don't have terms --

10 THE COURT: -- you can't meet, you can't do it --

11 MS. MEREDITH: -- you can't meet it on the side lease
12 either because what you have in the actual written lease.
13 And he says in his deposition that she was at the table, I
14 was present, there was really no discussions with her
15 other than Diane Newton telling us we could not change a
16 word or a comma in that lease. I mean, he was obviously
17 aware that they controlled and I think that if they had
18 given up this purchase on the statute of frauds argument
19 that you can't get where they want to go without following
20 that same path. And I have looked at all of the other
21 arguments that they have made to try to figure out if
22 there is, I mean I don't see a negligent representation, I
23 mean I keep coming back to whether there was any sort of,
24 I mean you do not have an unambiguous promise to purchase
25 because there is never an agreed upon price. I mean,

1 granted, I mean if I tell my daughter we may go swimming
2 if it quits raining and I get all of my work done, and it
3 quits raining but I don't get all of my work done we don't
4 go. I cannot parlay that into an agreement if the alleged
5 promise is outside of the four walls of the contract and
6 the statute of frauds confines me to that contract. And
7 his own admission is that he knew that he couldn't rely on
8 the person that he is alleging that he relied upon. I
9 think that is where I have a problem in that I know that
10 if this had worked out for him and we had purchased it, we
11 wouldn't be here. And I don't know that if we had
12 purchased it, if we could have purchased it that he would
13 have argued about the purchase price that much if he could
14 have just gotten out of the trap, as he referred to it in
15 his deposition. But I think where I fall short on this is
16 I can't see how you get to a separate agreement when you
17 have already got one that is, the actual agreements with
18 the forbearance and the non-disturbance. And this is
19 where he got aggravated because he had a five percent
20 management fee. This is how he made his money. He got
21 paid whatever the management fee was and he was continuing
22 to get paid throughout the course of the lease and his
23 debt was being serviced and his principle and interest was
24 being reduced. So if you look at from strictly the
25 standpoint of whether he relied on something to his

1 detriment or not, then he is not a member of the LLC. But
2 theoretically the LLC came out with a lower deficiency and
3 the member who made the personal guarantee came out with a
4 lower deficiency. I don't get to an agreement on the side
5 without by extension getting to an actual purchase price
6 because all of this, they, the emails and the course of
7 conduct between the parties is this. Diane Newton left
8 after December and took a position with another
9 University. Somebody else steps into her spot. There is
10 constant emails back and forth, where are we on the
11 agreement. Do y'all know if you can do anything yet, you
12 were supposed to have this to the Budget and Control
13 Board. It is obvious that they know the steps that they
14 have to go through and are trying to figure out if there
15 is a faster way to get there. And when we get to April
16 and we are trying to do all of this evaluation to see
17 whether it is financially feasible, if there is a way for
18 them to afford the building, knowing what the debt
19 structure is --

20 THE COURT: -- knowing that there is a \$300,000.00
21 dollar lien.

22 MS. MEREDITH: Knowing that they knew the \$300,000.00
23 dollar lien has just hit. I mean, at that point I think
24 his focus changes because from that point to the end of
25 the lease you have him talking about alternatives. He

1 knew he didn't have the building sold, because if he knew
2 he had the building sold then they were suppose to be
3 honoring this promise when he got sued for foreclosure.
4 He should have brought them in and said, here is what I
5 believe is the reason for the deficiency. Here is my
6 cause of action for impairment of my collateral. At that
7 point I think he has an argument if he wants to make one.
8 I don't know that it succeeds then or now but what he does
9 between the time of the renewal and the end of the lease
10 is to try to find anybody else that he can to buy it or
11 get Lander to lease it for five years.

12 THE COURT: Right.

13 MS. MEREDITH: I mean he is taking action that is in
14 direct contradiction to his own testimony. And if he's
15 got this promise for them, I mean there is an email that
16 is from September, September the 6th, if I remember
17 correctly, where he says, well at some point we need to
18 reach a purchase price. This is right after the signing
19 of the lease. I mean, I don't think I can get to an
20 amorphous, I have to have an unambiguous promise or a
21 specific act or omission that otherwise you could, you
22 wouldn't need the statute of frauds, number one. And as
23 far as any part and performance is concerned, if the part
24 performance is as to the terms of the lease and he fires
25 his maintenance guy because he can't pay him anymore and I

1 don't know that this will be born out or not but there was
2 some, you know, story about how they had to barter with
3 him for his last check or something like that. But if we
4 take over the maintenance at that point, for the remainder
5 of the term of the lease, I mean that is as to the lease,
6 not as to a purchase. There is nothing about that in
7 particular that gets me to a purchase price, to other
8 essential terms of the purchase agreement.

9 THE COURT: Mr. Moore, you want to respond to that.

10 MR. MOORE: Yes and I think I, I think we were kind
11 of saying the same thing in some sense. I mean, I am not,
12 like I told you earlier, Judge, maybe there is a question
13 of fact, we could litigate it. All in the purchase of, I
14 don't think we have, I don't think I can, in good faith,
15 show you definite terms of the purchase. And I agree that
16 we run into all kinds of problems, I agree that the LLC,
17 based on the evidentiary record knew that things had to
18 happen with the Budget and Control Board for them to buy
19 this piece of property.

20 THE COURT: And it wasn't going to happen.

21 MR. MOORE: I disagree a little bit with the
22 contention that this was all in his own mind, that it was
23 going to happen in April. I mean there are emails where
24 she is saying, we are going to phase one approval in
25 December. Looks like hopefully we will get it on the

1 docket in March.

2 THE COURT: There is an email that says they got
3 approval in December.

4 MR. MOORE: Right. There were things, he is asking
5 through September and October and November saying, where
6 is my offer, where is my offer. And they are like, we are
7 getting there, you know, it looks we might actually get
8 this thing in March. So I think when he had his
9 deposition taken, he had a reason to have some, at the
10 time, I mean we are looking back at the time. But he had
11 some good faith basis to think that maybe they could get a
12 deal done in April. But I don't think it matters because
13 what I am trying to argue is that they promised that, even
14 though he knows he has got a lease with the Budget and
15 Control Board and that any sales contingent upon their, he
16 says I am not going to enter that lease. And then Lander
17 says we are going to sweeten the deal, we are going to pay
18 you the additional rents we agreed to, we are going to pay
19 you the taxes.

20 THE COURT: And that's fine and I appreciate that and
21 we are talking about summary judgment. And so your
22 representation at this point is enough for that. But
23 there needs to be some independent evidence of that, if
24 you have that.

25 MR. MOORE: And I think the fact that they say you

1 don't have a side agreement and that we say we did have a
2 side agreement, I mean I think that is a dispute of fact.

3 THE COURT: I agree that is a dispute of fact but
4 what I am telling you and I think this is being done
5 nonjury. I would be surprised if, hey, you have this side
6 agreement. Your guy says okay, we have got this side
7 agreement and we were operating under this side agreement
8 but there is nothing to document the side agreement either
9 by way, as I mentioned a moment ago, a canceled check. An
10 email string, the other side's deposition in saying, yeah,
11 you know, I mentioned to them --

12 MR. MOORE: -- we did tell them.

13 THE COURT: You have an evidentiary problem even
14 though technically you are correct, maybe summary judgment
15 is not appropriate. That is what I am getting at.

16 MR. MOORE: Let me go find the canceled check.

17 THE COURT: There you go.

18 MR. MOORE: And that is why I tried to point out that
19 they did take over the maintenance and that is, that is
20 consistent with our alleged oral side agreement.

21 THE COURT: They took over the maintenance because
22 there were a whole bunch of college students there and
23 there was no way in the world that your guy could
24 probably, he was tired of it all anyway and he wasn't
25 getting paid.

1 MR. MOORE: And I would argue that, you know, if they
2 really felt as strongly that this side agreement didn't
3 exist then they should have been knocking on our door with
4 reimburse them.

5 THE COURT: Well, I understand. But they also, if
6 the maintenance guy is not getting paid and he quits and
7 leaves or whatever, there is a dispute like that, they
8 still got a whole bunch of college kids that are gone over
9 Christmas break. We are going to need somebody to
10 maintain the place when they come back.

11 MS. MEREDITH: That is mitigation is all I see that
12 as. And I don't know that we get to a purchase agreement.
13 I still think that if he is trying to say, because this is
14 how I break it down. We either are talking about damage
15 to personal property which was pledged to the bank and
16 which the bank has a deficiency for and the bank owns the
17 damages because there is a deficiency. And even if there
18 is a judgment in this case it belongs to the bank and the
19 bank, by virtue of the assignment, would have to release
20 it for anybody to get any money. Okay. I mean, if there
21 is a filed judgment and all of those agreements are still
22 in place then it would be like the insurance company
23 issuing the check to the homeowner after the foreclosure
24 and getting sued by the bank because they had an agreement
25 with the bank that they would pay them first to satisfy

1 the debt.

2 THE COURT: I have actually had that to happen, I had
3 a case. All right.

4 MS. MEREDITH: But the other option is, if it is not,
5 you know, what was in the building and was it cracked and
6 broken or whatever, which I mean we have the argument on
7 who it belonged to and what damage there would be. I
8 mean, I would argue that if the bank is foreclosed on the
9 real property that you can't argue damage to a fixture
10 because you don't have a building anymore to repair. And
11 we are talking about made up numbers basically. Because
12 unless you can show that there is some detriment to you in
13 the form of some increase in the deficiency, I mean I
14 think the deficiency, it comes down to numbers, whether
15 the deficiency was going to be what it was absent any of
16 the lease were not, and what the value would have been of
17 the personal property and that's numbers. I can look at
18 the books and tell you what that is based on the
19 depreciation schedules, the tax returns and whatever else.
20 You get outside of that to whether or not there was some
21 agreement to make up the difference in a purchase price of
22 the \$17,000.00 dollars that Huffman claims he is short on
23 the rent. Then I think in order to get to those numbers
24 outside of any of the personal property, if we are, if
25 this is a personal property and real property, property

1 damage case then we are talking about purchase price and
2 that is where my problem is. I don't think that we get,
3 that is how he is claiming that it was to be calculated as
4 an increase in the purchase price.

5 THE COURT: Briefly.

6 MR. MOORE: The damages issue, that is going to be my
7 burden on the proof but I think it is a fact question. I
8 mean, there are certainly things that we claim just walked
9 out of the building and that weren't there for the bank to
10 foreclose on that the LLC put into the facility with their
11 own, some of it would have probably been preexisting.
12 That is going to be my burden at trial and I think the
13 question of damages will be a fact question.

14 THE COURT: All right. Ms. Meredith, I will give you
15 an opportunity, obviously, to respond to what was filed
16 last night. And we will take it from there. Go ahead and
17 see if y'all can reschedule the mediation and maybe there
18 is some way we can get worked out. The Plaintiff at least
19 at this point in time, seemed to have acknowledged, make
20 it their proof problems with perhaps with some of their
21 causes of action. Maybe the Plaintiff is not willing to
22 make that concession. I don't know. I will take the
23 matter under advisement and at your leisure, when you have
24 that reply, just shoot it to me and I will take it from
25 there. Y'all let me know when you have mediation

1 rescheduled. Okay.

2 MS. MEREDITH: Can we agree at this point that the
3 foundation, because they are not a party to the lease, is
4 out so that, at the very lease --

5 THE COURT: -- the Foundation is out?

6 MR. MOORE: Let me just, can I just --

7 THE COURT: You can.

8 MR. MOORE: I think I pretty much --

9 THE COURT: -- good enough.

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 17th day of November, 2017.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 January 16, 2022
1920 *Joy E. Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-24-576

IOS, LLC,

Plaintiff,

vs.

Lander University, Lander College and The
Lander Foundation,

Defendants.

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

In or about August 2009, IOS, LLC (hereinafter the "Plaintiff") owned certain real property with improvements and personal property better known as the Inn on the Square located at 104 East Court Avenue, Greenwood (hereinafter the "Inn"). Plaintiff, as landlord, and Lander University, as tenant, entered into a lease agreement for the Inn which included an option to purchase the Inn at a price to be agreed upon by the parties in the future. (See Exhibit A, Lease.) Lander University did not exercise its option to purchase under the lease, and tendered the Inn upon the lease termination in June of 2011. Plaintiff thereafter filed suit against the Defendants for breach of contract, promissory estoppel, negligent misrepresentation, negligence, and breach of lease agreement alleging an oral agreement to purchase the Inn between the parties. Defendants denied the Plaintiff's claims and demanded strict proof thereof. Defendants also subsequently filed a motion for summary judgment seeking to dismiss Plaintiff's Complaint.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue of material fact and the

moving party is entitled to judgment as a matter of law. Rule 56 (c), SCRCP; White v. JM Brown Amusement Co., 360 S.C. 366, 601 S.E.2d 342 (2004); B&B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inference which can easily be drawn therefrom must be viewed in the light most favorable to the non-moving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). When a motion for summary judgment is made and support is provided, an adverse party may not rest upon the mere allegations or denials in his pleading, but his response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Rule 56, SCRCP.

ARGUMENTS

A. SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANTS AS TO PLAINTIFF'S CAUSES OF ACTION FOR BREACH OF CONTRACT AND BREACH OF LEASE AGREEMENT AS THE PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF FRAUDS.

South Carolina Code Ann. § 32-3-10 provides that "[n]o action shall be brought whereby . . . [t]o charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them . . . [u]nless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized." S.C. Code § 32-3-10 (1976 as amended) (hereinafter referred to as the "Statute of Frauds").

Plaintiff alleges that Defendants orally agreed to purchase the Inn. The enforcement of such alleged oral agreement is prohibited by the Statute of Frauds. Plaintiff further alleges part performance in an effort to avoid the strict application of the Statute of Frauds to this case. The

Plaintiff alleges by taking possession thereof, making alterations thereto, paying a portion of the purchase price and telling the public that the Inn had been purchased, that the Defendant partly performed. Plaintiff has not alleged facts sufficient to avail itself of the part performance exception to the Statute of Frauds. The facts supporting the part performance exclusion to the Statute of Frauds must be alleged with particularity to avoid demurrer. See McMillan v. King, 193 S.C. 14, 7 S.E.2d 521 (1940). The party partially performing may seek equitable relief. White v. McKnight, 146 S.C. 59, 143 S.E. 552 (1930). In the instant case, Plaintiff has alleged that acts committed by Defendants under the terms of the lease agreement between the parties constitute part performance. Plaintiff may not avail itself of the equitable maxim by only alleging acts of the opposing party in support thereof. Plaintiff must show some action taken on its behalf in order to avail itself of any remedy arising out of an oral contract. Assuming for the sake of argument, that certain representations were made on behalf of Defendants regarding possible intent to purchase, said representations would have all been prior to the execution of the lease agreement in August of 2009, and any such representations were superseded by the terms of the written agreement and merged into the option to purchase. See S.C. Code § 32-3-10. As such, Plaintiff's causes of action related to breach of contract and breach of lease agreement are prohibited by the Statute of Frauds, and therefore Defendants are entitled to summary judgment.

B. SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANTS AS TO PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF CONTRACT AND SPECIFIC PERFORMANCE BECAUSE NO JUSTICIABLE CONTROVERSY EXISTS BETWEEN THE PARTIES.

"Before any action can be maintained, there must exist a justiciable controversy." Byrd v. Imo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). Justiciability encompasses several

doctrines, including ripeness, mootness, and standing. Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). The Plaintiff lacks standing to bring this action, and therefore its Complaint should be dismissed. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." Powell ex rel. Kelley v. Bank of Am., 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (alteration and internal quotation marks omitted). In addition, the party seeking to establish standing has the burden of proof. Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

The Plaintiff does not own the Inn, nor the real property or personal property related thereto, and thus the Plaintiff does not have any substantial interest in the subject matter of this action. See Powell, 379 S.C. at 444, 665 S.E.2d at 241 (finding that one element of standing is that the plaintiff must have suffered an "injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent") (internal citations and quotations omitted). Standing "concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." Id. (alteration in original) (internal quotation marks omitted).

Plaintiff's predecessor-in-interest purchased the Inn from Business Carolina, Inc. on or about December 31, 2002. Business Carolina, Inc. retained a security interest in the Inn, including the real and personal property thereto, as evidenced by a mortgage recorded in Mortgage Book 1453 at Page 87 in the Office of the Clerk of Court for Greenwood County and Assignment of Leases and Rents recorded in Mortgage Book 1453 at Page 97 in the Office of the Clerk of Court for Greenwood County. (See Exhibit B-1, Mortgage of Real Estate recorded Mortgage Book 1453 at BPage 87; B-2, Assignment of Leases and Rents recorded in Mortgage Book 1453 at Page 97;

B-3, Certified copies of Title to Real Estate recorded in Deed Book 895 at Page 90; , B-4, Quit-claim Deed recorded in Deed Book 999 at Page 294; B-5, Loan Modification Agreement recorded in Book 1833 at Page 136 all in the Office of the Clerk of Court for Greenwood County are attached hereto and incorporated herein.) On or about July 22, 2011, about a month after the expiration of the Lease, Business Carolina, Inc. filed a foreclosure action in the Court of Common Pleas for Greenwood County against Plaintiff and its predecessor-in-interest as well as other entities under Case Number 2011-CP-24-818. (See Exhibit B-6, Certified copy of Summons in connection with Case No. 2011-CP-24-818 is attached hereto and incorporated herein.) By Order of the Honorable Curtis G. Clark, as Special Referee for Greenwood County, dated February 7, 2012, Business Carolina, Inc. was granted its foreclosure on the Inn, including the real property and personal property thereto, and the Special Referee ordered that the property should be sold at foreclosure sale. The Inn was subsequently sold to Business Carolina, Inc. for the sum of \$805,000 at foreclosure sale. (See Exhibit B-7, Certified copies of legal advertisement of Special Referee's Notice of Sale, B-8, Special Referee's deed recorded in Deed Book 1315 at Page 16, B-9, Order for Deficiency Judgment dated April 20, 2012, and B-10, Supplemental Order dated September 6, 2012 all filed in the Office of the Clerk of Court for Greenwood County are attached hereto and incorporated herein). As Plaintiff does not presently own the Inn, nor did it own the Inn at the time of filing its Complaint, Plaintiff does not have a sufficient interest in the subject matter of this action nor has it suffered an injury in fact. Specifically, the Plaintiff's interest in any real or personal property associated with the Inn was terminated by the above-referenced foreclosure action, and thus there is no justiciable controversy because Plaintiff does not have an interest in the property that is the subject of this action. Therefore, the Plaintiff lacks standing, and summary

judgment should be granted in favor of Defendants.

C. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO PLAINTIFF'S THIRD CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

To establish a claim for promissory estoppel under South Carolina law, a plaintiff must demonstrate that: (1) a party made a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relied on the promise; (3) the reliance was expected and foreseeable by the party who made the promise; and (4) the party to whom the promise is made sustained injury in reliance on the promise. Anthony v. Atlantic Group, Inc., 909 F. Supp. 2d 455 (D.S.C. 2012). Under promissory estoppel, the promise to be enforced must be unambiguous with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition by the promisor, particularly because promissory estoppel applies without a contract; the presence of either an ambiguous promise or an injury not arising out of the inconsistent disposition precludes promissory estoppel's application, though perceived inequities may exist. Barnes v. Johnson, 402 SC 458, 742 S.E.2d 6 (Ct. App. 2013). Because one may properly invoke promissory estoppel absent elements typically required for a contract, such a meeting of the minds or exchanged consideration, the doctrine requires, by clear and convincing evidence, a promise unambiguous in its terms (emphasis added) Id. An inability to clearly articulate the terms of an alleged oral contract, including how an existing capital contribution would be treated and specifically how the parties would settle up, renders an agreement ambiguous, and any loss is not recoverable under a theory of promissory estoppel. Id. Although the doctrine of promissory estoppel may be used to avoid the statute of frauds' writing requirement in South Carolina, it may not be used to create a legally enforceable promise when it would not otherwise be binding under ordinary contract principles. Trident Construction Co., Inc. v. Austin Co., 272 F. Supp. 2d 566 (D.S.C. 2003). The

doctrine of promissory estoppel, although equitable, has limitations. See e.g., Rushing v. McKinney, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct.App. 2006) (holding absence of clearly articulated terms between parties precludes recovery in promissory estoppel). "Specifically, the doctrine's elements represent a balancing between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." Barnes v. Johnson, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct.App. 2013).

Plaintiff has not alleged any facts from which an unambiguous promise can be inferred by clear and convincing evidence. An examination of the lease entered by the parties' shows that it includes an Article titled "Option to Purchase" which granted the Defendant the exclusive option to purchase the property, but which did not contain an explicit agreement to purchase. Plaintiff has further failed to provide any evidence of Defendant's exercise of the option, including an agreed upon purchase price.

To the contrary, Article 21 of the Lease specifically sets forth a requirement of written notice to the Landlord and provided that "Tenant may cancel its exercise of the option to purchase at any time prior to the day of closing." (See Exhibit A, as referenced above.) Finally, Article 21 sets forth that "purchase of the Land and Building is subject to any required approvals by the South Carolina Joint Bond Review Committee, the South Carolina Budget and Control Board and General Services Division" which Defendant would argue invalidates any assertion that statements made by agents or employees of the Defendant could have been interpreted to guarantee that the Defendant would purchase the Inn in the future. Id.

This requirement of third party approval, set forth explicitly in the lease between the parties, makes it is impossible for the Plaintiff to assert any reasonable reliance on alleged

statements made by any agent or employee of the Defendant regarding the possibility of future purchase, as it is clear from the contract itself that they were incapable of consent to such a sale, even if terms had been agreed upon and all other requirements of due diligence had been met.

D. SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANTS AS TO PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

South Carolina law recognizes an action in tort for negligent misrepresentation. The doctrine of negligent misrepresentation is an equitable maxim that provides a duty for information negligently supplied for the guidance of others in business transactions. S.C. Elec. & Gas Co. v. Westinghouse Elec. Corp., 826 F. Supp. 1549, 1557 (D.S.C. 1993). The essential elements of this tort are: (1) that 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 a proximate result of his reliance on the representation. Gilliland v. Elmwood Properties, 301 SC 295, 391 S.E.2d 577 (1990) and AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). To be actionable, the representation must relate to a present or pre-existing fact and be false when made. Fields v. Melrose, Ltd. Partnership, 312 SC 102, 439 S.E.2d 283 (Ct. App. 1993). The representation cannot ordinarily be based upon unfulfilled promises or statement as to future events. Id. Plaintiff alleges that Defendants made false representations to Plaintiff regarding the intent and/or willingness to purchase the Inn. "Evidence of a mere broken promise is not sufficient to prove negligent misrepresentation." Winburn v. Insurance Co. of N. Am., 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct. App. 1985). While issues of reliance are ordinarily resolved by the finder of fact, there can

be no reasonable reliance to show negligent misrepresentation based on a misstatement if the plaintiff knows the truth of the matter; thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact to preclude summary judgment in an action for negligent misrepresentation. Quail Hill, LLC v. County of Richland, 692 S.E2d 499 (SC 2010).

The Plaintiff has not alleged facts to establish any of the six elements of this cause of action. Although a duty may exist, Plaintiff has failed to show any false statement upon which it reasonably relied. It is clear from the lease that Plaintiff was well aware that Defendant had merely an option and that purchase would require substantial due diligence and approval by third parties. Further, any inferred promise of a future purchase would not be a pre-existing fact, as required by Fields. Finally, Plaintiff cannot show reasonable reliance, as it was clear from the lease itself that Defendant could not unilaterally approve the purchase.

In addition, Plaintiff cannot show that Defendants had a pecuniary interest in making any representation. Plaintiff alleges Defendants had a pecuniary interest in inducing Plaintiff to sign a lease by representing that it would purchase the Inn. The Plaintiff suffered no pecuniary loss resulting from the lease as may be seen by reference to the terms thereof, the same being on file with the court as an attachment to the Plaintiff's Complaint. In addition, Defendants hereby submit an Affidavit from Diane Newton in support of its motion for Summary Judgment. (See Exhibit C, Affidavit of Ms. Newton which is attached hereto and incorporated herein.) Ms. Newton was the Vice-President for Business and Administration at Lander University from 2003 through December 2009. In her affidavit, Ms. Newton stated that she never entered into an agreement for the Defendants to purchase the Inn nor did she make any representations to Plaintiff that the

Defendants would purchase the Inn. Further, Ms. Newton deferred to the terms of the lease agreement, which included an option to purchase, for the specific terms of the agreement between Plaintiff and Defendants. (See Exhibit C, which is a Copy of the Affidavit of Diane Newton. The original of which will be filed with the Court by the undersigned.)

Plaintiff has argued it suffered economic loss as the result of its reliance on such representations. The economic loss rule is founded on the theory that parties to a contract may allocate their risks by agreement and do not need the special protections of tort law to recover for damages caused by a breach of the contract. East River Steamship v. TransAmerica Delaval, 476 U.S. 858, 106 S.Ct. 2295 (1986). In Westinghouse, the Court concluded that in a commercial transaction where the loss alleged is purely economic and the cause of action is for mere negligent misrepresentation, the economic loss rule bars recovery. 826 F.Supp. at 1557. Therefore, Plaintiff's cause of action for negligent misrepresentation is barred by the economic loss rule and Defendants are entitled to summary judgment.

E. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENCE

Actions based upon contract, referred to as actions ex contractu, are distinguished from those based upon tort. Tort causes of action have as their basis non contractual duties. SC Jurisprudence, Actions §11, Charles E. Baker, Esquire, Baker, Barwick, Ravenel and Bender. The term tort has been described as "one's disturbance of another in rights which the law has created, either in the absence of contract or in consequence of a relation which a contract has established between the parties." Under South Carolina law, an action for tort does not lie if the cause of action is predicated on the alleged breach, or even negligent breach of a contract between the parties. Id. Welborn v. Dixon, 70 SC 177-118, 49 S.E.2d 232, 235 (1904). Toney v. LaSalle

Bank Nat. Ass'n, 896 F. Supp. 2d 455 (D.S.C. 2012). In general, the Plaintiff's remedy is for breach of contract where there is no duty except as the contract creates. However, a tort cause of action may exist when the duty arises out of liability independently of the personal obligation undertaken by the contract. Gilliland v. Elmwood Properties, 301 SC 295, 391 S.E.2d 577 (1990).

As discussed in Section D above, Defendant would show that Plaintiff has not met its threshold burden to support a cause of action for negligent misrepresentation. Defendant would likewise argue that any other 'duties' owed to the Plaintiff would arise out of the specific contract entered by the parties on August 12, 2009. In order for any cause of action in tort to lie outside of negligent misrepresentation, the Plaintiff would be required to show a duty of care outside of the lease contract attached hereto. Inasmuch as Plaintiff's cause of action sounds in contract, summary judgment for the fifth cause of action, titled "Negligence" is warranted.

F. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF LEASE AGREEMENT

Plaintiff's cause of action for breach of the lease contract alleges that Defendant failed to restore alterations to the Inn, failed to surrender the Inn, and instead abandoned it in poor condition. An inspection of Section 10 of the Lease shows that the "Tenant may, with prior written consent of the landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demises Premises as its sole cost and expense." Further, the agreement states that "Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the time of the Lease. If Tenant elects not to remove the Improvements, the Improvements shall become a part of the Demised Premises and subject to this Lease."

Plaintiff's representative, John Huffman, publically acknowledged in an article in the Index Journal (see attached Exhibit D) his inability to continue operating the property as an Inn due to the economic downturn. For approximately one year prior to the lease agreement, Plaintiff's receipts had suffered to the extent that at the time the lease was entered on August 12, 2009, Plaintiff owed \$33,910.71 in property taxes arrears which it could not pay and would have resulted in loss of the property to tax sale in October 2009. In addition, the Defendant was advised that the Plaintiff, who had eight mortgages on the property, was in default with lenders, necessitating forbearance agreements be negotiated with Plaintiff's creditors due to an Assignment of Leases and Rents in order that Defendant could be assured of peaceful possession of the property during the term of the Lease. (See Exhibit A to Diane Newton's Affidavit, Business Carolina, Inc. Forbearance Agreement.) The forbearance agreements, which were executed by the Plaintiff, specifically contained an agreement between the Plaintiff, Defendant and creditors whereby the creditors would continue to acknowledge the Lease through the end of the term, even if negotiations between the parties failed to produce a contract of sale.

As agreed upon explicitly by the parties, the Inn was converted in August 2009 from an Inn to student housing. At the expiration of the Lease term, representatives of both Plaintiff and Defendant attended a "walk through" negating his argument that the property was abandoned.

As stated earlier, Business Carolina, Inc. retained a security interest in the Inn, including the real and personal property thereto, as evidenced by the mortgage referenced in Section B, above. Any interest of Plaintiff in the real property or personal property, including the Lease itself, and all furniture, fixtures and equipment, was assigned to Business Carolina, Inc. by virtue of the above-stated security documents.

When Business Carolina, Inc. filed its foreclosure action in for Greenwood County against Plaintiff and its predecessor-in-interest, as assignee of all rights under the Lease, did not name the Defendants as a party to the foreclosure action or allege any damages regarding the real or personal property resulting from the Lease.

As stated above, Business Carolina, Inc. was granted its foreclosure on the Inn, including the real property and personal property thereto, and the Special Referee ordered that the property should be sold at foreclosure sale. The Inn was subsequently sold to Business Carolina, Inc. for the sum of \$805,000 at foreclosure sale. The above order and resulting actions foreclosed any rights of Plaintiff in and to the real or personal property, including any rights under the Lease Agreement which had been assigned to Business Carolina, Inc. by Plaintiff as acknowledged in the Forbearance Agreement attached to Diane Newton's affidavit as Exhibit "A".

As Plaintiff does not presently own the Inn, nor did it own the Inn at the time of filing its Complaint, and had assigned all its rights under the Lease to Business Carolina, Inc., which foreclosed on any equity of redemption of Plaintiff under the Mortgage and Lease, including the rights to claims against property, Plaintiff does not have a sufficient interest in the subject matter of this action nor has it suffered an injury in fact. Specifically, the Plaintiff's interest in any real or personal property associated with the Inn was terminated by the above-referenced foreclosure action, and thus there is no justiciable controversy because Plaintiff does not have an interest in the property that is the subject of this action. Therefore, the Plaintiff lacks standing, and summary judgment should be granted in favor of Defendants.

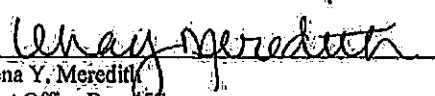
In addition, any claims raised by Plaintiff in its Complaint are moot and any losses sustained are due to the intervening foreclosure action in which judgment has been rendered

against Plaintiff. "A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court." Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). Plaintiff alleges it has suffered damages to the Inn's personal property as well as other damages. Any decision by this Court related to Plaintiff's alleged damages would have no practical legal effect because pursuant to the above-referenced foreclosure Order any interest Plaintiff had in all personal and real property related to the Inn was terminated by said Order, and Plaintiff has no right to such property. If any party had standing to assert claims for damages related to the alleged breach of the lease agreement brought by the Plaintiff, it would be Business Carolina, Inc. who chose to foreclose and did not name the Defendants as a party to that action, or bring any action for damages to collateral which would have been subject to their security interest. Therefore, Plaintiff's claims in this action are moot, and Defendants are entitled to summary judgment.

CONCLUSION

For the reasons stated above, summary judgment on all causes of action in the Plaintiff's Complaint should be granted in favor of Defendants.

NICHOLSON MEREDITH & ANDERSON, LLC

By: 

Lena Y. Meredith
Post Office Box 457
Greenwood, SC 29646
(864) 229-7241
Attorneys for Defendants

September 9, 2014

Greenwood, South Carolina

EXHIBIT "A"

GOVERNMENTAL REAL ESTATE LEASE - STANDARD OFFICE

THIS LEASE AGREEMENT ("Lease") is made as of the Effective Date (which is the date on which the South Carolina State Budget and Control Board, General Services Division, executes this Lease as set forth on the signature page) by and between: IOS, LLC ("Landlord") having an address at 104 East Court Avenue, Greenwood, SC 29646; and Lander University ("Tenant") an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at: 320 Stanley Avenue, Greenwood, SC 29649.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, a parcel of land, located in the City and County of Greenwood, South Carolina, having an address of 104 East Court Avenue, Greenwood, SC 29646 (TMS# 6845-942-879) (the "Land") together with the entire three story building located on the Land commonly known as "Ina on the Square" consisting of 36,543 rentable square feet (the "Building"), collectively as the "Demised Premises", Landlord agrees to lease the Demise Premises to Tenant together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto. Floor plans of the Building are attached hereto as Schedule "B".

ARTICLE 2 - TERM

2.1. The term of this Lease shall be ten (10) months (the "Initial Term") beginning on August 15, 2009, (the "Commencement Date") and, unless terminated or extended, shall end on June 14, 2010, (the "Termination Date"). Tenant shall have the right to extend the term of this lease for up to one (1) consecutive period of one (1) year (the "Extended Term") upon the same terms and conditions contained herein, including the amount of Basic Rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least three (3) months prior to the expiration of the then existing term.

ARTICLE 3 - BASIC RENT

3.1. Tenant shall pay rent (the "Basic Rent") to Landlord during the Initial Term the total aggregate amount of \$310,000.00 payable in equal monthly installments of \$31,000 in advance on or before the tenth (10th) day of each consecutive calendar month of the Initial Term.

3.2. All payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.3. Unless notified otherwise in writing, all payments shall be mailed to Landlord at:

IOS, LLC
c/o McDonald Patrick Poston Hemphill & Roper, LLC,
P.O. Box 1547
Greenwood, SC 29648

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Demised Premises for: Student Housing/University Related Events and Meetings.

4.2. If during the Initial Term or Extended Term, if any, the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or uneconomical for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the Demised Premises to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease.

5.2. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any assignee or sub lessee of Tenant and the performance of such act shall be deemed to be performance by Tenant.

ARTICLE 6 - SERVICES

6.1. The services provided by the Landlord to Tenant as part of basic rent and additional rent, if any, shall include, but are not limited to, elevator service, use of video monitoring equipment, grounds maintenance and landscaping and any other services necessary to maintain and operate all building and site improvements. Services provided by the Landlord shall include all service charges, labor, materials and supplies.

6.2. Services provided by the Landlord shall include all service charges, labor, materials and supplies.

6.3. Tenant will separately meter all utilities serving the Demised Premises and to make direct payment for such utility services to the suppliers thereof. Tenant will be responsible for their own janitorial service.

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the Demised Premises;

(b) The use of the Demised Premises contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Landlord's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Tenant's intended use of the Demised Premises as described in this Lease;

(e) Landlord will not discontinue any service required to be provided by Landlord pursuant to this Lease and, if any such discontinuance is contemplated, Landlord will provide Tenant with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Landlord will keep the Land, the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises as student housing and a meeting space;

(g) Landlord will keep the Building and the Demised Premises protected against flood, storm, water leakage through roofs and windows and against other hazards of nature and will repair or protect same from such hazards within a reasonable time after Landlord has notice of damage or the need for repair; and

(h) Landlord will provide peaceful and quiet enjoyment of the Demised Premises to Tenant and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other tenant in the Building, by Landlord, by anyone claiming under Landlord or by any other person, party or entity.

7.2. Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1.(d).

ARTICLE 8 - TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Basic Rent when due provided a written invoice is submitted in advance to the Tenant by the Landlord. Should any Basic Rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises in a clean and good condition and return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord; or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and

(e) Allow Landlord reasonable access to the Demised Premises for inspections.

ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1. Landlord covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable State law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Landlord shall, at Landlord's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1 Landlord shall make no renovations to the Demised Premises prior to the commencement of this Lease.

10.2. Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such Improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty excepted.

10.3. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Demised Premises and may be removed by Tenant at any time and from time to time during the term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there be any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Landlord will promptly commence and complete Restoration of the Building and the Demised Premises.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Landlord advises Tenant that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Basic Rent and any other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - INSURANCE

12.1. Landlord shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal.

ARTICLE 13 - TENANT CANCELLATION PRIVILEGE

13.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the demised premises upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

- (a) If appropriations, revenue, income, grants or other funding are not provided by the General Assembly to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Base Rent, Additional Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the State Budget and Control Board; or
- (b) If the Tenant is dissolved and no longer performs the functions and purposes ascribed to it; or
- (c) If at any time during the Initial Term or the Extended Term, if any, the square footage in the Demised Premises is, in the sole opinion of the State Budget and Control Board, Division of General Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or
- (d) If Landlord shall have breached any covenant, condition, representation or warranty made by Landlord in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Tenant to Landlord of such breach and request to cure or correct.

13.2. In addition to the cancellation privileges set forth in subparagraph 14.1, Tenant shall also have the right to cancel this Lease or any portion of the Demised Premises at any time after the first six (6) months of the Term by giving 120 days written notice to Landlord of Tenant's intention to vacate all or a portion of the Demised Premises to relocate to a building owned or otherwise controlled by the State of South Carolina.

ARTICLE 14 - EXEMPTIONS

14.1. Landlord and Tenant agree that Tenant shall be specifically exempt from the payment, furnishing or providing to Landlord of any of the following:

- (a) Security deposits for any rents or other charges to be paid by Tenant pursuant to this Lease or for any service or item supplied to Tenant by Landlord;
- (b) Liquidated or punitive damages for any cause or reason;
- (c) Landlord's attorney fees, court costs or costs of collection in connection with any action or inaction by Tenant under this Lease;
- (d) Any form of insurance coverage for Landlord or any person or entity other than Tenant or for any real or personal property of any party other than Tenant including, but not limited to, fire, comprehensive general public liability or contractual liability.
- (e) Any indemnification, hold harmless, release or waiver agreement by Tenant to Landlord or any other person, party or entity; and
- (f) Payment of any late charges or penalties for failure by Tenant to make payment of Base Rent or any other charges payable to Landlord pursuant to this Lease.

ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Tenant hereunder, the leasehold estate of Tenant created hereby and Tenant's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises as of the Commencement Date, Landlord shall furnish Tenant with an executed non-disturbance agreement from any such mortgagee.

ARTICLE 16 - MINOR REPAIRS

16.1. If at any time during the Initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement, including, but not limited to, torn or damaged carpet, improper or inadequate lighting, faulty workmanship in construction, inoperative door locks or other similar deficiencies which affect Tenant's use and enjoyment of the Demised Premises, Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof. In the event Landlord shall fail or refuse to repair, replace or cure the deficiency within the time aforesaid and the cost of such repair, replacement or cure is less than \$3,000, Tenant shall have the right, but not the obligation, to undertake such repair, replacement or cure and, in such event, shall have the right to deduct the cost thereof from the next due monthly installment of Base Rent. In the event Tenant does not undertake such repair, replacement or cure, irrespective of the cost

thereof, and Landlord shall not have repaired, replaced or cured such deficiency within sixty (60) days of the date of Tenant's notice to Landlord of such deficiency, Tenant may, at its option, terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in good order and condition, except for ordinary wear and tear, permitted additions, improvements or alterations made by Tenant and the results of any damage, destruction or Taking. Tenant shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to Landlord or Tenant at the addresses appearing at the heading of this Lease.

ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 20 - HOLDOVER

20.1. In the event Tenant shall remain in the Demised Premises after the Term has expired and Tenant shall have failed to give notice to Landlord of Tenant's intent to extend this Lease in accordance with subparagraph 2.1 hereof, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent in effect for the Term until either Landlord or Tenant, by sixty (60) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 21 - OPTION TO PURCHASE

21.1. Tenant has the exclusive option to purchase the Land and Building on the following terms:

(a) This option may be exercised at anytime during the Initial Term or Extended Term by giving written notice to Landlord. Tenant will examine title, easements, restrictions, environmental hazards and any other concerns. The closing shall occur within nine (9) months after notice is given to Landlord on a date selected by Tenant. Tenant may cancel its exercise of the option to purchase at anytime prior to the day of closing.

(b) The purchase price shall be agreed upon by Landlord and Tenant. All rent payments made by Tenant to Landlord for the lease of the Demised Premises shall be applied to the agreed upon purchase price.

(c) The purchase of the Land and Building is subject to any then required approvals by the South Carolina Joint Bond Review Committee, the South Carolina Budget and Control Board and General Services Division.

ARTICLE 22 - MISCELLANEOUS

22.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

22.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

22.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

22.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

22.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

22.6. In the event Landlord is involved in any bankruptcy or insolvency proceedings and Landlord's trustee fails to perform or rejects any of the Landlord's obligations under this Lease, Tenant shall have the option to terminate this Lease.

22.7. Schedule "A" and Schedule "B" is incorporated herein and made a part hereof.

22.8. This Lease is subject to and conditioned upon the approval of General Services Division, Real Property Services, and shall be of no force or effect until the consent of such office shall be endorsed hereon.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year indicated under their signature.

WITNESS:

Kristin U. Sherman

LANDLORD:
IOS, LLC

[Signature]
(signature for landlord)

Louis Smith, Manager
(printed name and title of signatory)

8-12-09
Date

WITNESS:

Kristin U. Sherman

TENANT:
Lander University

[Signature]
(signature for tenant)

Diane Newton
(printed name and title of signatory)

8-12-09
Date

This Lease is approved in accordance with Regulation 19-447.1000 by the State Budget and Control Board, General Services Division, Real Property Services, this 17th day of August, 2009.

[Signature]
Lisa H. Catanolito
Program Manager/Attorney

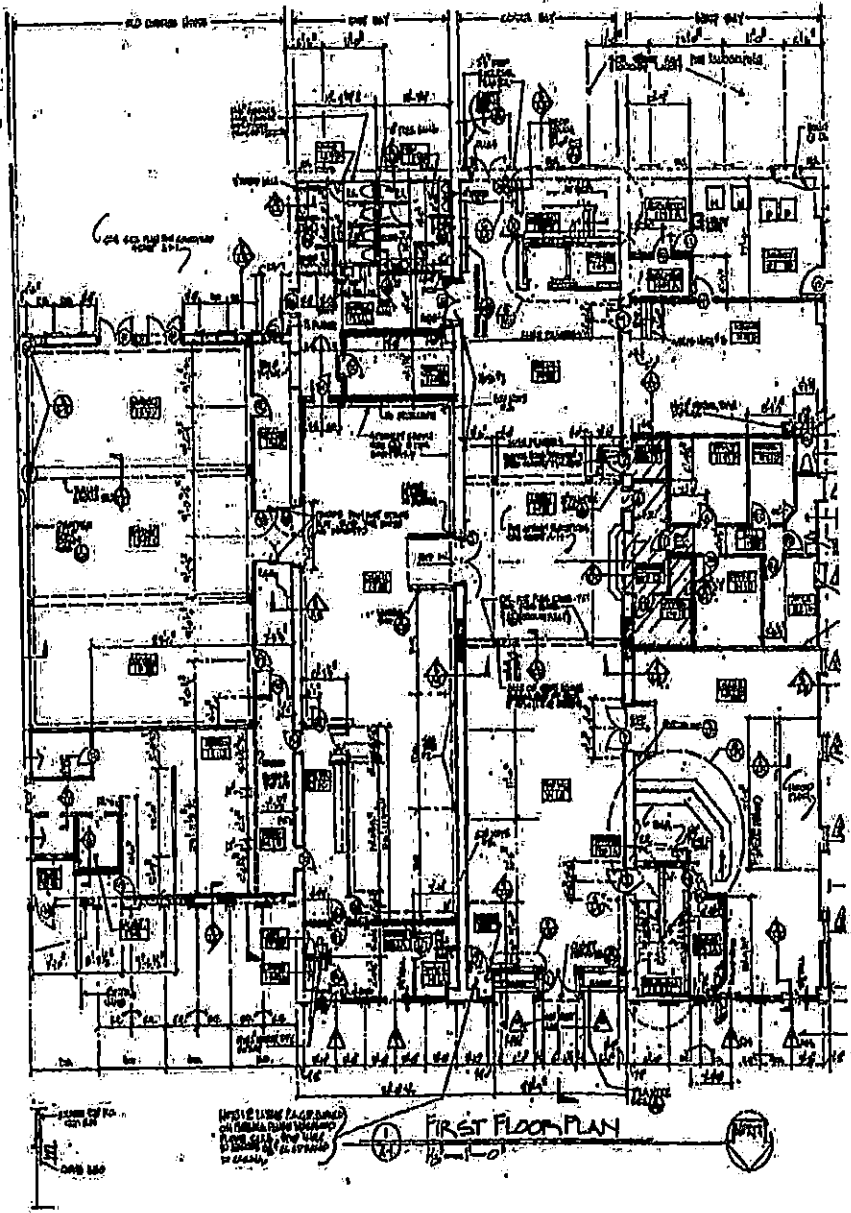
Schedule "A"

In addition to the covenants made by Landlord and Tenant in the Lease heretofore, Landlord and Tenant further agree as follows:

1. Landlord shall leave all kitchen fixtures, equipment, flatware, stemware, plates and accessories as well as the furniture, fixtures and equipment on the first floor that are in place at the commencement of this lease for Tenant's use; except for office supplies and equipment currently used by the Landlord at the commencement of this lease.
2. Tenant has the option to use any furniture currently in place on the second and third floors of the Building. Tenant shall notify Landlord during a walk through prior to the commencement of this lease which furniture it wishes to use. Landlord is responsible for removing and storing all other furniture that Tenant determines not to use.
3. Landlord shall close prior to August 15, 2009 for the duration of Tenant's occupancy of the Building the restaurant/lounge/bar located on the first floor of the Building.
5. Events currently scheduled through August 29, 2009 will remain the responsibility of Landlord.
6. After August 29, 2009, all events will be managed by Tenant.

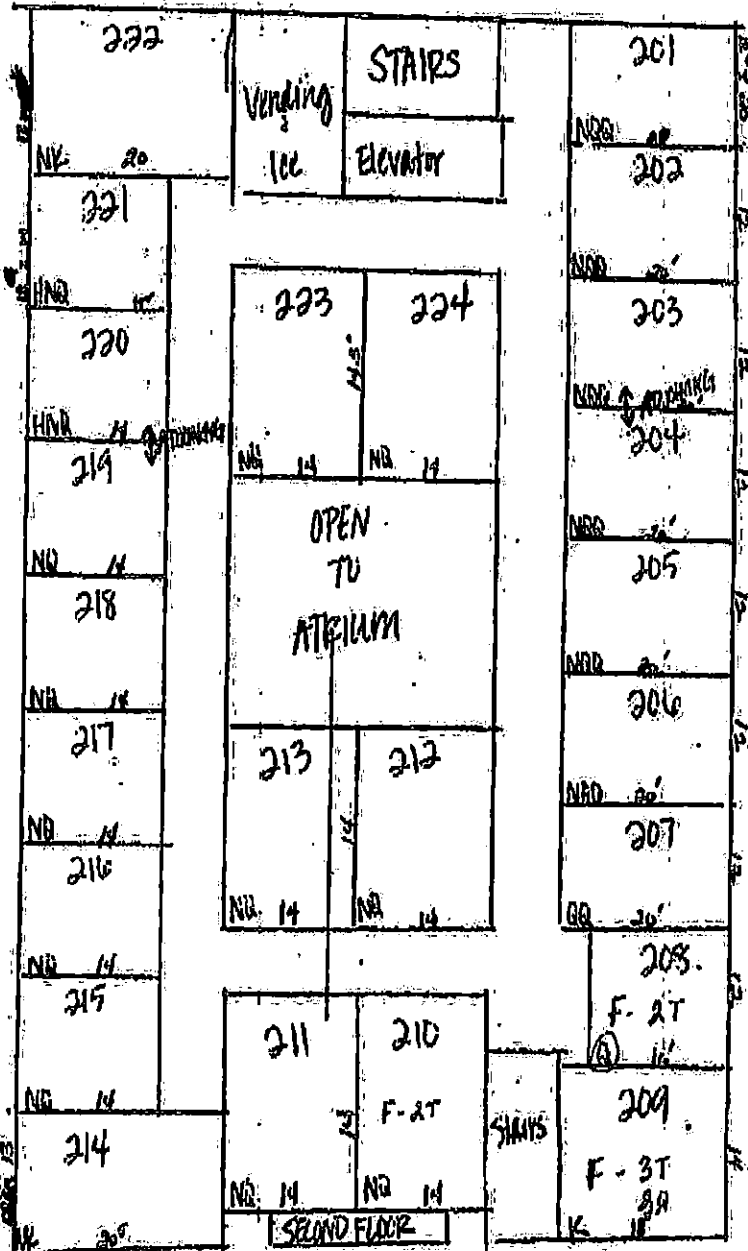


Schedule "B"
First Floor



Handwritten signature/initials

Second Floor



Third Floor

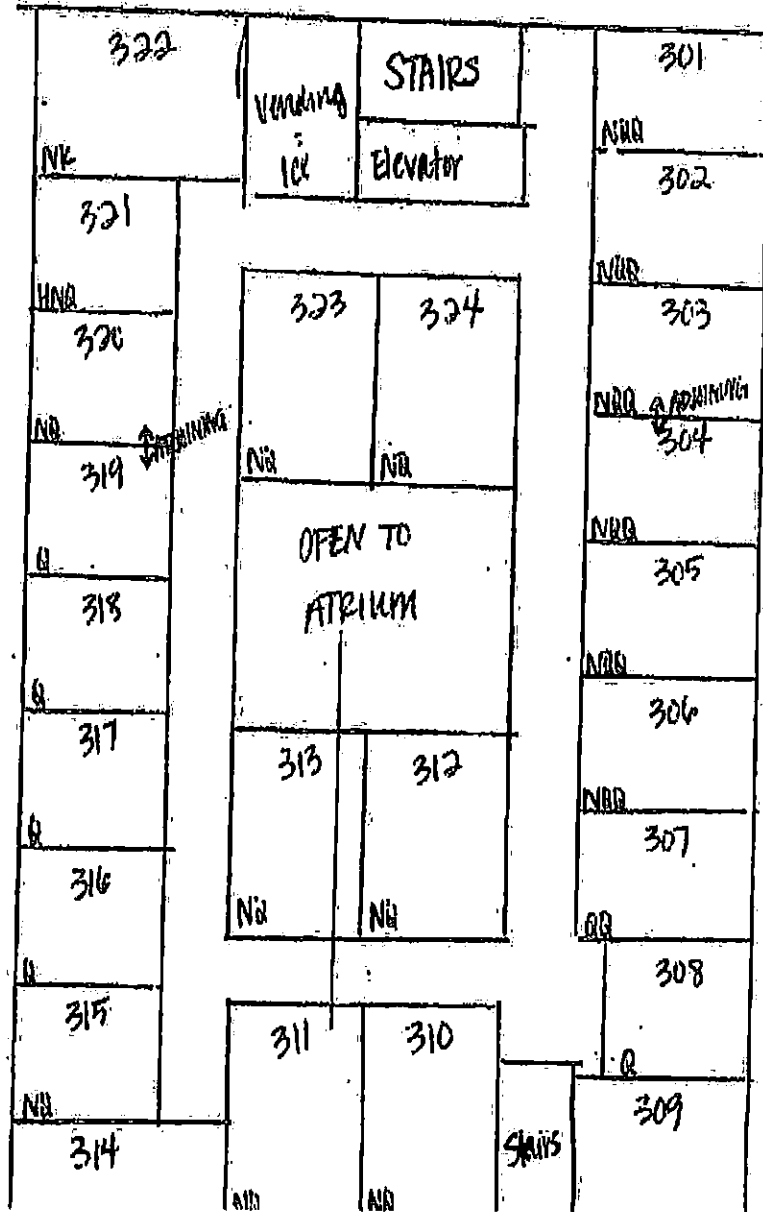


EXHIBIT "B-1"

FILED FOR RECORD 02/13/2003
 AT 03:07:22PM BOOK 01453 PAGE 00087
 Louise Davis - Clerk of Court
 Greenwood County Courthouse 000002050

STATE OF SOUTH CAROLINA

) BUSINESS CAROLINA, INC.
) MORTGAGE OF REAL ESTATE
)

COUNTY OF GREENWOOD

2050 Bk: 1453 Pg: 87
 THIS MORTGAGE OF REAL ESTATE (this "Mortgage") is made and entered into to be effective as of the 31 day of December 2002, by Palmetto Inns, LLC, a limited liability company, organized under the laws of the State of South Carolina ("Mortgagor") to Business Carolina, Inc. ("Lender") pursuant to the terms of that certain Loan Agreement, dated as of even date herewith, between Lender and Mortgagor regarding a \$1,000,000.00 (evidenced by a Note in said face amount) (the "Loan Agreement"). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Loan Agreement (with all references to any Note or other Loan Document to include all amendments, extensions, renewals, restatements, and replacements of the same).

NOW, THEREFORE, for valuable consideration (the receipt of which is hereby acknowledged), to induce Lender to enter into and perform its obligations under the Loan Agreement, and to secure payment and performance of all obligations (collectively, the "Obligations") of Obligors arising out of or related to (i) the Note, the Loan Agreement, and all other Loan Documents; Mortgagor hereby bargains, grants, sells, and conveys to Lender and the heirs, successors and assigns of Lender, the following described property (the Land [defined below] and all other property described in paragraphs (a)-(e) below are collectively referred to as the "Premises"):

All that certain parcel or tract of land (the "Land") more fully described in Annex A attached hereto and incorporated herein located in Greenwood County, State South Carolina.

ATTEST A TRUE COPY
 ANGELA WOODHURST
 CCLP AND GS
 GREENWOOD COUNTY
 S.C.

Together with:

(a) all singular rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto;

(b) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration, and repair of the Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Land, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Land and Improvements or any part thereof or derived from or acquired by any proceeds of the Land or Improvements or any part thereof, including all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning, and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Property");

BCI / Palmetto Inns, LLC

1

Mortgage

ANNEX A 2050 BK:1453 Pg:28

Deliver To: PATTEN WATSON
WHITE & WHITE LAW OFFICES
1430 RICHLAND ST
COLUMBIA SC 29201

Mortgagee's Address: Business Carolina, Inc.
1441 Main Street, Suite 900
Columbia, South Carolina 29201
Attention: Charles Harmon
Facsimile Number: (803) 461-3819

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

TMS# 6845942879

Property Address: 104 E. Court Avenue, Greenwood, South Carolina 29646

This being the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December 31, 2002 and recorded ~~December 31, 2002~~ in Mortgage Book 769 at Page 218 in the Office of the Greenwood County Register of Deeds. *Deed*

BCI / Palmetto Inns, LLC

10

Mortgage

Greenwood County, SC - Doc. ID: 2003-2050

2/10

ROA_0116

(c) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, and tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating, or appertaining to any of the Premises, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, at law as well as in equity, of Mortgagor of, in, and to the same, including all judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of any of the Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or any part thereof, or to any rights appurtenant thereto (together, the "Easements and Other Interests");

(d) all proceeds of any sales or other dispositions of any of the Premises or any part thereof, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals, and accessions of any of the foregoing (the "Proceeds"); and

(e) as additional collateral and further security for the Obligations, Mortgagor hereby conditionally assigns to Lender all the leases, security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contract rights, rights to payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, general intangibles, other forms of obligations and receivables, all monies due or to become due, and all returned or repossessed goods now or hereafter pertaining to or resulting from the Premises or any part thereof (the "Intangible Property") or constituting or derived from or acquired by any proceeds of the Premises or any part thereof (the "Rents and Profits") reserving only the right to Mortgagor to collect the same as long as there shall exist no Event of Default (hereafter defined), together with all proceeds, including cash proceeds, noncash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals, and accessions of the Rents and Profits or any part thereof, and all replacements, modifications, renewals, and substitutions thereof or therefore.

All Tangible Property which comprises a part of the Premises shall, to the extent permitted by law, be deemed to be affixed to the Land. As to the balance of the Tangible Property and Intangible Property, this Mortgage shall constitute a security agreement and Mortgagor grants to Lender a security interest in the Tangible Property, the Intangible Property and the Rents and Profits, together with all of the rights and remedies of a secured party under the Loan Documents and applicable law, including the South Carolina Uniform Commercial Code.

To Have and To Hold all and singular the Premises unto Lender and the heirs, successors, and assigns of Lender forever.

Mortgagor covenants that Mortgagor is lawfully seized of the Premises in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey, or encumber the same, and that the Premises are free and clear of all encumbrances except as expressly disclosed in writing to Mortgagee. Mortgagor further covenants to warrant and forever defend all and singular the Premises unto Lender and the heirs, successors, or assigns of Lender from

and against Mortgagor and all persons whomsoever lawfully claiming the Premises or any part of the Premises.

Provided Always, nevertheless, and it is the true intent and meaning of Mortgagor and Lender, that if Mortgagor pays or causes to be paid to Lender the Obligations, the estate hereby granted shall cease, determine, and be utterly null and void; otherwise, said estate shall remain in full force and effect.

It Is Agreed that Mortgagor shall be entitled to hold and enjoy the Premises until an Event of Default has occurred.

Mortgagor further warrants, covenants and agrees with Lender as follows:

1. **Advances and Obligations under Loan Agreement.** This Mortgage is given to secure all advances made or to be made to Mortgagor by Lender and all Obligations related to the Loan Agreement or the Note. The maximum amount of such Obligations not to exceed \$1,000,000.00.
2. **Maintenance.** Mortgagor will maintain the Premises in good condition and repair and will neither permit nor allow waste of any portion of the Premises. Mortgagor will promptly repair or restore any portion of the Premises which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the Premises and will cut no timber on the Premises without the express written consent of Lender. Lender shall be entitled to specific performance of the provisions of this paragraph.
3. **Insurance.** Mortgagor will keep all Tangible Property insured by such company or companies as Lender may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood and earthquake. Such insurance will be payable to Lender as the interest of Lender may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by Lender and will not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to Lender. Mortgagor hereby assigns to Lender the right to collect and receive any indemnity payment otherwise owed to Mortgagor upon any policy of insurance insuring any portion of the Premises, regardless of whether Lender is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Lender from any such policy of insurance may, at the option of Lender, (i) be applied by Lender to payment of any Obligations in such order as Lender may determine, (ii) be applied in a manner determined by Lender to the replacement, repair, or restoration of the portion of the Premises damaged or destroyed, (iii) be released to Mortgagor upon such conditions as Lender may determine, or (iv) be used for any combination of the foregoing purposes. No portion of any indemnity payment which is applied to replacement, repair, or restoration of any portion of the Premises which is released to Mortgagor shall be deemed a payment against any Obligations. Mortgagor will keep the Premises continuously insured as herein required and will deliver to Lender the original of each policy of insurance required hereby. Mortgagor will pay each premium coming due on any such policy of insurance and will deliver to Lender proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor will furnish to Lender at least ten (10)

days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements of this Mortgage. Upon foreclosure of this Mortgage, all right, title, and interest of Mortgagor in and to any policy of insurance upon the Premises which is in the custody of Lender, including the right to unearned premiums, shall vest in the purchaser of the Premises at foreclosure, and Mortgagor hereby appoints Lender as the attorney in fact of Mortgagor to assign all right, title, and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. **Taxes and Assessments.** Mortgagor will pay all taxes, assessments, and other charges which constitute or are secured by a lien upon the Premises and will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided that Mortgagor shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment, or charge so long as the collection of the same is stayed during the pendency of such proceedings and Mortgagor deposit with the authority to which such tax, assessment, or charge is payable or with Lender appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

5. **Environmental Site Assessment.** Mortgagor shall pay when due the cost of providing to Lender, at Lender's reasonable request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Premises, which Assessment shall be prepared by an environmental auditor acceptable to Lender, in Lender's sole discretion; provided that Lender shall make such request no more frequently than once every year unless the Note is being renewed, extended, modified, or accelerated or Lender is otherwise required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such Assessment.

6. **Appraisal.** Mortgagor shall pay when due the cost of providing to Lender, at Lender's reasonable request from time to time, a then-current appraisal of the market value of the Premises prepared by an appraiser acceptable to Lender in its discretion; provided that Lender shall make such request no more frequently than once every third year unless the Note is being renewed, extended, modified, or accelerated or Lender is otherwise required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such appraisal.

7. **Expenditures by Lender.** If Mortgagor fails to make payment for restoration or repair of the Premises, for insurance premiums, for taxes, assessments, or other charges as required in this Mortgage, or for performance of any other covenant or condition hereof, Lender may, but shall not be obligated to, pay for the same, and any such payment by Lender will be secured by this Mortgage and have the same rank and priority as the principal Obligation secured by this Mortgage and bear interest from the date of payment at the rate payable from time to time on outstanding principal under the Note after the occurrence of an Event of Default. Payments made for taxes by Lender shall be a first lien on the Premises to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of this Mortgage.

8. **After Acquired Premises.** The lien of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter located in or on, or attached to, or used or intended to

BCI / Palmetto Inns, LLC

4

Mortgage

be used in connection with or with the operation of, the Premises or any part of the Premises.

9. **Environmental Indemnifications.** Mortgagor agrees to indemnify Lender with respect to environmental matters as more particularly set forth in the Loan Agreement.

10. **Condemnation.** Lender shall be entitled to be made a party to, be notified by Mortgagor of, and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Premises. Mortgagor assigns to Lender the right to collect and receive any payment or award to which Mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Premises. Any such payment or award received by Lender may, at the option of Lender, (i) be applied by Lender to payment of any Obligations in such order as Lender may determine, (ii) be applied in a manner determined by Lender to the replacement of the portion of the Premises taken and to the repair or restoration of the remaining portion of the Premises, (iii) be released to Mortgagor upon such conditions as Lender may determine, or (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair, or restoration of any portion of the Premises or which is released to Mortgagor shall be deemed a payment against any Obligations.

11. **Transfer.** At the option of Lender, the Obligations shall become due and payable if, without the prior written consent of Lender, Mortgagor shall convey away the Premises or any interest therein, further encumber the Premises, or suffer the placement of any mechanics' lien on the Premises which is not removed within 30 days after filing; or if the legal or beneficial ownership shall become vested in any other person in any manner whatsoever.

12. **Event of Default.** An "Event of Default" shall be the occurrence or existence of any Event of Default as defined the Loan Agreement.

13. **Remedies.** Upon the occurrence of an Event of Default which continues beyond any applicable Grace Period set forth in the Loan Agreement, Lender may, without notice to Mortgagor, declare all Obligations immediately due and payable. If default shall be made in the payment of any amount due under the Note, this Mortgage, or any other Loan Document, then, upon Lender's demand, Mortgagor will pay to Lender the whole amount due and payable under the Note and all other Obligations; and if Mortgagor shall fail to pay such sums upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses, and disbursements of Lender's agents and attorneys incurred in connection with such suit and any appeal of such suit. Lender shall be entitled to sue and recover judgment, as set forth above, either before, after, or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Lender to recover such judgment shall not be affected by any taking, possession, or foreclosure sale under this Mortgage, or by the exercise of any other right, power, or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien of this Mortgage. At the foreclosure Lender shall be entitled to bid and to purchase the Premises and shall be entitled to apply the Obligations, or any portion thereof, in payment for the Premises. The proceeds of the sale shall be applied to the cost of sale, the amount due to Lender, and as otherwise required by then existing laws related to foreclosure or as deemed necessary by Lender. In case of a foreclosure sale of all or any part of the Premises and of the application of the proceeds of sale to the payment of the Obligations, Lender shall be entitled to enforce

BCI / Palmetto Inns, LLC

payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or any other Loan Document, by law or in equity, all of which rights and remedies may be exercised by Lender independently, simultaneously, or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

Without in any way limiting the generality of the foregoing, Lender shall also have the following specific rights and remedies:

- (a) To make any repairs to the Premises which Lender deems necessary or desirable for the purposes of sale.
- (b) To exercise any and all rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Lender's possession or under its control.
- (c) To cure such Event of Default, with the result that all costs and expenses incurred or paid by Lender in effecting such cure shall be additional charges on the Loan which bear interest at the interest rate set forth in the Note and are payable upon demand.
- (d) To foreclose on the Premises and to pursue any and all remedies available to Lender at law or in equity, and in any order Lender may desire, in Lender's sole discretion.

14. Appointment of Receiver. Upon the occurrence of an Event of Default, Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Premises in order to perform all acts necessary and appropriate for the operation and maintenance of the Premises including the execution, cancellation, or modification of leases, the making of repairs to the Premises, and the execution or termination of contracts providing for the construction, management, or maintenance of the Premises, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Premises. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Premises and collecting the rents, including attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Mortgagor as lessor or landlord of the Premises and then to the Obligations. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those rents actually received. Lender shall not be liable to Mortgagor or anyone claiming under or through Mortgagor, or anyone having an interest in the Premises by reason of anything done or left undone by Mortgagor under this Section. If the rents of the Premises are not sufficient to meet the costs of taking control of and managing the Premises and collecting the rents, Lender, at its sole option, may advance funds to meet the costs. Any funds expended by Lender for such purposes shall become Obligations of Mortgagor to Lender. Unless Lender and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note after the occurrence of an Event of Default. The entering upon and taking and maintaining of control of the Premises by Lender or the receiver and the application of rents as provided in this Mortgage shall not cure or waive any Event of Default or invalidate

BCI / Palmetto Inns, LLC

any other right or remedy of Lender under this Mortgage. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as secured party hereunder to the possession and control of any cash deposits or instrument at the time held by, or payable or deliverable under the terms of this Mortgage to, Lender.

15. **Waiver by Mortgagor.** Mortgagor understands that upon default under this Mortgage, among other remedies set out in this Mortgage, the Note, and the Loan Agreement, Lender may foreclose upon the Premises or any portion thereof in the sole discretion of Lender and ask for a deficiency judgment. Mortgagor, to the extent permitted by law, hereby expressly waives and relinquishes any rights of redemption, valuation, appraisal, marshaling of assets, and sale in inverse order of alienation and homestead, which Mortgagor may have under any statute or governing law and understands and agrees that a deficiency judgment, if pursued by Lender, shall be determined by the highest price bid at the foreclosure sale of the property.

16. **Notices.** Any notice given to Mortgagor or Lender by one of these parties shall be sent subject to the provision set forth in the Loan Agreement. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

17. **Additional Documents.** The Mortgagor agrees to execute and deliver to the Lender, upon the request of the Lender from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the lien and security interest created by the Mortgage.

18. **Partial Foreclosure.** In the event the Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Lender to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Lender to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

19. **Greater Estate.** In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Premises and, prior to the satisfaction of the Obligations and the cancellation of this Mortgage of record, Mortgagor obtains a fee estate in such portion of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of Mortgagor, be and become subject to the security lien of this Mortgage.

20. **Imposition of Tax.** In the event of the passage of any state, federal, municipal, or other governmental law, order, rule, or regulation in any manner changing or modifying the laws now in force governing the taxation of debts secured by deeds of trust or the manner of collecting taxes so as to affect adversely Lender, Mortgagor will promptly pay any such tax on or before the due date; and if Mortgagor fails to make such prompt payment or if any such state, federal, municipal, or other governmental law, order, rule, or regulation prohibits Mortgagor from making such payment or would penalize Lender if Mortgagor makes such payment, then the entire balance of the Obligations evidenced by the Note shall become due and payable upon demand at the option of Lender.

21. **Amendments.** Neither this Mortgage nor any term hereof may be changed, waived, discharged, or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or

termination is sought. Any agreement made after the execution of this Mortgage by Mortgagor and Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance on the Premises.

22. Miscellaneous.

(a) The terms "Mortgagor" and "Lender" shall refer to and include the heirs, legal representatives, successors, and assigns of Mortgagor and Lender and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or Lender shall bind and inure to the benefit of their representatives, heirs, successors, and assigns, whether so expressed or not.

(b) This Mortgage shall be governed by, construed, and enforced in accordance with the laws of South Carolina.

(c) Lender may make or cause to be made reasonable entries onto the Premises for inspections, appraisals, environmental tests, or assessments upon the giving to Mortgagor of prior notice, and to this end, Mortgagor grants an easement to Lender over and onto the Premises for such purposes.

(d) If this is not a first mortgage, any prior mortgages and the maximum amount thereof are shown below:

(e) Mortgagor represents to Lender that such Mortgagor is benefitted by the Loan evidenced by the Note, whether or not Mortgagor is the maker thereof, that Mortgagor's obligations under this Mortgage will not render Mortgagor insolvent, and that adequate and sufficient consideration has been given to Mortgagor for its execution and delivery of this Mortgage.

23. **Incorporation by Reference.** The Loan Agreement is incorporated into this Mortgage by reference as if set forth verbatim. IN EXECUTING THIS MORTGAGE, MORTGAGOR AGREES TO BE BOUND BY ALL PROVISIONS OF THE LOAN AGREEMENT PERTAINING TO OBLIGORS.

2050 BK:1453 Pg:95

24. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of the deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

In Witness Whereof, Mortgagor has executed this Mortgage under seal as of the day and year first above written.

WITNESSES:

Lori King

MORTGAGOR: PALMETTO INNS, LLC

By S. Craig White
Its: Member / Manager

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness who after first being duly sworn, deposes and says that s/he saw the within-named Palmetto Inns, LLC, a South Carolina limited liability company by S. Craig White, its authorized agent, sign, seal and as its act and deed, deliver the within-written Mortgage of Real Estate for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.

Lori King
WITNESS

SWORN TO BEFORE ME THIS
31 day of December, 2002.

(L.S.)
Notary Public for South Carolina
My commission expires: 2/21/2004

2050 Bk:1453 Pg:96

BCI / Palmetto Inns, LLC

9

Mortgage

Greenwood County, SC - Doc. ID: 2003-2050

10/10

ROA_0124

EXHIBIT "B-2"

FILED FOR RECORD 02/13/2003
AT 02:08:05PM BOOK 01453 PAGE 00097
Louise Davis - Clerk of Court
Greenwood County Courthouse 000002051

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD .)

2051 BK:1453 Pg:97

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 31 day of December, 2002, by and from Palmetto Inns, LLC, a South Carolina limited liability company ("Assignor"), to and for Business Carolina, Inc. ("Assignee").

Assignor is the owner of that certain real property located in the County of Greenwood State of South Carolina described in Annex "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage of even date herewith, conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Register of Deeds in Greenwood County, South Carolina (the "Mortgage").

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the income, rents, receivables, security or similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents, issues and profits") together with the right, power and authority to collect the same; (b) all leases, written or oral, now in existence or hereafter arising, all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof (individually or collectively "Lease" or "Leases"), together with the right, power and authority of Assignor to alter, modify or change the terms thereof, or surrender, cancel or terminate the same; and (c) any and all guarantees of any obligations of any lessee (the "lessee") under each of the leases. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of the Assignee to demand, receive and enforce payment of rent, to give receipts, releases and satisfactions, and to sue, in the name of Assignor or Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured; provided, however, that Assignor shall have the right and license to collect the rents, issues and profits prior to or at any time there is no continuing default hereunder or under any of the other loan documents evidencing and securing the Note (as defined herein) ("Loan Documents"). The assignment of the rents, issues and profits in this Assignment is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

This Assignment is made for the purpose of securing:

A. Payment of the principal sum, interest and indebtedness evidenced by that certain Promissory Note dated December ____, 2002 (including any amendments, extensions, renewals, or substitutions thereof, collectively the "Note"), in the principal sum of One Million Dollars (\$1,000,000.00) made by Assignor payable to order of Assignee under a Loan Agreement dated of even date herewith.

B. Payment of all other sums with interest becoming due and payable to Assignee
BCI / Palmetto Inns

Assignment of Leases and Rents

Deliver To: PATTERSON & ASSOCIATES
WHITE & WHITE LAW OFFICES
1430 RICHLAND ST.
COLUMBIA SC 29201 ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

Mortgage Bk: 1453 Pg: 97

Greenwood County, SC - Doc. ID: 2003-2051

GREENWOOD COUNTY
S. C.

ROA_0125

under the provisions of this Assignment and the Loan Agreement and the Loan Documents. The terms used herein shall have the same meaning as set forth in the Loan Agreement dated of even date herewith and the terms and conditions of the Loan Agreement are incorporated herein by reference.

C. The performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein or in the Loan Documents, or in any other obligation of Assignor to Assignee, and all costs of collection including reasonable attorney's fees, as provided in the Note.

The indebtedness and obligations described in A, B, and C above are hereinafter collectively referred to herein as the "Indebtedness".

THE ASSIGNOR WARRANTS to Assignee that the Assignor is the sole owner of its entire interest, as Lessor, in the Lease; that the Lease is valid and enforceable and has not been altered, modified or amended in any manner whatsoever except as previously disclosed in writing to Assignee; that no lessee named therein is in default under any of the terms, covenants or conditions thereof; that no rent reserved in any Lease has been assigned or anticipated, that no rent for any period subsequent to the date of this Assignment has been collected more than one month in advance of the time when the same became due under the terms of any Lease; that it has full right and title to assign the Lease and all rents, issues and profits thereunder; and no other assignment of any interest therein has been made.

THE ASSIGNOR COVENANTS AND AGREES with the Assignee to observe and perform all obligations imposed under the Lease and any other Leases affecting the property; to give prompt notice to the Assignee of any notice of default under any Leases received or given by the Assignor together with a complete copy of any such notice; at the sole cost and expense of the Assignor, to enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition thereof by all parties thereto; and not to do or permit to be done anything to impair the security thereof; not to pay or collect any of the rent, issues and profits arising or accruing under the Leases or from the Property in advance of the time when the same shall become due; not to execute any other assignment of interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property not to subordinate any Lease to any other encumbrance, or permit, consent or agree to such subordination without Assignee's prior written consent; not to alter, modify or change the terms of any Lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Assignee or cancel or terminate any Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the leased premises thereby or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any party thereunder; not to alter, modify or change the terms of any guaranty of any Lease or cancel or terminate such guaranty without the prior written consent of the Assignee; not to consent to any assignment of or subletting under any Lease, whether or not in accordance with its terms, without the prior written consent of the Assignee, said consent not to be unreasonably withheld; at the Assignee's request to assign and transfer to the Assignee any and

BCI / Palmetto Inns

Assignment of Leases and Rents

2051 Bk=1453 Pg=98

Greenwood County, SC - Doc. ID: 2003-2051

2/7

ROA_0126

all subsequent leases upon all or any part of the premises described in such Leases or the Mortgage, and to execute and deliver at the request of the Assignee all such further assurances and assignments in the Property as the Assignee shall from time to time require.

THIS ASSIGNMENT is made on the following additional terms, covenants and conditions:

1. At any time and for any reason the Assignor shall have the right and obligation to collect and receive at the time of but not prior to, the date provided for the payment thereof, all rents, issues and profits arising under the Leases. Upon the occurrence of an event of default hereunder or under the Loan Documents, and after the expiration of any applicable cure period, the Assignee, at its option, without notice and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, may take possession of the premises described in any Lease or in the Mortgage and have, hold, manage, lease and operate the same, while such event of default continues, on such terms and for such period of time as the Assignee may deem proper and either with or without taking possession of such premises in its own name, demand, sue for or otherwise collect and receive all rents, issues and profits of the Property or pay the same including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee, and to apply any such collected rents, issues and profits to the payment of: (a) all expenses of managing the Property, including, without being limited thereto, the salaries, fees and wages, of a managing agent and such other employees as the Assignee may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which the Assignee may deem necessary or desirable, and the costs of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Indebtedness together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph, as the Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by the Assignee of the option granted it in this paragraph and the collection of the rents, issues and profits and the application thereof as herein provided shall not be considered a waiver of any default by the Assignor under this Assignment the Note or the Mortgage, or under any Lease.

2. The Assignee shall not be liable for any loss sustained by the Assignor resulting from any act or omission of the Assignee or from managing the Property unless such loss is caused by the willful misconduct or gross negligence of the Assignee. The Assignee shall not be obligated to perform or discharge, nor does the Assignee hereby undertake to perform or discharge, any obligation, duty or liability under any Lease or under or by reason of this Assignment, and the Assignor shall, and does hereby agree, to indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage, which may or might be incurred under any Lease or under or by any reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements

BCI / Palmetto Inns

Assignment of Leases and Rents

2051 BK=1453 Pg=99

Greenwood County, SC - Doc. ID: 2003-2051

3/7

ROA_0127

contained in any Lease. Should the Assignee incur any such liability under any Lease or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and a reasonable attorney's fee shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of the Assignor to do so, the Assignee may, at its option, declare the Indebtedness immediately due and payable. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or any portion thereof upon the Assignee, nor for the carrying out of any of the terms and conditions of any Lease; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Property by any parties, or for any dangerous or defective condition of the Property or any portion thereof or for any negligence of the Assignor or its agents, in the management, upkeep, repair or control of the Property or any portion thereof resulting in loss or injury or death to any tenant, licensee, employee or stranger.

3. The Assignee shall have the right to assign the Assignor's right, title and interest in the Leases to any subsequent holder or the Mortgage, subject to the provisions of this instrument, and to assign the same to any person acquiring title to the Property through foreclosure or otherwise. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Property no assignee of the Assignor's interest in the Leases shall be liable to account to the Assignor for the rents, issues and profits thereafter accruing.

4. Upon payment and performance in full of the Indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee showing any part of the Indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor, as the lessor under any Lease, hereby authorizes and directs the lessee named in any such Lease or any other or future lessee or occupant of the premises described therein upon receipt from the Assignee of written notice that the Assignee is then the holder of the Note to pay over to the Assignee all rents, issues, and profits arising or accruing under such Leases or from the premises described therein and to continue so to do until otherwise notified by the Assignee.

5. The Assignee may take or release other security for the payment of the Indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the Indebtedness without prejudice to any of its rights under this Assignment.

6. Nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of the Loan Documents. The right of the Assignee to collect the Indebtedness and to enforce any other security therefor held by it may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

BCI / Palmetto Inns

Assignment of Leases and Rents

2051 Bk:1453 Pg:100

7. Assignor hereby assigns to Assignee any portion of an award payable by reason of condemnation action under the right of eminent domain, and directs that such award shall be paid directly to Assignee, to be applied to satisfy the indebtedness, any excess to be returned to Assignor upon such satisfaction.

8. Any guaranty of payment and performance of any Lease shall not be released, modified, or limited in any manner without the prior written consent of the Assignee which consent shall not be unreasonably withheld.

9. This Assignment is made, executed and delivered in the State of South Carolina and shall be governed by the laws of the State of South Carolina. Each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under the applicable law, but if any provision hereof shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

10. In case of any conflict between the terms of this instrument and the terms of the Mortgage, the terms of this Assignment shall control.

[signatures on next page]

2051 BK=1453 Pg=101

BCI / Palmetto Inns

Assignment of Leases and Rents

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of the Assignor and any subsequent holder of the Note and Mortgage and shall be binding upon the Assignor, its successors and assigns and any subsequent owner of the Property.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, or caused this agreement to be executed by its duly authorized officers, and the corporate seal hereunto affixed this the day first above shown.

WITNESSES:

ASSIGNOR:

PALMETTO INNS, LLC

Alison S. Palmer
(Signature)

By: S. Craig White
Its: (Signature)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being duly sworn, deposed and said that s/he saw Palmetto Inns, LLC, a South Carolina limited liability company by S. Craig White, its MANAGE sign, seal and deliver the within-written instrument and that s/he together with the other witness witnessed the execution thereof.

Alison S. Palmer
Witness

SWORN TO and subscribed before me
this 31 day of December, 2002.

(Signature) (SEAL)
Notary Public for South Carolina
My Commission Expires: 2/25/2004

2051 BK 1453 Pg 102

BCI / Palmetto Inns

Assignment of Leases and Rents

Greenwood County, SC - Doc. ID: 2003-2051

6/7

ROA_0130

ANNEX A

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

BEING the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December ___, 2002 and recorded in the Register of Deeds Office for Greenwood County in Mortgage Book ___ at Page ___.

TMS# 099-12-12-001-00

Property Address: 104 Court Street, Greenwood, South Carolina 29646

2051 Bk:1453 Pg:103

BCI / Palmetto Inns

Assignment of Leases and Rents

Greenwood County, SC - Doc. ID: 2003-2051

7/7

ROA_0131

EXHIBIT "B-3"

000002398
 RECORDED 03/07/2005 03:07:13PM
 Bk:00875 Pg:00090 Pages:4
 Fee:10.00 State:0.00
 County:0.00 Exempt:_____
 Ingram Moon, Clerk of Court
 Greenwood County, SC

STATE OF SOUTH CAROLINA }

COUNTY OF GREENWOOD }

TITLE TO REAL ESTATE

2398 Bk:895 Pg:90

KNOW ALL MEN BY THESE PRESENTS, that **Palmetto Inns, LLC** [Grantor], in the State aforesaid, for and in consideration of Five Dollars (\$5.00) and subject to mortgage held by Business Carolina, Inc., to the Grantor in hand paid at and before the sealing of these presents, by **IOS, LLC** ["Grantee"], the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell, and release unto:

IOS, LLCits successors and assigns:

All those certain piece, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying, and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997, and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104 at page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 65° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

This being the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December 31, 2002, and recorded in the Office of the Clerk of Court for Greenwood County on February 13, 2003, in Book 769 at page 218.

TMS: 6845942879

PROPERTY ADDRESS: 104 E. Court Avenue, Greenwood, South Carolina 29646

GRANTEE'S MAILING ADDRESS: c/o John W. Huffman, Inn on the Square,
 104 E. Court Avenue, Greenwood, S.C. 29646

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

ANGELA WOODHURST
 CCCC AND GS
 GREENWOOD COUNTY
 S. C.

Deliver To: LEONARD R JORDAN JR
 PO BOX 394
 COLUMBIA SC 29202

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

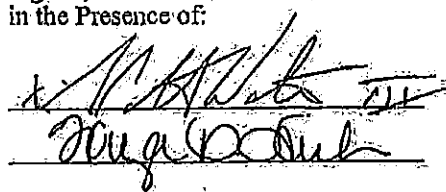
TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said Grantee, Grantee's successors and assigns forever.

And the said Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said Premises unto the said Grantee, Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

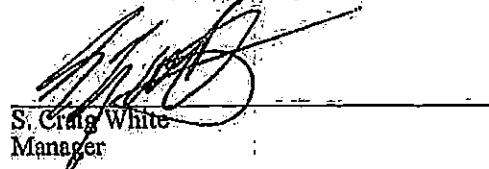
IN WITNESS WHEREOF, the Grantor, by its Manager, has hereunto set its hand and seal this 16th day of February, 2005.

Signed, Sealed and Delivered
in the Presence of:

PALMETTO INNS, LLC


Notary Public

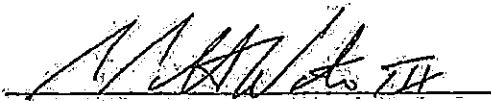
By:


S. Craig White
Manager

STATE OF SOUTH CAROLINA }

COUNTY OF RICHLAND }

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw the within-named Palmetto Inns, LLC, by S. Craig White, its Manager, sign, seal and, as its act and deed, deliver the within Title to Real Estate, and that (s)he with the other witness whose signature appears above, witnessed the execution thereof.



SWORN to before me this

16th day of February, 2005

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/29/2008

P:\Tosca\Huffman-Files\UOS, LLC\Deed.wpd

EXHIBIT "B-4"

000010810
RECORDED 09/27/2006 04:54:36PM
Bk:00999 Pg:00294 Pages:4
Fee:10.00 State:0.00
County:0.00 Exempt:-----
Ingram Moon, Clerk of Court
Greenwood County, SC

STATE OF SOUTH CAROLINA)

QUIT-CLAIM DEED

COUNTY OF GREENWOOD)

10810 Bk:999 Pg:294

KNOW ALL MEN BY THESE PRESENTS, That the City of Greenwood (hereinafter whether singular or plural referred to as the "Grantor"), in consideration of the premises and also in consideration of the sum of Five and no/100 (\$5.00) Dollars and **NO OTHER VALUABLE CONSIDERATION**, to Grantee in hand paid at or before the sealing of these presents, to IOS, LLC (hereinafter whether singular or plural referred to as the "Grantee"), the receipt of which is hereby acknowledged, has remised, released and forever quit-claimed unto the said Grantee the following described property, to-wit:

Deliver To: WELCH

All that certain piece, parcel or lot of land, together with improvements therein, if any, situated, lying and being located in the County of Greenwood, State of South Carolina, which fronts the former Southern Railway railroad right-a-way located on South Main Street for a distance of 117.49 feet, more or less, on east side of South Main Street and being shown and delineated on plat prepared by John H. Welborn, PLS, dated September 15, 1997, and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, at Page 11 on September 17, 1997. Aforesaid plat is specifically incorporated herein and reference is craved thereto for a more complete and accurate description of metes, bounds, course and distance of the property concerned herein.

Derivation: This is the identical property conveyed to the City of Greenwood by deed of IOS, LLC, dated May 4, 2006 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 973, at Page 196 on May 17, 2006.

TMS #: 6845-942-879

Grantee(s) Address: 104 Court Avenue, E.
Greenwood, SC 29646

ATTEST TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CLERK AND GS
GREENWOOD COUNTY
S.C.

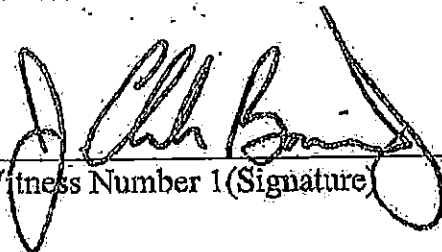
This conveyance is made subject to taxes and assessments for 2006, and to all easements, covenants, restrictions and conditions of record and otherwise affecting the property, including but not limited to, rights-of-way indicated by instruments and plats of record, and to all applicable zoning and other land use regulations and restrictions of any political subdivision in which the subject premises are situate.

TOGETHER WITH all and singular the rights, members, hereitaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

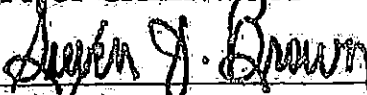
TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, Grantee's successors and assigns, forever, so that neither the said Grantor, nor Grantee's heirs, nor any other person or persons, claiming under the Grantor, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS OUR HANDS and seal this 25th day of September in the year of our Lord 2006 and in the 230th year of the independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Witness Number 1 (Signature)

CITY OF GREENWOOD

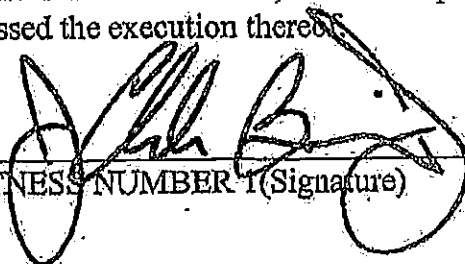

By: Steve Brown
As: City Manager


Witness Number 2 (Signature)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

SS: PROBATE

Personally appeared before me the undersigned witness and made oath that he/she saw the within named Grantor sign, seal, and as his/her act and deed deliver the within Deed, and that deponee, with other witness whose signature appears above, witnessed the execution thereof.


WITNESS NUMBER 1 (Signature)

SWORN TO and subscribed before me
this 25th day of September, 2006.


Notary Public for South Carolina
My Commission Expires: 3/8/14

n:\client\427.03\misc\IOS-QCD2

EXHIBIT "B-5"

FILED FOR RECORD 03/31/2005
AT 11:13:50AM BOOK 01833 PAGE 00136
Ingram Moon - Clerk of Court
Greenwood County Courthouse 000003342

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

3342 Bk:1833 Pg:136

LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement") is effective March 29, 2005, between Palmetto Inns, LLC (the "Borrower") and Business Carolina, Inc. ("Lender"), and amends and supplements (1) the Promissory Note ("Note") made by the Borrower, dated December 31, 2002, in the original principal sum of \$1,000,000.00 (the "Loan"), and (2) the Mortgage of Real Estate ("Security Instrument"), recorded in the office of the Clerk of Court for Greenwood County, South Carolina in Book 1453, Page 87. The Security Instrument, which was entered into as security for the Note, encumbers the real and personal property described in the Security Instrument and defined as the Premises in the Mortgage (the "Property").

The Premises is described in the attached Schedule A:

The Borrower has requested that the Lender modify the terms of the Note and Security Instrument. The Lender has agreed to do so pursuant to the terms and conditions stated in this Agreement and in that certain Forbearance Agreement (the "Forbearance Agreement"), dated of even date herewith, between Lender and Borrower and S. Craig White (the "Guarantor"). A copy of the Forbearance Agreement is attached hereto as Exhibit X and made a part hereof. In consideration of the amendments made in this Agreement, and other good and valuable consideration which the parties agree and acknowledge they have received, the Borrower and Lender agree that the provisions set forth in the Note and Security Instrument are modified as follows:

1. The Borrower acknowledges that interest has accrued but not been paid and the Lender has incurred, paid or incurred expenses necessary to protect or enforce its interest in the Note and Security Instrument. The Borrower and the Lender agree that effective March 29, 2005, the balance due on the Note and Security Instrument ("Unpaid Principal Balance") will be adjusted to \$930,000.00, as provided in the Forbearance Agreement.
2. The Borrower promises to pay the Unpaid Principal Balance, plus future interest as set forth in the Note, to the order of the Note Holder, until the unpaid principal balance has been paid. The Unpaid Principal Balance shall be paid as follows: Twelve (12) payments of interest only in the monthly amount of \$5,231.25, beginning on the 15th day of April, 2005, and continuing thereafter on the same day of each succeeding month for a period of twelve (12) months. Thereafter, the Borrower promises to make monthly payments of principal and interest in the amount of \$7,071.39 beginning on the 15th day of April, 2006, and continuing thereafter on the same day of each succeeding month for a period of fifty nine (59) consecutive months. The final payment of principal and interest, together with all other amounts due, if not sooner paid, shall be due and payable on the 15th day of March, 2011. The Unpaid Principal Balance may be prepaid in whole or in part without penalty.

ATTEST A TRUE COPY

Angela Woodhurst
ANGELA WOODHURST
CCOP AND GS
GREENWOOD COUNTY
S. C.

ROBINSON

Deliver To: RICHARDSON PLUMDEN CARPENTER &
PO DRAWER 7783, KT
COLUMBIA, SC 29202-7783

SCHEDULE A

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46'45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

TMS# 6845942879

This being the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December 31, 2002 and recorded in Book 769 at page 218 in the Office of the Greenwood County Register of Deeds.

3. The Lender shall bill for all accrued interest at least ten (10) days prior to the due date of each monthly payment of interest.
4. Except to the extent modified herein, the Borrower will comply with all of the covenants, agreements, and requirements of the Note and Security Instrument, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under the Security Instrument.
5. Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument which will remain unchanged and in full effect except as modified herein, and the Borrower and Lender will be bound by, and comply with, all the terms and provisions thereof, as amended by this Agreement.
6. In the event of a default under the terms of the this Agreement, the Note, the Security Instrument, the Forbearance Agreement, or any other document that Borrower or Guarantor have executed or will execute in connection with the Loan, then the amount due under the Note shall be increased to an amount equal to the Indebtedness, as that term is defined in the Forbearance Agreement, with credit given for all payments received by Lender hereafter.

Signed, sealed and delivered
in the presence of:

WITNESS

WITNESS

WITNESS

WITNESS

Business Carolina, Inc.

By: [Signature]

Its: SVP operations

Date: 3/30/05

Palmetto Inns, LLC

By: [Signature]

Its: Manager

Date: 3/29/05

STATE OF SOUTH CAROLINA.)
)
COUNTY OF RICHLAND)

3342 Bk:1833 Pg:139
PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Business Carolina, Inc., by Todd Lucas, its Senior V.P., sign, seal, and, as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that (s)he, with the other witness whose signature appears above witnessed the execution thereof.

S. C. J.
Witness

SWORN to before me this
30 day of March, 2005

Donna M. Cook
Notary Public of South Carolina
My Commission Expires: 3/30/14

3342 Bk=1833 Pg=140

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Palmetto Inns, LLC, by SCraig White, its MANAGER, sign, seal and, as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned and that (s)he, with the other witness whose signature appears above witnessed the execution thereof.

Witness WJF

SWORN to before me this
29th day of March, 2005

Thomas J. Peltz
Notary Public of South Carolina
My Commission Expires: 3/2/13

3342 Bk:1333 Pg:141

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

IOS, LLC hereby acknowledges that it purchased the Property secured by the mortgage modified by the attached Loan Modification Agreement and the Property is encumbered with the lien of that mortgage, as modified by the Loan Modification Agreement and the Forebearance Agreement. The terms used in this Acknowledgement have the same meaning as defined in the attached Loan Modification Agreement.

IOS, LLC
By 
Its Manager

SWORN to before me this
29th day of March, 2005

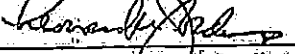

Notary Public of South Carolina
My Commission Expires: 3/7/13

EXHIBIT "B-6"

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
BUSINESS CAROLINA, INC.,

Plaintiff,

vs.

IOS, LLC, PALMETTO INNS, LLC,
MISTY R. HUFFMAN, BRIDGE
FINANCIAL, LLC, CORNERSTONE
CAPITAL FUNDING, LLC, UPPER
SAVANNAH COUNCIL OF
GOVERNMENTS, UPTOWN
DEVELOPMENT CORPORATION,
LONESTAR VENTURES, LLC, and
THE UNITED STATES OF AMERICA by
and through its agency THE INTERNAL
REVENUE SERVICE,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-24-00818

SUMMONS
(Mortgage Foreclosure)
(Non-Jury)

2011 JUL 22 PM 2 47

FILED
8TH JUDGE
GREENWOOD

NOTED MARIE COPE
JUL 22 2011
CLERK OF COURT
GREENWOOD COUNTY
S.C.

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and REQUIRED to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office at 126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492, within thirty (30) days after the service thereof, except as to the United States of America who shall have sixty (60) days, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the said Complaint.

CLAWSON & STAUBES, LLC



Stephanie A. Grunthal
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
Telephone: (843) 577-2026
Facsimile: (843) 722-2867
Attorneys for the Plaintiff

Charleston, South Carolina
July 20, 2011.

It is our understanding that you are not currently in bankruptcy. If you are in bankruptcy, please disregard this Summons in its entirety and have your attorney contact our office as soon as possible.

ROA_0142

The Index-Journal, P.O. Box 1018, Greenwood, SC 29648

FILED COMMUN PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2012 MAR 14 PM 1 49

Plaintiff, vs.
IOS, LLC, PALMETTO
INNS, LLC, MISTY R.
HUFFMAN, BRIDGE
FINANCIAL, LLC,
CORNERSTONE CAP-
ITAL FUNDING, LLC,
UPPER SAVANNAH
COUNCIL OF GOV-
E R N M E N T S ,
UPTOWN DEVELOP-
MENT CORPORATION,
LONESTAR
VENTURES, LLC, and

ALL those certain
pieces, parcels or lots
of land, containing
approximately 0.547
acres, together with the

Beginning at a point located at the south-eastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a dis-

tance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0 to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less. This being the same property conveyed to IOS, LLC, by deed from The City of Greenwood, dated September 25, 2006, and recorded September 27, 2006, in Book 999 at page 294, in the Office of the Greenwood County Register of Deeds; and by deed from Defendant, Palmetto Inns, LLC, dated February 16, 2005, and recorded March 7, 2005, in the RMC/ROD Office for Greenwood County in Book 895 at Page 90. TMS# 6845-942-879 Current Property Address: 104 E. Court Avenue, Greenwood, SC 29646 This sale shall be sub-

ject to taxes and assessments due on the day of such sale, existing easements and restrictions of record. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record, and to the right of the United States of America to redeem the property within 120 days from the date of the Foreclosure pursuant to Sec. 2410 (c.) title 28, United States Code. As a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days after the date of sale as provided by law in such cases. The property shall be sold for cash to the highest bidder. The highest bidder, other than the Plaintiff, will be required to deposit with the Special Referee, at the conclusion of the bidding, cash or certified check in the amount of five (5%) percent of the bid: the said deposit to be applied to the purchase price in case of compliance, but to be forfeited and applied first to costs and then to Plaintiff's debt in case of non-compliance. Should the highest bidder fail or refuse to make the required

deposit at the time of the bid or comply with the other terms of the bid within thirty (30) days from the date of sale, the Special Referee will resell the property at the risk and expense of the defaulting bidder upon the same terms as above set out. The Sheriff of Greenwood County may be authorized to put the purchaser into possession of the premises if requested by the purchaser. Purchaser to pay for the preparation of the Special Referee's Deed, documentary stamps on the deed, recording of the deed, and interest on the amount of the bid from the date of sale to date of compliance with the bid at the legal rate of interest for judgments (7.25% per annum). Curtis G. Clark, Esquire Special Referee for Greenwood County 2 (1 7 , 2 4) 3 (2) 1 2 639066

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-24- 000916

BUSINESS CAROLINA, INC.

IOS, LLC, PALMETTO INNS, LLC, S. CRAIG WHITE

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stephanie G. Hess
CLAWSON AND STAUBES, LLCAttorney for: ☒ Plaintiff

DISPOSITION TYPE: (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT FILING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order. (Format order to follow)☐ Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ☒ ends ☐ does not end the case. Additional information for the Clerk: Deficiency amount set forth below calculated at tax sale of subject property

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
BUSINESS CAROLINA, INC	Palmetto Inns, LLC	\$425,218.84

If applicable, describe the property, including tax map information and address, referenced in the order: 104 East Court Avenue, Greenville, SC - former "Eva on the Square" - Original Trms No. 6845 - 242-879

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Guthrie B. Clark
Circuit Court Judge Special Referee2098
Judge CodeApril 20, 2012
Date

ROA_0145

EXHIBIT "B-8"

6845-942-879

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

BUSINESS CAROLINA, INC.,

Plaintiff,

vs.

IOS, LLC, PALMETTO INNS, LLC,
MISTY R. HUFFMAN, BRIDGE
FINANCIAL, LLC, CORNERSTONE
CAPITAL FUNDING, LLC, UPPER
SAVANNAH COUNCIL OF
GOVERNMENTS, UPTOWN
DEVELOPMENT CORPORATION,
LONESTAR VENTURES, LLC, and
THE UNITED STATES OF AMERICA by
and through its agency THE INTERNAL
REVENUE SERVICE,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-24-818

201200004452
CLAWSON & STAUBES-LLC
126 BEVEN FARMS DR
STE 200
CHARLESTON SC 29472

SPECIAL REFEREE'S DEED
(Public/Private Sale)

201200004452 EXEMPT
INGRAM ROOM
COUNTY CLERK
GREENWOOD COUNTY SC
06-18-2012 02:55 PM.
REC FEE: 10.00

Instrument Book Page
201200004452 1315 16

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S. C.

TO ALL WHOM THESE PRESENTS SHALL CONCERN:

I, Curtis G. Clark, Esquire, Special Referee for Greenwood County, in the said State,
send Greetings:

WHEREAS, in an action in the Court of Common Pleas in Greenwood County
between Business Carolina, Inc., as Plaintiff, and Defendants, IOS, LLC, Palmetto Inns,
LLC, S. Craig White, Case No.: 2011-CP-24-⁸¹⁸, by an Order dated February 7, 2012, it was
decreed that the property hereinafter described should be sold by the Special Referee for
Greenwood County on the terms and for the purposes mentioned in the order(s) granted
in the case as by reference thereto will appear.

WHEREAS, the property was sold to the Plaintiff, Business Carolina, Inc., as the
highest bidder, for the consideration of \$805,000.00.

WHEREAS, the prior owner is IOS, LLC.

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Special Referee
for Greenwood County, pursuant to the foregoing and in consideration of the sum of

Deed Bk: 1315 Pg: 16

Greenwood County, SC - Doc. ID: 2012-4452

1/5

ROA_0146

\$805,000.00 paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release unto the grantee, **Business Carolina, Inc.**, 1523 Huger Street, Suite A, Columbia, South Carolina 29201 the following described property.

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B and C, Abandoned Alley and Addition On a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39" to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

This being the same property conveyed to IOS, LLC, by deed from The City of Greenwood, dated September 25, 2006, and recorded September 27, 2006, in Book 999 at page 294, in the Office of the Greenwood County Register of Deeds; and by deed from Defendant, Palmetto Inns, LLC, dated February 16, 2006, and recorded March 7, 2006, in the RMC/ROD Office for Greenwood County in Book 895 at Page 90.

TMS# 6845-942-879

Property Address: 104 E. Court Avenue, Greenwood, SC 29646

TOGETHER with all and singular the hereditaments, rights, members, and

appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges and appurtenances, unto the said grantee, its successors and assigns for its own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Special Referee for Greenwood County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 20th day of April, in the year of our Lord Two Thousand Twelve in the Two Hundred Thirty Fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

Jane Bradford
Witness
Pauline Clark
Witness

Curtis G. Clark (L.S.)
Curtis G. Clark, Esquire
Special Referee for Greenwood County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

I, JANE BRADFORD, do hereby certify that Curtis G. Clark, Esquire, Special Referee for Greenwood County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 20th day of April, 2012.

Jane Bradford
Notary Public for South Carolina
My commission expires: 1-12-20

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF Greenwood

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 is located at 104 E. Court Avenue, Greenwood, SC 29846, bearing Greenwood County Tax Map Number 884-58-42-878, was transferred by Curtis G. Clark, Esquire, Special Referee for Greenwood County to Business Carolina, Inc. on April 4, 2012.
3. Check one of the following: The DEED is:
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer or as a distribution to a trust beneficiary.
 - (c) X EXEMPTION #13 - Deed executed pursuant to foreclosure proceedings.
4. Check one of the following if either Item 3(a) or Item 3(b) above has been checked:
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$_____.
 - (b) The fee is computed on the fair market value of the realty which is \$_____.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Check YES or NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The DEED Recording Fee is computed as follows:
 - (a) the amount listed in Item 4 above.
 - (b) the amount listed in Item 5 above (no amount place zero)
 - (c) Subtract line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Attorney.
8. Check if Property other than Real Property is being transferred on this Deed.
 - (a) Mobile Home
 - (b) Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT Estate of _____ Deceased Case Number _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina, that (s)he has prepared the Deed of Distribution for the Personal Representative in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. 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 or imprisoned not more than one year, or both.

Stephanie G. Hess
Grantor, Grantee, or Legal Representative
connected with this transaction.

Stephanie G. Hess
Print or Type Name Here.

Sworn to before me this 16
day of April, 2012.

[Signature]
Notary Public for South Carolina
My Commission Expires 5/26/2020

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds: Section 12-24-40

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitutes a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-4(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation; (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchases as well as for the purpose of purchasing the realty.
- (15) Transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT "B-9"

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
BUSINESS CAROLINA, INC.,

Plaintiff,

vs.

IOS, LLC, PALMETTO INNS, LLC,
MISTY R. HUFFMAN, BRIDGE
FINANCIAL, LLC, CORNERSTONE
CAPITAL FUNDING, LLC, UPPER
SAVANNAH COUNCIL OF
GOVERNMENTS, UPTOWN
DEVELOPMENT CORPORATION,
LONESTAR VENTURES, LLC, and
THE UNITED STATES OF AMERICA by
and through its agency THE INTERNAL
REVENUE SERVICE,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-24-818

ORDER FOR DEFICIENCY
JUDGMENT

FILED
2 PM 2 01
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

ATTACHED TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

THIS MATTER came before the undersigned upon referral for foreclosure and the Plaintiff reserving its right to a deficiency judgment; and

IT APPEARING TO THE COURT that upon consideration of the Master's Order of Sale and Disbursement in the above case, and upon the Order of Foreclosure entered February 7, 2012;

IT IS ORDERED that the Plaintiff have judgment against the Defendant, Palmetto Inns, LLC, in the sum of \$425,218.84 Dollars, plus interest accruing thereon from and after April 4, 2012, at the legal rate of interest for judgments.

AND IT IS SO ORDERED.

Curtis G. Clark
Curtis G. Clark, Esquire
Special Referee for Greenwood County

Greenwood, South Carolina

April 20, 2012

EXHIBIT "B-10"

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
BUSINESS CAROLINA, INC.,

Plaintiff,

vs.

IOS, LLC, PALMETTO INNS, LLC, MISTY
R. HUFFMAN, BRIDGE FINANCIAL, LLC,
CORNERSTONE CAPITAL FUNDING,
LLC, UPPER SAVANNAH COUNCIL OF
GOVERNMENTS, UPTOWN
DEVELOPMENT CORPORATION,
LONESTAR VENTURES, LLC, and THE
UNITED STATES OF AMERICA by and
through its agency THE INTERNAL
REVENUE SERVICE,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-24-818

SUPPLEMENTAL ORDER

2012 SEP 26 AM 9 55
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

ALLIANCE FOR THE
GREENWOOD COUNTY
S.C.

IT APPEARING TO THE COURT that the Summons and Complaint in the above captioned action was filed on or about July 22, 2011, and an Order of Foreclosure and Sale was entered on February 13, 2012;

IT FURTHER APPEARING that the Plaintiff, Business Carolina, Inc., was the successful bidder at the foreclosure sale and a Deed was been issued to the Plaintiff for the property known as 104 E. Court Avenue, Greenwood, SC 29646;

IT FURTHER APPEARING that it has now come to the attention of the Plaintiff that a lien filed by the Defendant, The United States of America, by and through its agency, The Internal Revenue Service, should have been included in this action;

IT FURTHER APPEARING that there were no surplus funds resulting from the Sale of this aforementioned property, and that the lien described above is junior and subordinate to the Mortgage held by the Plaintiff;

NOW, THEREFORE, It is hereby ORDERED, ADJUDGED AND DECREED, that the lien filed by the Defendant, The United States of America by and through its agency The Internal Revenue Service, dated April 23, 2010, and recorded April 30, 2010, in the RMC/ROD Office for Greenwood County in Book 6 at Page 6, is hereby discharged only as to the property known as 104 E. Court Avenue, Greenwood, SC 29646, which is the property subject to this foreclosure action.

Curtis G. Clark
The Honorable Curtis G. Clark
Special Referee for Greenwood County

Greenwood, South Carolina
September 6, 2012

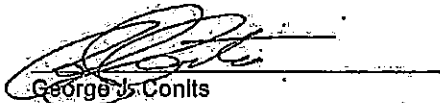
WE SO MOVE:



Stephanie G. Hess
CLAWSON AND STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorneys for the Plaintiff

WE CONSENT:



George J. Conlts
Assistant US Attorney
55 Beattie Place, Ste 700
Greenville, SC 29601
(864) 282-2100

Attorney for the Defendant United States of
America by and through its agency
The Internal Revenue Service

2 CG

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this "Agreement") is made effective the _____ day of August, 2009, by and between IOS, LLC ("Mortgagor"), a South Carolina limited liability company, and Business Carolina, Inc. ("Mortgagee").

PRELIMINARY STATEMENT

On or about December 31, 2002, Palmetto Inns, LLC ("Palmetto"), a South Carolina limited liability company, and Mortgagee entered into a certain Loan Agreement (the "Loan Agreement") pursuant to which Mortgagee made a loan (the "Loan") to Palmetto in the original principal amount of \$1,000,000.00. The obligation of Palmetto to repay the Loan is evidenced by the Note (as defined in the Loan Agreement) of Palmetto payable to the order of Mortgagee, and, together with all other obligations of Palmetto with respect to the Loan (all such obligations of Palmetto with respect to the Loan including, without limitation, the payments required by the Note, being herein referred to as the "Obligations") is secured by, among other instruments, a Mortgage of Real Estate (the "Mortgage") executed by Palmetto in favor of Mortgagee, and recorded in the Greenwood County, South Carolina public records in Book 01453 at page 00087. The Mortgage constitutes both a real estate mortgage and a security agreement and encumbers, and grants a lien upon and a security interest in and to the Land (located in Greenwood County, South Carolina), the Improvements, the Easements and Other Interests, the Proceeds, the Intangible Property and the Rents and Profits (together with the proceeds of the Rents and Profits), as each of the foregoing capitalized terms is defined in the Mortgage. Payment and performance of the Obligations is also secured by an Assignment of Leases and Rents (the "Assignment") dated December 31, 2002, and recorded February 13, 2002, in the Greenwood County, South Carolina public records in Book 01453 at page 00097, of Palmetto, as assignor, in favor of Mortgagee, as assignee, absolutely assigning and transferring unto Mortgagee each and all "Leases" (as defined in the Assignment) with respect to the Land and Improvements, and the "rents, issues and profits" (as defined in the Assignment) of and from said Leases, and by a Security Agreement dated December 2, 2002, of Palmetto, as debtor, in favor of Mortgagee, as secured party, encumbering the Collateral (therein defined), which security interest (and the security interests granted by the Mortgage), was perfected by the filing of financing statements (and continuations thereof) in the Greenwood County, South Carolina public records and in the Office of the Secretary of State of South Carolina. Accordingly, Mortgagee held and continues to hold a first perfected lien and security interest in and to the Land, the Improvements, the Easements and Other Interests, the Proceeds, the Intangible Property and the Rents and Profits (together with the proceeds of the Rents and Profits), the Leases, the rents, issues and profits therefrom, and the Collateral (all of the foregoing together with the proceeds thereof being and comprising the hotel known as the Inn on the Square in Greenwood, South Carolina and being herein referred to, without limitation, as the "Property"; the Loan Agreement, the Note, the Mortgage, the Assignment, the Security Agreement and all other documents executed or delivered by Palmetto, or by S. Craig White ("Guarantor"), as guarantor of payment and performance of the Obligations, to evidence, secure or guarantee payment or performance of the Obligations in whole or in part being herein referred to as the "Loan Documents").

On or about February 16, 2005, Mortgagor acquired the Property by deed from Palmetto, subject to the first priority lien and security interest of Mortgagee in and to the Property and each and every part thereof.

Neither Palmetto, Guarantor nor Mortgagor has made the payments required upon the Note and accordingly Mortgagor is entitled to and has declared a default and event of default (the "Defaults") under each of the Loan Documents, has declared the entire outstanding principal balance of the Note, plus accrued interest, late fees, and Mortgagor's attorneys' fees and other costs of collection, immediately due and payable in full, and has made demand therefor, but payment has not been made. Accordingly, Mortgagee is entitled to immediately and without further notice or demand foreclose and realize upon its liens and security interests in the Property.

Mortgagor has negotiated a lease (the "Lease") of the Property to Lander University ("Lander") for a term commencing August 15, 2009, and ending not later than June 14, 2010 (the "Term"), and is also in negotiations to enter into a contract (the "Sales Contract") to sell the Property to Lander.

Mortgagor has requested that Mortgagee enter a subordination, non-disturbance and attornment agreement (the "SNDA") with Lander with respect to the Lease, refrain from commencing foreclosure and other actions (collectively, without limitation, and whether one or more than one, the "Foreclosure Action") to foreclose upon and liquidate the Property or any part thereof to satisfy (in whole or in part) the Obligations until after January 1, 2010 (or later, depending on whether the Sales Contract shall have been entered prior thereto, but not finally approved by the Board (hereafter defined) until thereafter), refrain from proceeding to sale and realization upon the Property pursuant to the Foreclosure Action before August 20, 2010 (the "Sale Date"), and agree to sell the Note and other Loan Documents to Mortgagor (without recourse) at any time prior to June 14, 2010, for a cash price of \$700,000.00 (the "Purchase Price"). Mortgagee is willing to so do provided that (i) Mortgagor acknowledge the Defaults have occurred, (ii) enter with Mortgagee into an escrow agreement (the "Escrow Agreement") with either or both of McDonald, Patrick, Poston, Hemphill & Roper, LLC (Lander's legal counsel) and Beiry, Quackenbush & Stuart, P.A. (Mortgagor's legal counsel) (whether either or both, "Escrow Agent"), as escrow agent, and direct Lander that all rentals and other payments (collectively, without limitation, "Rentals") made pursuant to the Lease shall be paid directly into a trust account (the "Account") maintained by Escrow Agent with an institution the deposits of which are insured by an agency of the federal government to the maximum amount permitted by law, from which Account Escrow Agent shall make disbursements and payments ("Disbursements") only in accordance with a budget (the "Budget") proposed by Mortgagor and approved by Mortgagee, for all reasonable and necessary expenses with respect to the ownership and operation of the Property including, but not limited to, taxes, debt service (for the payment described in the next subsection and other debts but only to extent actually approved and agreed to by Mortgagee), utilities, repairs and maintenance; the Escrow Agreement shall require that Escrow Agent provide a monthly report (the "Report") showing funds received into the Escrow Account, Disbursements (including the payee thereof and invoices, statements, etc., paid and the balance remaining (if any), (iii) authorize and include in the Budget to commence not later than November 1, 2009, payments to be made monthly during the balance of the Term (or until Mortgagor shall have acquired the Loan Documents, whichever shall first occur), due on the first day of each month unto Mortgagee the sum of \$6,300.00, (the "Monthly Payment") which Monthly

Payment shall be applied by Mortgagee upon unpaid accrued interest due unto Mortgagee, (iv) waive any and all defenses, claims and set-offs of every kind and nature which could or might be interposed in the Foreclosure Action, (v) agree to and assist in the orderly liquidation and sale of the Property commencing not before June 14, 2010 in the event the Sales Contract is not timely entered (or if the Sales Contract is timely entered, but not finally approved by the South Carolina State Budget State Budget and Control Board, General Services Division (the "Board"), prior to April 15, 2010 (the "Final Approval Date")), or the Sale Date if the Sales Contract is timely entered and is approved by the Board prior to the Final Approval Date, but Lander has not theretofore purchased the Property, and (vi) release Mortgagee from any and all claims of every kind and nature, to which Mortgagor has agreed. As a result the parties have entered into this Agreement.

TEXT OF AGREEMENT

NOW THEREFORE, for and in consideration of these premises and the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The factual recitals set forth in the Preliminary Statement are hereby incorporated as part hereof, and Mortgagor, by execution hereof, hereby confirms the truth and accuracy thereof.

2. Mortgagor represents and warrants that it has made all consents and acknowledgments necessary in order for the parties hereto to enter this Agreement and to consummate the actions and transactions contemplated hereby.

3. The terms and provisions hereof shall be deemed to and shall modify and amend the terms and provisions of each of the Loan Documents as expressly set forth herein, but shall not otherwise modify or amend the terms of any other Loan Documents, nor constitute a waiver or forgiveness of any of the Defaults. Other than as expressly set forth herein each and every term, provision and condition of each of the Loan Documents remains in full effect, and as modified and amended hereby, is hereby ratified and affirmed.

4. Mortgagor hereby expressly acknowledges and agrees that each of the Defaults has occurred, that Palmetto (and Mortgagor) is in default under the Note and the other Loan Documents, and that Mortgagee has given notice thereof and made demand for payment in full; that Mortgagee is entitled to immediately and without further notice or demand of any kind or nature exercise each, every and all rights and remedies accorded to Mortgagee following a default under the Note and each of the other Loan Documents including, without limitation, instituting and pursuing the Foreclosure Action. Notwithstanding the foregoing Mortgagor, for itself, its manager(s), member(s), agents, servants and employees does hereby expressly waive and forever relinquish any, every and all defenses, counterclaims, set-offs and rights of set-off that it now or hereafter may have or possess to and with respect to the Foreclosure Action. Mortgagor agrees that it (i) will not hinder or impede Mortgagee's institution and prosecution of the Foreclosure Action and (ii) will assist in the orderly foreclosure, marshaling, liquidation and disposal of the Property, provided Mortgagee shall in instituting and prosecuting the Foreclosure Action comply with the terms of this Agreement including, without limitation, the requirements of Section 5 hereof.

5. Mortgagee agrees that notwithstanding the foregoing that it will not institute any

Foreclosure Action until the first to occur of (i) a default hereunder, (ii) any further default or event of default with respect to any of the Loan Documents, and (iii) January 1, 2010, but if the Mortgagor shall have entered the Sales Contract with Lander but the Board shall not have given final approval thereof on or before January 1, 2010, the earlier to occur of five business days after the Board shall have given final approval of the Sales Contract and the Final Approval Date; nor will the Mortgagee seek or allow foreclosure or liquidation of any of the Property pursuant to the Foreclosure Action prior to the earlier to occur of (a) a default hereunder; (b) any further default or event of default with respect to any of the Loan Documents, and (c) the Sale Date, but if the Mortgagor shall not have entered the Sales Contract with Lander prior to January 1, 2010 or the Sales Contract shall not have received final approval of the Board prior to the Final Approval Date, June 14, 2010.

6. Mortgagor shall no later than August 24, 2009, deliver or cause to be delivered unto Mortgagee a proposed Escrow Agreement to which Mortgagee shall notify Mortgagor and Escrow Agent of any required changes by August 27, 2009. If the parties fail to enter into the Escrow Agreement with Escrow Agent by no later than August 31, 2009, unless the parties shall agree otherwise in writing, this Agreement and the obligations imposed upon the parties hereby shall be rendered and become null and void. Mortgagor does hereby acknowledge and agree that the Lease is one of the "Leases" as defined in the Assignment, and that the Rentals comprise "Rents and Profits" under and as defined in the Mortgage, and "rents, issues and profits" as defined in the Assignment, and that accordingly Mortgagee has an absolute assignment thereof and holds a first perfected lien and security interest therein. Mortgagor agrees that the Escrow Agreement shall contain the agreement and acknowledgment of Escrow Agent thereto and that Escrow Agent holds the Rentals as bailee of the Mortgagee. Upon execution of the Escrow Agreement Mortgagor shall deliver any Rentals it then holds to and shall direct Lander to thenceforth make all payments of Rentals to, Escrow Agent, which shall deposit the same into the Account. Escrow Agent shall make Disbursements from the Account including for the Monthly Payment, but only in accordance with the Budget, and provide the Report to Mortgagor and Mortgagee within ten (10) days after each month's end, for the prior month.

7. So long as no further default or event of default shall have occurred hereunder or under any of the Loan Documents Mortgagee agrees to accept, in lieu of the payment otherwise due upon the Note, for the period commencing September 1, 2009, through June 14, 2009 only, the Monthly Payment (which shall commence payment on November 1, 2009), which shall be applied to outstanding accrued interest due upon the Note; provided, however, acceptance of such payments, (or any other payments) by Mortgagee shall not be deemed a waiver of the Defaults, to reinstate the Loan in good standing or to prevent or prohibit the Mortgagee from instituting and pursuing the Foreclosure Action.

8. Mortgagor may purchase the Note and other Loan Documents, all without recourse, warranty or representation of any kind or nature (other than that Mortgagee is the holder thereof and has not sold, transferred or assigned the Note, the other Loan Documents or any part or interest therein to any third party), at any time prior to the Sale Date upon the giving of not less than five (5) business days' notice, for the Purchase Price, which shall be paid to Mortgagee at or prior to the transfer of said instruments, in cash, by federal funds wire, or in other form of immediately available federal funds. Mortgagor acknowledges and agrees that if the Purchase Price is not paid in full in accordance with this section on or before the Sale Date, that Mortgagor shall have no further right

to purchase the Note and the other Loan Documents. The parties further acknowledge and agree that the Sales Price is the result of negotiation between the parties and is in no way based upon the value of the Property or any part thereof, or either party's determination or belief with respect thereto.

9. Mortgagee hereby acknowledges that Lander will lease the Property as a dormitory for its students and that the use of the Property as a hotel will cease. Mortgagee agrees that it will enter an SNDA with Lander in form and substance generally acceptable to Mortgagee agreeing to subordinate the lien of the Mortgage to the Lease for the Term only, in return for the agreement of Lander to (i) attorn to Mortgagee in the event of default hereunder or further default or event of default with respect to the Loan Documents, (ii) not amend, cancel or revise the Lease without the express written consent of Mortgagee, (iii) acknowledge the lien upon and perfected security interest of Mortgagee in and to the Property and accordingly agree to not remove or allow the removal of any of the Property from its present location without Lender's written consent, and (iv) pay rent in monthly installments and not more than one month in advance. The subordination contained in the SNDA shall not under any circumstances apply to the Sales Contract.

10. Mortgagor hereby expressly acknowledges and agrees that Mortgagee has fully and in good faith complied with all conditions and requirements imposed or inferred upon Mortgagee with respect to the Loan, and that neither Mortgagee nor any officer, employee or agent thereof is in any fashion or manner, directly or indirectly, responsible for, a contributing party to, or a cause of, the Defaults. Nonetheless Mortgagor, by execution hereof, does hereby remise, release and forever discharge, and by these presents does, for itself and its principals, agents, employees, legal representatives, successors and assigns, remise, release and forever discharge the Mortgagee, its principals, officers, attorneys, agents, employees, successors, assigns and legal representatives (collectively and individually the "Parties Released") of and from all, and all manner of, action and actions, cause and causes of actions, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespass and trespasses, damage and damages, judgments, extents, executions, claim and claims, and demand and demands, whatsoever, both at law and in equity, which against the said Parties Released and each of them, Mortgagor had, now has or which Mortgagor (including its legal representatives, successors and assigns) hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatever from the beginning of the world up to the day, hour and minute of the effective date of these presents, either known or unknown at this time, apparent or not apparent, including, without limitation, arising under or with respect to the Loan.

11. TIME IS OF THE ESSENCE in the performance of each, every and all of the terms, provisions and conditions hereof.

12. All notices and communications provided for hereunder shall be in writing, delivered by hand or sent by first-class or certified mail, postage prepaid to the following addresses:

- (a) If to Mortgagor, IOS, LLC
C/o Leonard Jordan, Esquire
Berry, Quackenbush & Stuart, P.A.
1122 Lady Street, 5th Floor
Columbia, South Carolina 29201

(b) If to Mortgagee, Business Carolina, Inc.
1523 Huger Street, Suite A
Columbia, South Carolina 29201
Attention: Todd Lucas, Senior Vice President

Mortgagor, Mortgagee, or either of them, may change address for notice purposes by notice to the other party in the manner provided herein. All notices, demands, consents or other communications hereunder shall be deemed effective when delivered personally or by delivery service, or 3 days after mailing when sent by registered or certified mail, first class postage prepaid, addressed to the party to receive such notice at the address for such party set forth above, or at such other address as such party may specify in a notice previously given to the other parties in the manner herein.

13. The terms of this Agreement may be varied by only by written agreement signed by the Mortgagor and Mortgagee.

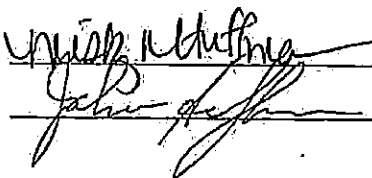
14. If any clause or provision of this Agreement is found to be invalid or is incapable of being enforced by any rule of law or public policy, all other clauses and provisions shall nevertheless shall remain in full force and effect.

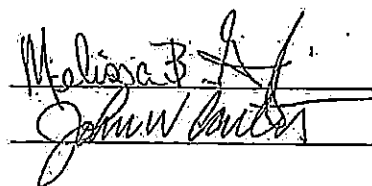
15. This Agreement is binding upon the and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

16. This Agreement may be executed in one or more counterparts, all of which shall collectively comprise one and the same instrument.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have hereunto set their hands AND SEALS effective the day and year first above-written.

WITNESSES:





IOS, LLC

By:  (SEAL)
Its sole Member Manager

BUSINESS CAROLINA, INC.

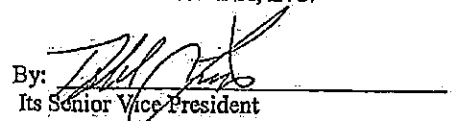
By: 
Its Senior Vice President

EXHIBIT "C"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	CIVIL ACTION NO. 2012-CP-24-576
	)	
IOS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF DIANE NEWTON
	)	
Lander University, Lander College and	)	
The Lander Foundation,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, DIANE NEWTON, who being first duly sworn, deposes and says:

1. That I am currently the Vice-President of Finance and Administration at the University of Central Arkansas and have held this job since January 2010.
2. That from 2003 through December 2009, I was the Vice-President for Business and Administration at Lander University (hereinafter "Lander").
3. That as a part of my duties with Lander, I attended Board meetings for The Lander Foundation (hereinafter "The Foundation").
4. That at no point have I ever been a member of the Board of Trustees of The Foundation or of Lander. I was a non-voting appointee to the Board of Trustees of The Foundation acting as Treasurer.
5. That in 2009, Douglas L. Bell, who is an attorney, provided legal services to Lander and The Foundation.
6. That in 2009 Attorney Bell was not a member or an officer of the Board of Trustees of Lander.
7. That in 2009 Attorney Bell was not a member or an officer the Board of Trustees of The Foundation.
8. That I never entered into an oral contract with John Huffman or any other person for Lander or for The Foundation to purchase The Inn on the Square (hereinafter "The Inn") from IOS, LLC (hereinafter "IOS").
9. That I, on behalf of Lander or The Foundation, never made representations to IOS that Lander or The Foundation agreed to purchase The Inn from IOS.

10. That I never represented to IOS that Lander would purchase The Inn if the purchase was approved by the South Carolina Budget and Control Board.

11. That I never represented to IOS that The Foundation would purchase The Inn if Lander could not do so.

12. That I never agreed to a purchase price of \$2,300,000.00 for The Inn.

13. That I never agreed that Lander or The Foundation would purchase The Inn no later than April 2010.

14. That in August 2009 Lander, as tenant, did enter into a lease agreement with an option to purchase The Inn with IOS, as landlord, and I would defer to the lease agreement for the specific terms.

15. That Lisa Catalanotto, an attorney with the General Services division of the South Carolina Budget and Control Board, assisted with negotiation and drafting of the Lease Agreement, not Attorney Bell.

16. That I submitted the draft Lease for review to Attorney Bell.

17. That Attorney Bell informed me that there were several mortgage liens upon the leased premises, and that the ad valorem taxes for the 2008 tax year were delinquent in the amount of \$33,910.71, and that the leased premises would be sold at a tax sale under authority of the Greenwood County Delinquent Tax Collector in October, 2009.

18. That Attorney Bell recommended that Lander not enter into the Lease Agreement unless and until an escrow agreement could be entered to allow for direct payment of the delinquent taxes, and until such time as each mortgage holder agreed to subordinate its lien to the Lease so that there would be no potential impact upon the students during the term of the Lease.

19. That the mortgage lenders notified Lander that IOS was in default of the terms of the loan.

20. That Business Carolina, Inc., as the first lien mortgage holder, entered into a Forbearance Agreement with IOS, LLC, a true and correct copy of which is attached hereto as Exhibit "A", wherein IOS recognized its default, IOS agreed that it was requesting the Lease of the leased premises to Lander, acknowledged that negotiations were ongoing for a potential purchase and had not been agreed upon, and allowing an escrow arrangement with Lander's legal counsel to reserve from rent an amount sufficient to pay the delinquent taxes.

21. That Lander maintained an interest in negotiating for the purchase of the leased premises, and undertook due diligence to determine whether to make an offer to purchase the real property, to include obtaining an appraisal, a seismic condition study, and fire safety study.

22. That based upon the value of the property and the cost of upfitting required for permanent student housing, Lander did not make an offer to purchase to IOS, LLC.

23. That the Foundation did not review the due diligence materials nor was it ever involved in negotiations for purchase.

24. That it was my understanding that Lander had the option, in its sole discretion, to purchase The Inn under terms of the lease agreement but was not under an obligation to do so.

25. That to my knowledge Lander did not exercise its option to purchase The Inn under the lease agreement.

26. That to my knowledge Lander did not pay any money towards a purchase price for The Inn.

27. That to my knowledge Lander performed under the terms of the Lease Agreement, and did not perform any acts under any oral agreement.

FURTHER THE AFFIANT SAYETH NOT.

SWORN to before me this _____
day of _____, 2014.

DIANE NEWTON

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

NICHOLSON MEREDITH & ANDERSON, LLC
ATTORNEYS AT LAW

W.H. Nicholson, III
Lena Y. Meredith
Jennings B. Anderson

109 West Court Avenue (29646)
P. O. Box 457
Greenwood, SC 29648

864.229.7241 Phone
864.229.2739 Fax

www.nicholsonmeredith.com

Writer's Direct E-mail: lena@nicholsonmeredith.com

September 23, 2014

The Honorable Donald B. Hocker
PO Box 972
Laurens, SC 29360

Re: IOS, LLC vs. Lander University, Lander College and The Lander University
C.A. No.: 2012-CP-24-576

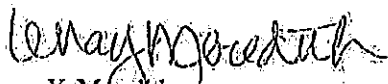
Dear Judge Hocker:

Enclosed herewith is a copy of the signed Affidavit of Diane Newton (Exhibit "C" to Defendants' Memorandum in Support of its Motion for Summary Judgment). The original has been filed with the Court and copies served on all counsel.

If you have any questions or concerns, please let me know.

Yours very truly,

NICHOLSON MEREDITH & ANDERSON, LLC


Lena Y. Meredith

LYM/kvs
Enclosures

Cc: James E. Smith, Jr., Esquire (Via email and first class mail)
Douglas L. Bell, Esquire

NICHOLSON MEREDITH & ANDERSON, LLC
ATTORNEYS AT LAW

W.H. Nicholson, III
Lena Y. Meredith
Jennings B. Anderson

109 West Court Avenue (29646)
P. O. Box 457
Greenwood, SC 29648

864.229.7241 Phone
864.229.2739 Fax
www.nicholsonmeredith.com

September 23, 2014

Greenwood Clerk of Court
Attn: Civil Records

Via Hand-Delivery

Re: IOS, LLC vs. Lander University, Lander College and The Lander University
C.A. No.: 2012-CP-24-576

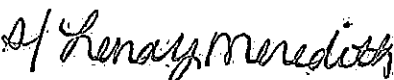
Dear Madam Clerk:

Enclosed herewith is the original and one copy of the *signed* Affidavit of Diane Newton which should be attached as Exhibit "C" to the Memorandum in Support of Defendants Motion for Summary Judgment already filed in the above-referenced case. The original filing included an *unsigned* copy of this Affidavit. Please return a clocked-in copy via my firm's box in the Clerk's office.

If you have any questions or concerns, please feel free to contact me.

Yours very truly,

NICHOLSON MEREDITH & ANDERSON, LLC


Lena Y. Meredith

LYM/lvs
Enclosures

EXHIBIT "C"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENWOOD	)	CIVIL ACTION NO. 2012-CP-24-576
	)	
IOS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF DIANE NEWTON
	)	
Lander University, Lander College and	)	
The Lander Foundation,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, DIANE NEWTON, who being first duly sworn, deposes and says:

1. That I am currently the Vice-President of Finance and Administration at the University of Central Arkansas and have held this job since January 2010.
2. That from 2003 through December 2009, I was the Vice-President for Business and Administration at Lander University (hereinafter "Lander").
3. That as a part of my duties with Lander, I attended Board meetings for The Lander Foundation (hereinafter "The Foundation").
4. That at no point have I ever been a member of the Board of Trustees of The Foundation or of Lander. I was a non-voting appointee to the Board of Trustees of The Foundation acting as Treasurer.
5. That in 2009, Douglas L. Bell, who is an attorney, provided legal services to Lander and The Foundation.
6. That in 2009 Attorney Bell was not a member or an officer of the Board of Trustees of Lander.
7. That in 2009 Attorney Bell was not a member or an officer the Board of Trustees of The Foundation.
8. That I never entered into an oral contract with John Huffman or any other person for Lander or for The Foundation to purchase The Inn on the Square (hereinafter "The Inn") from IOS, LLC (hereinafter "IOS").
9. That I, on behalf of Lander or The Foundation, never made representations to IOS that Lander or The Foundation agreed to purchase The Inn from IOS.

10. That I never represented to IOS that Lander would purchase The Inn if the purchase was approved by the South Carolina Budget and Control Board.
11. That I never represented to IOS that The Foundation would purchase The Inn if Lander could not do so.
12. That I never agreed to a purchase price of \$2,300,000.00 for The Inn.
13. That I never agreed that Lander or The Foundation would purchase The Inn no later than April 2010.
14. That in August 2009 Lander, as tenant, did enter into a lease agreement with an option to purchase The Inn with IOS, as landlord, and I would defer to the lease agreement for the specific terms.
15. That Lisa Catalanotto, an attorney with the General Services division of the South Carolina Budget and Control Board, assisted with negotiation and drafting of the Lease Agreement, not Attorney Bell.
16. That I submitted the draft Lease for review to Attorney Bell.
17. That Attorney Bell informed me that there were several mortgage liens upon the leased premises, and that the ad valorem taxes for the 2008 tax year were delinquent in the amount of \$33,910.71, and that the leased premises would be sold at a tax sale under authority of the Greenwood County Delinquent Tax Collector in October, 2009.
18. That Attorney Bell recommended that Lander not enter into the Lease Agreement unless and until an escrow agreement could be entered to allow for direct payment of the delinquent taxes, and until such time as each mortgage holder agreed to subordinate its lien to the Lease so that there would be no potential impact upon the students during the term of the Lease.
19. That the mortgage lenders notified Lander that IOS was in default of the terms of the loan.
20. That Business Carolina, Inc., as the first lien mortgage holder, entered into a Forbearance Agreement with IOS, LLC, a true and correct copy of which is attached hereto as Exhibit "A", wherein IOS recognized its default, IOS agreed that it was requesting the Lease of the leased premises to Lander, acknowledged that negotiations were ongoing for a potential purchase and had not been agreed upon, and allowing an escrow arrangement with Lander's legal counsel to reserve from rent an amount sufficient to pay the delinquent taxes.
21. That Lander maintained an interest in negotiating for the purchase of the leased premises, and undertook due diligence to determine whether to make an offer to purchase the real property, to include obtaining an appraisal, a seismic condition study, and fire safety study.
22. That based upon the value of the property and the cost of upfitting required for permanent student housing, Lander did not make an offer to purchase to IOS, LLC.
23. That the Foundation did not review the due diligence materials nor was it ever involved in negotiations for purchase.

24. That it was my understanding that Lander had the option, in its sole discretion, to purchase The Inn under terms of the lease agreement but was not under an obligation to do so.

25. That to my knowledge Lander did not exercise its option to purchase The Inn under the lease agreement.

26. That to my knowledge Lander did not pay any money towards a purchase price for The Inn.

27. That to my knowledge Lander performed under the terms of the Lease Agreement, and did not perform any acts under any oral agreement.

FURTHER THE AFFIANT SAYETH NOT.

SWORN to before me this 10
day of September, 2014.

Diane Newton
DIANE NEWTON

Susan R. Gille
NOTARY PUBLIC FOR SOUTH CAROLINA, Arkansas
My Commission Expires: July 30, 2015

EXHIBIT "D"

Newspapers.com

<http://www.newspapers.com/image/70479776>

The Index-Journal (Greenwood, South Carolina) · Thu, Aug 6, 2009 · Page 1

Printed on Sep 2, 2014

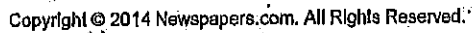


Copyright © 2014 Newspapers.com. All Rights Reserved.

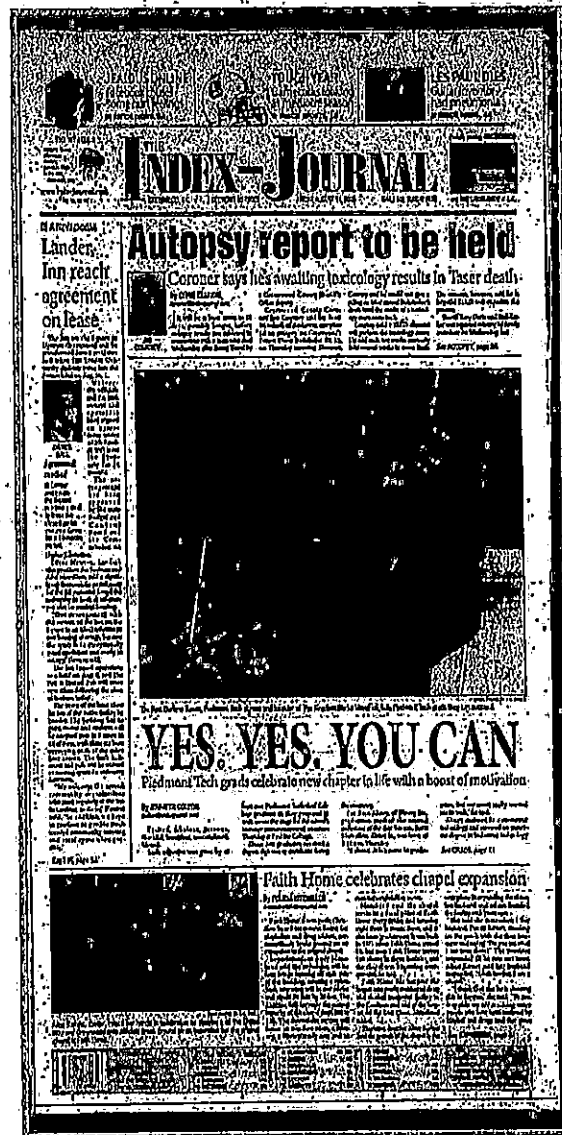
<http://www.newspapers.com/image-pdf.php?id=70479776&print=1>

9/2/2014

ROA_0168



ROA_0170



■ A NEW DORM

Lander
Inn reach
agreement
on lease

The lion on the Square in Uptown Greenwood will be transformed into a residence hall when Lander University students move into the former hotel on Aug. 30.

University officials and the inn's owners and operators have signed an agreement under which Lander

DANIEL BALL

Agreement reached

Lander and Inn on the Square reached a deal to lease the closed-in to use as a dorm for 10 months.

Ellen Newton, Lander's vice president for housing and facilities, said a decision on the lease was made last week.

"Our arrangement with the owners of the Inn on the Square is an ideal solution to our housing shortage, because the space is in exceptionally good condition and ready to occupy," Newton said.

The inn ceased operations as a hotel on Aug. 9, and The Fox & Hound Pub will cease operations following the close of business today.

The terms of the lease allow for use of the entire facility by Lander. The building has eight guest rooms and students will be assigned two to a room in 44 of them, with three students occupying each of the other four rooms. The inn's ballroom and pub will be utilized as meeting space for university functions.

higher education.

Diane Newton, Lander's vice president for business and administration, said a significant increase in enrollment for the fall semester forced the university to look at off-campus sites for student housing.

"Our arrangement with the owners of the Inn on the Square is an ideal solution to our housing shortage, because the space is in exceptionally good condition and ready to occupy," Newton said.

The Inn ceased operations as a hotel on Aug. 9, and The Fox & Hound Pub will cease operations following the close of business today.

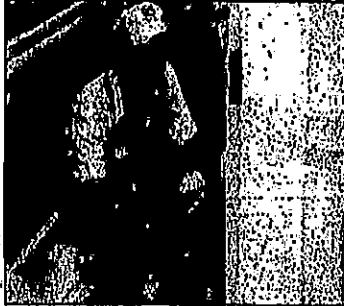
The terms of the lease allow for use of the entire facility by Lander. The building has 48 guest rooms and students will be assigned two to a room in 44 of them, with three students occupying each of the other four rooms. The Inn's ballroom and pub will be utilized as meeting space for university functions.

"We welcome the several community organizations who meet regularly at the Inn to continue to do so," Newton said. "In addition, we hope to continue to provide much needed community meeting and event space when possible."

See INN, page 9A







Inn on Square a bundle of activity

By CHRIS THURSON
christhurson@journal.com

Less than 10 days ago, Lander University officially struck a deal with Inn on the Square to lease the building for use as a student housing facility.

Since that time, the Downtown Greenwood hotel-turned-arena has been a whirlwind of activity as Lander personnel have been hard at work making the Inn to serve the university's purposes. Students are set to move into the building Aug. 30.

Lander vice president for student affairs Randy Dinklage said much of the work has been cosmetic, with the parking lot being re-surfaced, certain elements inside the building being painted and rooms being prepped to accommodate two students apiece.

University director of safety Rodney Boyter said crews have been working vigorously at the Inn.

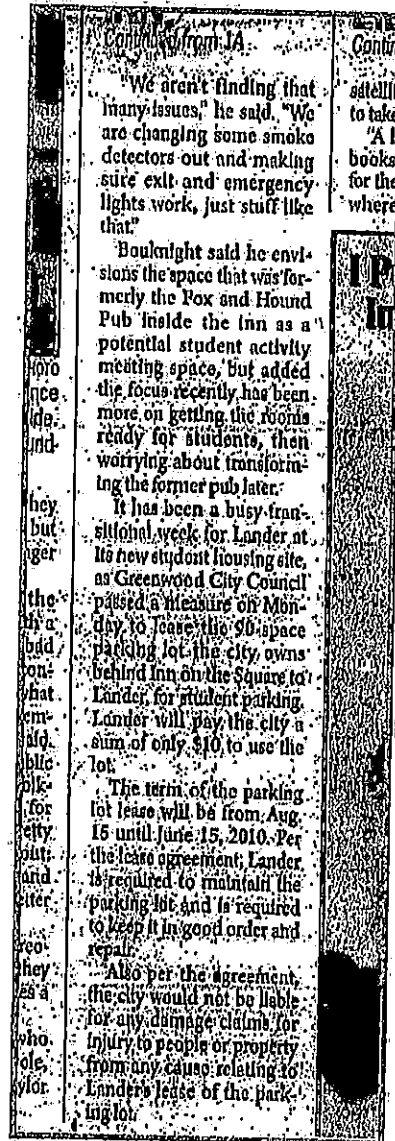
"It has been a lot of cosmetic type work," Boyter said. "We are doing some painting and patching these rocks and that type of thing. We are making up all the doors and the machinery on them work well. We are going through all the air conditioning units and plumbing, and making sure everything electrical is where it needs to be."

Boyter said the fact the Inn on the Square operated smoothly up until last weekend has made Lander's transition into the building easier.

"It does make it easier for us," Boyter said. "If the building had been modified for a little while we would have had a whole lot more work ahead of us than what we do now. It has been a little bit of a hiccup, and it is in very good shape. It's not much of a stretch for us."

Boyter said work is being done to assure the building meets all the fire codes required for student housing, noting there are no more upgrades needed on that end.

See INN, page 12A



Lena Meredith

From: Chris Moore <cmoore@rpwb.com>
Sent: Thursday, November 16, 2017 5:39 PM
To: Addy, Frank R.; Addy, Frank R. Law Clerk (Daenayia Hudson); Addy, Frank R. Secretary (Freda Sartin)
Cc: Lena Meredith; James Smith; Melissa Axson; Laura Diaz
Subject: IOS, LLC v. Lander University, et al.
Attachments: Brief and Exhibits.pdf

Importance: High

Judge Addy;

I sincerely apologize for the late hour but I am attaching plaintiff's response in opposition to defendants' motion for summary judgment which is being heard tomorrow at 10 a.m. in Newberry. I have provided Lena an advance copy and I am also copying her on this transmission. I will be filing this in Greenwood tomorrow but wanted to get it to the Court as soon as I could under the circumstances.

Also, I was able to speak to the client today and our plan, as you will see, is an election to pursue the property damage claim. I apologize I was unable to provide that update sooner. In addition, Lena and I are meeting tomorrow in order to come up with a discovery plan for the court so that we can give Your Honor our game plan tomorrow.

I look forward to seeing everyone tomorrow in Newberry..

Most respectfully,

Chris Moore
Richardson Patrick Westbrook & Brickman LLC
803.541.7857

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

IOS, LLC,

Plaintiff,

v.

Lander University, Lander College, & The
Lander Foundation,

Defendants.

COURT OF COMMON PLEAS

C/A No. 2012-CP-24-576

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants have moved under Rule 56, SCRPC, for an order granting summary judgment as to all plaintiff's claims in this action. Plaintiff opposes defendants' motion and contends that genuine issues of law and fact exist such that summary judgment is not appropriate and plaintiff's claims should be tried before this Court. In support of its opposition to this motion plaintiff would show the court as follows:

INTRODUCTION

Plaintiff alleges certain claims against defendants arising out of an ultimately unsuccessful business relationship involving the attempted sale and lease of a piece of property known as the "Inn on the Square" in Greenwood, South Carolina. The claims asserted in this action are: (1) breach of an oral contract for the sale of real property; (2) breach of contract and specific performance; (3) promissory estoppel; (4) negligent misrepresentation; (5) negligence; and (6) breach of the lease agreement.

Initially plaintiff sought specific performance of the oral agreement; however, plaintiff forgoes that claim (claim (2)) at this time and intends to pursue its remedies for (1)

recovery for damage to the property by defendants during their possession of the property under a lease agreement and (2) damages resulting from defendants' breach of the lease agreement. As plaintiff will not pursue specific performance this opposition will not address Argument B of defendants' motion.

FACTS

Plaintiff IOS, LLC is a South Carolina limited liability company that owned the Inn on the Square ("IOS"), a hotel / restaurant / bar operation, in downtown Greenwood, South Carolina from 2005 to 2011. During that time period, John Huffman was the person responsible for the operation of the facility. Ex. 1, Huffman deposition, pp.9-15. Mr. Huffman had years of experience rehabilitating similar projects and had worked on twenty-two prior buildings before becoming involved with IOS. *Id.* Plaintiff agreed to purchase the property in order to rehabilitate it into a profitable, going concern. *Id.* On behalf of plaintiff, Mr. Huffman negotiated a debt reduction on the mortgage on the property, obtained financing through various lenders in order to renovate and improve the structure and the furniture, fixtures, and equipment ("FFE") in 2007 (spent approximately \$670,000.00 in upfitting), secured a franchise agreement with Clarion hotels, and achieved three-star status as a hotel operation. Ex. 1, pp.14-15.

For a time, IOS was a profitable venture. Ex. 1, pp.20-24. As a result of the economic downturn in 2008 the hotel portion of the operation began to struggle. *Id.* Leading up to the summer of 2009, plaintiff intended to close the rooms on the top two floors and only operate the restaurant and bar, its most profitable operations, both for the public and for private events. *Id.* Then, around July 2009, plaintiff made the decision to market the property for sale. Ex. 1, pp.23-24. The property was never listed for sale; however, through local channels

Lander University came to learn that plaintiff might be interested in selling the building and set up a meeting with Mr. Huffman in July 2009. Ex. 1, pp.25-26. During that meeting, Diane Newton, a representative and housing acquisition executive of Lander University toured the property and expressed an interest in leasing the rooms for student housing. Ex. 1, pp.26-27. Mr. Huffman informed them plaintiff was not interested in leasing the property. *Id.* A few days later, Mr. Huffman alleges Ms. Newton met with him and indicated Lander would be willing to purchase IOS for \$2.3 million but that it would require federal funding. Ex. 1, pp.28-29. She informed him that funding would take time and, because Lander needed beds within a month, inquired as to whether plaintiff would just rent the second and third floors (not the bar / restaurant / event hosting first floor) until they could work out a contract for the purchase of the property. *Id.* Plaintiff agreed to look at such an arrangement. Plaintiff then negotiated with defendants, through Ms. Newton, to rent the top two floors and their forty-eight rooms for a ten month lease at a monthly rent of \$48,000.00. Ex. 1, pp. 28-30. This oral agreement was made with the understanding that the lease would give defendants time to obtain financing to purchase the property for \$2.3 million in April 2010 and that defendants would draw up an offer to purchase reflecting that term. *Id.* Based on that understanding, Mr. Huffman obtained a verbal agreement from plaintiff as well as the mortgagor to enter such a deal. *Id.* Plaintiff has consistently maintained that without Lander's promise to purchase the property it never would have agreed to lease its recently renovated, three-star hotel for student housing. Ex. 1, pp.30-31; Ex.2, Louis Smith deposition, pp.103-104.

Following this meeting, with the understanding that a lease and offer to purchase were forthcoming, Mr. Huffman was contacted by Ms. Newton who was upset and concerned

that her housing need deadline and that no lease had been executed because the South Carolina Budget and Control Board ("BCB") had to approve it. Ex. 1, pp.35-36. Mr. Huffman was then faxed a copy of the lease the BCB drafted which materially altered the terms he had negotiated with Ms. Newton, including the rent (\$48,000.00 to \$31,000.00), ad valorem tax treatment, the scope of the lease (entire property as opposed to 2d and 3d floors necessitating the close / cancellation of events, bar, and restaurant), and maintenance responsibility. *Id.*, pp.36-48. The BCB lease also required plaintiff to obtain forbearance agreements from the various lenders recognizing and consenting to the lease. Mr. Huffman refused to agree to this proposed lease. *Id.* In response, Ms. Newton offered an oral "side" lease agreement to plaintiff which they took to defendants' attorney office to have drafted. *Id.* The terms of the oral "side" lease were that (1) even though the BCB lease made plaintiff responsible for maintenance, defendants agreed they would be responsible and reimburse plaintiff for maintenance expenses; (2) the additional rents (\$17,000.00 per month) would be deferred and paid later, on the "back end", and incorporated into the sales price for the property; and (3) the property taxes would be owed and paid, but in the same manner as the deferred rent. *Id.*, pp.36-48, 261-264; Ex. 3, July 11, 2011 letter. Based on the oral "side" lease agreement, plaintiff agreed to obtain the forbearance agreements and execute the BCB lease that had been presented. Ex. 1, pp.44-45; Ex. 4 - Lease.

Once plaintiff executed the written BCB lease agreement for a ten month term, defendants took possession of the building and students began moving in. Over the next few months, plaintiff and its attorney regularly reached out to Ms. Newton and defendants' attorney inquiring as to the status of the promised offer to purchase. Ex. 5 - 9/2/09 email; Ex. 6 - 11/17/09 emails. Upon inquiry into the status of the promised purchase offer,

plaintiff was regularly put off and assured that defendants were still working toward that goal (offering to buy) but that it would require BCB approval following environmental assessment, appraisal, and other inspections which, they were told, would likely happen in March 2010. *Id.*, Ex. 1, pp.73-74, 80.

During this same time period, defendants treated the property as if they owned it. Of note, defendants unilaterally, and without the written approval required by the lease (Ex. 4, ¶10) filled in the swimming pool with concrete, tore down the fence surrounding the pool, nailed the windows shut (voiding the warranty), and sold and moved furniture. Ex. 1, pp.61-64, 171-172. When plaintiff confronted defendants about this conduct their response was essentially that they owned it all because they were going to purchase the building. Ex.1, pp.63, 75-76; Ex. 3.

As time passed, plaintiff learned that Ms. Newton was leaving Lander for a post at another university around December 2009. Ex. 7 – 12/16/09 emails. During that time period, plaintiff was informed that Phase I of the BCB's purchase approval process had occurred (essentially they got funding to conduct the due diligence). *Id.* Plaintiff was informed that their contact with defendants going forward would be Tom Covar who informed plaintiff that they were still working towards an offer to purchase the property. Ex. 8 – 1/12/10 emails. As it became clear the due diligence would not be completed prior to the prior represented target of April 2010, defendants confirmed that they would be exercising their option to renew the lease. Ex. 9 – 2/22/10 email. Even during the renewal process it was still defendants' stated intent to purchase the subject property. Ex. 10 – 3/3/10 email. After the renewal of the lease, a similar pattern continued. Plaintiff would inquire as to the status of the offer of purchase and would be informed that they were still

working on it. The parties even worked on setting up an alternative arrangement including a long-term lease while defendants worked through the purchase due diligence period. Ex. 11 – 4/23/10 email.

Then, in February 2011, defendants abruptly informed plaintiff they would not be renewing the lease when it expired in June 2011. Ex. 12 – 2/24/11 letter. Plaintiff requested a joint walk-through of the premises in advance of plaintiff re-taking possession. Ex. 13 – 3/7/11 letter. After an initial walkthrough in May 2011, plaintiff planned a joint walkthrough with a number of inspectors for the parties to attend. Ex. 14 – 6/15/11 email. Defendants did not show and when plaintiff arrived the power had been shutoff, the doors were unlocked, and the entire property was in disrepair with substantial damage. *Id.*, Ex. 3. Some of the damage was as follows: pool filled in with concrete and pool fence torn down without being repaired, bar equipment / fixtures missing including ice machine, other furniture missing including TVs, computers, servers, telecommunications switchboard, windows crudely nailed shut, industrial laundry equipment had been taken out, textiles and other soft goods had been removed, water damage to ceiling tiles, bar / kitchen sink and plumbing ripped out or exposed, and mold damage throughout the restaurant. Ex. 1, pp.155-58, 171-72, 181-86; Ex. 3; Ex. 15 – damage photos. Defendants essentially abandoned the property and failed to make amends or repairs in anyway following plaintiff's demand that they do so.

Without the capital to fix the extensive damage defendants caused and replace the missing items defendants took or lost, plaintiff was unable to re-open the property as a hotel and, thus, was unable to service its debt and the property was foreclosed upon in July 2011. The property was sold at auction to the first priority lien holder shortly thereafter. In

addition, judgments were entered against plaintiff by a number of different creditors including Clarion / Choice hotels due to plaintiff's breach of the franchise agreement following their failure to re-open as a hotel following the end of defendants' lease. Ex. 2, pp.76-77.

STANDARD OF REVIEW

"Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Singleton v. Sherer*, 377 S.C. 185, 198 (Ct. App. 2008). Summary judgment is only appropriate where no genuine issue as to any material fact exists such that judgment as a matter of law, without trial, is warranted. *Id.* at 196. "In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Id.* (citations omitted). And while the movant has the burden of clearly establishing the absence of a genuine issue of material fact, *see Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007), "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment," *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330 (2009). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Singleton*, 377 S.C. at 197 (citing *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37 (Ct. App. 2004)).

ARGUMENT

- 1. Plaintiff has standing to pursue its claims for breach of both the written and oral lease agreement and the resulting damages.**

Defendants contend that no justiciable controversy exists with respect to plaintiff's breach of oral contract and breach of lease agreement because plaintiff's interest in the real property, as well as the fixtures, furniture, and equipment (FFE), was foreclosed on by the first priority lienholder prior to the initiation of this lawsuit. Their argument goes that either plaintiff lacks standing because it no longer owns the property and, therefore, cannot be a real party in interest and / or due to the lack of possession or title to the property a judgment in plaintiff's favor will have no practical legal effect.

Justiciability of a dispute is a matter of law. "A plaintiff must have standing to institute an action. To have standing, one must have a personal stake in the subject matter of the lawsuit." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 547 (Ct. App. 2003). In addition, justiciability requires "a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Id.* at 546.

a. Standing:

Plaintiff was a party to the alleged oral contract for sale, the oral lease "side" agreement, and the written lease agreement. Plaintiff has alleged pecuniary loss as a result of defendants' alleged conduct in breach of those agreements. Even should the court find that the oral sale contract is not enforceable because it is not in writing, the remaining two agreements are enforceable and fact questions exist as to both breach and damage under those agreements. Plaintiff has presented evidence of both testifying to the actions of

defendants constituting breach and the resulting damages. Just because the objects forming the basis of the parties' contracts may no longer be owned does not divest plaintiff, a party to a contract, the right to pursue contractual remedies under those agreements. As a party to those agreements plaintiff has a direct, personal stake in this matter

b. Mootness:

Plaintiff concedes, as it must, that its claim for specific performance must fail and that the court can no longer enter judgment awarding such relief. That claim is moot. However, plaintiff has presented evidence that defendants breached both the oral and written lease agreements and that the breach of those agreements caused pecuniary loss. Just because the object of the agreements (the property / FFE) is no longer owned by plaintiff does not mean it cannot still recover its damages under the agreements. Plaintiff's assert that defendants stole property (or at least negligently let it disappear) during the lease, did not return the property in good condition, made unapproved alterations to the building, and a number of other actions that were in breach of the duty owed plaintiff under these agreements. Plaintiff has a contractual right to pursue these remedies. Defendants should not be able to avoid responsibility for their wrongful conduct simply because the real property was foreclosed upon. "Equity will not suffer a wrong without a remedy." *Lane v. New York Life Ins. Co.*, 147 S.C. 333, 369 (1928).

2. Genuine issues of fact exist on the breach of lease agreement claim

There are essentially two lease agreements at issue: (1) the written lease agreement; and (2) the oral "side" lease agreement entered into by agreement between defendants and plaintiff.

The elements of a breach of contract claim are existence of a contract, its breach, and damages caused by that breach. *See Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, (1962). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* "The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed. The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach." *Minter v. GOCT, Inc.*, 322 S.C. 525, 528 (Ct. App. 1996). "The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the lease." *Gilbert v. Miller*, 356 S.C. 25, 30 (Ct. App. 2003). In addition, there is implied in this contract a covenant of good faith and fair dealing that is treated as a term of the contract and any violation of that implied covenant is also actionable as a breach of contract for which damages may be had. *See Rotec Servs. v. Encompass Servs.*, 359 S.C. 467 (Ct. App. 2004); *Williams v. Riedman*, 339 S.C. 251, 274 (Ct. App. 2000).

There is no dispute that a written lease agreement exists and that the parties performed under that written lease. Ex. 4. Plaintiff has provided evidence that that lease was breached in a number of respects with the primary breaches being: (1) unapproved alterations to the property; (2) removal of FFE items without replacement; (3) failure to return the property in the condition it was received, and (4) that defendants acted in bad faith during the term of the lease. Plaintiff has also presented testimony as to the damages resulting from those breaches. Thus, factual issues exist making summary judgment inappropriate.

In addition, plaintiff has presented evidence of an additional oral "side" lease agreement relating to the initial lease for a ten month term. "A tenancy for not to exceed one year may be created by oral agreement." S.C. Code § 27-35-10. There is further record evidence that defendants partially performed under that agreement by reimbursing plaintiff for maintenance costs. Ex. 1, pp.37-38. Plaintiff has presented evidence that other terms of that enforceable, oral lease were breached, i.e., failure to pay additional rents and taxes, which resulted in damages. Defendants can certainly present evidence to dispute that assertion (or the validity of the oral lease agreement); however, it is a material dispute of fact that should be submitted to the factfinder.

3. Plaintiff's breach of oral contract claim falls within the estoppel exception to the statute of frauds.

Defendants assert that the statute of frauds, S.C. Code § 32-3-10 bars the enforcement of the alleged oral contract between plaintiff and defendants for the sale of the property to defendants for \$2.3 million because (1) the statute of frauds requires contracts for the sale of real property to be in writing (§ 32-3-10(4)); and (2) plaintiff cannot show facts sufficient to meet one of the exceptions to the statute of frauds. Plaintiff concedes no written contract for the sale of the subject property to defendants exists. Thus, plaintiff's only chance of success on the merits of its claim that the oral agreement should be enforced is a common law exception to the statute of frauds.

Partial performance of an alleged, oral agreement is a recognized exception to the statute of frauds; however, it is generally an equitable remedy by which specific performance of the contract is enforced. Plaintiff concedes specific performance is not a possible remedy at law and has elected not to pursue that remedy. Nonetheless, "the doctrine of estoppel may be invoked to prevent a party from asserting the statute of frauds." *Collins Music Co. v.*

Cook, 281 S.C. 580, 583 (Ct. App. 1984) (citing *Florence Printing Co. v. Parnell*, 178 S.C. 119, 127 (1935)). Plaintiff has asserted a claim for estoppel here. If proven, plaintiff seeks to recover the actual damages to IOS, LLC that arose as a result of its detrimental reliance. In order to succeed on that claim a plaintiff is required to show: (1) competent proof of the existence of the oral contract (promises); and (2) “that he has suffered a definite, substantial, detrimental change of position in reliance on the contract” *Collins Music*, 281 S.C. at 583. And, here, evidence of partial performance by plaintiff is probative of substantial and detrimental reliance.

Based on the evidentiary record cited above there can be little doubt that, while plaintiff and defendants never consummated a written sales agreement for the subject property, it was certainly the parties’ intention to enter a sales agreement for the Inn on the Square. Defendants started the BCB approval process and continued to pursue purchase of the property for the majority of the two year lease. Numerous communications between the parties evidence this. In addition, Diane Newton, a representative of Lander, entered into an oral “side” agreement with plaintiff to pay ongoing maintenance costs of the property despite it being listed as a landlord duty under the lease agreement, and to pay the difference in initial, agreed rents, as well as the property tax due during lease period, on the back-end sales price when the sale closed. As discussed above, this oral side agreement (further evidence of the parties’ intent to enter a sales agreement for the property) is itself an enforceable oral, lease agreement that defendants should be estopped from disclaiming. While plaintiff was not in ideal financial condition at the time defendants approached it in July 2009 about the building, the facts show plaintiff had a recently renovated, well-appointed, popular, and promising hotel / bar operation. Plaintiff detrimentally relied upon

the representations of Ms. Newton and, by extension, Lander in the following respects: (1) agreeing to a less-than-agreed-upon rent with the expectation it would be added later to the sales price (\$170,000.00); (2) agreeing to lease a recently renovated, boutique hotel property to a University for student housing; (3) agreeing to pay property taxes on the property for two years, against the initial agreement for Lander to escrow property taxes, based on the promise to plaintiff that it would be paid on the back-end at closing (\$68,000.00); (4) refraining from taking action upon the discovery of numerous, unapproved, and substantial modifications to the property on the repeated assurances that the property was being purchased; (5) twice negotiating and executing numerous forbearance agreements with its lenders to accommodate defendants' lease request pending an offer to purchase or approval thereof; (6) handing over possession of plaintiff's higher-end furnishings, textiles, soft goods, telecommunications, electronics, and, essentially, all contents in the facility; and (7) agreeing to discontinue restaurant, bar, and event-hosting operations after initially negotiating the right to use the first floor during the term of the lease.

In *Springob v. Univ. of South Carolina*, 407 S.C. 490 (2014), a group of luxury basketball ticket purchasers were induced to purchase tickets based on a promotion that if they paid a premium for the seats for five years (\$5,000.00 per seat for year one; \$1,500 per seat for years 2-5) they would then only have to maintain their Gamecock Club membership and pay face value for the season tickets after the initial five year period. *Springob*, 407 S.C. at 494. In year six the University sought to charge them \$1,500 per seat. *Id.* No written contract existed and the University raised the statute of frauds as a defense because the contracts could not be performed within one year. *Id.* at 495-96. The trial court granted

summary judgment in the University's favor, finding that the estoppel exception to the statute did not apply. The Supreme Court reversed and remanded the matter to the trial court based on its finding that a genuine issue of fact existed with respect to the ticket buyers' estoppel argument. Key to the Court's finding was that the ticket buyers proffered affidavits that they had been induced by the University's representatives to buy the tickets based on the promise that after year five the same tickets could be purchased at face value as long as they kept up their Club membership. *Id.* at 498. The Court found that was sufficient to create an issue of fact as to definite, substantial, and detrimental change in reliance on oral promises made by the University. *Id.* Similarly here, both Mr. Smith and Mr. Huffman testified that there was no way plaintiff would have rented the property to defendants without an expectation that defendants would offer to buy the property as promised. Mr. Huffman testified that he entered into a side agreement with Ms. Newton, in the presence of Lander's attorney, that Lander would pay maintenance costs incurred by plaintiff (despite the lease agreement) and that Lander would reimburse plaintiff on the back-end, at closing, the difference between what the parties had agreed to on the rent term and property taxes and what the BCB ultimately agreed to in the lease agreement. Without that assurance, and Ms. Newton / Lander's repeated declarations that they "owned" or "would own" the contents of the property during the lease term Mr. Huffman testified he would not have leased the property and he would have taken action on the substantial modifications defendants were observed to be making to the permission in breach of the lease agreement (i.e. without written consent). Last, as a result of the oral agreement, Mr. Huffman testified that he agreed to lease the first floor and to close the restaurant / bar, the profit center of plaintiff's business, based on the promise that defendants would be putting an offer on the property.

These facts establish definite, substantial, and detrimental change by plaintiff in reliance on oral promises made by defendants and their representatives. Mr. Huffman's testimony alone is sufficient to create a genuine dispute on this issue. Whether it is the oral agreement to purchase the property or the oral side agreement to reimburse plaintiff for the taxes and additional rents, there is sufficient evidentiary record to present that issue to the factfinder.

4. Genuine issues of fact exist with respect to plaintiff's negligence claim.

Plaintiff's negligence claim is premised upon the allegation that defendants owed a duty to plaintiff with respect to the lease of the property that was breached, resulting in damage to plaintiff. Here the duties owed would be: (1) to act in good faith and with fair dealing so as not to impair plaintiff's rights under the lease; (2) to perform tenant's other contractual duties under the lease; and (3) a special duty of care created by statute. This lease, like all commercial leases in South Carolina, is governed by title 27 of the South Carolina Code of Laws which imposes a special duty on both landlords, and with respect to this claim, tenants:

SECTION 27-35-75. Lessee's obligations as to use and maintenance; lessor's right to inspect.

(A) Unless otherwise agreed to in a commercial lease agreement or a security agreement, this section applies to all leases on commercial units located in South Carolina.

(B) A lessee must: . . .

(2) not deliberately or negligently destroy, deface, damage, impair, abuse, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the lessee's permission or who is allowed access to the premises by the lessee;

Here, as in *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524 (Ct. App. 1996), a special duty of care is imposed by statute. *See also Nēdrow v. Pruitt*, 366 S.C. 668 (Ct. App. 1999); *Rayfield*

v. S.C. Dep't of Corr., 297 S.C. 95, 103 (Ct. App. 1988); *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334 (2002).

Plaintiff has provided evidence that during the term of the lease defendants breached these duties in a number of ways including (1) unapproved alterations to the property; (2) removal of FFE items without replacement; (3) failure to return the property in the condition it was received, and (4) that defendants acted in bad faith during the term of the lease. Plaintiff also presents evidence of damages resulting from those breaches. Defendants dispute damages and the breach and, thus, summary judgment is not appropriate.

It is true that the law would require plaintiff to elect between tort and contract remedies and is not permitted to recover under both. However, to the extent defendants argue that their conduct was permitted under the lease, plaintiff would have the election to proceed under its negligence theory for breach of the above-mentioned duties.

5. Genuine issues of material fact exist to support plaintiff's claim for damages for defendants' negligent misrepresentations.

"To state a claim for negligent misrepresentation a plaintiff must show (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 communicate truthful information to the plaintiff; (4) the defendant breached that duty; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as a result of such reliance." *Schnellmann v. Roettger*, 368 S.C. 17, 20-21 (Ct. App. 2006). "A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." *Winburn v. Insurance Co.*, 287 S.C. 435, 441 (Ct. App. 1985). Damages can be recovered on a negligent misrepresentation where a party suffers injury or loss from relying on the misrepresentation. *Redwend Ltd. Partnership v. Edwards*, 354 S.C.

459, 474 (Ct. App. 2003). "These general rules have been applied, in every case this Court has located, to support the recognition of a negligent misrepresentation claim where the misrepresented fact(s) induced the plaintiff to enter a contract or business transaction." *Id.* (internal citations omitted).

It is well established that "[n]either the parol evidence rule nor a merger clause in a contract prevents one from proceeding on tort theories of negligent misrepresentation and fraud." *Slack v. James*, 364 S.C. 609, 616 (2005). Whether reliance is justifiable under a given set of facts usually requires factual inquiry: *See Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 474 (Ct. App. 2003) (internal quotation marks omitted). "The general rule is that questions concerning reliance and its reasonableness are factual questions for the jury." *Unlimited Servs., Inc. v. Macklen Enters., Inc.*, 303 S.C. 384, 387 (1991); *see also Frewil, LLC v. Price*, 411 S.C. 525, 531-32 (Ct. App. 2015) (involving misrepresentations related to inducement of lease agreement); *Starkey v. Bell*, 281 S.C. 308, 313 (Ct. App. 1984) ("Issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are **preeminently factual issues for the triers of the facts.**" (emphasis added)).

a. False representation:

Huffman testified regarding two oral agreements or misrepresentations in the inducement of the lease agreement. First, he testified that defendants, through the representations of Diane Newton, agreed to purchase the subject property for \$2.3 million. Second, he testified that plaintiff and defendants agreed to a lease of the property for a ten month term for \$480,000.00 (\$48,000.00 per month) with the understanding that defendants would be responsible for maintenance / costs on the property and for escrowing

the annual property tax on the property. However, the Budget Control Board did not agree to those terms and insisted on a \$31,000.00 per month lease. In response, plaintiff refused to enter into a lease agreement. As a result, defendants represented to plaintiff that they would pay the additional \$17,000.00 per month in rents they had agreed to on the back-end at closing, once a sale was complete, by adding it to the purchase price. They made the same agreement for the property taxes which were \$34,000.00 per year. Defendants promised that, although plaintiff would be responsible for maintenance costs under the terms of the lease, defendants would reimburse plaintiff for those costs. In fact, defendants performed on the promise to reimburse maintenance costs during the first year of the lease. However, plaintiff was never paid the outstanding rents or the property taxes it was promised by Diane Newton in this "side" agreement to induce plaintiff to sign the lease. Last, defendants represented to plaintiff that they could do whatever they wanted with the real property and the furniture, fixtures, and other contents of the property because they were buying it.

Defendants contend, correctly, that in order for the representation to be actionable it must be false and must relate to a present or pre-existing fact and be false when made. *See Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 105 (Ct. App. 1993). Defendants, through Ms. Newton, contend that no representations were made that defendants would purchase the property, that there was an agreed purchase price, or that defendants ever performed on promises made under an oral agreement. This conflicts with the testimony of plaintiff's representative and creates a factual dispute regarding whether defendants made false statements to induce the execution of the lease with its substantial reduction in rents and taxes. As such, summary judgment is not appropriate here.

b. Defendant's pecuniary interest:

Defendants badly needed additional beds to accommodate a spike in demand for student housing entering the 2009 Fall semester and, as a result, they approached plaintiff about purchasing and leasing the subject property in July 2009. Following the BCB exerting influence over the lease terms that Newton and plaintiff had previously agreed, defendants, more than ever, were trying to get the lease executed so they could ready the facility before students were to move in within weeks. There is no real dispute that defendants had a pecuniary interest in making the side agreement representation - they needed a lease executed into so they could honor their obligations to students who were paying for student housing. So they promised to pay additional rents, pay taxes, and be responsible for rents - all things that were promised were outside of the lease that was being signed - to induce its execution.

c. Duty to communicate truthful information:

Plaintiff contends defendants had such a duty based on their relationship as negotiating parties, parties to a contract with an implied covenant of good faith and fair dealing, and plaintiff detrimentally relied upon defendants' misrepresentations in executing a lease with different terms than what they agreed to. Moreover, a tenancy for less than one year (which this was - 10 months) may be created by oral agreement. See S.C. Code § 27-35-10. Because the oral "side" lease agreement is enforceable then defendants had a duty to plaintiff to provide truthful information in negotiating the terms of that agreement. In any event, "[t]he determination of the existence of a duty is solely the responsibility of the court." *Miller v. City of Camden*, 329 S.C. 310, 320 (1997) (citing *Ellis v. Niles*, 324 S.C. 223 (1996)). And our courts recognize that a "duty to exercise reasonable care in giving

information exists when the defendant has a pecuniary interest in the transaction. *Winburn v. Ins. Co. of North America*, 287 S.C. 435, 441 (Ct. App. 1985) (citing RESTATEMENT (SECOND) OF TORTS § 552 (1977)).

d. Breach of that duty:

Plaintiff contends, based on testimony in this case, that defendants breached this duty by failing to pay the additional rents on the back-end as promised, failing to purchase the building as promised, failing to pay property taxes on the property as promised, and failing to purchase, replace, or repair the furniture, fixtures, and other contents they claimed as “theirs” that were destroyed and / or removed from the property without the written consent of the landlord. Presumably defendants will dispute this which necessitates denial of summary judgment on this claim.

e. Justifiable reliance:

Plaintiff has presented evidence that it relied on the representation of defendants’ representatives both with respect to the promise to purchase and the oral “side” lease agreement regarding additional rents, taxes, and maintenance costs. As set forth above, whether that reliance was justifiable is a fact question for the court. *See Frewil, LLC v. Price*, 411 S.C. 525, 531-32 (Ct. App. 2015). In addition, plaintiff’s reliance on the oral lease agreement here was further induced (and in turn justified) because defendants partially performed that agreement by reimbursing plaintiff for incurred maintenance costs.

f. Pecuniary loss to plaintiff based on that reliance:

Plaintiff never was paid the additional rents. Plaintiff was required to pay the property taxes on the property without reimbursement. Plaintiff suffered the loss, constructive loss, and destruction of its furnishings, electronics, real property (pool, fixtures,

etc.), laundry equipment, and numerous other items that it left in the care of defendants based on the representations that it was "theirs" because they were buying everything anyway.

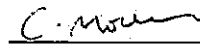
CONCLUSION

For the foregoing reasons, plaintiff respectfully requests the Court enter an order denying defendants' motion for summary judgment with respect to plaintiff's claims, save its prior prayer for specific performance.

Respectfully submitted,

**RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC**

By:



Chris Moore
2700 Middleburg Drive
Suite 220
Columbia, South Carolina 29204
T: 803.541.7857
F: 803.541.9625
cmoore@rpwb.com

JAMES E. SMITH, JR., P.A.
James E. Smith, Jr.
1422 Laurel Street
Columbia, South Carolina 29201
T: 803.933.9800
james@jamesmithpa.com

November 16, 2017
Columbia, South Carolina.

Attorneys for plaintiff

Certificate of service

I certify that I provided a copy of the foregoing pleading on counsel for defendants on November 16, 2017 by delivering a copy via electronic and U.S. Mail to:

Lena Meredith, Esq.
Nicholson, Meredith and Anderson, LLC
109 West Court Avenue
Greenwood, South Carolina 29646
Attorney for defendants



EXHIBIT 1

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS)) COUNTY OF GREENWOOD) C/A NO.: 12-CP-24-0576 DAY 1 VIDEO DEPOSITION OF IOS, LLC,))) Plaintiff,) JOHN W. HUFFMAN)) vs.) September 3, 2015)) Lander University, Lander College and) the Lander Foundation,))) Defendants.) COPY Deposition on oral examination of JOHN W. HUFFMAN, reported by Diane Grubowski, Court Reporter and Notary Public in and for the State of South Carolina; Said deposition taken pursuant to Notice and in accordance with the South Carolina Rules of Civil Procedure, at the Law Offices of James E. Smith, Jr., 1422 Laurel Street, Columbia, South Carolina, on Thursday, the 3rd day of September, 2015, scheduled for 10:00 a.m. and commencing at the hour of 10:25 a.m. PALMETTO REPORTING (803) 463-3526	3 CONTENTS (Video deposition of JOHN W. HUFFMAN) <table style="width: 100%;"> <thead> <tr> <th></th><th style="text-align: right;">PAGE</th></tr> </thead> <tbody> <tr> <td>Exhibit Index</td><td style="text-align: right;">3</td></tr> <tr> <td>Stipulations</td><td style="text-align: right;">4</td></tr> <tr> <td>Examination by Mr. Smith</td><td style="text-align: right;">4</td></tr> <tr> <td>Examination by Ms. Meredith</td><td style="text-align: right;">268</td></tr> <tr> <td>Certificate of Reporter</td><td style="text-align: right;">374</td></tr> </tbody> </table> * * * * * EXHIBIT INDEX EXHIBITS: IDENTIFIED AT PAGE: *** See Exhibit Index Court Reporter's note: -- indicates interruption; incomplete phrases; trailing off; unfinished sentences		PAGE	Exhibit Index	3	Stipulations	4	Examination by Mr. Smith	4	Examination by Ms. Meredith	268	Certificate of Reporter	374
	PAGE												
Exhibit Index	3												
Stipulations	4												
Examination by Mr. Smith	4												
Examination by Ms. Meredith	268												
Certificate of Reporter	374												
2 APPEARANCES: Representing the Plaintiff: JAMES E. SMITH, ESQUIRE 1422 Laurel Street Columbia, South Carolina 29201 -- AND -- Representing the Defendants: LENA Y. MEREDITH, ESQUIRE Nicholson Meredith and Anderson, LLC P.O. Box 457 Greenwood, South Carolina 29648 -- AND -- DOUGLAS L. BELL, ESQUIRE McDonald Patrick Poston Remphill and Roper, LLC P.O. Box 1547 Greenwood, South Carolina 29648 Also Present: Gary M. McCombs	4 1 This deposition is taken in accordance with 2 the South Carolina Rules of Civil Procedure. 3 It is agreed and stipulated by the deponent 4 and respective counsel that the reading and 5 signing of the deposition by the deponent is 6 expressly waived. 7 WHEREUPON: 8 JOHN W. HUFFMAN: being duly sworn and 9 cautioned to speak the truth, the whole truth 10 and nothing but the truth, testifies as 11 follows: 12 EXAMINATION 13 BY MR. SMITH: 14 Q Mr. Huffman, please state your full name for the 15 record, sir. 16 A Johnny Wayne Huffman. 17 Q And what is your current address? 18 A 316 Murphy Branch Road, Burnsville, North Carolina 19 28714. 20 Q Now we are taking your videotaped deposition here 21 today and before we get into that, I do want to put 22 a couple of stipulations on the record with my 23 counsel or opposing counsel here, Ms. Meredith. 24 MR. SMITH: We've agreed to withhold all 25 objections and reserve all those rights for a												

13 1 she have an ownership interest in IOS, LLC? 2 A She was given a 10 percent ownership if I would 3 take on the project as a turnaround, so she was in 4 fact a 10 percent silent partner owner. 5 Q Okay. And the understanding of the turning 6 something around, did you have personal knowledge 7 of the finances of Inn on the Square when you 8 started and throughout the time that you worked 9 there? 10 A Yes. Before I took over the Inn, I went and meet 11 with a lender and cut a deal. I cut several 12 different deals with the existing partnership, with 13 the existing lender, as to what would occur on 14 certain triggers -- 15 Q Right. 16 A -- if certain objectives were reached. The first 17 thing I did was reduce the debt of I believe it was 18 a million, a million one something, to \$900,000. 19 Q Okay. 20 A The second thing I did was secure \$150,000 21 partnership loan to start operating and turning the 22 building around. 23 Q Turn it around. 24 A Other finances were added as we stabilized the 25 building and started renovations and got it	15 1 rags, things like that to keep it operational. As 2 far as the full upfitting of the hotel, which 3 carried it to a 4-star status, that started in '07. 4 Q Okay. So you mentioned the hotel reached 4-star 5 accommodation status, is that correct? 6 A It was franchised under Clarion as a 4-star 7 boutique hotel. It needed a weight room, exercise 8 room, to go to a full 4-star. So it had 4-star 9 accommodations, although it was rated as a 3-star 10 until we could put in a weight room. 11 Q A weight room. 12 A A weight room, an exercise room. 13 Q Okay. And you mentioned getting the Clarion 14 franchise. Tell the jury a little bit about that. 15 How does that process go and does it add value to 16 the facility? 17 A The Clarion franchise initially was \$150,000 for 18 the franchise. I went and negotiated with Clarion 19 and got them down to \$45,000. When I brought the 20 Clarion boutique franchise into there, it put the 21 hotel on the map, that and the \$670,000 renovations 22 that we had done to the facilities. It in essence 23 made us and carried us to a 3.3 million dollar 24 operation. 25 MR. SMITH: Lena, I wish I had more copies
14 1 franchised through Clarion. 2 Q So a couple things. So you had -- from 1986 to 3 January 2005, you had experience of 22 separate 4 turnarounds, successful turnarounds, and I imagine 5 in doing so you built a good reputation amongst 6 lenders? 7 A I did, yes. 8 Q And that was important in your ability, I would 9 imagine, to turn this around, wasn't it? 10 A Oh, yes, that was, I believe, the only reason I was 11 approached about taking this project on. 12 Q And so in the process of turning things around, you 13 all made some investments to do some upfits on the 14 building. So after you arrived there about how 15 much money was spent in upfitting Inn on the 16 Square? 17 A Six hundred seventy thousand dollars for total 18 upfitting that we did. 19 Q And that was in the period beginning in January 20 2005 to when? 21 A It was really the first year was more or less 22 stabilizing the property versus upfitting. We 23 didn't start our upfitting until 2007. We went in 24 and basically cleaned the hotel. The hotel was 25 rundown, raggedy. We got new towels, sheets, wash	16 1 of this, but they are pretty straightforward 2 pictures. I think we sent them on disc to you, 3 but I'm going to -- 4 Plaintiff's Deposition Exhibit #1, 5 consisting of 1 sheet, marked for 6 identification and made a part of this 7 deposition. (Photograph) 8 Q John, I've got a picture here and it's marked as 9 Plaintiff's Exhibit One. I just want you to look 10 at it and see if you -- 11 A That's the main entrance to the Inn on the Square 12 after renovations. We had repainted the building, 13 refurbished all the rooms, put new windows in, 14 redid the kitchen, the ballroom and the 15 entranceways. And this is facing Main Street. 16 Q That's facing Main Street. And so about what year 17 would this have been? 18 A It probably would have been probably late 2007, 19 early 2008. 20 Q I've got a succession of pictures that look like 21 they might have all been taken about the time and 22 good days. These are -- I'll show these to Ms. 23 Meredith. But these are additional photographs of 24 the Inn. 25 Plaintiff's Deposition Exhibit Numbers 2

17 1 through 4, consisting of 1 sheet each, marked 2 for identification and made a part of this 3 deposition. (Photographs) 4 Q John, you have what's been marked as Plaintiff's 5 Two, Three and Four, as well, and there are 6 additional pictures. And if you could describe 7 them by -- let's go by number, by Number Two. 8 A These pictures were taken a day before Lander took 9 over the operations at Inn on the Square. 10 Q Who took the pictures? 11 A My wife -- 12 Q Misty. 13 A -- and the manager of the hotel went around and 14 took the pictures. And it basically shows the 4- 15 star accommodations of the rooms prior to turning 16 it over to Lander. This is the ballroom 17 (indicating) which -- 18 Q When you say, this is the ballroom, what exhibit is 19 that, Number? 20 A The ballroom? 21 Q Yes, Number Three, is that -- 22 A Yes -- 23 Q Okay. 24 A -- Number Three. 25 Q And the other two are pictures of a bedroom?	19 1 we will necessarily pursue. But I would like 2 to see the actual photographs of all of the 3 rooms at this point. And I understand that you 4 are marking these for exhibit at this point and 5 not formally offered them. If you are going to 6 offer them, I just preserve my objection on a 7 running basis so that we don't have to keep 8 stopping and starting with regard to the 9 photographs and then maybe once I have seen 10 them, I may withdraw my objection. 11 MR. SMITH: Certainly. And I'll just add 12 for the record we have -- these photographs are 13 not within John's custody or control. We think 14 we know where they are and we will endeavor to 15 go get those and produce those, assuming they 16 still exist. And as soon as we're able to get 17 a hand on them, we'll certainly produce them. 18 MS. MEREDITH: Absolutely. 19 Q John, so you -- get us back where we were. You 20 operated -- well, I guess what was the date that 21 Lander took over? 22 A Lander took over I guess effectively the 12th of 23 August, although there was a lot of transition 24 going on throughout the month of August. The Inn 25 was still doing certain events I believe, going
18 1 A These are typical bedrooms inside the Inn. There 2 were 48 rooms. We actually have pictures of all 48 3 rooms. I just took these two as typical. 4 Q But these are representative of the rest of the 5 rooms? 6 A And it shows the bedding, the pictures, the 7 covering, the pillows that we have. 8 Q Okay. 9 MS. MEREDITH: Can we go off the record 10 for just one second? 11 MR. SMITH: Yes, sure, absolutely. 12 (OFF THE RECORD) 13 MS. SMITH: We took a brief break and gone 14 off the record, but I think, Ms. Meredith, you 15 wanted to make a request on the record. I'm 16 certainly happy to have that. 17 MS. MEREDITH: I did. I'd like to reserve 18 an objection which may or may not be necessary. 19 The witness just testified that there were 20 additional photographs which were taken of each 21 room of the Inn that would indicate by room the 22 condition of each room and that he did not 23 actually physically take the pictures. 24 Although I don't believe that will be an 25 objection, other than just to preserve it, that	20 1 through a shutdown process. I believe we closed 2 our pub down on the 15th. I believe we did our 3 last event, which was a wedding, on the 28th or 4 29th of August. 5 Q Okay. 6 A Lander was coming in starting on about the 12th or 7 15th and moving furniture, setting up rooms. It 8 was just a turmoil, hodgepodge of activity. 9 Q We'll get into more of that. So you operated as 10 IOS, LLC, and ran it as a hotel and turned it into 11 a 4-star accommodations and giving it a Clarion 12 hotel, boutique hotel, franchise from January 2005 13 through to about August 2009? 14 A Correct. 15 Q During that time was the business profitable? 16 A It had -- it had its up and downs. We were very -- 17 we were sort of profitable the first year -- 18 Q Right. 19 A -- the turnaround year I call it. We did our 20 renovation. We went through a very profitable 21 period. 22 Q Yes, a very profitable period? 23 A A very profitable period. And then we first got 24 franchised -- 25 Q Right.

21 1 A -- and everything else. And then we went through 2 the 2008 to 2009, what do you call it, period where 3 the -- 4 Q Economy went down, yeah. 5 A Crashed. And we really struggled that last year, 6 which is why we decided to go ahead and put the 7 hotel up for sale. 8 Q For sale. 9 A So we were struggling the last year, doing okay, 10 but struggling. 11 Q You were still profitable then or no? 12 A Marginally profitable. We were still trying to do 13 some renovations that had not quite been completed. 14 And but we were losing business. For instance, we 15 were -- our typical rooms were operating -- we were 16 renting 31 a night, we dropped to 7. Our typical 17 events, they would come in and spend 8 to \$12,000 18 an event and they were coming in wanting to do 19 events for \$2,000. 20 Q Right. 21 A So nobody had any money and we were really -- 22 everybody around us were struggling. We were doing 23 okay and holding our own. 24 Q So the hotel it seemed to have like as the best I 25 can -- there were three profit centers and was it	23 1 Q Right. 2 A So we never really stabilized the rooms. In fact, 3 when I sold the property to Lander, my intention at 4 that point in time was to close down the rooms 5 upstairs and just operate The Fox and Hound, the 6 restaurant and the events.. 7 Q Right. 8 A Except for special events we would rent the rooms 9 for weddings, anniversaries and stuff. As far as 10 the free market, I was looking to possibly close 11 those rooms -- 12 Q Okay. 13 A -- when Lander approached me about purchasing. 14 Q Okay. So let's talk about when that began. I 15 guess after '05, had you felt like you turned 16 things around there to a large extent? 17 A Oh, yes. Before the big blowout in 2008, the big 18 national downturn, the hotel was probably tracking 19 in about \$150,000 a year profit. 20 Q So when we didn't have the downturn of the economy, 21 you saw \$150,000 in profit -- 22 A Right. 23 Q -- on an average year? 24 A We were well on our way to \$150,000 profit margin 25 prior to the big blowout in August, September 2008,
22 1 the rooms, having events and the pub? 2 A There were four profit centers. 3 Q Four profit centers. 4 A Profit one was the pub, The Fox and Hound, which 5 was -- 6 Q Tell us about that. 7 A It was the happening place in Greenwood. It was 8 the place to go and the place to be. It made 9 approximately \$22,000 a month. 10 Q A month. 11 A The second profit center was the restaurant. The 12 restaurant operated on basically a break even 13 status or a sliding loss. We had just never really 14 made any money on the restaurant, but didn't lose a 15 lot either. 16 Q Yes. 17 A The event was our big profit margin. Weddings, 18 birthdays, anniversaries, bringing in 250 people to 19 the ballroom, feeding them and et cetera. We were 20 bringing in a quarter million dollars a year off 21 events of which profit was probably 30 or 35 22 percent. And then we had the rooms upstairs. The 23 rooms upstairs, the actual rental, was hit and 24 miss. We made profits part time of the year, we 25 lost money other times of the year.	24 1 when everything went upside down. 2 Q So in late or I guess it was somewhere around July 3 maybe, or you tell me exactly when or tell the jury 4 exactly when, 2009, you were tasked with looking to 5 sell the property? 6 A I had met with the partnership and I said I've done 7 all I can with this property. It's currently 8 appraised at 3.3 million. We are hanging on 9 through these economic times. I suggest we go 10 ahead and sell the property on the upside now. 11 Q Right. 12 A We never listed the property for sale. I had 13 exclusive rights to sell the property, so I put out 14 feelers to certain individuals that I knew of 15 and/or had worked with in the past that the 16 property was for sale. I had two potential buyers, 17 one out of Charleston and one out of Charlotte, 18 that approached me and were interested in the 19 property when Lander approached me about the 20 property. 21 Q And just so the jury understands and appreciates, 22 while your wife was a part owner, you were hired to 23 be the manager and then have the exclusive rights 24 to sell the property? 25 A That's correct.

25 1 Q So tell me about how you were approached by Lander. 2 A Initially, my -- one of my partners, Louis Smith, 3 approached me and said that Charlie Barrineau, who 4 was one of the city officials there, had heard that 5 we were trying to sell the Inn on the Square. 6 MS. MEREDITH: James, I'm going to note a 7 running objection to hearsay at this point. 8 MR. SMITH: Sure. 9 MS. MEREDITH: I've allowed the leading 10 because I wanted -- 11 MR. SMITH: Yes. 12 MS. MEREDITH: -- to get to the heart of 13 the issue, but I think if I just note an 14 objection at this point as a running objection 15 to leading. I don't want to keep interrupting 16 you all. 17 MR. SMITH: That's fine and I understand 18 all of those are reserved from the outset, so I 19 don't need -- I think you can consider them all 20 running. 21 A Louis approached me and said Charlie Barrineau, if 22 we were in fact selling the hotel, would it be okay 23 to tell Lander that we were looking to sell the 24 hotel. And I said, sure, tell them. So a few days 25 later I was contacted by Diane Newton from Lander.	27 1 hotel. She asked me the list price of the hotel 2 and I told her 3.3 million dollars. She then told 3 me that she would have to think it over and get 4 back with me and her and her entourage departed. 5 Q Okay. 6 Plaintiff's Deposition Exhibit #5, 7 consisting of 3 sheets, marked for 8 identification and made a part of this 9 deposition. (July 31 '09 Letter from Newton) 10 Q John, I've got a document here. It's marked 11 Plaintiff's Exhibit Five and I ask you to take a 12 look at it. On the third page of the document are 13 you referenced there? 14 A Yes, John Huffman, Inn on the Square. 15 Q What is this three-page document? 16 A This is a document through two weeks of 17 negotiations with Diane Newton. Diane Newton came 18 back initially after a couple of days -- 19 Q And John, excuse me for interrupting. Who is Diane 20 Newton? Who did you understand Diane Newton to be? 21 A She presented herself to me and gave me a business 22 card as the chief housing acquisition person for 23 Lander University. 24 Q Okay. 25 A I forget her exact title, but she procured all
26 1 Q Okay. So based upon what you understood you heard 2 from Charlie Barrineau, what did you do? 3 A I didn't do anything. 4 Q Okay. 5 A I just told Louis to tell Charlie to tell Lander, 6 yes, we would talk to them. 7 Q You would be interested in talking to them? 8 A Yes. 9 Q Okay. And then what happened? 10 A Well, Diane Newton came down from -- she called, 11 made an appointment. She came down with about 12 three other people, seems like there was two women 13 and a man, and she wanted to look at all 48 rooms. 14 Q And about when was this? 15 A Some time around the middle of July or shortly 16 after the middle of July. 17 Q Okay. 18 A So I carried her and her little entourage through 19 all 48 rooms to show it to them. 20 Q Okay. What kind of interest did she express? 21 A At the end of the thing, she asked me would I be 22 willing to lease the 48 rooms to Lander to house 23 approximately 100 college students. I told her 24 that I absolutely would not be interested in that 25 at all, that we were only interested in selling the	28 1 student housing. 2 Q Okay. 3 A She had approached me the second time, I think it 4 was two days after the first visit, and she asked 5 me -- I was actually playing golf. My wife called 6 me on the golf course and said Diane Newton just 7 called and wants to know if you would entertain an 8 offer to purchase Inn on the Square by Lander for 9 2.3 million dollars. 10 Q And based just on what you heard from Misty, your 11 wife, your right hand, what did you do? 12 A I told Misty, call Diane Newton back, tell her I'm 13 playing golf and I'll be back around four this 14 afternoon, that I would be happy to carry any 15 bonafide offers to the partnership for 16 consideration. 17 Q And then what did you do? 18 A I got back around four. Diane Newton was waiting 19 on me. I went upstairs, took a shower, I was hot 20 and sweaty. I come back down. She and I went into 21 the dining room and we met. She said Lander, it 22 would be willing to purchase the Inn on the Square 23 at 2.3 million dollars, however, we have a problem. 24 She says, we want to use Obama's money, which will 25 not be available until April of next year, so --

29 1 but we need student housing; a hundred beds, 2 immediately. We need a hundred beds in August. 3 Would you lease us a hundred beds, in essence, the 4 second and third floors, until April when we can 5 close on the property? I said, well, I'm open to 6 that. I'll have to check with the partnership. 7 She and I -- I worked up a budget that night and 8 faxed it to her the next day, which was basically 9 to rent the 48 rooms came to \$51,000 a month. She 10 sent me back a revised budget that afternoon which 11 was \$48,000 a month. And she says, if we lease 12 this, \$48,000 a month on a ten month lease and buy 13 it for 2.3 million dollars in April, will this be 14 acceptable? And I said, yes. We walked across the 15 street to Lander's attorney's office, which was 16 Doug Bell, and sat down at a conference table in 17 his office and fed him the details. Doug Bell was 18 supposed to draw up a lease at 41, \$48,000 a month 19 for ten months and a purchase price of 2.3 million 20 dollars to close in April with Obama's money. 21 Q Were there any contingencies on that agreement? 22 A None, at that point. Now not at that point in 23 time, but many contingencies came in after that. 24 Q But at that time did you -- well, would you have 25 agreed or would the partnership have agreed to	31 1 4-star hotel that was worth 3.3 million dollars. I 2 knew for a fact if I turned it into student 3 housing, although I did not think student housing 4 was a bad use of it, but I knew it would no longer 5 be a 3.3 million dollar 4-star hotel if I put 6 students in there for ten months. So no, I -- 7 there's no way I would have leased that only as 8 student housing. 9 Q So how would you describe the offer and the 10 commitment to purchase made by Diane to your 11 decision to enter into the lease arrangement? 12 A Well, using Obama's money, whatever Obama's money 13 was -- she had fell out with the Indian guy who 14 owned, according to her, some apartment complex, 15 who was trying to jerk Lander around. 16 Q Okay, wait a minute. So there was another -- so 17 where were these kids staying the year before 2009? 18 I mean what -- help the jury understand. 19 A They were staying at this apartment complex. And 20 Diane Newton and this Indian that owned the 21 apartment complex had had some big falling out and 22 she did not want to deal with him. But she had to 23 secure a hundred beds for the students to be able 24 to do that, so she was all fit to be tied to get a 25 lease signed to get the students -- so she knew she
30 1 lease the property -- 2 A I actually -- 3 Q -- without a commitment to purchase? 4 A Before we went to Doug Bell's office, I actually -- 5 MS. MEREDITH: Object to the form of the 6 question. 7 A I actually went and called the two partners and the 8 major lender, which was Business Carolina, and ran 9 the basic deal by them and got a verbal agreement, 10 yes, proceed. So I had the major lender and both 11 partners in verbal agreement before we went across 12 the street to Doug Bell's office. Everybody was in 13 agreement that we would lease the top two floors 14 for \$48,000 a month. Now the IOS was going to 15 continue running the Inn on the Square, The Fox and 16 Hound, the dining room and the events. We had 17 events booked for the next year in the ballroom. 18 We were going to continue running those. We were 19 only leasing the 48 rooms upstairs for a hundred 20 beds for Lander students. 21 Q Would you have agreed to just a lease without a 22 purchase? 23 A No, absolutely not. 24 Q Why not? 25 A I had run many student housing projects. I had a	32 1 could house the students. On the other hand, 2 getting Obama's money was not going to happen until 3 April to purchase. I personally in Doug Bell's 4 office was concerned about that because I knew our 5 governor was not prone to taking federal money. 6 And I told her, I said, I cannot do this deal based 7 on what you call "Obama money". She says, well, 8 Doug Bell and I are both members of the Foundation 9 and we can guarantee you that if we don't get 10 Obama's money to make this purchase, Lander will 11 use Lander Foundation funds. And I said then I 12 want that made part of the contract. 13 Q Right. 14 A Because I want to know this sale is absolute before 15 -- either using Obama's money or Lander money, 16 before I will sign a lease for these hundred 17 students. So that was supposed to be incorporated 18 into the purchase that Doug Bell was writing up. 19 Q So you understood Mr. Bell was writing the lease. 20 What would you call that document? 21 A I called it a lease/purchase. It was going to 22 lease the top two floors. This is initially. 23 There were many changes. It was going to lease a 24 hundred beds on the top two floors for \$48,000 a 25 month, with a purchase to be completed in April.

33 1 They were going to present Phase I to the Budget 2 and Control Board to get Obama's money in December. 3 March was the second reading of Obama's money and 4 April was the release of the money and closing. 5 Q And all these terms, they were agreed to before you 6 signed the lease? 7 A Yes, sir. Doug Bell was making notes on his yellow 8 pad to draw this lease/purchase up. 9 Q All right. Now -- 10 A And this would have been probably somewhere the 11 last week of July. 12 Plaintiff's Deposition Exhibit #6, 13 consisting of 10 sheets, marked for 14 identification and made a part of this 15 deposition. (Draft Lease) 16 Q John, I've got here what's been marked as 17 Plaintiff's Exhibit Six. 18 A Yes. 19 Q I'm going to ask if you can identify it, please. 20 A Yes. This is the draft lease for the Budget and 21 Control Board for the Inn on the Square. 22 Q Okay. And I'm going to ask that you go to the -- I 23 think there are the signature page -- 24 A Yes. 25 Q -- which is number 6 out of 10. Do you see that?	35 1 A Yes, I did. 2 Q And physically saw her do it? 3 A Yes. 4 Q Now why would the parties be signing a document 5 which is clearly marked Draft? 6 MS. MEREDITH: Object to the form of the 7 question. And again, I'm sorry, I'm going to - 8 - 9 MR. SMITH: That's fine. 10 MS. MEREDITH: I'll just reserve everything 11 until a later time that way I just have -- 12 unfortunately, it's nature. I apologize. 13 MR. SMITH: That's not -- as you like, as 14 you like, Ms. Meredith. 15 Q So John, tell me, you know, you were presented with 16 a draft -- 17 A Yes. 18 Q -- document? 19 A We got this draft I believe a day before on the 20 11th. Diane Newton had called me in a tizzy. She 21 was desperate to get those students in the Inn on 22 the Square by the end of the month. We didn't have 23 anything from Doug Bell in the form of a lease or a 24 contract. She had to move furniture in and out. 25 She was waving her hands in the air, was just in a
34 1 A Yes. 2 Q Okay. And that page -- it's clearly marked Draft, 3 the document, is that correct? 4 A That's correct. 5 Q But it's signed and it looks like -- who is Louis 6 Smith? 7 A Louis Smith is the managing partner of IOS, LLC, 8 the partnership. I was the manager of the hotel. 9 Q What date -- did he sign this document? 10 A Yes, he did. 11 Q And on what date was that? 12 A The 12th of August. 13 Q And you have seen Mr. Louis Smith's signature 14 before? 15 A Oh, yes. 16 Q Are you confident that that is indeed his 17 signature? 18 A I watched him sign it. 19 Q So you actually physically watched him sign this 20 document? 21 A That's correct. 22 Q And Diane Newton, it appears she signed on behalf 23 of Lander, is that correct? 24 A That's correct. 25 Q Did you watch her sign this document?	36 1 tizzy. She called me around the 8th, 9th, 10th of 2 August, and she says, we've got a problem, can I 3 come see you? So she came down to the Inn and she 4 was in near tears. She says I really f'd up. She 5 says I done pissed off this Indian guy. I got no 6 chance to go back there. I've got to have this 7 property for my hundred students, but I just found 8 out today that we can't sign a lease with you. We 9 have to do a lease through the Budget and Control 10 Board. 11 Q And can you negotiate the terms of this lease? 12 A Well, at the time I didn't know. I said I don't 13 even know what the Budget and Control Board is. Is 14 that part of Lander? She said, no, it's a the 15 State Budget and Control Board. They are actually 16 the people that's going to give us Obama's money in 17 April and because they are going to fund the 18 purchase, we have to go through them to do the 19 lease. Doug Bell will still draw up the purchase 20 contract, but he won't be doing the lease contract. 21 And I said, well, I have to see this thing. So 22 they faxed, "they" being somebody from the State 23 Budget and Control Board, faxed this to Diane, who 24 faxed it to me. I faxed it to Leonard Jordan. 25 Q Who is Leonard Jordan?

37 1 A Leonard Jordan was my personal attorney and IOS' 2 acting attorney at the time. I sent it to my 3 attorney, Leonard Jordan, who said this is pure 4 bullshit. 5 Q Yes. 6 A There is no way in hell you can sign this lease. 7 Q Right. 8 A So I called -- 9 Q What was his concern? 10 A Everything. Everything that Diane Newton and I had 11 agreed to this draft took away. 12 Q Yes. 13 A For instance, maintenance, Lander was doing all the 14 maintenance. 15 Q Right. 16 A This says I have to do all the maintenance. 17 Q Right. 18 A Taxes, Lander -- the taxes are \$32,000 a year. 19 Taxes -- this says I have to pay the taxes. On and 20 on. Everything in here was -- 21 Q Is Exhibit -- I'm sorry, go ahead. I didn't mean 22 to interrupt you. 23 A Everything in here was completely counter to what 24 Diane Newton and I had agreed to in Doug Bell's 25 office.	39 1 Q Okay. 2 A She had this draft and she explained to me that 3 this was a State lease. The State did not 4 negotiate leases. This was a take it or leave it. 5 And I said, we'll leave it. And Diane went berserk 6 and she says, no, no, no. You and I can work all 7 this out on the side. So she started saying I'll 8 give you a signed agreement that Lander will pay 9 for all the maintenance. I'll give you a signed 10 agreement that we'll pay the taxes. Lisa got up, 11 she says, "Stop. I represent the Budget and 12 Control Board. I cannot be a party to this. What 13 you all are talking about is illegal. I will not 14 be in this room while it's discussed." So she got 15 up and she left the room. Diane Newton and I and 16 Louis Smith sat there and went through this, 17 paragraph by paragraph, and we wrote down our 18 signed agreement. We then left, went across the 19 street to Doug Bell's office. 20 Q All right. 21 A And she instructed Doug Bell, based on our note, to 22 draw a separate agreement outside of this lease, 23 whereby we were going to acknowledge that we were 24 going to sign this State Budget and Control lease, 25 but that Lander was going to be bound by this side
38 1 Q Now is this Exhibit Number Six, as it has been 2 presented to you, is it in the same form as it was 3 when it was signed -- 4 A Yes. 5 Q -- on the 12th of August? 6 A Exactly. 7 Q All right. 8 MR. SMITH: I'll ask that it be admitted 9 into evidence. 10 A So Diane Newton was in a real tizzy. She says how 11 do we overcome this. So she calls me back I guess 12 the next day, it must have been the 11th -- 13 Q Right. 14 A -- and she says, I talked to the Budget and Control 15 Board attorney. They said you cannot change so 16 much as a comma on this. You can't change 17 anything. This is a State lease and it has to be 18 signed As-Is. And I said, well, I guess this deal 19 is dead. She says, no, it ain't. The attorney 20 will be down tomorrow. So the attorney came -- 21 Q This is the Budget and Control Board attorney? 22 A The state -- a little short, blonde-headed girl 23 named Lisa something. She and Diane Newton came to 24 the Inn on the Square the next day and met with 25 Louis Smith and I.	40 1 agreement. 2 Q What were the terms, the specific terms, of that 3 side agreement? 4 A The only copy that we had was given to Doug Bell 5 because we had sat there and made notes. But 6 basically, Lander would do and pay for all the 7 maintenance. 8 Q Right. 9 A Lander would pay for the taxes. Lander would use 10 Foundation funds in April to close on the deal if 11 they did not get Obama money. 12 Q And what was the price for the sale? 13 A The price of the sale -- well, there was one other 14 one. The price of the lease would only -- the 15 State Budget and Control Board would only pay 16 \$31,000 a month. The lease called for \$48,000. 17 Q Right. 18 A So in a second agreement, after Lisa left the room, 19 Diane says, we will take the \$17,000 and put it on 20 the back end. We'll take the 2.3 million dollars 21 and we'll add in ten months of \$17,000, which is 22 \$170,000, to the sales price. Plus I was concerned 23 -- we had a major item in there of maintenance 24 which is a \$10,000 hot water heater. I had three 25 of them in tandem. One had already failed.

41 1 Commonsense says if one fails, the other two are 2 going to go. With them cutting us to \$31,000 a 3 month, we had no money for maintenance. So part of 4 the agreement was we would fund the maintenance on 5 a month to month basis and they would reimburse us. 6 If one of them hot water heaters broke, they would 7 pay the \$10,000 for one or both of those remaining 8 two hot water heaters. Because I didn't have the 9 10 or 20 thousand to do it getting \$31,000 a month, 10 so that was built into it. It was probably two and 11 a half pages countering this -- 12 Q Right. 13 A -- that we gave to Doug Bell to do a separate 14 agreement. Diane said this absolutely had to be 15 signed that day, the 12th, because she had to get 16 her crew in there to start cleaning rooms. Oh, we 17 also had to give up The Fox and Hound, we had to 18 give up the dining room, and we had to give up all 19 events after August. So we -- that was also we 20 signed those over to Lander. Lander got 21 operational control of The Fox and Hound. 22 Q The whole building? 23 A They got all of our special events that were 24 already signed except for the ones in August. And 25 they got the operational control of the dining	43 1 Lander and no qualms about them at all. 2 Q So you had -- 3 A The only one going nuts was my attorney over there 4 (indicating). 5 Q Well, and just for the record, you're pointing to 6 Mr. Leonard Jordan, is that right? 7 A Yes. 8 Q Who is in the room. Now I'm going to -- so the 9 terms that you mentioned, did they also include a 10 date of closing? 11 A Yes, they did, the end of April. 12 Q Okay. Of 2010, is that correct? 13 A And they included the terms Obama money -- this is 14 my writing (indicating). 15 Q Right. 16 A If you do not receive the Obama money, you will use 17 Foundation money. 18 Q And they guaranteed that, did they not? 19 A That was guaranteed because apparently Doug Bell 20 and Diane Newton were both on the Foundation, 21 that's what they told me. 22 Q In fact that was represented to you by both of 23 them? 24 A By both of them. 25 Q And do you --
42 1 room, that was part of the agreement. 2 Q Did you believe Diane Newton when she said she was 3 going to do all these things? 4 A Absolutely. She was a desperate woman. She really 5 wanted that for student housing. She was between a 6 rock and a hard place. 7 Q Were you somewhat sympathetic to her situation? 8 A Very much. And the State was jerking her around 9 and screwing her around with the lease, the 10 purchase money and everything else. Lander, in my 11 opinion, was bending over backwards to do 12 everything they could to make this deal work. And 13 you had a bunch of idiots in the State Budget and 14 Control Board who were a bunch of bureaucrats who 15 didn't even understand what was going on, who were 16 putting us all through the hoops that we didn't 17 need to jump through. 18 Q Right. 19 A At that point in time I would have told you Lander 20 University was the most honorable people I had ever 21 dealt with. I actually went to Lander as an author 22 and taught classes at Lander. 23 Q You mentioned you're an author. How many books 24 have you written? 25 A Eight. And I had a great working relationship with	44 1 A They represented to me (a) the money was there and 2 (b) would be used. 3 MR. SMITH: We're going to take a short 4 break to change the video. 5 (OFF THE RECORD) 6 Q John, we took a brief break to swap the tape on the 7 video and I want to get back to I think where we 8 were in your testimony. And I believe you had just 9 finished describing a meeting with you, Mr. Bell 10 and Ms. Newton, Diane Newton, wherein a side 11 agreement was established, is that correct? 12 A Which basically verified all the points that we 13 could not live with in this. So Diane was still in 14 a tizzy. She had to have those rooms. Which we 15 left Bell's office, we had agreed -- we went back 16 over and met with Lisa. We agreed to sign the 17 draft and she was supposed to get a clean version 18 in the next day or so for everybody to resign. 19 Q Okay. And by signing the draft, that is what has 20 been marked as Plaintiff's Exhibit Six, that I have 21 requested -- 22 A That's right. 23 Q -- to be admitted into evidence? 24 A That's right. 25 Q And you were there. You have seen that document?

45 1 A I was there and watched them both sign it. 2 Q And read the document? 3 A And so was Lisa. 4 Q And you read the document? 5 A Yes. 6 Q And that what is marked as Exhibit Six is in the 7 exact same condition it was when it was signed? 8 A Yes. 9 Q And would you have -- or would Louis and would you 10 have advised since you were responsible for this 11 transaction, allow that to go forward without the 12 side agreement being established? 13 A No, absolutely not. I'd have two side agreements. 14 (A) without a side agreement that we ain't going to 15 do this crap that they want us to do, we wouldn't 16 have signed it. 17 Q Yes. 18 A And secondly, without the agreement they were going 19 to purchase in April, we wouldn't have signed it. 20 There's no way we would have leased this as student 21 housing, not a 4-star hotel. And there was no way 22 we could sign this lease and live up to it, 23 especially when they just reduced it \$17,000 a 24 month. 25 Q Why did you have such confidence in the	47 1 identification and made a part of this 2 deposition. (E-mail from D. Newton) 3 Q So I want to present to you, John, what's been 4 marked as Plaintiff's Seven, and ask if you can 5 identify that for us? 6 A (Reviews document) 7 Q Is it an e-mail? 8 A Yes. 9 Q And who is the e-mail from? 10 A It's from Diane Newton to my wife, Misty. Inn on 11 the Square. 12 Q What is the date and time of that e-mail? 13 A It's August the 4th, 2009, 6:09:44 p.m. 14 Q Okay. What is being expressed in the e-mail? 15 A Diane says, "We are working on the parking issue 16 with the City." Lander wanted to put barriers up 17 in the city parking lot, which had been built for 18 the hotel so that Lander students exclusively could 19 use the parking lot. 20 Q Right. 21 A She said, "I feel confident that we'll work that 22 out". And in fact they did. "Lisa is still 23 working on the reserve issue." 24 Q And what is that? What do you understand that to 25 be?
46 1 representations made to you by Ms. Newton and Mr. 2 Bell? Why did you have confidence in their 3 representations to you? 4 A I thought -- I paid no attention to Doug Bell. 5 He's an attorney and require him ... inaudible ... 6 Q Well, was he a member of the Foundation? 7 A I don't know. He presented -- Diane presented him 8 to be. He did not correct her. 9 Q Okay. 10 A I felt like Lander was dealing in good faith. I 11 felt like -- they had already named it Lander on 12 the Square. They were chomping at the bits to get 13 in there. They were excited about it. 14 Q Right. 15 A They -- I thought it was an excellent use, as a 16 real estate man, for that property. 17 Q Right. 18 A There was no questions in my mind that Lander were 19 honorable people. There was no question in my mind 20 that their intent was to purchase this. 21 Q Right. 22 A But we had to get around Columbia. 23 Q Right. 24 Plaintiff's Deposition Exhibit #7, 25 consisting of 1 sheet, marked for	48 1 A That is the maintenance reserve and tax reserve. 2 Since they had reduced our payments from \$48,000 a 3 month to \$31,000 a month, I wanted the \$32,000 in 4 taxes escrowed, plus the maintenance escrowed on a 5 monthly basis. 6 Q Right. 7 A Because there was absolutely no funds on the 8 partnership's part to take care of this. 9 Q Sure. 10 A But yet we were going to be required to take care 11 of it on a month-to-month basis with a letter 12 personally from Lander. 13 Q Right. 14 A I wasn't real comfortable with that. 15 Q And so in the next sentence what is she saying when 16 she says, "... working on the reserve issue", and 17 then -- 18 A She says, she's not -- she being Lisa -- "Lisa's 19 not crazy about Lander having to pay, I ran by her 20 the option of reducing the purchase price by 21 whatever we have to spend for major repairs, she 22 wasn't fond of that either. My latest thought was 23 something similar to a home warranty, I haven't 24 heard back. I go to Columbia tomorrow for 25 approval. I am assuming your mortgage holders are

61 1 Greenville, where they talked about they had just 2 purchased Lander on the Square, is what they called 3 it, as student housing. 4 Q And who was in the video speaking? 5 A It was a Lander official. I don't recall their 6 name. I had not met with them. I talked with -- 7 Q Was he speaking to the press? 8 A Yes. He was speaking outside the doors of the Inn 9 on the Square. The Inn on the Square was in the 10 background. Students were moving in and out and 11 they were giving a news interview and they were 12 talking about how excited they were to have 13 purchased the Inn as part of Lander's new student 14 housing complex. 15 Q And they were proclaiming that to the public at 16 large? 17 A Yes. 18 Q Did you believe at the time that you had a 19 commitment to purchase from Lander? 20 A Oh, no question. I didn't even question. I was 21 trying to reassure Todd Lucas who was getting 22 nervous. 23 Q Now you described in your testimony earlier 24 alterations? 25 A Uh-huh.	63 1 A This was IOS' furniture. So I -- 2 Q Did you authorize them to sell IOS' furniture? 3 A No, I did not. So I called -- Diane Newton was not 4 there, so I called her office and said, Diane, we 5 have a huge major problem, get down here. So she 6 got there in about ten minutes. I said you have 7 got to stop this insanity. You can't sell any of 8 this furniture, it's not yours. You can't cover up 9 the swimming pool. She says, why not, we're buying 10 the building and everything in it. I said I have 11 to answer to the lenders until such time for you to 12 do any of this. I have to go to the lenders and 13 get approval. 14 Q So every time she raised selling things and making 15 changes, what was her basis for doing that? 16 A Well, Lander is buying it. We own everything in 17 the building anyway. 18 Q So she continually made representations about their 19 intent to purchase? 20 A On several occasions when this was ongoing and I 21 objected to it. Her answer was, why, Lander bought 22 everything in the building. Why can't we do -- she 23 was moving kitchen stuff to their kitchen. She was 24 moving furniture up to their lounges. I said you 25 can't do this. She says, it's ours, we bought it.
62 1 Q Would you have permitted all of the alterations 2 that were made or did you permit the alterations 3 that were made by Lander? 4 A No, I would not have permitted any of them. 5 Q What kind of alterations did they make? 6 A God, I don't know if I can remember. They ripped 7 down the fencing around the pool, filled it in 8 cemented it in. 9 Q They did what to the pool? 10 A They ripped down the fencing around the pool, 11 filled it in, put gravel and cemented it in. 12 Q So they emptied the water and covered the pool with 13 cement? 14 A Covered it, cemented it in. 15 Q And did you authorize that change? 16 A No, absolutely not. 17 Q When you raised -- did you raise an objection to 18 it? 19 A Oh, yes. I got there as they were pouring cement 20 into it and I went crazy. They also had a sign on 21 the ballroom that says, For Sale, and had all this 22 furniture and stuff in the ballroom and they had 23 cars and trucks backed up there and they were 24 carting furniture and stuff out. 25 Q So whose furniture was this?	64 1 I said you haven't closed on it yet. 2 Q Yes. 3 A I have to have lender approval for you to do this. 4 And she said, hogwash, or something like that. 5 They never stopped. They kept moving. 6 Q The Exhibit Number Eleven, you wrote that e-mail? 7 A Yes. 8 Q And that is in fact your e-mail account, 9 jhuffman46@aol.com? 10 A Yes. 11 Q And you recall specifically writing that e-mail on 12 August 31, 2009 at 8:19 a.m.? 13 A Correct. 14 Q And this copy, as it is in Plaintiff's Exhibit 15 Number Eleven, does it accurately reflect the e- 16 mail that you wrote at that time? 17 A Yes. 18 Q Okay, thank you. 19 MR. SMITH: I'll ask that it be admitted 20 into evidence. 21 Q Thank you, John. 22 A Now I've got three other things here, should I -- 23 Q Yes, hold onto those for me. I'm going to come 24 back to some of that. 25 Plaintiff's Deposition Exhibit #12,

73 1 the property prove unsuccessful. I'll get back 2 with you on the dates. Thanks, John." Is that 3 accurate? 4 A That's correct. 5 Q And then she responds at 5:42, only about 20 6 minutes later or less than 20 minutes, and says, 7 "John, I think we are saying the same thing. The 8 March time frame is still what we are hoping 9 happens. We had hoped the Budget and Control Board 10 would have a meeting prior to December, that just 11 didn't happen, totally out of our control. Our 12 schedule is still December 13th, Phase I approval 13 from the Budget and Control Board to perform a 14 building conditions assessment, get an appraisal, 15 perform a Phase I environmental assessment. 16 Shortly after that approval we will begin the 17 assessments to draw up the purchase contract. The 18 contract will contain language stating the sale 19 will be pending Budget and Control Board approval. 20 We hope that meeting will be in March, but I can't 21 say for certain until they put out the schedule. I 22 hope this helps. Di." Now when the oral contract 23 that you testified earlier in Mr. Bell's office and 24 based upon that signed the lease, did it include 25 anything about a Budget and Control Board approval?	75 1 Q With definite terms? 2 A No uncertainties. 3 Q And in fact did they make renovations -- 4 A Yes. 5 Q -- significant renovations, to the property? 6 A Throughout August, in fact, throughout their stay 7 there. 8 Q And did those renovations harm the value of the 9 property? 10 A Oh, yes. I couldn't -- it certainly detracted from 11 a 4-star hotel. 12 Q Right. Could you take that property back over and 13 turn it back into an ongoing -- 14 A No. 15 Q -- hotel? 16 A Not without reversing those things. 17 Q And that would cost a significant amount of money? 18 A Somewhere in the neighborhood of \$600,000. 19 Q And the renovations that they made, the alterations 20 that you described earlier, the pool, the rooms 21 themselves, removing The Fox and the Hound, the 22 most profitable center, those were done without 23 your authorization? 24 A Oh, absolutely. 25 Q But they said that it was okay, why?
74 1 A No. Initially, when we met in Doug Bell's office, 2 Diane was planning to get control of the property. 3 Doug Bell was going to draw up a lease/purchase 4 agreement some time in August so that she could get 5 control of that property. That transferred to 6 Budget and Control Board as to the lease, Doug Bell 7 is going to have a contract by September. That 8 transferred to we can't do a contract until we do 9 an appraisal and environmental and a building 10 assessment, which is going to be done October, 11 November, so you will get a sales contract by the 12 end of November. And then that changed to 13 December. So this thing was flopping all over the 14 place. 15 Q Did that concern you? 16 A Oh, yes. It concerned me, Leonard Jordan, my 17 lenders, everybody. 18 Q So you entered -- 19 A Except Doug Bell and Lander, who didn't seem to be 20 concerned at all. 21 Q Right. So again, why did you sign a lease? 22 A Because I thought I would have a contract in hand 23 to purchase by the first of September. 24 Q And did they promise you that? 25 A Yes.	76 1 A Because they owned it. 2 Q They said they owned it, right? 3 A We own -- we own it -- Diane said I'm really tired 4 of you getting in my damn face every time you come 5 up here. We own this damn building and everything 6 in it. Why don't you go to Columbia and come back 7 in April and get your damn money? Quote, unquote. 8 Plaintiff's Deposition Exhibit #15, 9 consisting of 2 sheets, marked for 10 identification and made a part of this 11 deposition. (E-mail to Attorney Jordan) 12 Q John, I've got what's been marked as Plaintiff's 13 Exhibit Fifteen. Again, it's a series of e-mail 14 communications and again they start on the back 15 page. 16 A Uh-huh. 17 Q I first ask you is this document, Plaintiff's 18 Fifteen, is it familiar to you? 19 A Yes. 20 Q And on the second page, which is where the e-mail 21 chain begins, how does it start? 22 A It's from me to Diane Newton. 23 Q Okay. And so I'll just -- 24 A On December 16th, 2009. 25 Q And let me read it to save -- and you just again

77 1 confirm for the record that I've accurately read 2 the e-mail. It's from you to Diane Newton dated 3 December 16th, 2009, 8:56 a.m. "Diane, can you 4 please advise me as to where we stand on the 5 purchase of the Inn? If you no longer -- if you 6 are no longer the point of contact for Lander, 7 please advise me as to who is and give me contact 8 information. I am under a lot of pressure on this 9 deal and would appreciate your assistance. John." 10 Now there's some handwriting and adds an e-mail and 11 a number down at the bottom. Whose handwriting is 12 that? Do you know whose handwriting that is? 13 A I do not. 14 Q Okay. 15 A I do not recognize it. 16 Q The next e-mail was a response from Diane, December 17 16th, the same day, a few hours later in the 18 afternoon. "John, yesterday the Budget and Control 19 Board approved Phase I of the purchase of IOS. We 20 are scheduled to meet with the code officials to 21 discuss changes that will be required of us in 22 order to occupy the building." In fact, on 23 December 16th, 2009, they were already in the 24 building? 25 A Yes.	79 1 help or be there to help facilitate? 2 A Never. 3 Q Then after that it looks like you forwarded this e- 4 mail chain to Todd Lucas and Todd is the business 5 guy through -- 6 A Yes. 7 Q -- your loan? 8 A Yes. 9 Q And he's at Business Carolina? 10 A Yes. 11 Q And Business Carolina is who? 12 A Business Carolina was the first mortgage on the 13 property. 14 Q And you said, "Todd, this is the latest update on 15 Lander's purchase of the Inn. It appears we have 16 passed the first hurdle with the State and are 17 moving forward. If you have any questions, please 18 advise. Thanks, John." And then it looks like you 19 forward the same chain to Leonard Jordan, who at 20 the time was counsel, correct? 21 A Yes. 22 Q And did the same, "This is the latest input from 23 Lander. Diane has accepted a position with the 24 University of Arkansas and will leaving at the end 25 of the month. I have already forwarded this to
78 1 Q And had been since August? 2 A Uh-huh. 3 Q "The purchase will initiate an zoning change and as 4 a state building we will be required to meet the 5 codes associated with the new occupancy. In 6 addition, we are pursuing an appraisal and an 7 environmental assessment. Once we know what the 8 code changes will require, we will be in a better 9 position to settle on a price. Tom Covar, Director 10 of Financial Services, will be your new contact in 11 my office. Of course, Randy Bouknight will still 12 be on this project. Feel free to contact either of 13 them. I wish this was -- I wish there was a, 14 quote, easy button, for making purchases through 15 our current system, but there just isn't one. We 16 appreciate your patience with us as we jump through 17 hoops. All the best, Di." Does that accurately 18 reflect her e-mail to you on that date? 19 A Pardon? 20 Q Does that accurately reflect -- 21 A Yes, it does. 22 Q And then you respond on December 16th at 2:19. 23 "Diane, thank you for the update. If I can be of 24 assistance, please advise. John." Was there 25 anything ever they asked of you that you didn't	80 1 Todd Lucas at Business Carolina. John." So your 2 contact, Diane, is leaving Lander at this time? 3 A Right. 4 Q And this is the individual that made all the 5 representations and promises to purchase on behalf 6 of Lander, is that correct? 7 A And she's -- the new point of contact is that Tom 8 Covar. 9 Q And all these new conditions that were not present 10 in the original meeting, in the original, you know, 11 side, oral contract to purchase, you know, it 12 sounds like your response to them has been what? 13 A I'm not sure of the question. 14 Q Yes. Well, I know it was a poorly asked question. 15 So at the time of your meeting and when the side 16 contract was established, did you believe you had a 17 contract to purchase? 18 A Oh, certainly, yes. Never questioned it. 19 Q Yes. Any of these Budget and Control Board 20 conditions in Phase I, were they ever a part of 21 that original contract? 22 A No. 23 Q And she never said that these were contingencies on 24 the oral contract to purchase? 25 A Never.

153 1 doing it, but that ain't my place to say so. 2 Q Right. 3 A I said, lots of luck, I'll see you in a week. 4 Q And when was that? What date was that? 5 A That was the week before this. 6 Q The week before this e-mail? 7 A Maybe it was May. I've got an e-mail in there to 8 that effect. 9 Q Okay. But before this, what is marked Plaintiff's 10 Exhibit Twenty-Nine -- 11 A It was either one week or two weeks before this and 12 I would have to find my e-mail to be sure. 13 Q Okay. So Plaintiff's Exhibit Twenty-Nine, what you 14 have, is an e-mail exchange between you and Doug 15 Bell? 16 A This is when -- that's when I walked through for 17 the final inspection on the 15th -- 18 Q Right. 19 A -- after this. 20 Q It was after you had done one, the previous one. 21 Well, let me read it into the record then I'm going 22 to ask you some questions about it. So your first 23 e-mail to Mr. Doug Bell and it looks like you also 24 include to Louis Smith and Leonard Jordan and John 25 Carter at Business Carolina. You said, "Doug, a	155 1 functioning properly. If you run into any issues, 2 you can certainly give me a call. You will have 3 possession of the Inn when you leave. Thank you." 4 This report, did you ever receive any type of 5 written report or it was just -- 6 Q No. 7 A I walked in and this is what I found. 8 Q Okay. And then you respond because you already 9 were headed down there, it was 9:30 that morning -- 10 A Yes. 11 Q -- when you were going to be there at 10:00. And 12 you wrote back to Doug at 6:21 that day, after your 13 visit at 10:00. And you said, "Doug, I arrived at 14 the Inn this morning shortly before 10:00 a.m. for 15 a final joint inventory and equipment inspection 16 with Lander's personnel as the lease calls for and 17 we discussed on my visit last week, in the final 18 task of Lander officially turning over control of 19 the building. I also had heat, air, refrigeration, 20 elevator, kitchen, pool, telephone and roofing 21 inspectors scheduled to visit before transferring 22 the utilities out of Lander's name in an orderly 23 fashion this afternoon. Upon my arrival, I find 24 the power and water turned off, the building 25 abandoned and standing open to the public, the
154 1 reminder that I will be arriving at the Inn at 10 2 a.m. in the morning with my heat and air and 3 refrigeration inspectors if you want to have the 4 Lander maintenance man accompany them. I assume I 5 will be taking control of the Inn tomorrow when I 6 leave. Is this correct? John." So you sent that 7 on June 14th at 2:05 saying, hey, it's, you know -- 8 A Yes. 9 Q -- the 15th and I'm coming to inspect and 10 anticipate taking control. Is that correct? 11 A This was -- I was to get the keys when I left. The 12 building would be mine on the next day. 13 Q And so on June then that same -- correction, you 14 sent that on the 14th, telling him you were going 15 to be there at 10 o'clock on the next day -- 16 A Yes. 17 Q -- and then on the 15th, at 9:34, just about 26 18 minutes before your stated arrival, you get that 19 call from -- or not call, correction, I'm sorry, 20 the response to your e-mail from Doug Bell to you. 21 And it says, "John, after our last meeting I 22 requested Lander have their engineering department 23 inspect all units and address any issues. This was 24 carried out over the last several days and I 25 received a report yesterday that all units are	156 1 battery-powered emergency alarm system blaring and 2 all emergency battery lights drained dry. I was 3 informed Lander shut the utilities off Tuesday. No 4 one from Lander showed up to do a walkthrough and 5 formally release the building. Lander maintenance 6 personnel did not show up after Leonard Jordan 7 called you and replaced the locks on the front door 8 and back doors that had ..." -- 9 A Personnel did show up. 10 Q Oh, I'm sorry, I read that wrong. Lander 11 maintenance personnel did show up -- thank you -- 12 after Leonard Jordan called you to replace the 13 locks on the front and back doors that had -- they 14 had removed to allow me to secure the building. 15 With power I was forced -- without power, excuse 16 me. Without power I was forced to cancel all 17 inspections. Frankly, I do not understand Lander's 18 rationale. The building being in a grid down, 19 unprotected situation for two days while under 20 Lander's control is very disturbing. Gridding the 21 building back up is a time consuming operation to 22 ensure appliances and systems are not damaged in 23 the process, and draining the pipes and then re- 24 pressuring the system invariably blows joints and 25 causes leakages, all of which I consider a Lander

157 1 responsibility. As for Lander's personnel doing 2 their inspection and assuring you that everything 3 was fine, I do not consider that a joint inventory 4 in acceptance of the facility and equipment. I 5 remind you that when Lander assumed control of the 6 building I spent several days walking with -- 7 walking them through the building and inventorying 8 the equipment and the utilities were left on in 9 IOS' name for over a month before they were finally 10 switched -- switched them to their account. Please 11 advise. John Huffman. John, tell us what 12 occasioned you to write this e-mail and what you 13 wrote. 14 A I'm sorry? 15 Q Just if you would elaborate. You wrote this e- 16 mail, correct? 17 A Yes. I wrote it that day when I went down to do 18 the final -- we had done the walk, one of the 19 walkthroughs the week before, which we could not 20 complete because of all the trash, all the 21 furniture still in there, at least the furniture 22 from Lander, missing equipment, doors open, that 23 sort of stuff. So this was to be the final 24 walkthrough, joint acceptance. Lander was to have 25 their personnel. I had all these people there, so	159 1 hell out of me walking around the building. So he 2 said he would have somebody come down and replace 3 the locks. And I said what else do I need to do? 4 I said I've got no power, I've got no water. I 5 can't go turn the power and water on because I'll 6 blow stuff all over this place. 7 Q Yes. 8 A He says come back home, have a Bourbon and Coke, 9 calm down and we'll figure out what we're going to 10 do from here. So then I left and went across the 11 street to Doug Bell's office when Doug Bell and I 12 had a confrontation at which time Leonard called my 13 wife and said I told you to come home, damn it, 14 come home. 15 Q Yes. So now did Lander surrender the premise -- 16 A No. 17 Q -- or abandon the property? 18 A They abandoned it. 19 Q And why do you say that? 20 A Because they abandoned it the day before, stripped 21 all the locks off, turned off the power and the 22 water and left the building totally unsecured. 23 None of the doors had locks on it, no power, 24 nothing. 25 Q Did they take property?
158 1 if there was any dispute about anything being 2 wrong, I could -- I'd say this air conditioner is 3 broke. Lander's people are right there to say, no, 4 it's not. 5 Q Right. 6 A My people are there to say, yes, it is. And that 7 would have been resolved on the spot. They took my 8 own locks off the building. 9 Q Right. 10 A The building was standing open. There was a 11 vagrant in the building that I had to run out. 12 People would just walk in and out. Everything was 13 grid down, shutdown, burned up and used up. The 14 entire emergency system had burned itself out in 40 15 something hours, just burn itself up. 16 Q And so how did you feel at this time? 17 A Oh, I was super pissed. I called Leonard Jordan 18 and was screaming so bad he hung up on me. 19 Q Yes. 20 A Finally he called back and said if you're through 21 yelling, I'll listen to you. 22 Q Yes. 23 A And so then he told me was going to call Doug Bell 24 and get somebody from Lander. I said I can't even 25 lock it up. I've got a vagrant who just scared the	160 1 A Oh, yes. 2 Q What did they take? 3 A I had a -- all kinds of stuff. I have it in my 4 inventory sheet. 5 Q We'll go through that. 6 A Yes. 7 Q Now you had spent -- when you arrived, in your 8 earlier testimony, to take control of Inn on the 9 Square in January of 2005, I think it was your 10 testimony you all invested \$670,000 to create a 4- 11 star accommodations? 12 A It was over a period of about three years. The 13 first year we didn't invest more than 50, \$70,000. 14 Q Right. 15 A The second two years is when we decided to 16 franchise and upgrade it and that's when the 17 majority of the upgrades were done. 18 Q Okay. I'm going to start showing you a series of 19 pictures and asking you a few questions about these 20 pictures. 21 MR. SMITH: And I'll get copies, Ms. 22 Meredith, to you, as well. 23 MS. MEREDITH: Are those the -- they have 24 already been sent to us? 25 MR. SMITH: Yes. They were on a disc, but

169 1 A Yes, it's part of the bar. 2 Q So you're still talking about the bar? 3 A Yes. 4 Q So the shutters were broken? 5 A Yes. This is the carpet that was ripped (indicating). This is the mildew (indicating). 6 Q Did the carpet look like that when you turned it over — 7 A Oh, no. 8 Q -- in August of 2009? 9 A It was brand new. 10 Q Okay. 11 A And you could see all the mildew and mushrooms growing through it. This is where the pipes leaked and got the carpet wet and they ripped it out and didn't do anything, so it mildewed. 12 Q Now you gave them that place in good condition and they were contracted by the lease and required to give it back to you in good condition? 13 A Oh, absolutely. 14 Q Do you consider that they gave you back it in good condition? 15 A You look at it. 16 Q Is that normal wear and tear to you? 17 A Gah, no, that's destroyed. Plus the stink in there	171 1 equipment that was missing, right? 2 A I had 47, \$4,500 ice machine gone. 3 Q And it just disappeared? 4 A It went to Lander. 5 Q And the TVs were gone? 6 A TVs were gone. Here's more pictures of the bar area. 7 Q Okay. 8 A Now the bar was totally destroyed. It probably would have taken 10 or \$15,000 to re-outfit it, get it up and running again. 9 Plaintiff's Deposition Exhibit #34 10 consisting of 4 sheets, marked for 11 identification and made a part of this 12 deposition. (Photographs) 13 Q John, I've got what -- a couple pictures that's 14 been marked Thirty-Four, Plaintiff's Thirty-Four. 15 I'm going to ask if you can identify what's in 16 those two pictures. 17 A Yes. I had put brand new super windows -- what do 18 you call that windows that help you to stay cool 19 and warm? Thermostatic? 20 Q Thermostatic windows, yes. 21 A All through the hotel at great expense and they had 22 a lifetime warranty.
170 1 was so bad. Walking through there we had to go 2 open the windows because we couldn't even breathe 3 with the mildew spores. 4 Q So there were mildew spores in more than one 5 location? 6 A Oh, all over. That whole carpet had gotten wet and 7 mildewed. 8 Q And is that in the bar, too, right there 9 (indicating), or is that in the restaurant? 10 A This is rooms. This is all bar (indicating). 11 Q Okay. So this is all bar here (indicating)? 12 A Yes. 13 Q So I'm going to call the bar pictures are at 14 Exhibit Number Thirty-Three, plus, one, two, three, 15 four, five, six, seven, eight, nine pictures behind 16 it. And could you open back up as The Fox and 17 Hound after they turned this over to you? 18 A No way. No way. 19 Q Would it even meet DHEC inspections? 20 A No way. It had no plumbing. 21 Q No plumbing? 22 A It had no machinery and no glasses, of course, no 23 liquor. It had no -- the carpet was completely 24 mildewed, had mushrooms growing out of it. 25 Q You had an ice machine, too. You actually had	172 1 Q Yes. 2 A Lander went through and nailed 2 by 4's in all of 3 these window sills to keep the windows from 4 opening, which voided the entire warranty of every 5 window in the building. 6 Q And so when you look at this, I mean so this is 7 originally a 4-star accommodations place. And 8 these windows and they nailed 2 by 4's in the 9 windows? 10 A Nailed 2 by 4's into the frames of the windows, 11 right through them. 12 Q Did they ask you? 13 A No. 14 Q And did you ask them about why did you nail -- 15 A Yes. 16 Q -- 2 by 4's in my very expensive, nice windows? 17 A They said we don't want any kids committing suicide 18 by jumping out of the window. I said it's a 3 feet 19 drop here from this window to the top of the 20 building. 21 Q Yes, it's 3 feet. 22 A They are going to commit suicide in 3 feet? 23 Q Might there be other ways to deal with the windows 24 opening than nailing a board through the sill? 25 A I guess there would have been. Not to void a

181 1 is that, Thirty? 2 A Yes. This is where the fire extinguishers have not. 3 been serviced in over a year. 4 Q Yes. And so was there indications that other 5 things that required servicing, that the 6 maintenance was not done? 7 A None of it was done. The stove was not done. The 8 freezers were not done. The refrigerators were not 9 done. The fire alarm system was not done. The 10 security system was not done. None of those 11 inspections. The elevators were not done. There 12 was not a single required inspection done in the 13 last year. When I confronted the fire marshal 14 about it, I said you were on my butt every three 15 months. Lander sat here for a year and didn't do 16 any of these. He said, we were told it was 17 shutdown and non-operable. There is no requirement 18 for us to inspect it if it's not operable. Here's 19 a copy -- a picture of the windows that the 2 by 20 4's were nailed shut, which destroyed the windows 21 and voided the warranty. 22 Plaintiff's Deposition Exhibit #38, 23 consisting of 2 sheets, marked for 24 identification and made a part of this 25 deposition. (Photographs)	183 1 A Outright, gone. 2 Q And that's Exhibit Thirty-Eight. 3 Plaintiff's Deposition Exhibit #39, 4 consisting of 1 sheet, marked for 5 identification and made a part of this 6 deposition. (Photograph) 7 A This is a picture where all the telephones were 8 ripped out of all 48 rooms. The entire what you 9 call communications nerve center, which is a huge 10 computer that sits on the front desk that operates 11 that system is completely missing. 12 Q Could you reopen as a hotel with your phones piled 13 up like that? 14 A No. 15 Q So and the brains, you said, I think that causes 16 this to operate, where was it? 17 A Gone, not on the property. 18 Q And how much does something like that cost? 19 A Depending on the system you buy, anywhere from 150 20 to \$500,000, depending on sophistication. Like if 21 you wanted to log in long distance calls, you had 22 to go through the keyboard to make the outside 23 calls, et cetera, et cetera. Ours was a pretty -- 24 pretty sophisticated system. 25 Q Right. And I've marked that as Plaintiff's Thirty-
182 1 Q What is this a picture of here (indicating)? What 2 is it? 3 A This is a picture of my utility room. We did all 4 the laundry in the hotel. Notice that a \$12,000 5 dryer and two \$1,000 commercial washers are 6 missing. 7 Q So again here there is equipment that is yours that 8 is not present? 9 A Not present. 10 Q Was it there when you turned it over to -- 11 A Absolutely. In fact -- 12 Q -- to Lander? 13 A -- we showed Diane's staff how to use it, how to 14 use the dryers and the washers. 15 Q And these were industrial size, so you are like 16 washing a bunch of towels in the hotel -- 17 A Yes. 18 Q -- or a bunch of -- 19 A For the hotel. 20 Q And these were your equipment? 21 A Oh, yes. 22 Q And it's not a question that it's damaged or not, 23 right? 24 A It's gone. 25 Q It's just not there?	184 1 Nine. 2 Plaintiff's Deposition Exhibit #40, 3 consisting of 1 sheet, marked for 4 identification and made a part of this 5 deposition. (Photograph) 6 Q Tell me what this is a picture of here 7 (indicating). 8 A This is a picture down in the basement where lamps, 9 chairs, sofas, tables were just thrown into the 10 basement, which is very dark and damp. This stuff 11 mildewed, turned colors and et cetera. This was 12 the excess furniture that Lander did not want in 13 the rooms and they just basically helter-skelter 14 threw it into the basement. 15 Q Yes. 16 A It was all ruined. You can see it's bent, broke, 17 tore, stained. 18 Q Do you consider this normal wear and tear of your 19 property -- 20 A No. 21 Q -- by a tenant? 22 A It was improperly stored -- 23 Q Yes. 24 A -- for two years. 25 Q And that's how you found it when you --

185 1 A All I did was walk in and take pictures. 2 Q Now when you turned the place over in August of 3 2009 these lamps were in the rooms, I assume? 4 A Yes. 5 Q They were placed there? 6 A Every room, all 48 rooms, was a 4-star room, 7 complete with lamps, desks, tables, bedding, 8 everything. 9 Q Yes. 10 A There was nothing that wasn't in those. And I've 11 got some pictures of what the rooms looked like. 12 Q Right, right, and we had those in evidence earlier, 13 I think, Plaintiff's Two, Three and Four. So these 14 alterations or changes made to the rooms, you know, 15 did you authorize and tell them it was okay to pile 16 your lamps into a room like that? 17 A Absolutely not. According to our agreement, Lander 18 said we are going to be bringing a hundred beds in 19 here -- or excuse me, we want a hundred beds. 20 You've got 56. I had 56 beds, so they wanted to 21 bring another 44 beds in. They said we want you -- 22 we will want you to take certain furniture out so 23 we can do that. So in that walkthrough, Diane 24 Newton had me remove ten beds from our 56. 25 Q Right.	187 1 us what Forty-One is a picture of? 2 A This is just a picture of the maintenance room, 3 where the maintenance -- the elevator -- elevator 4 is on the left. By law you can store nothing in 5 these rooms. It's a felony to put anything in 6 these rooms. And all I did was walk in and took a 7 picture of the crap they pushed in there. 8 Q Yes. 9 A If a fire marshal had seen that, somebody would 10 have had handcuffs on. 11 Q Yes. But that's important for the escape, fire, to 12 get out of there if there was a fire? 13 A That's a fire hazard. 14 Q Right. 15 A Because you are in the electrical room and all your 16 electrical boxes are here. 17 Q Right. 18 A So there can be nothing stored in this and they 19 just shoved this stuff in there. I thought it was 20 hilarious when I seen it. I said, man, I'd go to 21 jail for this bullshit. 22 Q Right. 23 A Yes. So that was just a picture I took. 24 Q What's this picture of (indicating)? 25 A This is where they were nailing the windows shut.
186 1 A And then they brought in their 44 beds to carry 2 their bed count up to a hundred. 3 Q Right. 4 A So I removed those ten beds. That was the only 5 thing that I removed from that Inn. 6 Q But everything else that you had and had operating 7 as a 4-star accommodations -- 8 A Was left in place. 9 Q -- hotel was left in place? 10 A To include the overages down in our maids quarters. 11 We had extra bedding -- 12 Q Right. 13 A -- extra bed covers, sheets, pillows, pillowcases. 14 In fact, we had a 60 percent reserve. So not only 15 did you have all the rooms -- 16 Q Right. 17 A -- but we had a 60 percent reserve of the -- of the 18 -- what do you call them, covers for the beds -- 19 Q Covers for the beds, sheets, yes. 20 A -- and et cetera. 21 Plaintiff's Deposition Exhibit #41, 22 consisting of 1 sheet, marked for 23 identification and made a part of this 24 deposition. (Photograph) 25 Q I marked this picture as Forty-One. Can you tell	188 1 I wanted to show you the building that they were -- 2 Q Oh. 3 A The hotel, this is the first room (indicating). 4 Q Right. 5 A The rest of -- how were they going to jump out and 6 kill themselves -- 7 Q When it's a 3 foot drop. 8 A -- when it's a roof? 9 Q Okay. And what is this a picture of here? 10 A This is a picture where they cut out a section that 11 did have a water leak and re-patched it, but you 12 can see they never finished the job. 13 Q Yes. 14 A They just left it. 15 Q Yes. With something like this would you -- being 16 considered, you know, 99 percent with Clarion? 17 A Oh, no, no. This had to be mudded in, had to be 18 sanded, had to be painted. It had to be blended so 19 that you couldn't see it anymore. 20 Q Yes. This Clarion rating that you received is -- 21 MR. SMITH: Let me see that picture. I'm 22 going to have this picture marked as 23 Plaintiff's Forty-Two. 24 Plaintiff's Deposition Exhibit #42, 25 consisting of 1 sheet, marked for

261 1 am. We might be done with our direct. 2 (OFF THE RECORD) 3 Q Thank you. John, just a couple of concluding 4 matters. One of the elements of damages that we've 5 got to get to is the money that was promised to you 6 by Diane, in other words, the difference between 7 the \$31,000 of the lease and the \$51,000, being 8 \$20,000 per month. And I want to make sure I 9 understand, but what was your testimony as to how 10 IOS would be entitled to that? 11 A This was a moving target on Diane's part. We had a 12 firm price on the sale at \$2.3 million. 13 Q Right. 14 A That target -- that number didn't move. Diane was 15 trying to negotiate a ten month lease, but for 16 whatever reasons the State Budget and Control Board 17 could only pay or would only pay \$31,000 a month. 18 Which the price had dropped from 51 to 48 because 19 of the taxes, so the difference was \$17,000, at 20 that point in time. 21 Q Okay. So it was a \$17,000 difference between what 22 she promised to pay you and what was in the lease? 23 Am I correct about that? 24 A No. The lease said \$31,000. 25 Q Right. But what --	263 1 Q So there is no damages for them failure to pay 2 maintenance -- 3 A No. 4 Q -- costs while you were doing the maintenance? 5 A They reimbursed us on a monthly basis on that. 6 Q And that just happened in the first ten months? 7 A Yes. And that was okay. The second year we pulled 8 out of maintenance altogether and Lander took it 9 over. Now the third thing was the taxes. The 10 taxes were 32 or \$34,000 a year. We were escrowing 11 taxes to be paid. To reach that amount, she said 12 Lander would put the taxes on the back end. 13 Q Right. 14 A So she would add another \$34,000 divided by 12 15 times 10 onto the -- 16 Q Right. 17 A -- back end of the lease so we could pay the taxes. 18 Q But the total for those two years was \$34,000? 19 A For one year's taxes. 20 Q Oh, \$34,000 for one year. 21 A Sixty-eight. 22 Q So I want to get to the bottom line number. 23 A They were \$68,000 for two years. 24 Q So you maintain that Lander owes you for not paying 25 the taxes?
262 1 A She and I had agreed on \$48,000. 2 Q And how was that made up? 3 A That was why I had sat down with her and submitted 4 a budget on what it would cost -- 5 Q Right. 6 A -- for her to lease the second and third floors. 7 Q And so that differential, how was IOS to be paid 8 that differential between the 31 and the 48? 9 A She -- she was going to take the \$17,000 a month -- 10 Q Right. 11 A -- for those ten months and put it what she called 12 the backside of the lease. So the purchase price 13 was going to go to \$2,470,000 -- 14 Q Right. 15 A -- plus or minus some other contingencies -- 16 Q Okay. 17 A -- that we were dealing with, such as the 18 maintenance. Under the initial lease agreement, 19 the maintenance was all done by Lander. Under the 20 Budget and Control Board lease, maintenance had to 21 be done by IOS. So she and I agreed we would do 22 the maintenance but Lander would reimburse us, 23 which is what we -- 24 Q Which that happened though, right? 25 A Yes.	264 1 A They didn't pay the taxes either year. 2 Q And that was a total of \$68,000? 3 A That's correct. 4 Q So that number is to be added to the damages 5 summary on Fifty-Three, okay. 6 A Because we had to pay that out of our pocket. 7 Q And the \$17,000 per month that she promised to pay 8 on the back end as well, for the two years that was 9 not paid, correct? 10 A That's correct. 11 Q And so do you contend that Lander still owes you 12 that lease because they were in there and that was 13 the agreement you had up front? 14 A That was the agreement. 15 Q And that number for 23 months or the period of the 16 lease would equal \$391,000, is that correct? 17 A That's correct. 18 Q So in addition to the amount you testified to on 19 your damages summary, it's your contention that 20 Lander also owes you the additional rent that they 21 failed to pay per month of 17. 22 A Yes. 23 Q Is that correct? And the failure to pay the taxes 24 that they promised to pay? 25 A That's correct.

EXHIBIT 2

Page 1	Page 3
STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS COUNTY OF GREENWOOD IOS, LLC : PLAINTIFF, : VS. : 2012-CP-24-576 LANDER UNIVERSITY, LANDER : COLLEGE, AND THE LANDER : FOUNDATION : DEFENDANTS. : DEPOSITION OF LOUIS SMITH DATE: MARCH 14, 2016 TIME: 11:00 A.M. LOCATION: JAMES B. SMITH, JR., P.A. LAW FIRM 1422 LAUREL STREET COLUMBIA, SOUTH CAROLINA TAKEN BY: DEPENDANT REPORTED BY: REBECCA A. BAZZLE, CVR-M BAZZLE & ASSOCIATES COURT REPORTING 721 CYPRESS POINT DRIVE CHAPPAHILL, SOUTH CAROLINA 29037	1 INDEX 2 STIPULATIONS 3 OATH 4 EXHIBITS 5 EXAMINATION BY MS. MEREDITH 6 EXAMINATION BY MR. BAZZLE 7 EXAMINATION BY MR. MEREDITH 8 EXAMINATION BY MR. SMITH 9 CROSS EXAMINATION BY MR. MEREDITH 10 CROSS EXAMINATION BY REPORTER 11 READ AND SIGN EXHIBITS 12 13 14 15 16 17 18 19 20 21 22 23 24 25 D-1 COPY OF WORKSHEET (5 PAGES) 29 D-2 COPY OF LOAN MODIFICATION AGREEMENT (2 PAGES) 61
Page 2 1 APPEARANCES: 2 Representing: DEFENDANT 3 LENA Y. MEREDITH, ESQUIRE 4 NICHOLSON & ANDERSON 5 109 WEST COURT AVENUE 6 P.O. BOX 457 7 GREENWOOD, SOUTH CAROLINA 29648 8 9 Representing: PLAINTIFF 10 JAMES B. SMITH, JR., ESQUIRE 11 JAMES B. SMITH, JR., P.A. LAW FIRM 12 1422 LAUREL STREET 13 COLUMBIA, SOUTH CAROLINA 29201 14 15 Also Present: 16 DOUGLAS L. BELL, ESQUIRE 17 McDONALD PATRICK POSTON HEMPHILL & ROPER 18 P.O. BOX 1547 19 GREENWOOD, SOUTH CAROLINA 29648 20 21 22 23 24 25	Page 4 1 STIPULATIONS: 2 Taken pursuant to the rules of South Carolina Civil 3 Procedure. 4 WAIVER: 5 The reading and signing of this deposition 6 transcript have been waived by the deponent. 7 8 LOUIS SMITH, having been 9 first duly sworn to tell the truth, the whole truth, and 10 nothing but the truth, testified as follows: 11 MR. JAMES SMITH: I just want to make a 12 point early. We are going to read and sign. So if you 13 will send it to my office that will be great. 14 EXAMINATION: 15 BY MS. MEREDITH: 16 Q. Mr. Smith, my name is Lena Meredith. We met just 17 before the deposition, and I appreciate you coming in 18 today. I represent Lander University and Lander 19 Foundation in regard to the case which has been filed 20 against them that pertains to Inn on the Square Hotel 21 in Greenwood, South Carolina. Mr. Bell, who is 22 seated with me, is their transactional attorney and 23 is going to be here, as well, on their behalf, but I 24 will be asking all of the questions. 25 If there's anything -- unfortunately, you know,

1 (Pages 1 to 4)

BAZZLE & ASSOCIATES
(864) 980-6364

ROA_0221

Page 73	Page 75
1 Q. What about any sale? 2 A. I think it was over 75 percent. 3 Q. Okay. 4 A. Essentially making sure that Misty or myself would 5 have to be party to any transaction. 6 Q. Right. There's some language in here about, you 7 know, requiring that you stayed as managing member 8 through 2007. What was that all about? 9 A. I couldn't tell you. I don't know. There may not 10 have been the highest level of trust between John and 11 Craig. 12 Q. They had some kind of bad blood between them over 13 some previous deal or something? 14 A. No. I think it was all just tied in -- John has his 15 way of doing business and Craig has his. He is a 16 different entity, so. 17 Q. I know John. I haven't met Craig or if I have, I 18 don't remember it. I know John can be a pretty 19 strong personality, and if Craig is equally so, I can 20 understand how you and Misty would be caught in the 21 middle of that. 22 A. I was quite a mediator, I guess, which also has a lot 23 to do with the problem with my position as member 24 manager, that more the trusted go-between. 25 Q. Do you still have any business relationship with	1 A. We had contacted Charlie Barrineau in the summer of, 2 I guess, 2009 that we were contemplating closing the 3 hotel, hotel portion of the business. And he 4 immediately suggested that Lander was in a urgent 5 need of bedding and rooms. I may have made a phone 6 call to -- I made a phone call to someone within 7 Lander who Charlie had given the information to. 8 There was really no response to it, and then, 9 eventually, what I understand Diane Newton, maybe -- 10 at some point Lander figured out we need to do 11 something with this. Really, at that point, John 12 Huffman was the pure point person. Other than 13 initiating and truly signing up or showing up in Doug 14 Bell's office to sign the lease, I actually had no 15 one-on-one correspondence with Lander. Was not part 16 of those discussions. 17 Q. Okay. All right. Did you meet with anybody with the 18 South Carolina Budget and Control Board? 19 A. No. 20 Q. Okay. 21 A. But I understood that those meetings had taken place. 22 Q. Okay. All right. So with regard to the actual terms 23 of the agreement, John would have handled all of 24 that? 25 A. Yes. I believe -- I mean, Leonard was working with
Page 74	Page 76
1 Craig White? 2 A. Just this. 3 Q. Okay. As far as anything else, he bought you out in 4 2008, 2007 or 2008? 5 A. Excuse me? 6 Q. Any other business relationship you had with him he 7 bought you out in 2007? 8 A. Oh, from the other, 1200 Main and Granby, no. I 9 mean, I keep up with him, but -- 10 Q. Okay. 11 A. He's been my attorney for an unrelated matter. 12 Q. Okay. Is he still a member of IOS, LLC? 13 A. I believe so. I don't believe that has changed. 14 Q. All right. As far as -- 15 A. Or Chesterfield, his entity, is. 16 Q. Chesterfield? Anybody else in Chesterfield with him? 17 A. I don't know. 18 Q. What about Bridge, is that just him? 19 A. I don't know. 20 Q. Other than -- 21 A. I think his brother, Van, may have been a member of 22 Bridge Financial. 23 Q. All right. Okay. Tell me how the discussions with 24 Lander started with regard to the lease for student 25 housing.	1 John at that time. 2 Q. Okay. All right. The decision to close the hotel 3 was based on cash flow issues? 4 A. Cash flow -- the recession certainly was at that 5 point beginning to impact our room side much more 6 than our food and beverage side. There's a lot more 7 overhead associated with operating the rooms than for 8 the rest of the property. So it became, you know, we 9 no longer need to operate the hotel portion of this. 10 Q. So if you could close the upstairs for a period of 11 time -- 12 A. Cut the recession right out. There was nothing, no 13 refinancing. If you look at the hotel industry from 14 -- and the recession started in November of 2007. We 15 know that. I especially knew that when I started 16 doing consulting work, looking at past hotel numbers. 17 I mean, it started back in November, is when 18 basically leisure traffic kind of died down. I don't 19 know if it impacted us that much that early, but, 20 certainly, it began to catch up. So the -- like, in 21 a recession, it doesn't stop people from enjoying 22 themselves. It cuts out a lot of travel. 23 Q. And business travel gets curtailed, as well? 24 A. Absolutely. 25 Q. Closing the upstairs portion of the hotel would have

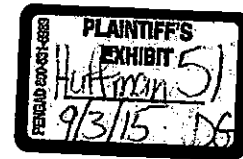
19 (Pages 73 to 76)

Page 77	Page 79
1 triggered the same breach of contract with regard to 2 the Choice Hotels agreement that you had to operate 3 for five years? 4 A. Yes and no. That is something that could have been 5 negotiated with. They had also made a change in 6 their brand. Clarion Collection was a brand that 7 Choice was no longer going to support. So we had a 8 very clear out as far as not utilizing the hotel 9 rooms. 10 Q. Okay. Then how did they get the judgement for -- 11 A. We couldn't afford the attorney to fight a portion of 12 the contract that basically said it's all going to be 13 arbitrated out of district office in Maryland. 14 Q. Got you. 15 A. You understand we had zero resources at our disposal 16 once Lander had left the property. 17 Q. As far as the decision to sign the lease was 18 concerned, was there any contact with Clarion as far 19 as negotiations to -- 20 A. Not at that point, not? 21 Q. All right. So you were not actually present with 22 Diane Newton and John for the majority of their 23 negotiations? 24 A. That's correct. 25 Q. And the only thing you signed would have been the	1 the lease or the agreement that we were signing. 2 That was then the situation that was brought to all 3 lenders. I actually -- I think John handled the 4 Business Carolina meeting. I was present for 5 Cornerstone Capital, Upper Savannah. These were 6 entities that I had reached out to and initiated 7 financing contact for. And we presented forbearance 8 agreements and described the process at hand, as we 9 were led to believe. 10 Q. Okay. What type of involvement did you have with 11 regard to any other issues, either environmental, 12 physical plant, or otherwise with regard to the 13 building and suitability for student housing? 14 A. None. 15 Q. So you negotiated with the junior lienholders a 16 forbearance. John negotiated Business Carolina a 17 forbearance? 18 A. John and I both negotiated with the junior 19 lienholders. 20 Q. Okay. And was Craig involved at all? 21 A. No. I mean, other than being aware that this is what 22 we were doing and why. 23 Q. Okay. With regard to the forbearance agreements, the 24 actual payment of the junior lienholders was 25 administered through Business Carolina; is that
Page 78	Page 80
1 lease with the option? 2 A. Yes. 3 Q. And anything else that required a signature you would 4 have had to have signed, and more than 75 percent of 5 the members of the LLC will have had to agreed? 6 MR. JAMES SMITH: Object to the form of the 7 question. If you can, answer it. 8 A. Sounds right. 9 Q. If there were any other agreements between John or 10 alleged agreements between John and Lander 11 University, there would have had to have been an 12 agreement? 13 A. In writing, yes. 14 Q. And any other type of approval for any type of sale 15 would have to come from a more than 75 percent 16 approval of the members of IOS which -- 17 A. Yes. 18 Q. -- would include you and Craig White and Misty, 19 correct? 20 A. Yes. 21 Q. What type of discussions did you have, if any, with 22 Business Carolina during the time that the lease was 23 actually being negotiated? 24 A. We were, I believe, mandated by Doug's office to get 25 forbearance agreements from all lenders to accompany	1 accurate? 2 A. Yes. 3 Q. And as far as operating capital for anything else, 4 any other obligations that y'all had, was that 5 something that was passed through and then y'all had 6 additional funds to meet any other obligations? Or 7 was it split amongst the primary junior lienholders? 8 A. I'm not sure I understand your question. Were junior 9 lienholders expected to add any money towards? 10 Q. Was there a complete forbearance by the junior 11 lienholders or were you paying them a small portion 12 of whatever their indebtedness was? 13 A. It was a payment plan that was established. 14 Q. Okay. How much did you have left over after all the 15 payments were made for any operating capital? 16 A. I don't recall. I really don't. Business Carolina 17 administered all of the funds. 18 Q. Okay. 19 A. That is part of what a forbearance agreement said. 20 They would probably have that answer. 21 Q. Did they manage the payroll, as well, for the 22 maintenance man? 23 A. I believe so. 24 Q. What was his name again? I can't remember. 25 A. I don't know. After the date of signing this lease I

20 (Pages 77 to 80)

Page 101	Page 103
1 A. Furnishings, I mean, I'm not aware of any 2 furnishings. 3 Q. Okay. What, if anything, are you aware of that he 4 had authority to sell? Or give away? 5 A. It seems like there was, I mean, some particular, 6 maybe, like bed frames, bedding that was not going to 7 be utilized, but I guess there was also some -- it 8 was actually my understanding that Lander -- that was 9 kind of y'all's bailiwick. Here's what we don't 10 need. We'll throw down in the -- I remember seeing a 11 lot of furniture that was in the ballroom area, I 12 guess. What was that? I guess, I was -- I mean, I 13 wasn't there after the lease. After the 15th I was 14 back at the property. Before -- after, with 15 everything kind of closed at that point, because I 16 remember crossing the bar area with a good bit of 17 furniture in there. 18 Q. And based on your specific knowledge, what happened 19 with the furniture that was there? 20 A. I think -- I mean, it seems that some was sold to 21 staff, folks. Who was administering that, though, 22 I'm not really sure. 23 Q. Were there employees of the hotel that actually 24 purchased some of the -- 25 A. I'm not really -- I don't really know. I mean, it	1 A. I was not directly involved with any conversations 2 with Lander representatives on that. So that was 3 definitely through John Huffman. 4 Q. Okay. All right. Okey dokey. I think that's all 5 I've got. 6 EXAMINATION: 7 BY MR. JAMES SMITH: 8 Q. Just a few questions. Mr. Smith, I'm going to talk 9 to you a little bit about signing the lease. Do you 10 recall that? 11 A. Yes. 12 Q. The lease hasn't been introduced or attached as an 13 exhibit, but you signed a lease agreement with Lander 14 to lease the property as a dorm? 15 A. Yes. 16 Q. And before that it had been a hotel; is that correct? 17 A. Uh-huh. 18 Q. Why would you agree to lease the property as a dorm, 19 Mr. Smith? 20 A. The -- I mean, it was a situation that made sense for 21 both parties. Lander needed space. We were going to 22 be closing down the hotel portion, the rooms portion. 23 Initially, what John was negotiating was strictly the 24 use of just the upstairs, just the room portion, 25 because we had food and beverage operation downstairs
Page 102	Page 104
1 was more of a collection of furniture, because, you 2 know, I guess y'all had to put double beds in certain 3 rooms or configure it different. What exactly was 4 going on with the furniture, I'm not really sure. I 5 know we don't need it; they don't need it. 6 Q. Was there a bill of sale that John signed off on on 7 behalf of IOS with IOS's permission for furniture 8 that was sold to Lander? 9 A. I'm not sure. 10 Q. All right. 11 A. Is there? I mean, is there a bill of sale from IOS? 12 MR. JAMES SMITH: You answer questions. 13 She asks them. 14 A. Okay. 15 Q. I think that's all I've got. Give me one second, 16 though. We may be able to be done. 17 (Off the record 2:11 p.m. - 2:13 p.m.) 18 BY MS. MEREDITH: 19 Q. I think I just have one other question. The 20 reference you made to the Lander Foundation -- 21 A. Yes. 22 Q. -- being involved, is that something that you got 23 from conversations you've had with John Huffman or 24 were you directly involved in any conversations where 25 that was mentioned?	1 that was, again, a vastly different entity. And we 2 had a cost associated. So the -- I mean, I signed a 3 lease essentially for the entire property. It became 4 either all or nothing. However, this is -- they are 5 purchasing this property in the spring of this year, 6 either in February through the State Budget and 7 Control Board or some point. By April at the latest 8 with the foundation as a backup. 9 Q. Would you have signed a lease if there was not a 10 promise or an inducement that they were going to 11 purchase the -- 12 A. No. That would -- 13 MS. MEREDITH: Object to the form question. 14 Q. You can answer. 15 A. It would have made no sense to have signed a lease 16 without the purchase being a part of it, because, I 17 mean, basically -- I mean, we had no way to control 18 our destiny with that. 19 Q. Did you expect Lander to comply with the terms of the 20 lease that they signed? 21 MS. MEREDITH: Object to form of the 22 question. 23 Q. You can definitely answer that. 24 A. Absolutely. I mean -- 25 Q. At any time did you provide any waiver of any of the

26 (Pages 101 to 104)



John Huffman
102 Stonebrook Drive
Blythewood, SC, 29016
803-754-5898

Douglas L. Bell
McDonald Patrick Baggett
Poston & Hemphill, L.L.P.
414 Main Street
Greenwood, SC 29646

11 July, 2011

Mr. Bell,

In August, 2009, I entered into negotiations in your office with Diane Newton, Lander University Vice President, Business and Administration, to purchase the Inn on the Square offered for sale by IOS, LLC, at a list price of \$3,300,000. Ms. Newton agreed that Lander would purchase the Inn for \$2,300,000. You and Ms. Newton then explained that in order to obtain funding from federal monies granted to the state to complete the purchase, a contract would be prepared by September, 2009, to be presented to The State Budget and Control Board in mid December of 2009, for a "first reading," and be presented again in March, 2010, for final board approval, with a closing date in the month of April, 2010. Ms. Newton further proposed that in the interim Lander lease the top two floors of the building containing 48 rooms for \$51,000 a month through the month of April, 2010, to accommodate the influx of students arriving at the end of August, 2009. When I expressed concerns about The State Budget and Control Board not approving the funds to purchase the Inn for student housing, you and Ms. Newton further assured me that if funding was not obtained from the federal funds given to the state, Lander's Foundation would fund the purchase in full. Based on these assurances by you and Ms. Newton, I agreed that you, as Lander's attorney, would deliver a contract to purchase to IOS, LLC in the month of September, 2009, to be executed in April of 2010, with or without state funding. It was also agreed that I would continue to operate the pub and catered events on the first floor.

Ms. Newton and an attorney from The State Budget and Control Board met with me two days later to negotiate the lease agreement, at which time I was informed I would be required to close the Pub, cease all event operations on the first floor of the hotel, and turn over the entire facility to Lander for a \$31,000 a month lease through April, 2010, in order to facilitate the sale of the property. When I pointed out that \$31,000 a month did not meet the minimum mortgage and tax requirements of the property, Ms.

12-0023 IOS 0320

ROA_0226

Newton assured me that if I would agree to the new terms Lander would "Make up the shortfalls from Foundation funds on the back end," in essence, fund the \$20,000 a month shortfall at closing. Based on this assurance, I met with IOS, LLC mortgage holders and entered into forbearance agreements to facilitate the lease and sale of the property to Lander.

Based on the assurances of you, the attorney from The State Budget and Control Board, and Ms. Newton, I then turned over operational control of the Inn on the Square to Ms. Newton and Lander University in mid August after removing some 10 beds at Ms. Newton's request. I point out that at this point the hotel was operating under the franchise of Clarion Boutique Hotels and rated 3 stars with 4 star accommodations, with all equipment fully inspected, up to code, and verified as operational by Ms. Newton and her staff. I also point out that Ms. Newton and Lander took over a month after taking possession of the facility to transfer the utilities (electrical, water, telephone, garbage, sewage, etc.) from IOS, LLC to Lander University.

Upon my visits to the property over the following two weeks, I found the facility in a state of upheaval with furniture moved about and stacked in piles while workers rushed about preparing the facility for the arriving students. Of particular concern to me was a "For Sale" sign in the ballroom where furniture was stored after being removed from the rooms, items being loaded onto trucks, and the fence around the pool torn down with contractors filling in the swimming pool. When I confronted Ms. Newton with these issues, her response was: "What does it matter, we're buying the building and everything in it, right?"

In the middle of September, I emailed Ms. Newton to inquire about the status of the purchase contract and was referred back to you, where you ignored my requests for a status update. My attorney, Leonard Jordan, then contacted you throughout October, November, and December of 2009, and into January, February, and March of 2010 inquiring about the contract to purchase, with no definitive response from you. In April, 2010, you notified IOS, LLC that under the terms of the lease Lander was renewing the lease for an additional year. When I inquired about Lander paying the \$34,000 in accrued property taxes due from their deferred lease payment I received no response from you. When I attempted to contact Ms. Newton's replacement concerning this matter, I was informed you were the sole contact for Lander for the Inn on the Square.

In March, 2011, after repeated request from IOS, LLC, to meet with Lander representatives to discuss the purchase of the property, you informed IOS, LLC, that Lander was terminating the lease in June, 2011. I made arrangements with you to do an initial walk through of the property in May, and for a final inspection and inventory of property with you and Lander representatives on 15 June, 2011, to return the property to IOS, LLC control. When I arrived on 15 June, 2011, I found the power and water turned off, the alarms blaring at full volume, the front and rear door locks removed with the building standing open to the public, and all emergency lighting

12-0023 IOS 0321

burned out, indicating the electrical grid had been shut down for an extended period of time. Upon calling my attorney, who called you, Lander maintenance personnel came by to install new locks on the front and rear doors, but neither you nor any other Lander representatives showed up for the final inspection, inventory, or to formally turn over control of the building to me as the IOS, LLC representative.

This is a preliminary demand by IOS, LLC, and me for compensation from Lander University to bring the building back to a serviceable and operational condition. An initial inspection of the property revealed the following missing items and property deficiencies which hinder our ability to reopen as a hotel:

1. \$23,000 for Security System replacement.
2. \$68,000 for pool replacement.
3. \$60,000 for telephone system replacement / repairs.
4. \$2,500 for kitchen repairs.
5. \$70,000 for HVAC and refrigeration repairs.
6. \$30,000 for bedding replacement@17,000 for bed covers and 13,000 for sheets, blankets, pillows and pillow cases.
7. \$7,000 for 14 missing beds@500 ea.
8. \$7,000 for 14 new mattresses@500 ea.
9. \$12,000 for missing commercial dryer.
10. \$2,000 for 2 missing washing machines@1,000 ea.
11. \$5,000 for missing commercial carpet shampoo machine.
12. \$2,500 general maintenance (ceiling tiles, broken desks / vanities, two commodes, broken tile)
13. \$312 for 48 missing shower curtains@ 6.50 ea.
14. \$5,000 to repair water damage to dinning room ceiling.
15. \$5,000 to replace carpet in pub.
16. \$1,000 to repair plumbing in pub.
17. \$1,400 for 28 missing lamps @ 50 ea.
18. \$900 for 3 missing TV's @300 ea.
19. \$2,000 for 4 missing armors @500 ea.
20. \$1,250 for 5 missing desks @250 ea.
21. \$600 for 3 missing desk chairs @200 ea.
22. \$2,400 for 24 missing end tables@100 ea.
23. \$11,500 for 46 missing Queen Ann chairs@250 ea.
24. \$4,800 for 4 missing sleeper sofas@1,200 ea.
25. \$4,600 for 92 missing pictures@50 ea.
26. \$1,000 for 2 missing cutting boards @500 ea.
27. \$3,500 for missing food mixer.
28. \$5,000 missing dinnerware, bowls, glasses, utensils, etc.

Total: \$339,262

Plus the following labor:

12-0023 IOS 0322

1. \$2,500 for labor to move furniture and fixtures back to correct rooms.
2. \$5,000 for building cleaning and carpet shampoo.
3. \$1,000 for storage / maintenance room clean up.

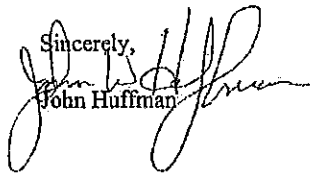
Total: \$8,500

In addition to the above, the following items are awaiting bids for repairs or replacement:

1. Alterations made to the windows which have voided the warranty of the manufacturer.
2. Fire hoses removed from the stairways.
3. Damages to the fire detection system when the building was put into an abrupt grid down situation.
4. Damages to the emergency lighting systems when the building was put into an abrupt grid down situation.
5. Damages from water and electrical malfunctions which may result when the building is powered back up.
6. Elevator repairs.

In the interim, an additional rental of \$51,000 per month is claimed beginning on 16 June, 2011, and ending 30 days after the above monetary funds have been delivered in full, to bring the building back up to a serviceable condition, and \$68,000 for property taxes incurred by IOS, LLC @34,000 per year for the two years of the lease period.

I would appreciate Lander's response within five days.

Sincerely,

John Huffman

12-0023 IOS 0323

ROA_0229

GOVERNMENTAL REAL ESTATE LEASE - STANDARD OFFICE

THIS LEASE AGREEMENT ("Lease") is made as of the Effective Date (which is the date on which the South Carolina State Budget and Control Board, General Services Division, executes this Lease as set forth on the signature page) by and between: IOS, LLC ("Landlord") having an address at 104 East Court Avenue, Greenwood, SC 29646 and Lander University ("Tenant") an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at: 120 Stanley Avenue, Greenwood, SC 29649.

ARTICLE 1 - DEMISE OF PREMISES

1.1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, a parcel of land, located in the City and County of Greenwood, South Carolina, having an address of 104 East Court Avenue, Greenwood, SC 29646 (TMS# 6845-942-879) (the "Land") together with the entire three story building located on the Land commonly known as "In on the Square" consisting of 36,543 rentable square feet (the "Building"), collectively as the "Demised Premises", Landlord agrees to lease the Demise Premises to Tenant together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto. Floor plans of the Building are attached hereto as Schedule "B".

ARTICLE 2 - TERM

2.1. The term of this Lease shall be ten (10) months (the "Initial Term") beginning on August 15, 2009, (the "Commencement Date") and, unless terminated or extended, shall end on June 14, 2010, (the "Termination Date"). Tenant shall have the right to extend the term of this lease for up to one (1) consecutive period of one (1) year (the "Extended Term") upon the same terms and conditions contained herein, including the amount of Basic Rent, by giving written notice to Landlord of Tenant's intent to extend the then existing term at least three (3) months prior to the expiration of the then existing term.

ARTICLE 3 - BASIC RENT

3.1 Tenant shall pay rent (the "Basic Rent") to Landlord during the Initial Term the total aggregate amount of \$310,000.00 payable in equal monthly installments of \$31,000 in advance on or before the tenth (15th) day of each consecutive calendar month of the Initial Term.

3.2 All payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.3 Unless notified otherwise in writing, all payments shall be mailed to Landlord at:

IOS, LLC
c/o McDonald Patrick Poston Hemphill & Roper, LLC.
P.O. Box 1547
Greenwood, SC 29648

ARTICLE 4 - USE

4.1. Tenant shall have the right to use the Demised Premises for: Student Housing/University Related Events and Meetings.

4.2. If during the Initial Term or Extended Term, if any, the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Building or the Demised Premises makes it impossible or uneconomical for Tenant to operate in the Demised Premises in accordance with subparagraph 4.1, then Tenant, at its option, may terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the Demised Premises to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease.

5.2. Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any assignee or sub lessee of Tenant and the performance of such act shall be deemed to be performance by Tenant.

ARTICLE 6 - SERVICES

6.1. The services provided by the Landlord to Tenant as part of basic rent and additional rent, if any, shall include, but are not limited to, elevator service, use of video monitoring equipment, grounds maintenance and landscaping and any other service necessary to maintain and operate all building and site improvements. Services provided by the Landlord shall include all service charges, labor, materials and supplies.

6.2. Services provided by the Landlord shall include all service charges, labor, materials and supplies.

6.3. Tenant will separately meter all utilities servicing the Demised Premises and to make direct payment for such utility services to the suppliers thereof. Tenant will be responsible for their own janitorial service.

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Land and Building in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Demised Premises as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the Demised Premises;

(b) The use of the Demised Premises contemplated by this Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Land, the Building nor the Demised Premises, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) To the best of Landlord's knowledge and belief, there is available to the Building and the Demised Premises adequate public water, gravity fed storm and sanitary sewers, electricity and telephone service for Tenant's intended use of the Demised Premises as described in this Lease;

(e) Landlord will not discontinue any service required to be provided by Landlord pursuant to this Lease and, if any such discontinuance is contemplated, Landlord will provide Tenant with written notice at least thirty (30) days prior thereto together with a statement of the appropriate reduction in Basic Rent as compensation for such discontinuance;

(f) Landlord will keep the Land, the Building and the Demised Premises in good order and repair and make all reasonable improvements to maintain the Land, the Building and the Demised Premises as student housing and a meeting space;

(g) Landlord will keep the Building and the Demised Premises protected against flood, storm, water leakage through roofs and windows and against other hazards of nature and will repair or protect same from such hazards within a reasonable time after Landlord has notice of damage or the need for repair; and

(h) Landlord will provide peaceful and quiet enjoyment of the Demised Premises to Tenant and will not allow such peaceful and quiet enjoyment to be disrupted or interfered with by any other tenant in the Building, by Landlord, by anyone claiming under Landlord or by any other person, party or entity.

7.2. Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1.(d).

ARTICLE 8 - TENANT'S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Basic Rent when due provided a written invoice is submitted in advance to the Tenant by the Landlord. Should any Basic Rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the Demised Premises in a clean and good condition and return the Demised Premises in a clean and good condition and return the Demised Premises to Landlord at the termination of this Lease in accordance with Article 17 hereof. Tenant shall not be obligated to make any repairs arising out of or in any way caused by, 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Demised Premises;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Demised Premises; and

(e) Allow Landlord reasonable access to the Demised Premises for inspections.

ARTICLE 9 - ARCHITECTURAL BARRIERS

9.1. Landlord covenants and agrees that the Land, Building and Demised Premises, being open to the public, shall comply with any and all applicable State law, rules and regulations with respect to architectural barriers or design that would prohibit free and full access to and use of the Land, Building, Demised Premises or any part thereof by the aged, disabled or physically handicapped. In the event the Land, Building or Demised Premises do not so comply as of the Commencement Date of this Lease, Landlord shall, at Landlord's sole cost and expense and within ninety (90) days following the Commencement Date, alter, repair, renovate or otherwise provide at the Land, Building and Demised Premises all reasonable access and use thereof for the aged, disabled or physically handicapped as required by Law.

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1 Landlord shall make no renovations to the Demised Premises prior to the commencement of this Lease.

10.2. Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Demised Premises ("Improvements") at its sole cost and expense. Each such Improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Demised Premises and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Demised Premises to its condition prior to such installation, reasonable wear and tear and damage by fire or other casualty excepted.

10.3. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Demised Premises by Tenant shall not become the property of Landlord or a part of the realty, no matter how affixed to the Demised Premises and may be removed by Tenant at any time and from time to time during the term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there be any damage to or destruction of the Building, the Demised Premises or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Building or the Demised Premises or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Landlord will promptly commence and complete Restoration of the Building and the Demised Premises.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Landlord advises Tenant that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Basic Rent and any other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Building or the Demised Premises or upon a Taking thereof which does not result in termination pursuant to subparagraph 11.3 of this Lease, Basic Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Demised Premises as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - INSURANCE

12.1. Landlord shall at all times during the Initial Term and Extended Term, if any, of this Lease maintain, with insurers authorized to do business in the State of South Carolina, fire insurance with extended coverage for the Building of which the Demised Premises is a part in an amount not less than the actual replacement cost, including the cost of debris removal.

ARTICLE 13 - TENANT CANCELLATION PRIVILEGE

13.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the demised premises upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding are not provided by the General Assembly to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Basic Rent, Additional Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the State Budget and Control Board; or

(b) If the Tenant is dissolved and no longer performs the functions and purposes ascribed to it; or

(c) If at any time during the Initial Term or the Extended Term, if any, the square footage in the Demised Premises is, in the sole opinion of the State Budget and Control Board, Division of General Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(d) If Landlord shall have breached any covenant, condition, representation or warranty made by Landlord in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by Tenant to Landlord of such breach and request to cure or correct.

13.2. In addition to the cancellation privileges set forth in subparagraph 14.1, Tenant shall also have the right to cancel this Lease or any portion of the Demised Premises at any time after the first six (6) months of the Term by giving 120 days written notice to Landlord of Tenant's intention to vacate all or a portion of the Demised Premises to relocate to a building owned or otherwise controlled by the State of South Carolina.

ARTICLE 14 - EXEMPTIONS

14.1. Landlord and Tenant agree that Tenant shall be specifically exempt from the payment, furnishing or providing to Landlord of any of the following:

(a) Security deposits for any rents or other charges to be paid by Tenant pursuant to this Lease or for any service or item supplied to Tenant by Landlord;

(b) Liquidated or punitive damages for any cause or reason;

(c) Landlord's attorney fees, court costs or costs of collection in connection with any action or inaction by Tenant under this Lease;

(d) Any form of insurance coverage for Landlord or any person or entity other than Tenant or for any real or personal property of any party other than Tenant including, but not limited to, fire, comprehensive general public liability or contractual liability.

(e) Any indemnification, hold harmless, release or waiver agreement by Tenant to Landlord or any other person, party or entity; and

(f) Payment of any late charges or penalties for failure by Tenant to make payment of Basic Rent or any other charges payable to Landlord pursuant to this Lease.

ARTICLE 15 - SUBORDINATION AND NON-DISTURBANCE

15.1. Any mortgage which may now or hereafter affect the Land, the Building, the Demised Premises, or any part thereof, and any renewals, modifications, consolidations, replacements or extensions thereof shall provide that so long as there shall be no continuing event of default by Tenant hereunder, the leasehold estate of Tenant created hereby and Tenant's peaceful and quiet possession of the Demised Premises shall be undisturbed by any foreclosure of such mortgage. In the event that any such mortgage affects the Land, the Building or the Demised Premises as of the Commencement Date, Landlord shall furnish Tenant with an executed non-disturbance agreement from any such mortgagee.

ARTICLE 16 - MINOR REPAIRS

16.1. If at any time during the Initial Term or Extended Term, if any, Tenant shall find in the Demised Premises items in need of repair or replacement, including, but not limited to, torn or damaged carpet, improper or inadequate lighting, faulty workmanship in construction, inoperative door locks or other similar deficiencies which affect Tenant's use and enjoyment of the Demised Premises, Tenant shall give written notice thereof to Landlord and Landlord shall, at its sole cost and expense, repair, replace or otherwise cure the deficiencies described by Tenant within thirty (30) days of the date of Tenant's notice thereof. In the event Landlord shall fail or refuse to repair, replace or cure the deficiency within the time aforesaid and the cost of such repair, replacement or cure is less than \$5,000, Tenant shall have the right, but not the obligation, to undertake such repair, replacement or cure and, in such event, shall have the right to deduct the cost thereof from the next due monthly installment of Basic Rent. In the event Tenant does not undertake such repair, replacement or cure, irrespective of the cost

thereof, and Landlord shall not have repaired, replaced or cured such deficiency within sixty (60) days of the date of Tenant's notice to Landlord of such deficiency, Tenant may, at its option, terminate this Lease, whereupon the Basic Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 17 - SURRENDER

17.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in good order and condition, except for ordinary wear and tear, permitted additions, improvements or alterations made by Tenant and the results of any damage, destruction or taking. Tenant shall remove from the Demised Premises on or prior to such expiration or earlier termination all of its property situated therein.

ARTICLE 18 - NOTICES

18.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when delivered or when mailed by first class mail, postage prepaid, addressed to Landlord or Tenant at the addresses appearing at the heading of this Lease.

ARTICLE 19 - AMENDMENTS

19.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 20 - HOLDOVER

20.1. In the event Tenant shall remain in the Demised Premises after the Term has expired and Tenant shall have failed to give notice to Landlord of Tenant's intent to extend this Lease in accordance with subparagraph 2.1 hereof, Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Basic Rent in effect for the Term until either Landlord or Tenant, by sixty (60) days written notice to the other, shall terminate this Lease, whereupon the Basic Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 21 - OPTION TO PURCHASE

21.1. Tenant has the exclusive option to purchase the Land and Building on the following terms:

(a) This option may be exercised at anytime during the Initial Term or Extended Term by giving written notice to Landlord. Tenant will examine title, easements, restrictions, environmental hazards and any other concerns. The closing shall occur within nine (9) months after notice is given to Landlord on a date selected by Tenant. Tenant may cancel its exercise of the option to purchase at anytime prior to the day of closing.

(b) The purchase price shall be agreed upon by Landlord and Tenant. All rent payments made by Tenant to Landlord for the lease of the Demised Premises shall be applied to the agreed upon purchase price.

(c) The purchase of the Land and Building is subject to any then required approvals by the South Carolina Joint Bond Review Committee, the South Carolina Budget and Control Board and General Services Division.

ARTICLE 22 - MISCELLANEOUS

22.1. If any provision of the Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

22.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

22.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

22.4. The Article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

22.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

22.6. In the event Landlord is involved in any bankruptcy or insolvency proceedings and Landlord's trustee fails to perform or rejects any of the Landlord's obligations under this Lease, Tenant shall have the option to terminate this Lease.

22.7. Schedule "A" and Schedule "B" is incorporated herein and made a part hereof.

22.8. This Lease is subject to and conditioned upon the approval of General Services Division, Real Property Services, and shall be of no force or effect until the consent of such office shall be endorsed hereon.

IN WITNESS WHEREOF, the parties have executed this lease as of the day and year indicated under their signature.

WITNESS:

Kristin U. Shuman

LANDLORD:
IOS, LLC

[Signature]
(signature for landlord)

Lane Smith, Manager
(printed name and title of signatory)

8-12-09
Date

WITNESS:

Kristin U. Shuman

TENANT:
Lander University

[Signature]
(signature for tenant)

Diagne Newton
(printed name and title of signatory)

8-12-09
Date

This Lease is approved in accordance with Regulation 19-447.1000 by the State Budget and Control Board, General Services Division, Real Property Services, this 17th day of August, 2009.

[Signature]
Lisa H. Catalano
Program Manager/Attorney

Schedule "A"

In addition to the covenants made by Landlord and Tenant in the Lease hereinabove, Landlord and Tenant further agree as follows:

1. Landlord shall leave all kitchen fixtures, equipment, flatware, stemware, plates and accessories as well as the furniture, fixtures and equipment on the first floor that are in place at the commencement of this lease for Tenant's use; except for office supplies and equipment currently used by the Landlord at the commencement of this lease.
2. Tenant has the option to use any furniture currently in place on the second and third floors of the Building. Tenant shall notify Landlord during a walk through prior to the commencement of this lease which furniture it wishes to use. Landlord is responsible for removing and storing all other furniture that Tenant determines not to use.
3. Landlord shall close prior to August 15, 2009 for the duration of Tenant's occupancy of the Building the restaurant/lounge/bar located on the first floor of the Building.
5. Events currently scheduled through August 29, 2009 will remain the responsibility of Landlord.
6. After August 29, 2009, all events will be managed by Tenant.

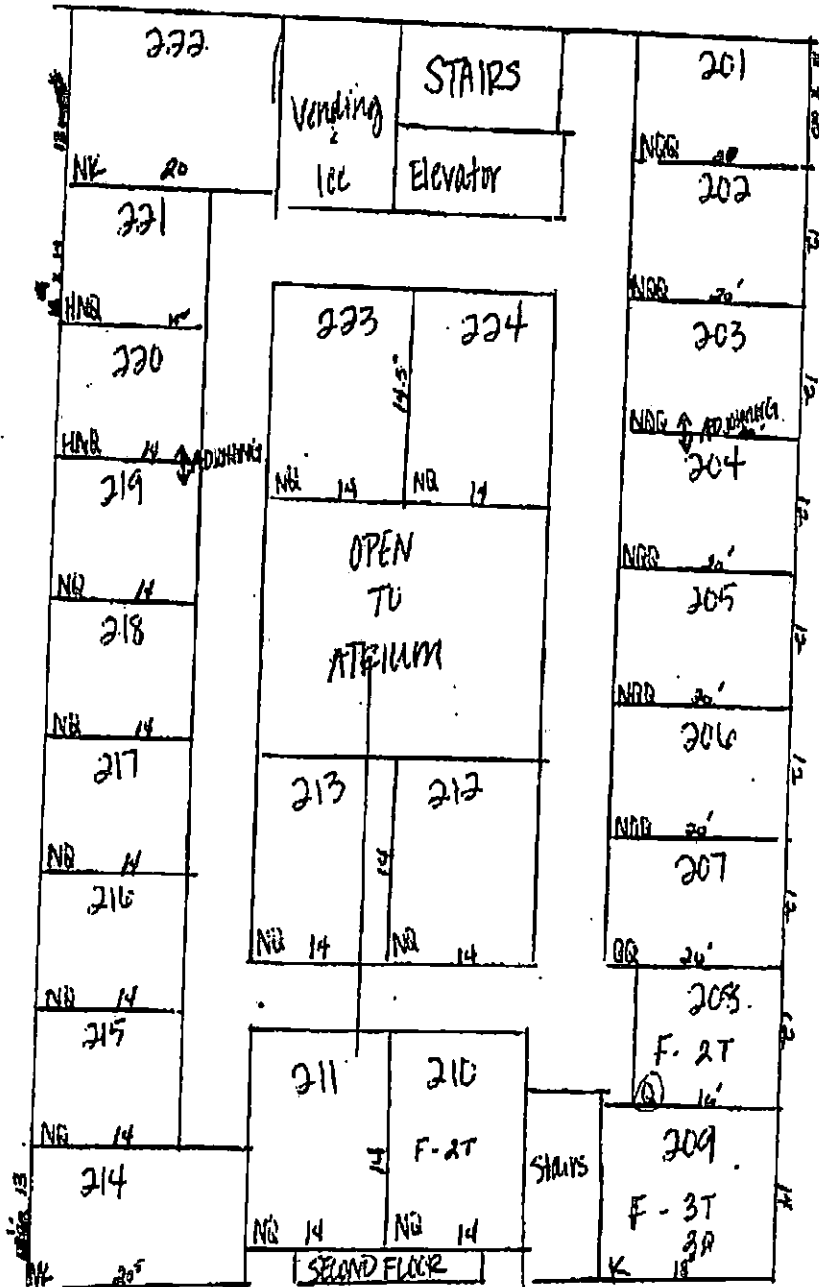


[illegible]

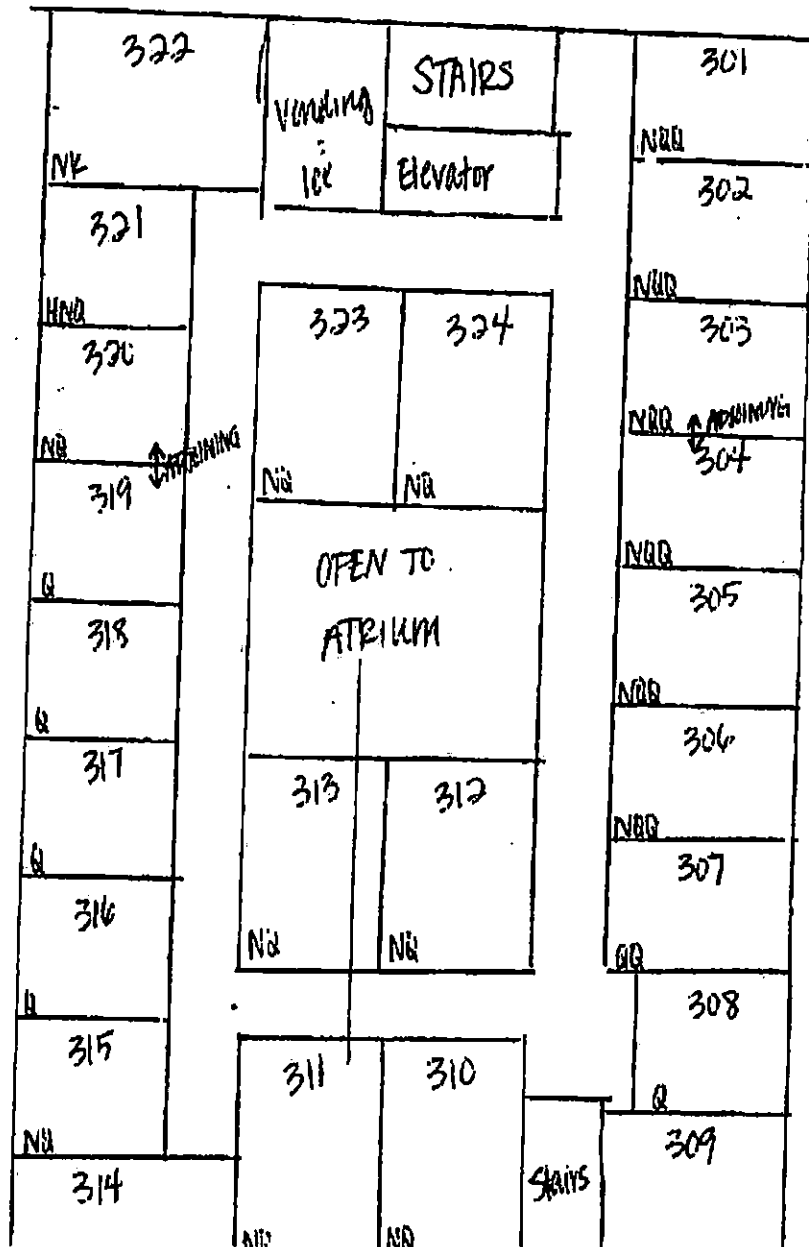
② 2

ROA_0238

Second Floor



Third Floor



di

EXHIBIT 5

Fwd: escrow agreement and purchase

Page 1 of 1

From: MRHuff68@aol.com
To: Jhuffman46@aol.com
Subject: Fwd: escrow agreement and purchase
Date: Wed, Sep 2, 2009 5:49 pm

From: dnewton@lander.edu
To: MRHuff68@aol.com
Sent: 9/2/2009 5:34:18 P.M. Eastern Daylight Time
Subj: escrow agreement and purchase

You should be hearing from Doug. He had been trying to reach Leonard and was trying again. I gave him your number to call, as well.

We have some work to do on our part to come up with an offer amount on the property. We are actively working on it.

Talk to you soon.

di

Diane Newton
Vice President for Business and Administration
Lander University
320 Stanley Ave.
Greenwood, SC 29649
864-388-8305
864-388-8056 fax
dnewton@lander.edu



<http://webmail.aol.com/44148/aol/en-us/mail/PrintMessage.aspx>

9/2/2009

12-0023 IOS 0349

ROA_0242

EXHIBIT 6

RE: Inn on the Square

Page 1 of 2

From: Diane Newton <dnewton@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>
Subject: RE: Inn on the Square
Date: Tue, Nov 17, 2009 5:42 pm

John,

I think we are saying the same thing. The March timeframe is still what we are hoping happens. We had hoped the Budget and Control Board would have a meeting prior to December, that just didn't happen; totally out of our control.

Our schedule is still

December 13th – Phase I approval from Budget and Control Board to

- Perform a building conditions assessment
- Get an appraisal
- Perform a Phase I environmental assessment

Shortly after that approval we will begin the assessments and draw up a purchase contract. The contract will contain language stating the sale will be pending Budget and Control Board approval. We hope that meeting will be in March, but I can't say for certain until they put out the schedule.

I hope this helps.

di

From: jhuffman46@aol.com [mailto:jhuffman46@aol.com]
Sent: Tuesday, November 17, 2009 5:25 PM
To: Diane Newton
Subject: Re: Inn on the Square

Diane,

I did not get that understanding from you when we discussed this deal in August. It was my understanding a contract would be drawn up before the end of November to submit to your board for first round approval in December, and that the final approval would go before your board in March.

Unfortunately, this new timeframe leaves me no option other than to proceed with a backup contract. I have a group out of Charleston and another out of Columbia that are interested in the property and will need to schedule them both in for inspections in the next few weeks prior to negotiating a contingency contract with them should your efforts to purchase the property prove unsuccessful.

I will get back with you on the dates.

Thanks,

John

-----Original Message-----
From: Diane Newton <dnewton@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>



<http://webmail.aol.com/28878/aol-1/en-us/mail/PrintMessage.aspx>

11/17/2009

12-0023 IOS 0353

ROA_0244

RE: Inn on the Square

Page 2 of 2

Sent: Tue, Nov 17, 2009 1:39 pm
Subject: RE: Inn on the Square

That's our plan.

From: jhuffman46@aol.com [<mailto:jhuffman46@aol.com>]
Sent: Tuesday, November 17, 2009 12:25 PM
To: Diane Newton
Subject: Re: Inn on the Square

Diane,

I take it that you expect to submit a contract sometime after the thirteenth of December, which must be approved in a second meeting sometime in March. Is this correct?

Thanks,

John

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

From: Diane Newton <dnewton@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>
Sent: Tue, Nov 17, 2009 10:18 am
Subject: RE: Inn on the Square

Hey John,

Daddy is having surgery again today. Hopefully this will get him all fixed up.

I can understand about your nervous investors, but as I said earlier, we still have to wait until we receive the phase I Budget and Control Board approval on December 13th before we can submit a proposal. It will require language from the state stating the contract is subject to Phase II approval from B&CB to purchase the property. That won't happen until the next meeting which has not been set. It has usually been in March, but things are very different down at Cola these days.

I hope this helps.

di

From: jhuffman46@aol.com [<mailto:jhuffman46@aol.com>]
Sent: Monday, November 16, 2009 4:10 PM
To: Diane Newton
Subject: Inn on the Square

Hi Diane,

I hope this finds you well and all is well with your father.

As you can imagine my investors are getting nervous because November is slipping away and they still have not seen a contract from Lander. Would you please give me an update on where things stand at the moment and when we might receive something from you in writing?

Thanks,

John

<http://webmail.aol.com/28878/aol-1/en-us/mail/PrintMessage.aspx>

11/17/2009

12-0023 IOS 0352

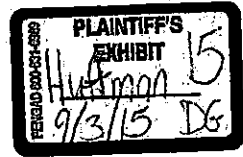
ROA_0245

EXHIBIT 7

Fwd: Inn

Page 1 of 2

From: jhuffman46@aol.com
To: tjordan@bqsllaw.com
Subject: Fwd: Inn
Date: Wed, Dec 16, 2009 2:25 pm



Leonard,

this is the latest input from Lander. Diane has accepted a position with the University of Arkansas and will leaving at the end of this month. I have already forwarded this to Todd Lucas at Business Carolina.

John

-----Original Message-----
From: jhuffman46@aol.com
To: tlucas@businesscarolina.nci
Sent: Wed, Dec 16, 2009 2:22 pm
Subject: Fwd: Inn

Todd,

This is the latest update on Lander's purchase of the Inn. It appears we have passed the first hurdle with the state and are moving forward.

If you have any questions please advise.

Thanks,

John

-----Original Message-----
From: jhuffman46@aol.com
To: dnewton@lander.edu
Sent: Wed, Dec 16, 2009 2:19 pm
Subject: Re: Inn

Diane,

Thank you for the update. If I can be of an assistance please advise.

John

-----Original Message-----
From: Diane Newton <dnewton@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>
Cc: Randy Bouknight <rbouknight@lander.edu>; Tom Covar <tcovar@lander.edu>; Daniel Ball <dball@lander.edu>
Sent: Wed, Dec 16, 2009 2:11 pm
Subject: RE: Inn

John,

Yesterday the Budget and Control Board approved Phase I of the purchase of LOS. We are scheduled to meet with code officials to discuss changes that will be required of us in order to occupy the building. The purchase will initiate an zoning change and as a state building we will be required to meet the codes associated with the new occupancy. In addition, we are pursuing an appraisal and environmental assessment.

<http://webmail.aol.com/30044-133/aol-1/en-us/mail/PrintMessage.aspx>

12/16/2009

12-0023 IOS 0354

ROA_0247

Fwd: Inn

Page 2 of 2

Once we know what code changes will be required, we'll be in a better position to settle on a price.

Tom Covar, Director of Financial Services will be your new contact in my office. Of course Randy Bouknight will still be on this project. Feel free to contact either of them.

I wish there was an "easy" button for making purchases through our current system, but there just isn't one. We appreciate your patience with us as we jump through hoops.

All the best,
dl

From: jhuffman46@aol.com [<mailto:jhuffman46@aol.com>]
Sent: Wednesday, December 16, 2009 8:56 AM
To: Diane Newton
Subject: Inn

Diane,

can you please advise me as to where we stand on the purchase of the Inn? If you are no longer the point of contact for Lander, please advise me as to who is and give me contact information.

I am under a lot of pressure on this deal and would appreciate your assistance.

John

TOVAH@lander.EDU
864-388-8305

<http://webmail.aol.com/30044-133/aol-1/en-us/mail/PrintMessage.aspx>

12/16/2009

12-0023 IOS 0355

ROA_0248

EXHIBIT 8

Re: Inn on the Square

Page 1 of 2

From: jhuffman46@aol.com
To: tcovar@lander.edu
Subject: Re: Inn on the Square
Date: Tue, Jan 12, 2010 4:31 pm

Tom,

Thank you for the update.

I am concerned that no contract of sale presently exists for Lander to purchase the Inn.

Initially, Diane and I agreed we would enter into a lease / purchase agreement due to the necessity of getting the students into the hotel in August, and that a contract of sale for 2.3M would be forthcoming in the September timeframe, with an appraisal, environmental, and facilities inspection conducted in October / November, all to be submitted to the state in December for initial approval, with the final approval occurring in March, and the closing to occur in April.

Additionally, Diane informed me Lander had foundation funds available if the state did not approve the purchase for whatever reason.

None of this has happened as we agreed.

I would appreciate your position on where we stand at the moment, and an estimated timeframe for us to complete this transaction.

Thank you for your assistance.

John Huffman

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

From: Tom Covar <tcovar@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>
Cc: Jeff Beaver <jbeaver@lander.edu>
Sent: Tue, Jan 12, 2010 3:10 pm
Subject: RE: Inn on the Square

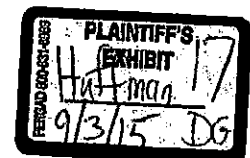
John,

I will be your Lander finance interim point of contact until Diane's replacement is named.

On December 15th the Budget and Control Board gave us approval to proceed with a Building Conditions Assessment, Building Appraisal and Environmental Impact Study. The State will only allow us choose one firm from their pre-approved list of businesses qualified to perform a Building Conditions Assessment. We have chosen Jenkins Engineering from Greenville. They are in the processing of sending us their paperwork and job cost estimate. Once we have received their information they can begin assessment of the Building. We plan to use Davis and Floyd for the Environmental Assessment. We have yet to contract an appraiser.

Thanks,
Tom Covar

From: jhuffman46@aol.com [mailto:jhuffman46@aol.com]
Sent: Monday, January 11, 2010 12:41 PM
To: Tom Covar
Subject: Inn on the Square



<http://webmail.aol.com/30361-111/aol-1/en-us/mail/PrintMessage.aspx>

1/12/2010

ROA_0250

Re: Inn on the Square

Page 2 of 2

Tom,

it is my understanding from Diane Newton that you are the new point of contact for the leasing and purchase of the Inn on the Square by Lander University. Please advise as to when you and I may meet on this subject in order to get an update on where we stand on the contract. It is my understanding that Lander has contracted for an appraisal and environmental study. Could you also please update me on the status of these initiatives, and the firms that are handling them.

Thank you,

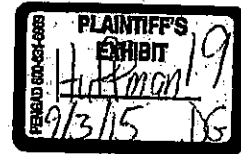
John W. Huffman

EXHIBIT 9

FW: IOS

Page 1 of 1

From: Leonard R. Jordan Jr. <LJordan@BQSLaw.com>
To: jhuffman48@aol.com
Subject: FW: IOS
Date: Mon, Feb 22, 2010 9:14 am



 Leonard R. Jordan, Jr.
Berry Quackenbush & Stuart, P.A.
1122 Lady St., 5th Floor (29201)
P.O. Box 394
Columbia, SC 29202
Telephone 803-779-2650
Direct Dial 803-255-0650
Facsimile 803 255-0179
E-mail ljordan@bqslaw.com
www.bqslaw.com

From: Doug Bell [<mailto:dbell@mcdonaldpatrick.com>]
Sent: Monday, January 25, 2010 10:29 AM
To: Leonard R. Jordan Jr.
Subject: IOS

Leonard,

I appreciate you taking the time to discuss the status of the lease and prospective purchase of the Inn On The Square building. Lander elected to renew the Lease in accordance with its renewal option provisions. We will need a formal reply from your client and its primary lender as to the lease renewal on or before February 15, 2010, in order that Lander will have sufficient time to make housing arrangements for the 2010-2011 school year. I am available to discuss at your convenience.

Thank you.
Douglas L. Bell, Esquire
McDonald Patrick Law Firm
P.O. Box 1547
414 Main Street (29646)
Greenwood, SC 29648
(864) 229-2511
(864) 229-5327 (fax)
dbell@mcdonaldpatrick.com

***** CONFIDENTIALITY NOTE *****

This message may contain information that is confidential or privileged under an attorney-client relationship. It is intended only for use of the individual or entity to which it is addressed, and any other dissemination, distribution, or copying of this communication is strictly prohibited and may be illegal under federal or state law. If you have received this communication in error, please notify us immediately by replying to this email and by deleting the original message and any copies. Thank you.

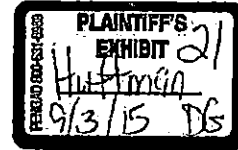
<<<<Berry, Quackenbush & Stuart P.A.>>>>

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code Section 6662(d) or (ii) promoting, marketing or recommending to another party any transaction or matter that is contained in this document.

<http://webmail.aol.com/30746-111/aol-1/en-us/mail/PrintMessage.aspx>

2/22/2010

ROA_0253



Catalanotto, Lisa

From: Tom Covar [tcovar@lander.edu]
Sent: Wednesday, March 03, 2010 1:41 PM
To: Catalanotto, Lisa
Subject: RE: Inn on the Square Lease Option Letter

Yes, BCB gave approval for Phase I studies (Environmental Impact, Building Assessment and Appraisal) in December. We are scheduled to receive those documents this week. Pending detrimental study data, we wish to proceed with the June 2011 purchase.

Thanks Tom

From: Catalanotto, Lisa [mailto:lcatalanotto@gs.sc.gov]
Sent: Wednesday, March 03, 2010 12:53 PM
To: Tom Covar
Subject: RE: Inn on the Square Lease Option Letter

Thanks, Tom. Is Lander's plan still to purchase it by June 2011?

Lisa H. Catalanotto
Program Manager/Attorney
South Carolina Budget and Control Board
Division of General Services
Real Property Services
1201 Main Street, Suite 420
Columbia, SC 29201
Phone: (803) 737-0008
Fax: (803) 737-0592
e-mail: lcatalanotto@gs.sc.gov

From: Tom Covar [mailto:tcovar@lander.edu]
Sent: Wednesday, March 03, 2010 11:18 AM
To: Daniel Ball; Randy Bouknight; Adam Taylor
Cc: Eleanor Teal; Catalanotto, Lisa
Subject: Inn on the Square Lease Option Letter

FYI

Attached is a letter drafted by Doug Bell that I signed to notify Mr. Huffman and "friends" that we are optioning the IOS lease.

Tom

3/3/2010

ROA_0255

EXHIBIT 11

Inn on the Square

Page 1 of 1

From: Tom Covar <tcovar@lander.edu>

To: jhuffman46 <jhuffman46@aol.com>; lsmith <lsmith@waterstonehospitality.com>

Cc: Doug Bell <dbell@mcdonaldpatrick.com>; Daniel Ball <dball@lander.edu>; Randy Bouknight <rbouknight@lander.edu>

Subject: Inn on the Square

Date: Fri, Apr 23, 2010 12:49 pm



John,

I have spoken with President Ball regarding our meeting on Wednesday, and he is quite interested in continuing our relationship. Your proposal of entering into a 5 year lease with an additional 5 year option, while continuing with our option to purchase Inn on the Square is attractive. Of course the purchase option would be conditioned upon the outcome of the South Carolina State Engineer's recommendations and approval by the five member Budget and Control Board.

It is my understanding that we (Lander) will make the necessary arrangements to be placed on the December 2010, Joint Bond Review Committee (JBRC) and Budget and Control Board agendas for consideration of our multi-year leasing arrangement. Prior to this meeting, we shall renegotiate our monthly lease payment in consideration of the multi-year option and ensure language such that Lander University will provide maintenance of the property. Should the JBRC and Budget and Control Board vote favorably on our lease request, then you (the landlord) will address the life safety issues we discussed on Wednesday (fire alarm, room sprinkling and wiring) pursuant to requirements and standards set by both Greenwood County building officials and the South Carolina State Engineer's office (or the more stringent, as the case may be).

My campus engineer has indicated that he will speak with Lawrence Ouzts (Greenwood Building Official) and express Lander's interest in extending a leasing arrangement and "get a feel" for the position the City might take with respect to their occupancy requirements as a dormitory. I am confident that you will want to visit with Mr. Ouzts regarding the City's occupancy requirements for your own interest and benefit.

Thanks

Tom Covar, Interim Vice President for Business and Administration
Lander University
320 Stanley Avenue
Greenwood, South Carolina 29649
864.388.8305

MCDONALD PATRICK POSTON HEMPHILL & ROPER, LLC
ATTORNEYS AND COUNSELORS AT LAW
414 MAIN STREET
GREENWOOD, S. C. 29646

WILLIAM B. PATRICK, JR.,
KENNETH W. POSTON
ROY R. HEMPHILL
W. LES ROPER, II
STEVEN M. PRUITT
DOUGLAS L. BELL

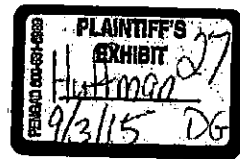
NANCY T. HOBBS*
HANNAH K. METTS*

*Also admitted in NC

February 24, 2011

OF COUNSEL
JAMES E. McDONALD
MAILING ADDRESS
P. O. BOX 1547
GREENWOOD, S. C. 29648

TELEPHONE
(864) 229-2511
FAX
(864) 229-5327
E-MAIL
dbell@mcdonaldpatrick.com



Leonard Jordan, Esquire
Berry Quackenbush & Stuart, PA
P.O. Box 394
Columbia, SC 29202

Re: IOS, LLC Lease with Lander University

Dear Leonard:

It is Lander University's understanding that the City of Greenwood will not approve a new lease between IOS, LLC and Lander University for the Inn On The Square property without the fire safety renovations which were outlined by the City Fire Marshall. Lander University and IOS, LLC have additionally not been able to agree upon terms for a new lease. As such, please accept this notice on behalf of IOS, LLC, that Lander University intends to terminate its tenancy at the Inn property and vacate the premises in accordance with the expiration of the current lease on June 15, 2011. It is unfortunate that the parties were not able to agree upon new lease terms. Despite your client's representations, Lander University was quite clear several months ago in explaining the per bed costs of this facility in relation to other student housing and the rental costs that Lander could absorb to operate the facility. This position will not change. Although unfortunate, Lander University cannot meet the income expectations based on the debt service of IOS, LLC, and that position will not change.

We hope that IOS, LLC, has a successful venture at the Inn property and we look forward to working with you to finalize matters necessary with regard to lease termination and the delivery of possession of the Inn facility.

Sincerely,

MCDONALD PATRICK POSTON HEMPHILL & ROPER, LLC


Douglas L. Bell

DLB/tbi

FEB 24 2011

12-0023 IOS 0297

ROA_0259

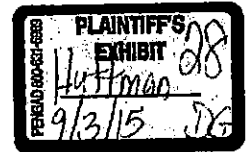
BERRY, QUACKENBUSH & STUART, P.A.

A PROFESSIONAL ASSOCIATION
Attorneys and Counselors at Law

1122 LADY STREET, 5th FLOOR (29201)
POST OFFICE BOX 394
COLUMBIA, SOUTH CAROLINA 29202-0394

LEONARD JORDAN, JR.
Direct Dial (803) 755-0650
E-mail ljordan@bqslaw.com

Telephone (803) 779-2650
Facsimile (803) 799-3954
www.bqslaw.com



March 7, 2011

Douglas A. Bell, Esquire
Attorney at Law
P.O. Box 1547
Greenwood, South Carolina 29648

RE: Lander University (Tenant) and IOS, LLC (Landlord)
104 East Court Avenue, Greenwood, SC

Dear Doug:

Thank you for the notice regarding Lander University's decision to vacate the leased premises upon the expiration of the lease on June 15, 2011 (actually June 14, 2011).

At some point between the end of the current semester and June 14, 2011, John Huffman will want to conduct a walk-through with Lander to inspect the premises for damages in anticipation of to the Landlord's retaking of possession.

IOS, LLC and Lander will have to address, among other things, the personal property removed from the premises by Lander, including but not limited to furniture, televisions, framed pictures and kitchen equipment and accessories, and the alterations to the improvements on the premises made by Lander as this property was released by IOS, LLC to Lander and alterations by Lander were approved by IOS, LLC in the mutual anticipation that Lander would purchase the building. IOS, LLC will expect all alterations made by Lander (which are acceptable to IOS, LLC) to remain upon its vacating the premises, and it will expect the personal property removed by Lander to be returned or replaced and the alterations (not acceptable to IOS, LLC) be reversed and the premises be returned to its pre-lease condition.¹ In that regard, John Huffman also requests that he be allowed a walk-through in the next week or so to identify and evaluate all alterations. He intends to make a preliminary list of the alterations he wants reversed and a list of personal property and fixtures that will have to be returned

¹This was mentioned in my email to you dated March 2, 2010.

12-0023 IOS-0300

ROA_0261

Douglas A. Bell, Esquire
March 7, 2011
Page Two

or replaced by Lander. This list will be subject to being revised upon the final walk-through in May or June or thereafter.

Doug, I am disappointed that Lander has decided not to follow through with its announced plan to purchase the building. As you know, the lease was always considered to be a temporary arrangement to address an emergency short-fall in Lander's student housing requirements. The plan from the start was for Lander to purchase the building; and since the parties had reached tentative agreement regarding the purchase, Lander was allowed to utilize the property in all respects as though it were the owner rather than as a tenant. Now that Lander has reneged on this agreement to purchase, it will be expected to pay for its actions in preparing to purchase the property and/or dealing with the property as an owner.

I intentionally did not make a demand herein with regard to Lander's or its Foundation's obligation to consummate a purchase of the property. Please do not take from this lack of a demand that we are not willing to pursue a claim in that regard. We will do that reluctantly if it appears to us that Lander is unwilling to resolve to our satisfaction all other issues.

I'm sure you will be hearing from John Huffman to request Lander's cooperation and assistance in a walk-through in the next week or so.

With kindest regards, I am

Sincerely yours,

Leonard R. Jordan, Jr.

LRJjr/sa
cc: Mr. John W. Huffman

U:\Stephen\Huffman-File\IOS, LLC 562E.0045\Bell for 1.07.11.wpd

12-0023 IOS 0301

ROA_0262

Re: Inn

Page 1 of 2

From: jhuffman46 <jhuffman46@aol.com>
To: dbell <dbell@mcdonaldpatrick.com>; ljordan <ljordan@bqslaw.com>; JCarter <JCarter@businesscarolina.net>;
lucas <lucas@businesscarolina.net>
Subject: Re: Inn
Date: Wed, Jun 15, 2011 6:21 pm

Doug,

I arrived at the Inn this morning shortly before 10 a.m. for a final joint inventory and equipment inspection with Lander's personnel, as the lease calls for and we discussed on my visit last week, in the final task of Lander officially turning over control of the building. I also had heat, air, refrigeration, elevator, kitchen, pool, telephone, and roofing inspectors scheduled to visit before transferring the utilities out of Lander's name in an orderly fashion this afternoon.

Upon my arrival, I found the power and water turned off, the building abandoned and standing open to the public, the battery-powered emergency alarm system blaring, and all emergency battery lights drained dry. I was informed Lander shut the utilities off on Tuesday. No one from Lander showed up to do a walk through and formally release the building. Lander maintenance personnel did show up after Leonard Jordan called you to replace the locks on the front and back doors that they had removed to allow me to secure the building.

Without power, I was forced to cancel all inspections.

Frankly, I do not understand Lander's rationale. The building being in a grid down, unprotected situation for two days while under Lander's control is very disturbing. Griding the building back up is a time consuming operation to ensure appliances and systems are not damaged in the process, and draining the pipes and then repressuring the system invariably blows joints and causes leakages, all of which I considered a Lander responsibility. As for Lander's personnel doing their inspection and assuring you that everything was fine, I do not consider that a joint inventory and acceptance of the facility and equipment.

I remind you that when Lander assumed control of the building I spent several days walking them through the building and inventorying the equipment, and the utilities were left on in IOS's name for over a month before they finally switched them to their account.

Please advise.

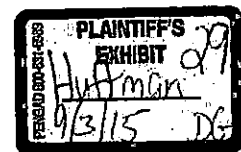
John Huffman

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

From: Douglas L. Bell <dbell@mcdonaldpatrick.com>
To: jhuffman46 <jhuffman46@aol.com>; lsmith <lsmith@waterstonehospitality.com>; ljordan <ljordan@bqslaw.com>; JCarter <JCarter@businesscarolina.net>
Sent: Wed, Jun 15, 2011 9:34 am
Subject: RE: Inn

John,

After our last meeting I requested Lander have their engineering department inspect all units and address any issues. This was carried out over the last several days and I received a report yesterday that all units are functioning



<http://mail.aol.com/34188-111/aol-6/en-us/mail/PrintMessage.aspx>

12-0023 IOS 0325 10/6/2011

ROA_0264

Re: Inn

Page 2 of 2

properly. If you run into any issues you can certainly give me a call.
You
will have possession of the Inn when you leave. Thank you.

Doug

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

From: jhuffman46@aol.com [mailto:jhuffman46@aol.com]
Sent: Tuesday, June 14, 2011 2:05 PM
To: Douglas L. Bell; lsmith@waterstonehospitality.com;
ljordan@bqslaw.com;
JCarter@businesscarolina.net.
Subject: Inn

Doug,

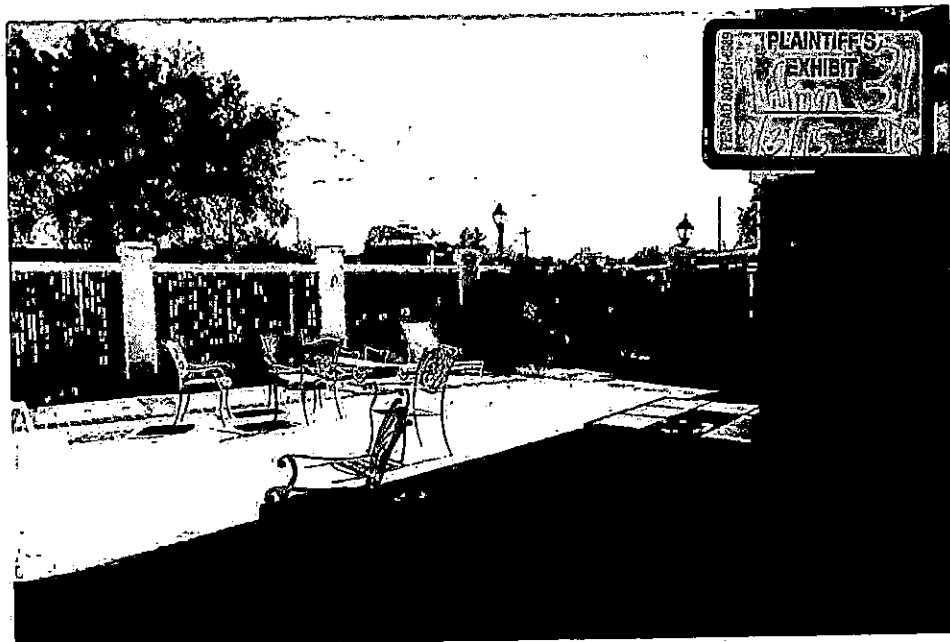
a reminder that I will be arriving att the Inn at 10:00 in the morning
with my
heat & air and refrigeration inspectors if you want to have the Lander
maintenance man accompany them. I assume I will be taking control of
the Inn
tomorrow when I leave. Is this correct?

John

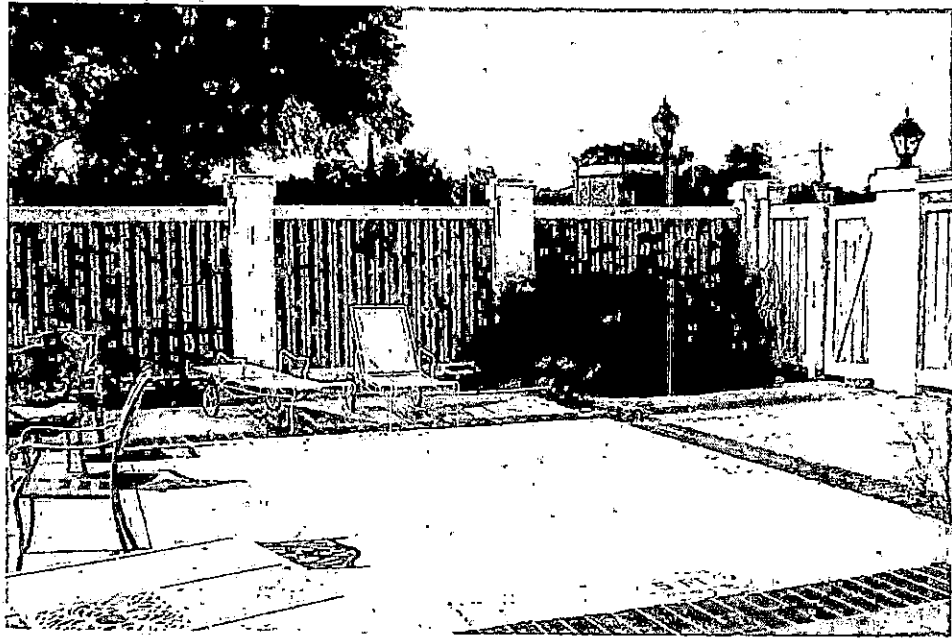
EXHIBIT 15



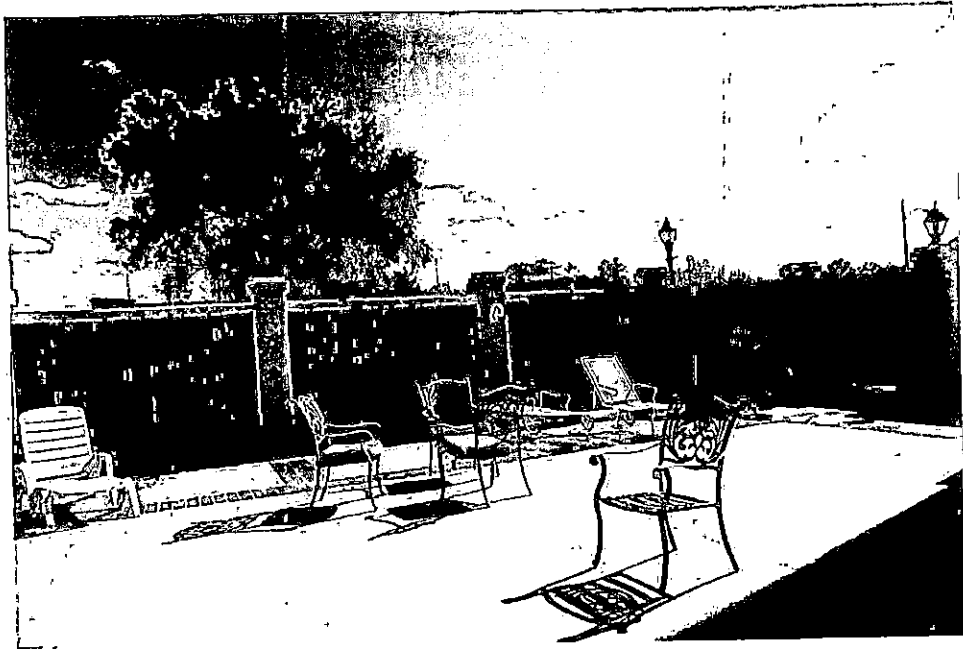
ROA_0267





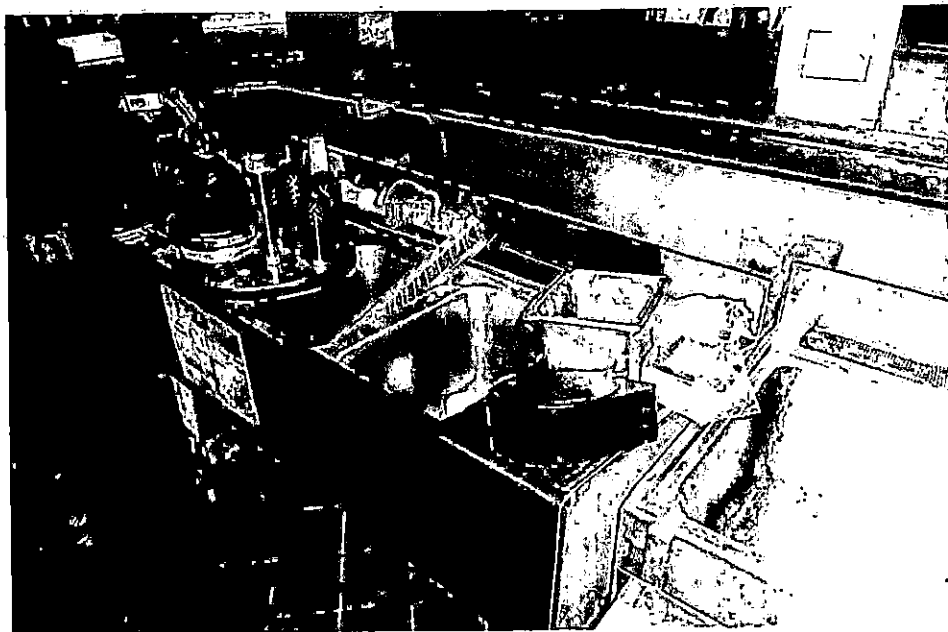
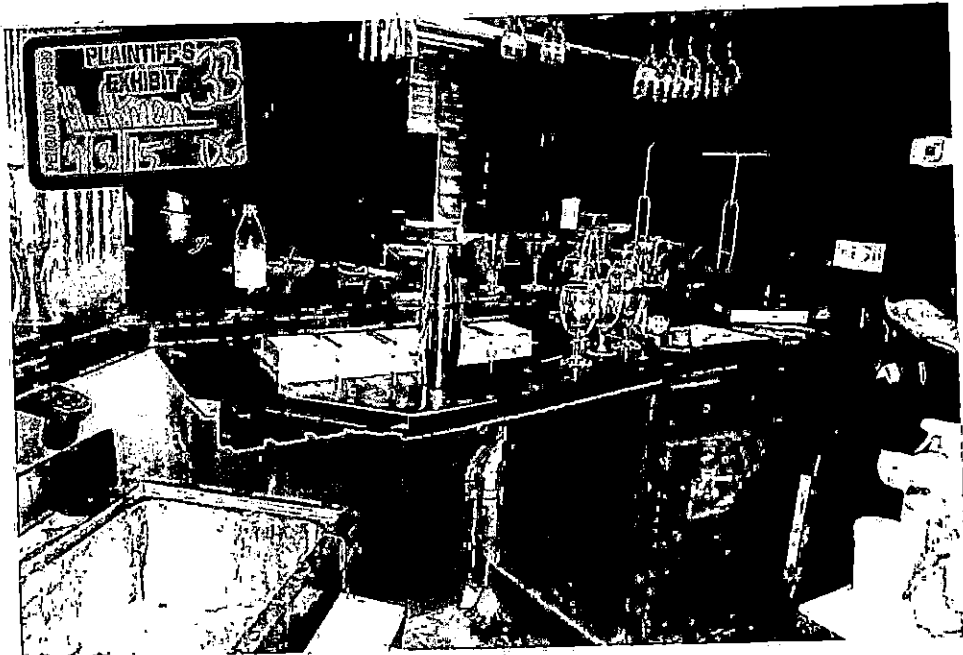


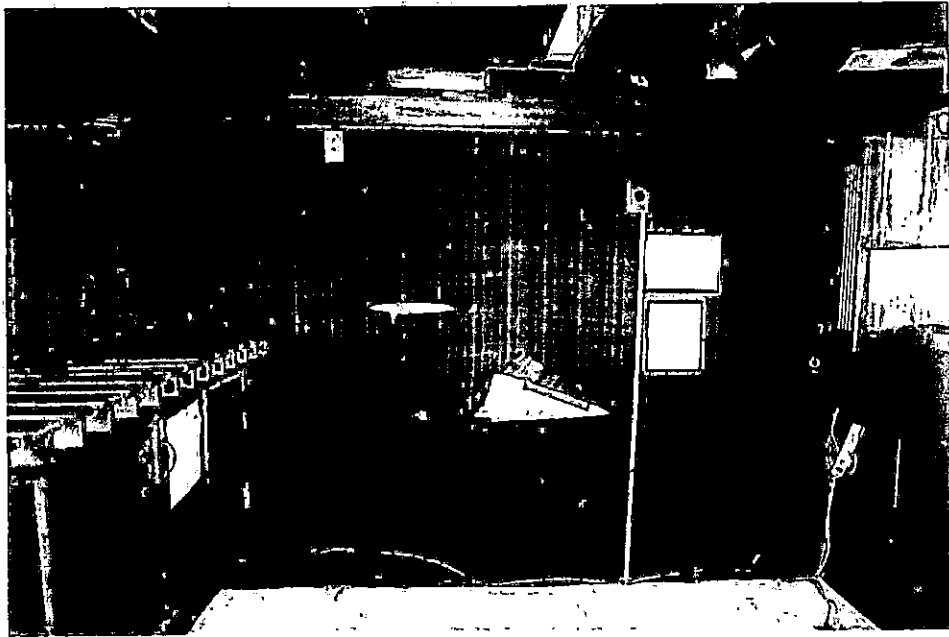
ROA_0270



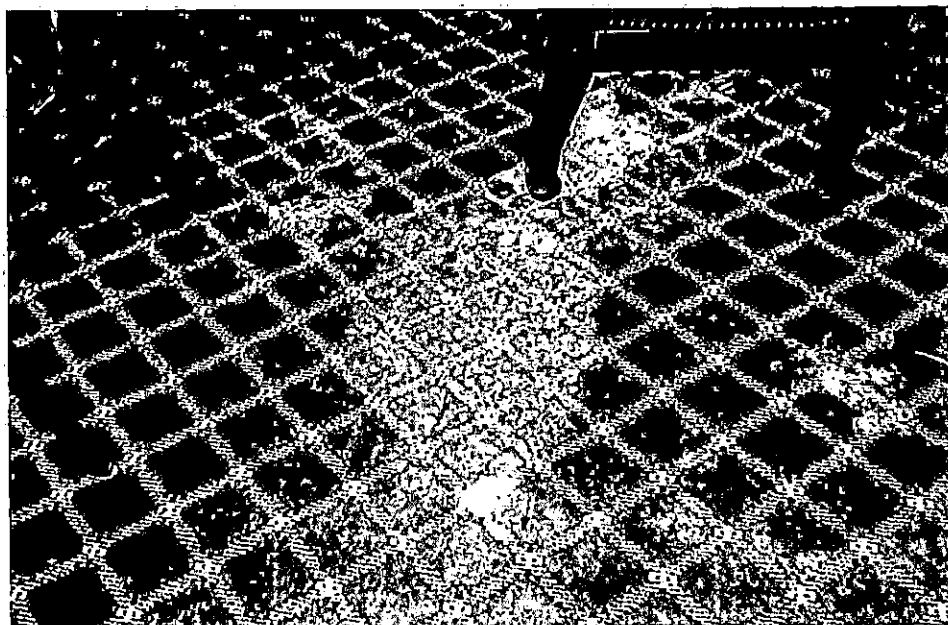
ROA_0271



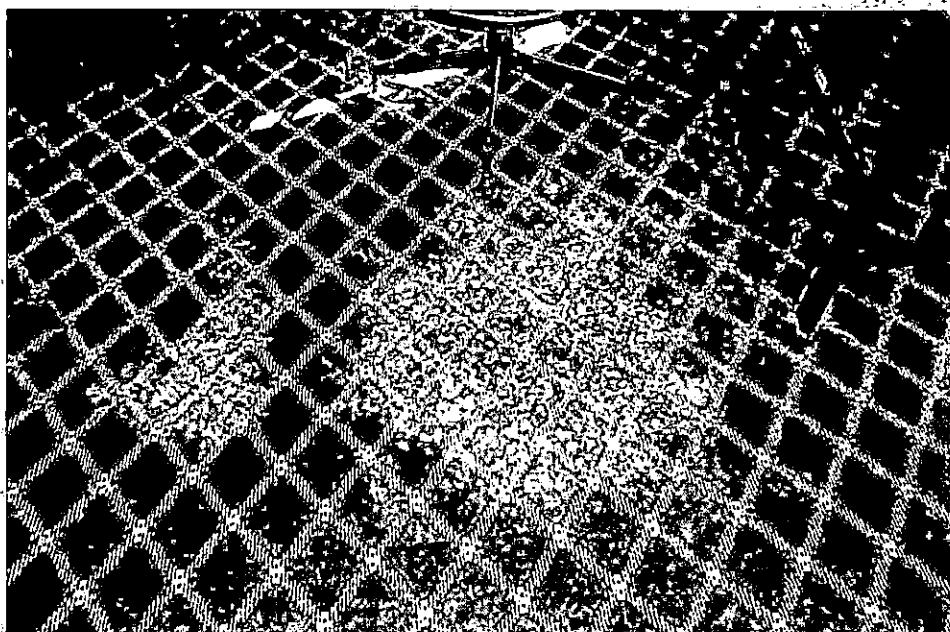
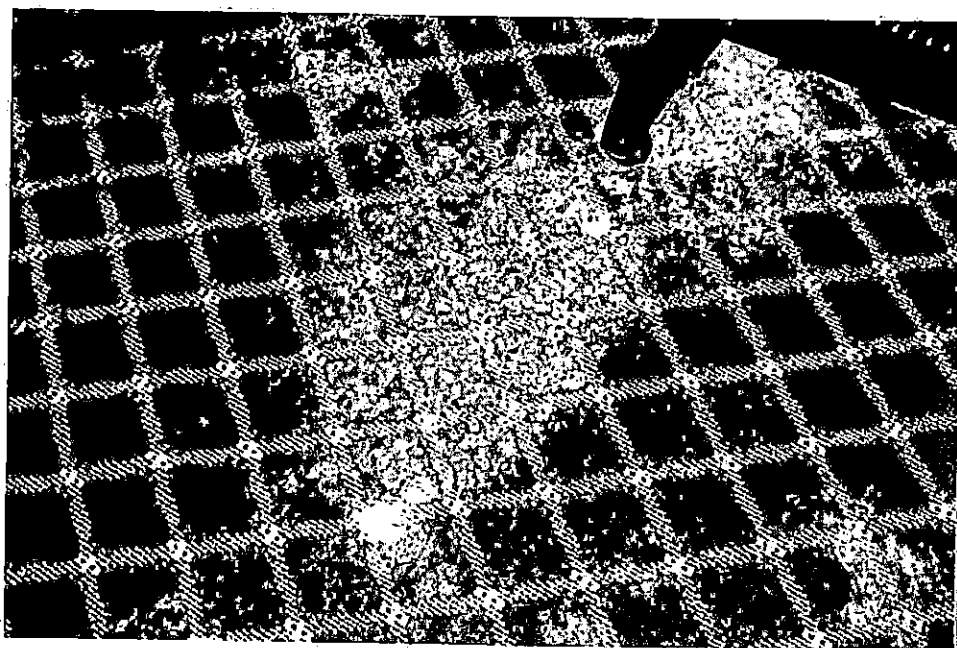




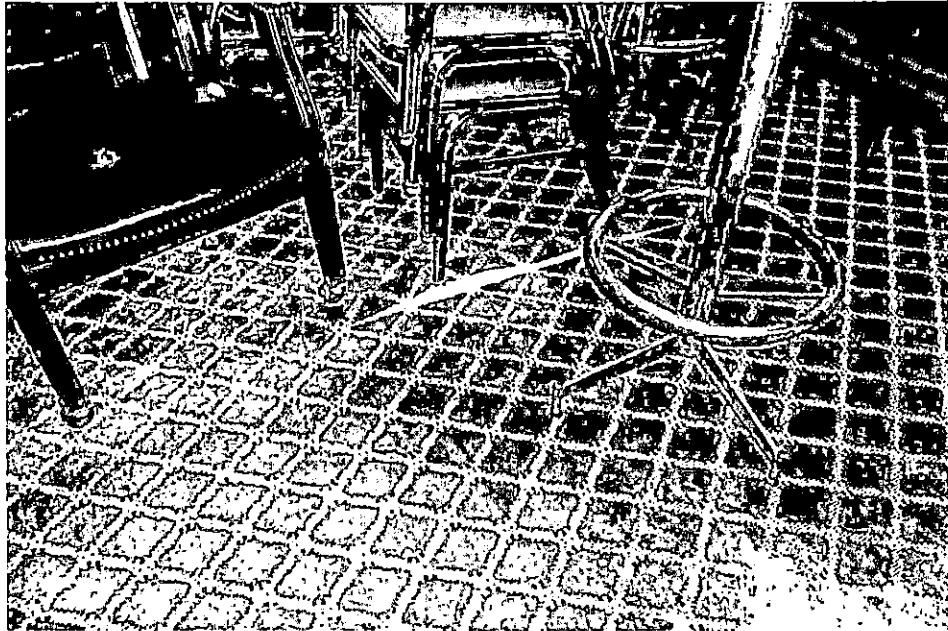
ROA_0274



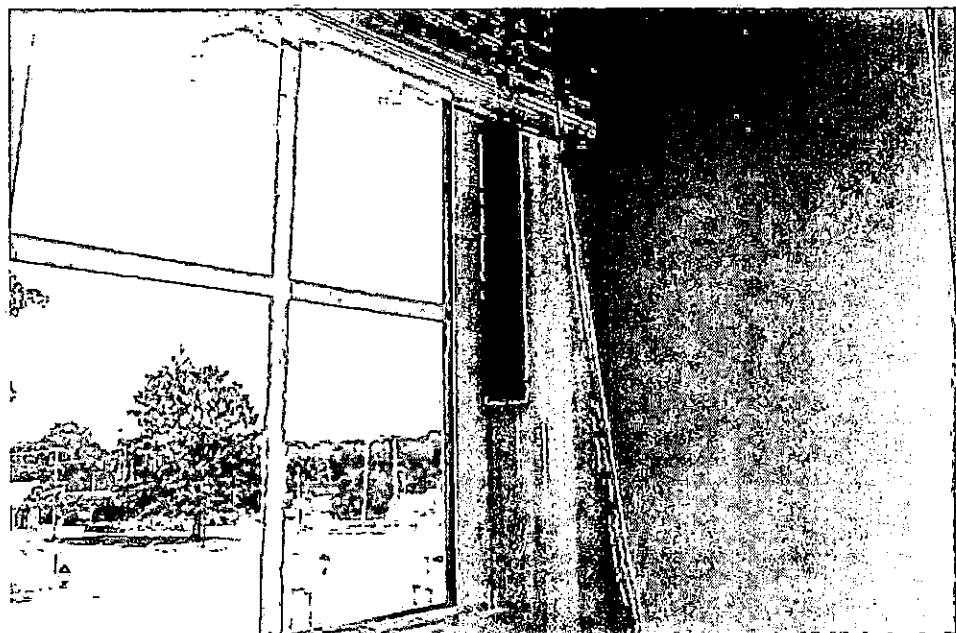
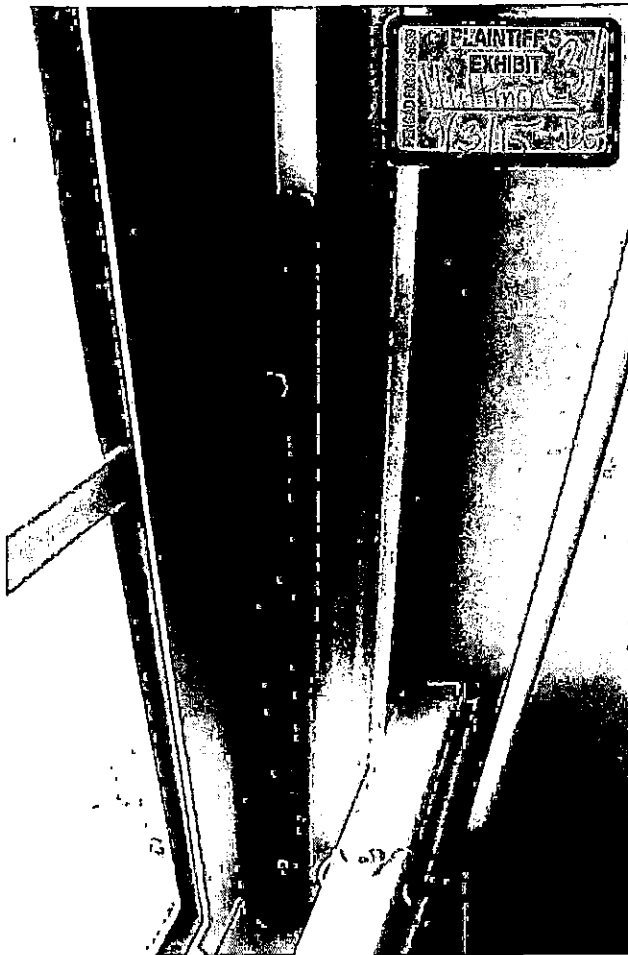
ROA_0275



ROA_0276



ROA_0277

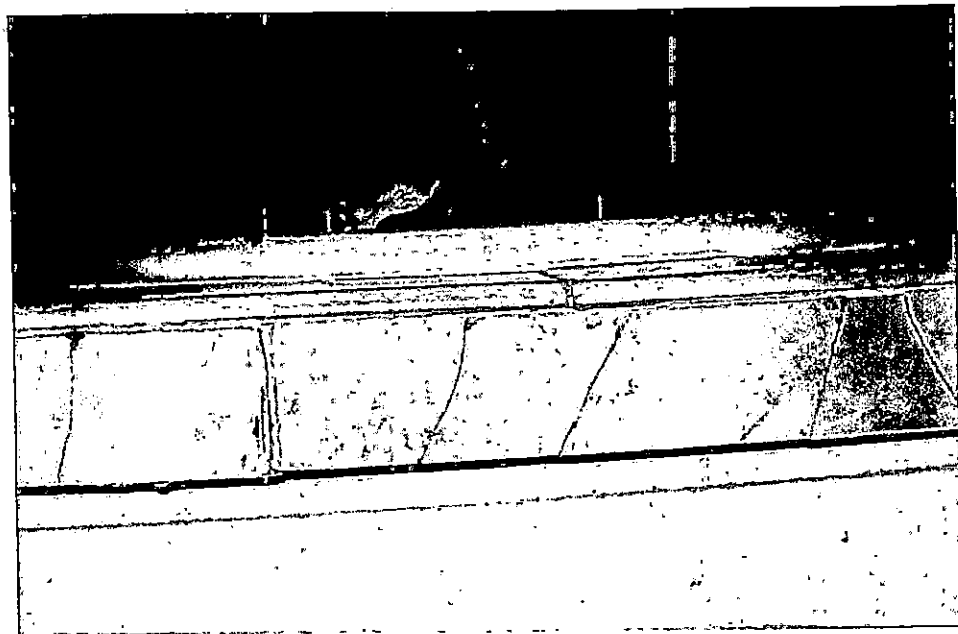
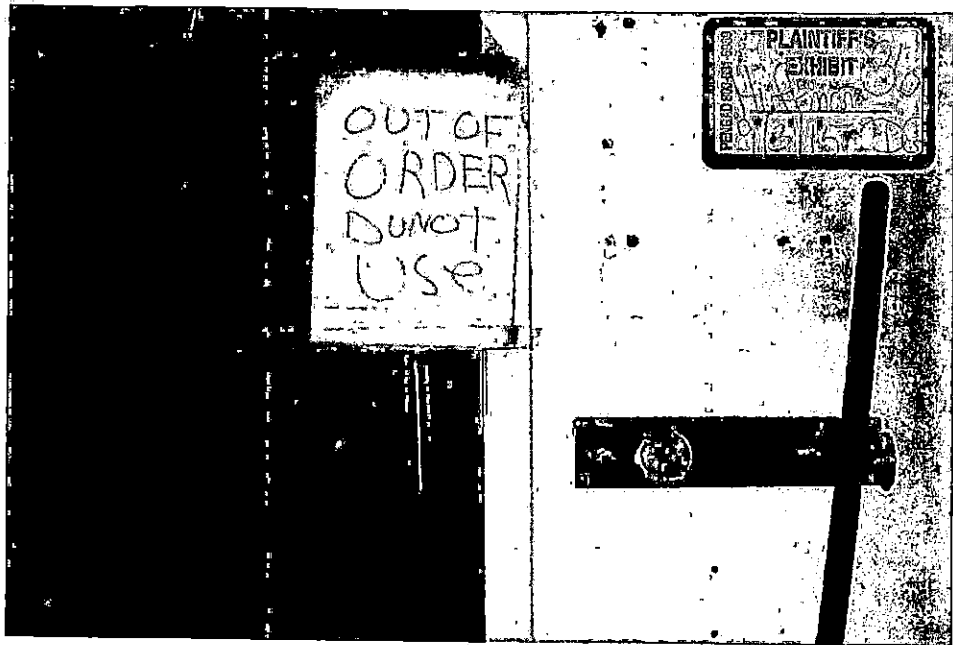


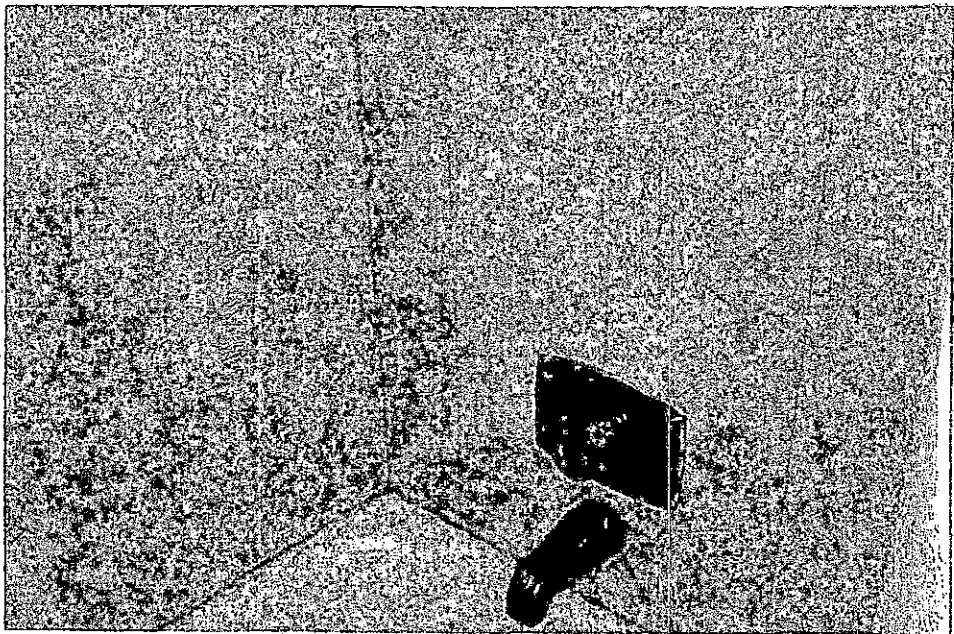
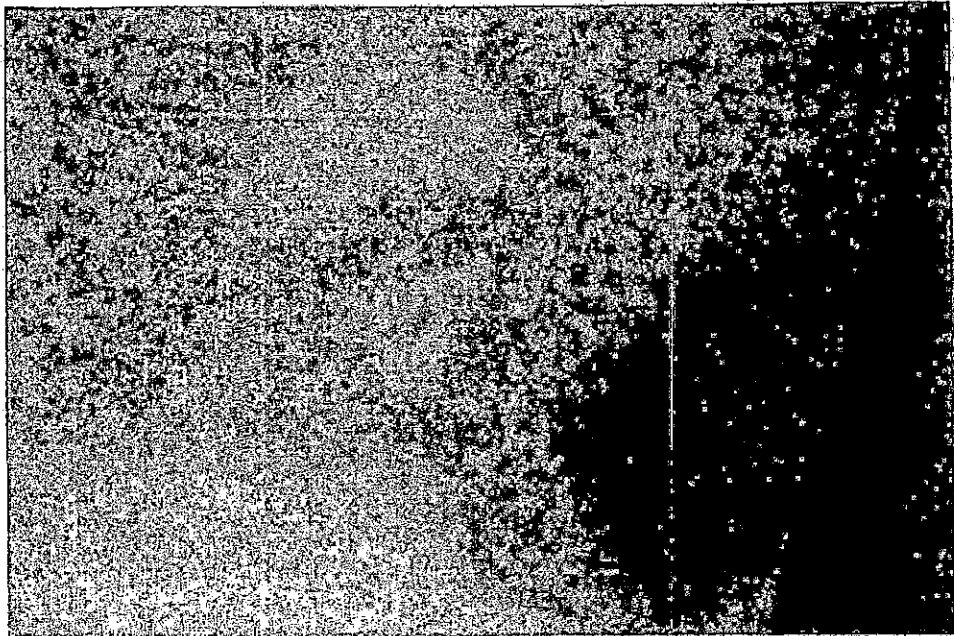
ROA_0278



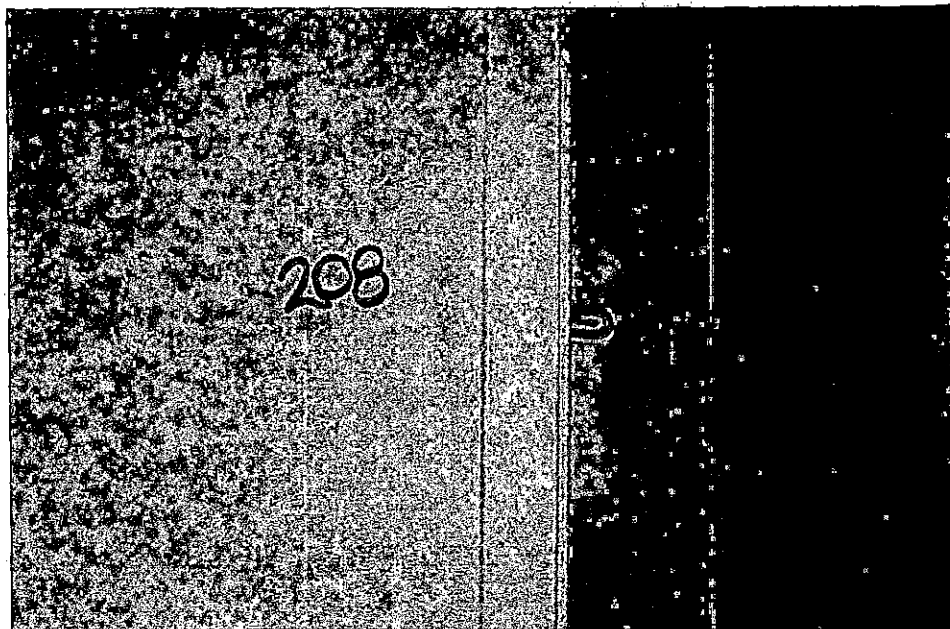
ROA_0279





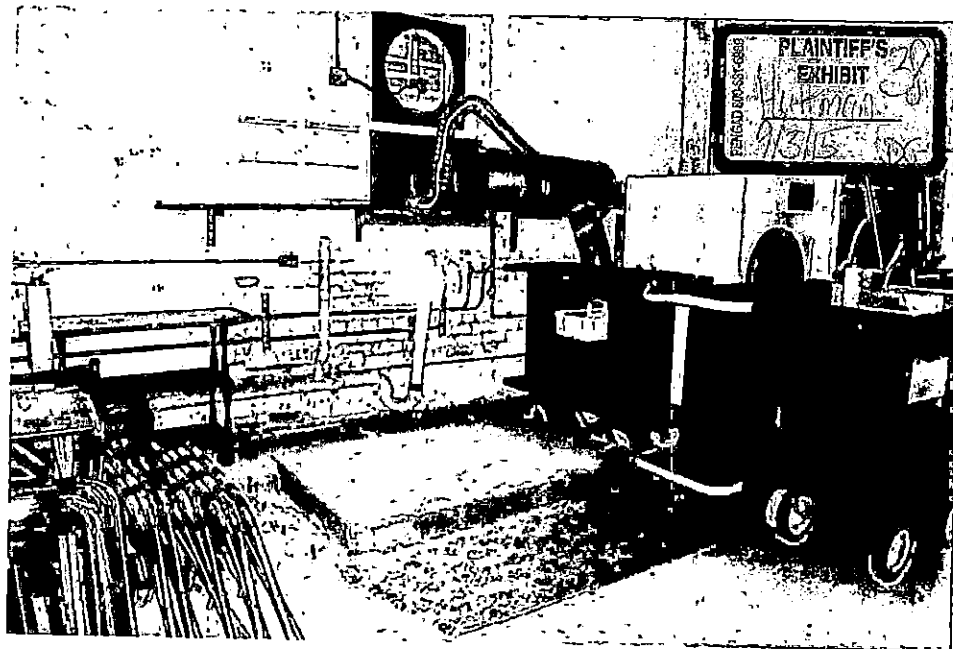


ROA_0282

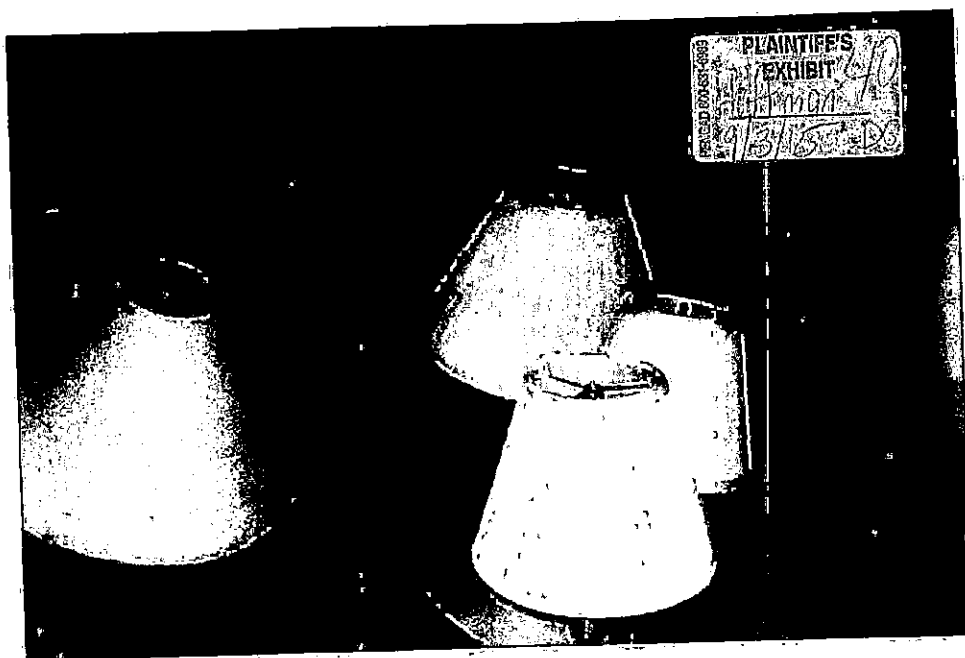




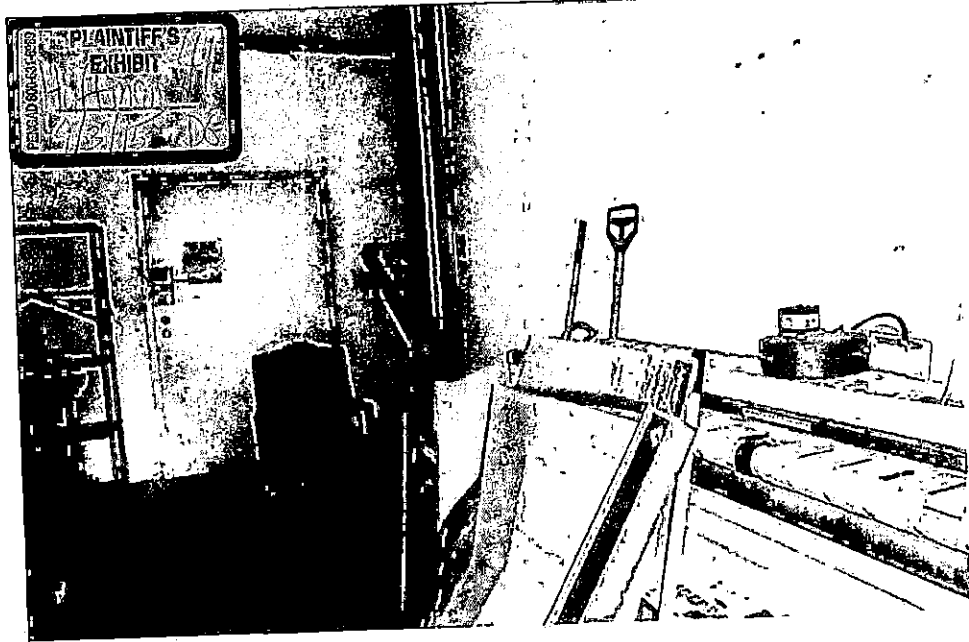
ROA_0284



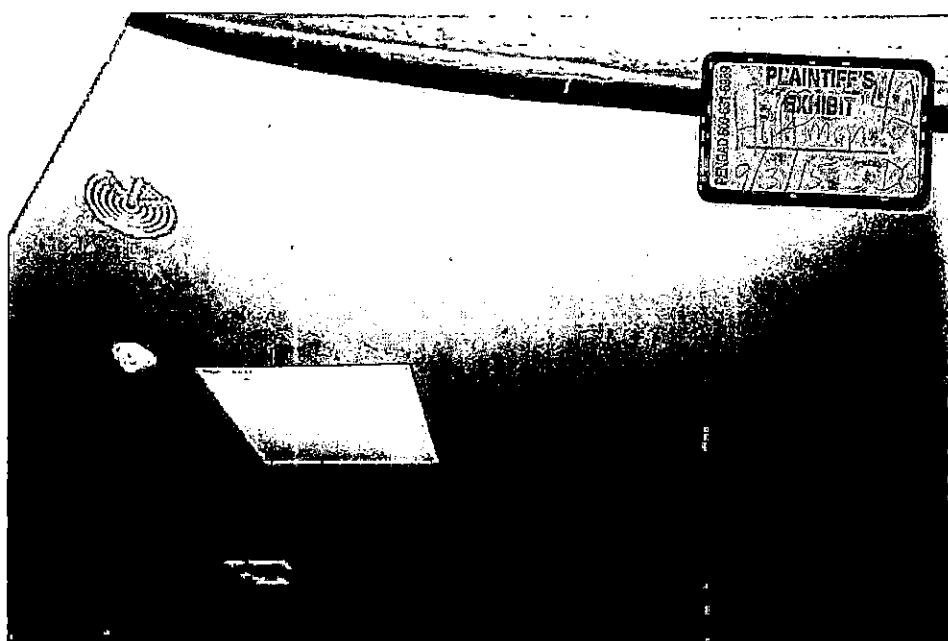




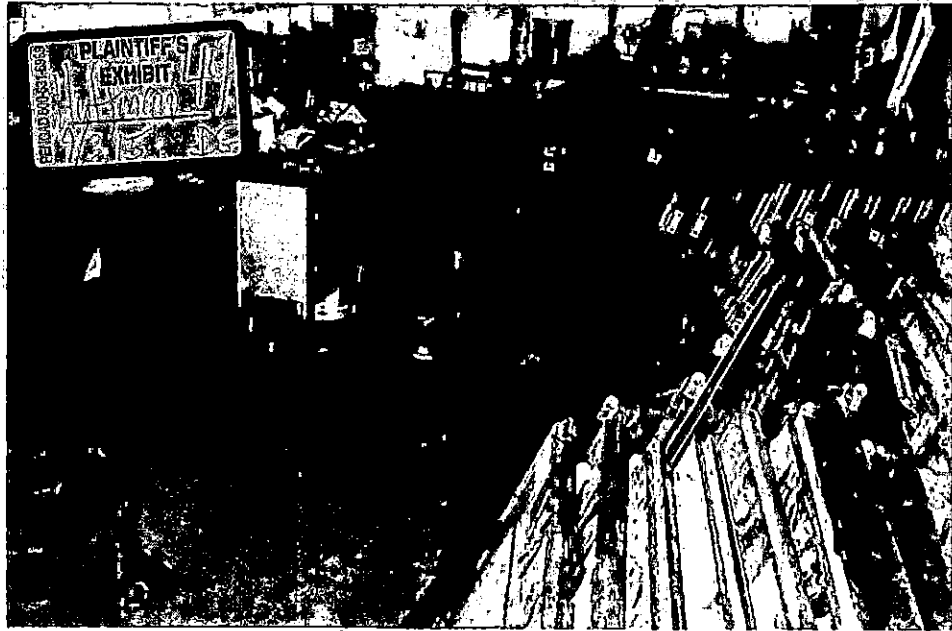
ROA_0287



ROA_0288



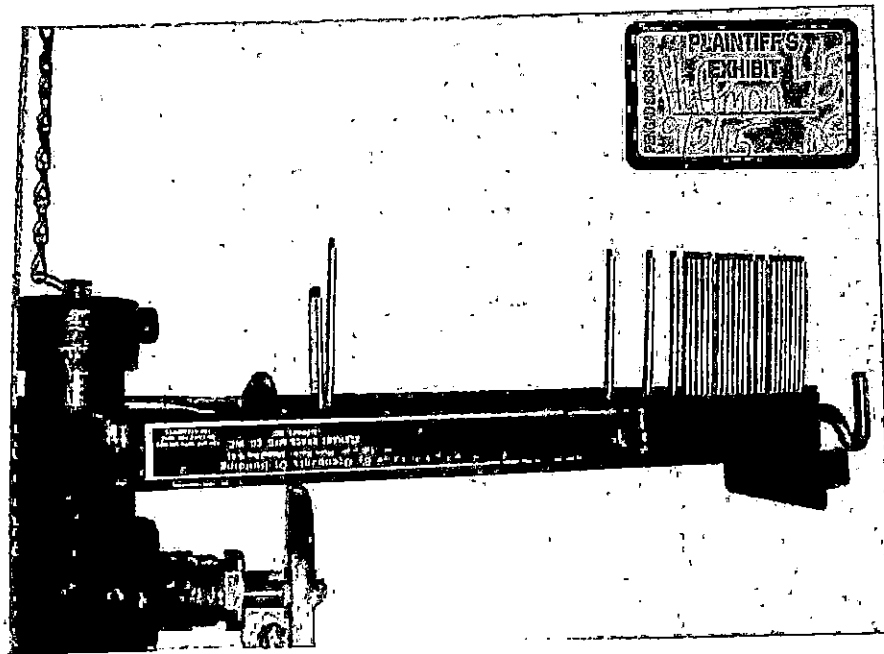
ROA_0289

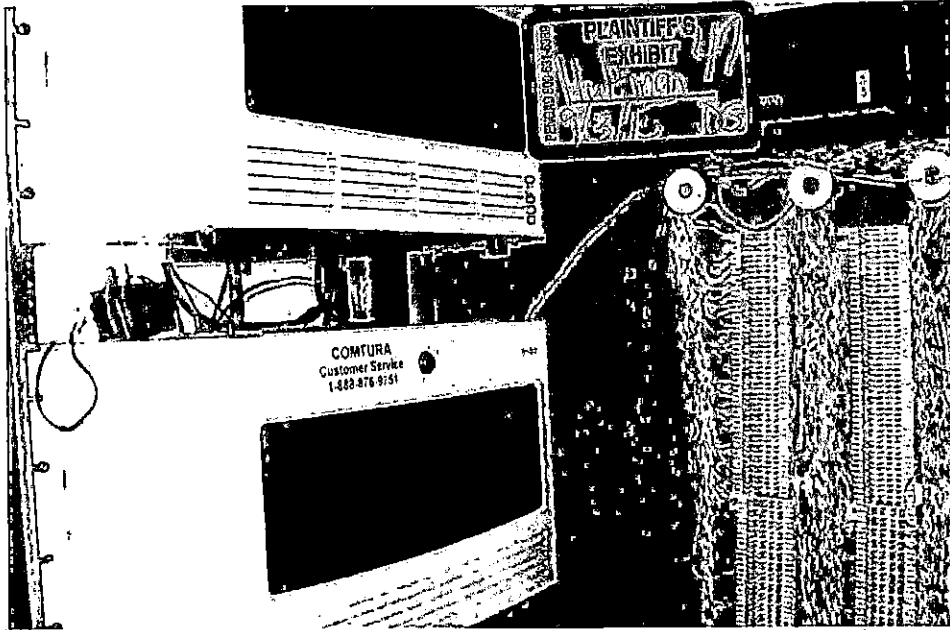


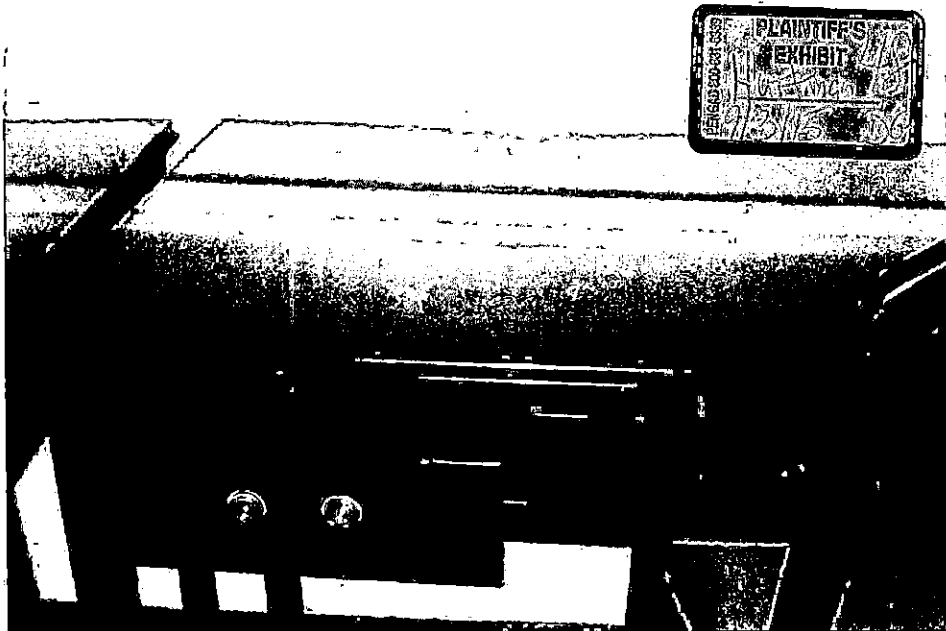
ROA_0290



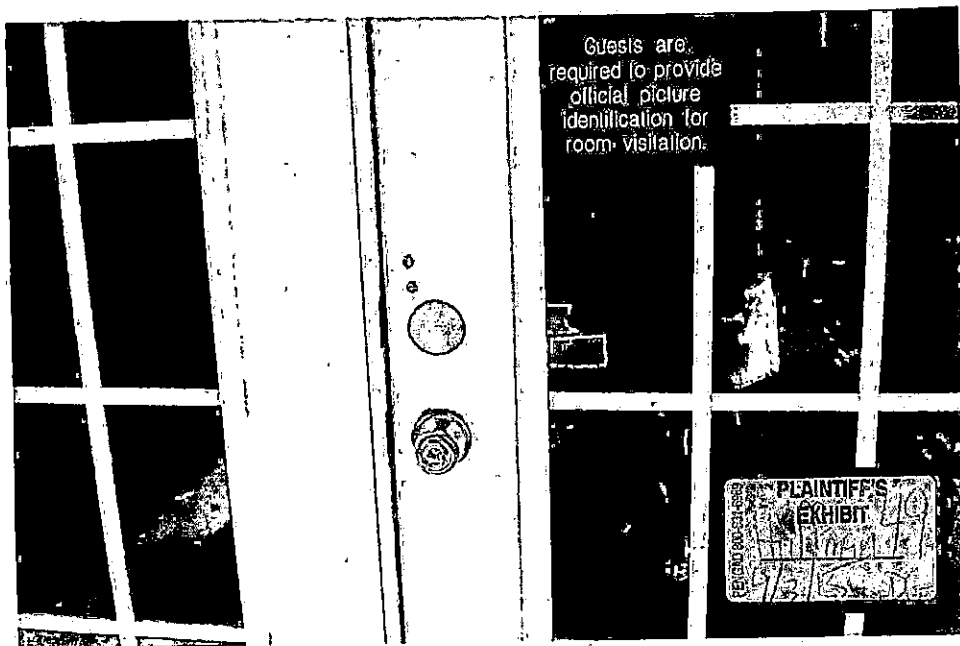








ROA_0295





ROA_0297

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	CIVIL ACTION NO. 2012-CP-24-576
	)	
IOS, LLC,	)	
	)	
Plaintiff,	)	REPLY TO PLAINTIFF'S MEMO IN
	)	OPPOSITION AND
vs.	)	SUPPLEMENTAL MEMORANDUM IN
	)	SUPPORT OF DEFENDANTS'
Lander University	)	MOTION FOR SUMMARY
	)	JUDGMENT
Defendants.	)	

The Defendant, Lander University hereby submits this Reply to the Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment. At a previous hearing before the Honorable Frank Addy, Plaintiff stipulated to the dismissal of any causes of action predicated upon an alleged breach of an oral contract to purchase the Inn, as well as all causes of action against the Lander Foundation, who has now been formally dismissed from this action. Defendant's Supplemental Memorandum, therefore, will only address Plaintiff's remaining causes of action. Defendant Lander University requests an Order dismissing any causes of action premised upon allegations of breach of any alleged oral promise to purchase, including breach of oral contract to purchase property and breach of contract/specific performance.

Defendant would also argue that Plaintiff lacks standing to pursue contract damages by virtue of an assignment of all leases and rents to the purchase money lender, Business Carolina, whose deficiency judgment was filed following a foreclosure of the property and remains unsatisfied, barring the Plaintiff from recovery.

Defendant would likewise argue that Plaintiff cannot provide clear and convincing evidence of an unambiguous promise to purchase, as would be required to prevail on a theory of promissory estoppel. In addition, the economic loss rule bars the Plaintiff from recovery in tort and requests dismissal of causes of action for negligent misrepresentation and negligence, inasmuch as the damages sought by the Plaintiff arise exclusively out of the Lease/Option contract executed by the parties.

ADDITIONAL HISTORY AND BACKGROUND DOCUMENTS

Plaintiff's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment summarily alleges that the Plaintiff IOS, LLC purchased a failing hotel known as the Inn on the Square and obtained additional financing through various lenders to improve the property, which they intended to operate or sell for a profit. (see Plaintiff's Memo in Opposition to Summary Judgment, November 2017, Page 2, paragraph 2.) Plaintiff further claims that through this renovation and the efforts of its manager, John Huffman, the Inn on the Square was a 'profitable venture' for a time. (Id.) As shown by the supplemental information attached, Plaintiff's claims rely solely on the testimony of Huffman and are not supported by its loan payment history. The Plaintiff likewise summarily alleges that following its purchase and renovation of the hotel an economic downturn left IOS, LLC unable to service the debt associated with the property. The Plaintiff claims this prompted the negotiation of the Lander lease which Plaintiff alleges was accompanied by the "promise" of Lander University to purchase the Inn sometime before March 29, 2010.

As argued in Defendant's initial Memorandum in Support of Summary Judgment, Plaintiff has failed to provide clear and convincing evidence of an unambiguous promise to

would need access to the property for site visits so these individuals could perform inspections.
(Id.)

During the course of this litigation, Lander has discovered the reason Plaintiff urgently needed a buyer for the property was (1) an imminent foreclosure of the property or sale of the note by the primary lienholder in July of 2009 (2) imminent sale of the property by the County for delinquent property taxes (3) Plaintiff's deadline of March 2010 to refinance its primary indebtedness utilizing a discounted payoff offered by the Lender and (4) federal tax liens for unpaid withholding on employee wages totaling \$295,513.25 which were levied against the property on April 10, 2010. Defendant argues that even had the Budget and Control Board given approval to offer to purchase the property, the relative value of the property in comparison with the extent of the Plaintiff's debt would've prevented a purchase contract.

Further information regarding of the relationships between the previous owners, history of the property and the associated debt, is likely to help the Court have a better understanding of the events leading up to Plaintiff's offer to lease the property to Lander, as well as illuminate the lack of evidence which Defendant argues is fatal to all of Plaintiff's claims.

The Defendant, therefore, would offer the following additional background:

The Inn on the Square was initially purchased by Palmetto Inns, on December 31, 2002, from Business Carolina, following the foreclosure of a previous owner. S. Craig White, the sole member of Palmetto Inns, personally guaranteed the \$1,000,000.00 purchase money Note and Mortgage. (See Ex. 3 (a. – g.), Articles of Organization and Operating Agreement of Palmetto Inns, LLC, Loan Agreement, Exhibit D to said Loan Agreement, "Certificate and Affidavit of Ownership of Palmetto Inns", executed by S. Craig White, Promissory Note, Mortgage of Real

Estate, Unconditional Guaranty, Assignment of Leases and Rents, and UCC-1, filed 2/13/2003 and UCC-3 continuation filed 2/12/2008.)

As part of the transaction, Business Carolina obtained from Palmetto Inns an Assignment of Leases and Rents which granted to the commercial lender an absolute assignment of leases and rents (emphasis added) (Ex.3 (f.) Assignment of Leases and Rents recorded on February 13, 2003 at Book 1453, Page 97, OCC for Greenwood.) A UCC filing further secured an interest in all furniture, fixtures and equipment in Palmetto Inns' possession, as well as any tangible personal property, renewals or replacements thereof, including but not limited to, ranges, refrigerators, HVAC systems, telephones, televisions, and computers. (Ex.3 (g.), Business Carolina UCC Financing statements, 2/13/2003, continued in 2008, after IOS, LLC took ownership in 2005.)

Following Palmetto Inns' purchase of the hotel in 2002, upgrades to the property were financed through a series of loans to a separate entity of White's known as Emerald Inn. (Ex. 4, S.C. Secretary of State records regarding Emerald Inn, LLC.) According to loan documents, Emerald Inn and White, as co-lessee, purchased new carpet, furniture and equipment and pledged the associated personal property to Allegiant/a Division of Telerent via a lease financing agreement. (Ex. 5 Allegiant/Telerent financing documents and UCCs executed by White as co-lessee). Shortly thereafter, Palmetto Inns went into default and in October 2004, less than two years after the purchase, Business Carolina filed foreclosure pleadings. (Ex. 6, Greenwood County, Eighth Judicial Circuit, Public Index.)

Louis Smith, a member of Plaintiff LLC, testified that John Huffman became interested in the distressed hotel after visiting Greenwood and staying there as a guest. Huffman partnered with Smith, one of his employees, to negotiate a purchase of the Note. (Ex. 7, Depo. of Smith,

p. 19, 20.) Huffman testified that he had been involved with similar distressed properties, as a “turnaround artist” (Ex. 8, Depo. of John Huffman, p. 282.) Smith testified that an agreement was struck with Palmetto Inns guarantor, Craig White, would allow White to “come back in at a certain percentage” if they were unable to refinance the existing indebtedness and remove his guarantee. (Id.)

Per Smith, he and Huffman weren’t able to borrow the funds necessary to purchase the Note. (Ex. 7). Instead, they purchased the property subject to the existing Note and Mortgage, which required Craig White to remain pledged as personal guarantor. (Id.) Smith and Huffman’s wife, Misty, formed IOS, LLC, which took title to the property in 2005. (Ex. 9 a-c., IOS, Corporate Documents.) According to the Operating Agreement, each member made an initial \$1.00 capital contribution and Louis Smith was named manager. (Id.) A subsequent amendment appointed John Huffman as manager, replacing Louis Smith. (Ex. 9b., IOS, LLC Amended Operating Agreement) A second addendum in 2006, (a signed copy of which has not been provided to the Defendant) designated White’s separate LLC, Chesterfield Express, as the owner of 75% of IOS, by virtue of a “purchase of ownership interest.” (Ex. 9c. IOS, LLC First Addendum to Amended Operating Agreement.) Though Craig White has not been deposed, these documents generally appear to match Huffman and Smith’s description of the timeline of events.

At the time IOS, LLC purchased the property in 2005, Business Carolina agreed to a dismissal without prejudice of the 2004 Foreclosure. (Ex. 10, Dismissal of Business Carolina Foreclosure of Palmetto Inns, without Prejudice.) Business Carolina further entered into a Forbearance and Loan Modification with Palmetto Inn and White, which acknowledged IOS, LLC as the current titleholder of the property. The agreement allowed interest only payments for

purchase the property, as would be required to support its causes of action, including promissory estoppel. On July 31, 2009, a letter from Diane Newton to South Carolina Budget and Control Board attorney, Lisa Catalanotto summarizing the lease deal was forwarded by email to Misty and John Huffman, with a request to "let me know if I left something out." (Ex. 1, July 31, 2009 email and letter from Diane Newton.). This letter states that "Lander University would entertain the option to purchase this hotel." (Id.) In light of this letter as well as the exchange of correspondence between the parties at the beginning of the Lease, it is clear that the Plaintiff was well aware that Lander did not have the authority to make an offer to purchase without Budget and Control Board investigation and approval. Defendant has attached copies obtained during discovery to highlight examples of emails between representatives for Lander and IOS, LLC which indicate that while a potential purchase was discussed, resulting in the Option contained in the lease, Lander Representatives advised the Plaintiff that Budget and Control Board procedure dictated a series of petitions and approvals before any decision could be made to exercise the Option. This process included seeking authorization to fund due diligence studies, including appraisals, environmental studies and engineering/code compliance investigations and without favorable results, the University could not go forward. (Ex. 2, Huffman emails.)

Although appraisals along with engineering and code compliance issues ultimately proved to be insurmountable obstacles and prevented Lander moving forward with an offer to purchase the property, there are multiple communications with John Huffman indicating that he was also pursuing other purchasers throughout the term of the lease. In November 2009 and again in March 2010, Huffman emailed Lander representatives to notify them he would be marketing the property to other prospective buyers from Columbia, Charleston and Atlanta and

a certain period and extended the maturity date of the Note to March 29, 2011. (Ex. 11, Forbearance executed between Palmetto Inns and Business Carolina, Inc. on 3/29/2005 and Loan Modification Agreement, recorded at Book 1833, Page 136 in the Office of the Clerk of Court for Greenwood County.) An Addendum to the Forbearance Agreement, executed by Smith on behalf of IOS, LLC, affirmed the debt and stipulated that while IOS, LLC had not assumed the Note, but took title subject to Business Carolina, Inc.'s security interest. (Id.) In these documents IOS, LLC acknowledged it had no right of recoupment or set off of any kind with respect to the indebtedness, loan or loan documents, and further waived appraisal, stay, valuation, extension or redemption. (Id.)

Based upon the testimony of both Louis Smith and John Huffman, there was controversy with White immediately after Plaintiff purchased the property. Huffman claims when he initially met him, White threatened to kill him, and Huffman reciprocated. (Ex.12, p. 316, Depo. of Huffman.) Neither Smith nor Huffman elaborate as to the exact reason for the dispute, only that it was fair to say the two never got along. (Id.)

During the pendency of this action, Defendant Lander discovered multiple additional liens and lawsuits filed against Emerald Inns, of which it wasn't previously aware, including a Complaint for Claim and Delivery filed by Allegiant/Telerent against White/Emerald Inn shortly before Palmetto Inns' transfer to IOS, LLC. (Ex. 13, Greenwood County Public Index.) The suit sought a money judgment against White and Emerald Inn, as well as the return of the hotel's furniture and fixtures for nonpayment. (Ex. 14, Telerent Complaint.) Although Huffman indicated the property was purchased in the name of IOS, LLC so he could "walk in debt free" without assuming Palmetto Inns' liabilities (which he estimated totaled at least \$200,000.00 over the mortgage debt) Huffman agreed to the payment of \$5,000.00 for a release and possession of

the furniture and personal property sought by Allegiant's Claim and Delivery (Ex. 15, Telerent hand written agreement, check and itemization and Ex. 16, Huffman, Day 2, p. 17, l. 21-24.) Huffman subsequently sold most of these furnishings, along with a Karaoke machine previously used in the Fox and Hound Bar, to Defendant Lander when the lease commenced. (Ex. 17., Handwritten Bill of Sale from IOS, LLC to Diane Newton on behalf of Lander University and Exhibit to Plaintiff's federal tax return indicating mass sale of assets on 12/31/2009.)

A review of the Greenwood County Public Index reflects additional claims filed against Palmetto Inns and IOS, LLC, during the first year Huffman was in operation. (Ex. 18, Greenwood County Public Index, IOS, LLC the Inn on the Square.)

Around this time frame, a junior mortgage from IOS, LLC to Misty Huffman, individually, in the amount of \$200,000.00 was filed with the Greenwood County Clerk of Court. (Ex. 19, 7/18/05 IOS, LLC mortgage to Misty Huffman, Book 1883, Page 269, OCC Greenwood County.) According to the Plaintiff, this Mortgage represents a loan for funds the Huffmans paid with personal credit cards or lines of credit on behalf of IOS, LLC as alleged by the Plaintiffs but there has been no matching ledger produced by the Plaintiffs which totals this amount. Defendant believes it also served to secure future profit from the Huffmans' rehab and sale of the property via a second mortgage position to the exclusion of any other unsecured debt which threatened to attach as a judgment in the interim.

Over the next two years, the following mortgages were additionally recorded against the property: Bridge Financial, LLC for \$115,475.00 (recorded 9/12/06), Cornerstone Capital Funding for \$230,000.00 (recorded 1/8/07), Upper Savannah Council of Governments for \$250,000.00 (recorded 1/25/07), Uptown Development Corporation for \$50,000.00 (recorded 1/25/07) and Upper Savannah Council of Governments for \$50,000.00 (recorded 1/9/09) (Ex. 20

Mortgage and Lien record, and mortgages filed in the OCC Greenwood County.) An additional Assignment of Leases and Rents was recorded on behalf of Upper Savannah Council of Governments. UCC's securing the furniture, fixtures and equipment were also filed on behalf of both Uptown Greenwood Development Corporation and Upper Savannah Council of Governments. (Ex. 21, Uptown Greenwood Development Corporation and Upper Savannah Council of Governments UCC's.)

Lonestar Ventures, LLC (an entity solely owned by Misty Huffman) also recorded a subsequent additional mortgage in the amount of \$200,000.00 on 4/2/07. (Ex. 22, Mortgage from IOS, LLC to Lonestar Ventures, LLC, Bk. 2158, p. 228, Subordinated to Bridge Financial, Bk., 2158, p. 232.) It is unclear whether this is a restatement of the original mortgage to Misty Huffman which was refiled due to subordination of her previous mortgage. As with the prior mortgage, there is no deposit or ledger totaling this amount which has been produced.

In 2014, (after the subsequent 2012 foreclosure proceeding wiped out any junior lienholders and this action was filed) Louis Smith executed two confessions of judgment on behalf of IOS, LLC to Lonestar Ventures, one in the amount of \$632,419.82, (Civil Action No.: 2014-CP-24-1429) and a second in the amount of \$277,154.22 (Civil Action No.: 2014-CP-24-1430. (Ex. 23, Confessions of Judgment by IOS, LLC.) These amounts far exceed the total of either mortgage to either Misty Huffman or Lonestar Ventures, LLC. There is also no corresponding complaint in the Court's record setting forth a debt, only entry of the confession.

Despite the substantial influx of capital from 2006-2009 from third party lenders, (i.e. not associated with Mr. or Mrs. Huffman) the Plaintiff was never current with Business Carolina. The Business Carolina file contains extensive documentation regarding late or missing payments. (Ex.:24, Business Carolina Palmetto Inns, Loan Transcript.): In October and November of 2007,

Business Carolina threatened foreclosure and filed a Lis Pendens against both Palmetto Inns and IOS, LLC (Ex. 25, Greenwood County Public Index for IOS, LLC). A letter from Business Carolina indicates that foreclosure would only be deferred if IOS, LLC escrowed funds totaling \$26,156.25, to be applied monthly to interest until March 1, 2008. In its November 2007 letter, Business Carolina indicated that if IOS successfully refinanced on or before March 1, 2008, the amount escrowed would be applied to reduce principal. After that date, the payment would revert to principal and interest in the amount of \$7,071.39 per month. Throughout the history of the IOS purchase/forbearance, Business Carolina repeatedly agreed to extend Plaintiff's interest only payments, only to later write demanding that IOS and Mr. Huffman attempt to refinance the property or face foreclosure. (Ex. 26, Letters of Todd Lucas to John Huffman, August 16, 2007 and November 8, 2007.)

Based on the payment summary received from Business Carolina, Inc., it appears this default was never cured and Palmetto Inns/IOS, LLC remained in arrears despite additional forbearance until the Lease/Option agreement was reached with Lander. (Ex. 24, Loan Transcript.)

After four years of delinquency, Business Carolina finally signed an agreement on June 29, 2009, to sell the Note to Banc Capital and Financial Services. (Exhibit 27, Banc Capital contract). Closing was initially to take place on or before June 29, 2009, but was extended at the buyer's request inasmuch as it needed to "settle out a 1031 exchange and would need more time." (Id.) The Business Carolina file indicates that while Business Carolina negotiated the sale of Note, Huffman reportedly went in search of an alternative use for the property to avoid the sale, being displaced as manager and losing the property.

According to Business Carolina employee Todd Lucas's notes, Huffman contacted the bank after the agreement was reached with Banc Capital to discuss "performance of the hotel" indicating for the first time that he could no longer fund it. (Exhibit 28, Business Carolina Credit Notes) On August 3rd, representatives of the bank met with Huffman and his attorney, Leonard Jordan, during which Huffman stated the hotel was suffering and he could no longer subsidize it every month. (Id.) Huffman reported that he was negotiating with Lander to lease the hotel, to which the bank objected, stating that they had already sold the Note and the buyer did not want 'the Lander deal or to the hotel to be shut down'. (Id.) On August 5, 2009, Business Carolina loan officer Todd Lucas documented a conversation with Huffman, who reportedly indicated that he would be forced to begin shutting the hotel down on August 8th, and would be completely closed by August 15, 2009, if Business Carolina did not agree to the lease. In the end, Huffman refused to keep the hotel open, over the prospective purchaser's objection, because 'his line of credit had been canceled.' (Id.) The Business Carolina file further indicates that the prospective buyer recommended replacing Huffman with the original borrower, Craig White, as interim manager.

Eventually, however, Business Carolina accepted the Lander lease and option to purchase, although it required additional security in the form of a Forbearance Agreement from IOS, LLC, reaffirming the debt and reiterating its previous waiver of all defenses in the event of a future foreclosure. (Ex. 29, Forbearance Agreement, IOS, LLC 2009.) In addition, the bank required any rent paid by Lander go through an escrow agent and be applied to the indebtedness pursuant to a schedule set forth by the bank. It is clear from both the Business Carolina credit history notes as well as the Forbearance Agreement that a contract of sale had not been entered by IOS, LLC, as there is an acknowledged contractual waiver of any and all claims, defenses or

set-offs as to Business Carolina in the event that future negotiations during the pendency of the lease did not result in a sale. IOS, LLC further agreed to assist in the orderly liquidation of the property in the event a contract of sale could not be reached. (Ex. 29, p. 3, paragraph 1.)

Further, the original assignment of leases and rents to Business Carolina, subject to which IOS, LLC took title provided (in pertinent part) that:

"for good and valuable consideration, Assignor absolutely assigns and transfers to assignee" the following:

(a). The income, rents, receivables, security or other similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents, issue and profits") together with the right, power and authority to collect same;

(b.) All leases, written or oral, now in existence or hereafter arising (emphasis added) all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof (individually collectively, the "Lease" or "Leases" together with the right, power and authority of the Assignor to alter, modify, or change the terms thereof, or surrender, cancel or terminate same; and

(c.) Any and all guarantees of any obligations of any Lessee (the "lessee") under each of the leases.

Assignor irrevocably (emphasis added) appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of the Assignee to demand, receive and enforce payment of rents, to give receipts, releases and satisfactions, and to sue, in the name of the Assignor or the Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured; provided however, that Assignor shall have the right and license to collect the rents, issues and profits prior to or at any time there is no continuing default hereunder or under any of the other loan documents evidencing and securing the Note (as defined herein) ("Loan Documents"). The assignment of rents, issues and profits is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

"Upon payment in full of the indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent, or attorney of the Assignee showing any part of the Indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor, as the lessor under any Lease, hereby authorizes and directs the lessee named in any such Lease or any other or future lessee or occupant of the premises described therein upon receipt from the Assignee is then the holder of the Note to pay over to the Assignee all rents, and profits or accruing under such Leases or from the premises described therein and to continue to do until otherwise notified by the Assignee."

The Forbearance Agreement contemporaneously executed by IOS with the Lander Lease/Option included an acknowledgement of default, and agreement to stay any foreclosure until the end of the lease term or the exercise of the Option. Paragraph 6 of the Forbearance Agreement further acknowledged that Business Carolina had an "absolute assignment" in and to the Lander Lease, as set forth in the Assignment of Leases and Rents executed by Palmetto Inns. Acceptance of the Forbearance Agreement by IOS, LLC specifically excluded acceptance of rent pursuant to the lease as a waiver of default.

In addition, a Subordination/Non Disturbance agreement further provided in paragraph 9 that the Lender would be entitled, but not obligated, to exercise the claims, rights, power, privileges and remedies of the landlord under the Lease, and shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Tenant under the lease as though the lender were named therein as the Landlord.

Ultimately, as discussed above, Lander declined to exercise its Option. Despite his earlier assertion that he was unable to continue to operate the property as a hotel, following the expiration of the lease in June of 2011, Huffman submitted to demand for payment of

\$339,262.00, which he claimed was necessary to place the property back in “serviceable and operational condition” and replace items necessary to reopen as a hotel. (See Plaintiff’s Memo in Opposition to Summary Judgment.) In his demand, he requested disproportionately large even sums, such as \$60,000.00 for a telephone system, \$70,000.00 for HVAC and refrigeration repairs, \$23000.00 for a security system and \$12,000.00 for a commercial dryer. According to IOS, LLC tax returns, obtained during discovery, these depreciable assets were only worth \$1,500.00 for the dryer, \$3,780.00 for the security system and \$19,300 for the HVAC, which was put into service in 2006. **There have been no documents disclosed during discovery (bills, estimates purchase orders, invoices) that support loss or damage to these items or justify Huffman's figures.**

Ultimately, Business Carolina refiled its foreclosure against Palmetto Inns and IOS, and obtained a deficiency judgment in the amount of \$425,218.84. (Ex. 30 Foreclosure Order and Judgment.) Contrary to Huffman’s assertion that said items were missing after Lander vacated the property, there is evidence that certain items were sold to Lander at the beginning of the lease term and others were in storage on the property when it was foreclosed, as is evidenced by a Bill of Sale from Business Carolina, Inc. to 104 East Court, LLP for personal property. (Ex. 31 Bill of Sale, Personal Property from Business Carolina to 104 East Court, LLP.)

A. DEFENDANT’S LACK STANDING TO ASSERT CLAIMS UNDER THE LEASE DUE TO THE ABSOLUTE ASSIGNMENT OF LEASES AND RENTS AND UNSATISFIED DEFICIENCY JUDGMENT TO BUSINESS CAROLINA, INC.

Plaintiff’s representative, John Huffman, publicly acknowledged in an article in the Index-Journal his inability to continue operating the property as an Inn prior to entering the lease with Defendant. In addition to an imminent foreclosure and/or sale of the Note, at the time the lease

was entered on August 12, 2009, Plaintiff owed \$33,910.71 in property taxes arrears which would have resulted in loss of the property at the County tax sale in October 2009. At the time of the lease, the Plaintiff had eight mortgages on the property and was in default with all of its lenders, necessitating forbearance agreements be negotiated with Plaintiff's creditors in order that Defendant could be assured of peaceful possession of the property during the term of the Lease. The forbearance agreements, which were executed by the Plaintiff, specifically contained an agreement between the Plaintiff, Defendant and creditors requiring the lenders to continue to acknowledge the Lease through the end of the term, even if negotiations between the parties failed to produce a contract of sale.

As agreed upon explicitly by the parties, the Inn was converted in August 2009, from an Inn to student housing. Due to potential liability issues, the State required that the Defendant fill the pool, which was not in working order at the time the Lease was negotiated. As stated earlier but for the lease and option, the foreclosure judgment would have occurred in 2009, rather than 2011. In light of its default and the requirement of forbearance agreements, Plaintiff unfortunately lacks standing to assert damages to the Inn facility and equipment or loss of economic advantage and opportunities.

In support of this argument, Defendant would point to the absolute assignment language contained in the loan documents, together with both forbearances, as well as the subordination and non-disturbance agreements, which were jointly executed by IOS, LLC and Palmetto Inns. This assignment irrevocably conveyed to Business Carolina, Inc. the right to collect rent or assert claims under the lease in the event of a default. Pursuant to the terms of the Assignment, as long as the secured debt remained unpaid or unperformed, the Assignment remained valid and effective.

An assignment of leases and rents made upon good consideration is valid. SC Code Ann. 29-3-100. Rents, issues and profits include all amounts payable by on or behalf of any lessee, tenant or other person with a possessory interest in land on account of any written or oral lease or other instrument or implied by law and any and all amounts payable on behalf of any licensee or permittee or the person occupying or using the real property under license or permission from the owner or person entitled to possession. (Id. 29-3-100(A)(1)). A recording of a written document containing an assignment of leases and rents, issues or profits is valid from the time of recording, and is perfected from the time of recording against subsequent assignees, lien creditors and purchasers for valuable consideration from the assignor. (Id. 29-3-100(B)) – emphasis added. The assignment of a lease or the subletting of leased premises conveys an interest in the land. An assignment is a conveyance of the lessee's entire interest in the demised premises without retaining any reversionary interest in the leasehold. Neal v. Craig Brown, Inc., 356 S.E.2d 912 (1987). The Assignment at issue in this case irrevocably transferred the following:

All leases, written or oral, now in existence or hereafter arising (emphasis added) all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof (individually collectively, the "Lease" or "Leases" together with the right, power and authority of the Assignor to alter, modify, or change the terms thereof, or surrender, cancel or terminate same; and

It is clear from this language, that the right, power and authority to alter, modify or change the terms of a written or oral lease, was transferred to Business Carolina upon the occurrence of default. This is more than a security interest in the rent paid pursuant to a lease agreement. By operation of law, therefore, the assignment of leases and rents executed by Palmetto Inns as well as Palmetto Inns' subsequent Forbearance, Subordination and Non-

Disturbance Agreements, executed by the Plaintiff conveyed the lessee's entire interest in the demised property and waived any right to assert claims under the Lease.

Any cause of action with regard to damages under the lease, therefore, was assigned to Business Carolina as a result of the assignment and subsequent agreements. If IOS, LLC intended to seek damages under any provision of the Lander lease, it should have filed a compulsory counterclaim against Business Carolina, Inc. and/or filed a third-party crossclaim against Lander in answer to the foreclosure.

South Carolina has adopted the logical relationship test, which utilizes four factors when determining if a counterclaim is compulsory:

- (1) Are the issues of law and fact essentially the same?
- (2) Would *res judicata* bar a subsequent suit?
- (3) Does the same evidence support the claims and counterclaims?
- (4) Is there a logical relationship between the claims and counterclaims?

North Carolina Federal Savings and Loan Association v. DAV Corp., 298 SC 514, 381 S.E.2d 903 (1989).

Although Plaintiff IOS, LLC was a named Defendant in the foreclosure action taken by Business Carolina against Palmetto Inns, LLC, it filed no answer and was in default when judgment of foreclosure was entered. Pursuant to the Assignment of Leases and Rents, any right Plaintiff had to damages under the lease was irrevocably assigned to Business Carolina. When Plaintiff waived any defense to the foreclosure and failed to bring a compulsory counterclaim against Business Carolina to determine the rights of the parties pursuant to the Assignment, Forbearances or Subordinations, it likewise waived any right to compel enforcement of any

Lease, whether written or oral which now operates to bar IOS, LLC's current claims for damages.

Furthermore, pursuant to the language of the Assignment (see above), any damages which could have been awarded for breach of the lease would have operated as a set off to amounts found due and owing under the Note and Mortgage at the time of foreclosure. Because the Assignment was executed as part and parcel of the loan package, and provided for any funds found owing under the lease to be applied to reduce the outstanding balance of the loan, the Defendant would argue that any claim to avoid the effect of the Assignment on behalf of the Plaintiff was properly brought as a defense to foreclosure, as it is part of the same occurrence or transaction. Had Plaintiff wished to pursue a remedy, a compulsory counterclaim should have been filed to compel Business Carolina to enforce rights under the lease pursuant to the Assignment of Leases and Rents. Had Business Carolina been found to owe a duty to collect for breach of the lease, Lander could have been added as a third party defendant pursuant to S.C.R.Civ.P. 19 and separate trials ordered, if necessary under Rule 42(b).

Further, once the Bank obtained title to the property through purchase at the foreclosure sale, any interest IOS, LLC held in the property or the lease terminated. An action for foreclosure adjudicates and cuts off any interest in real property. It is a proceeding *in personam*, as well as *in rem*. Bartles v. Livingston, 282 S.C. 448, 319 S.E.2d 707, Perpetual Building and Loan Association v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978). Anderson v. Pilgram, 30 S.C.499, 9 S.E. 587 (1889). When the holder of a mortgage acquires legal title to the mortgaged property, the mortgage interest is merged with the title and is extinguished unless the parties intend otherwise. Thompson v. Hudgens, 161 SC 450, 159 S.E.2d 807 (1931).

In this case, Business Carolina chose to foreclose the mortgage, and resold the property to 104 East Court LLP. Furthermore, on September 20, 2013, Business Carolina executed an "as is" Bill of Sale for any and all tangible personal property obtained via the foreclosure associated with the Inn on the Square to 104 East Court LLP. (Ex. 27) As stated above, the loan documents assigned to Business Carolina a security interest in all furniture, fixtures or equipment. Claims for damage, loss or impairment of that interest were likewise assigned to Business Carolina and before any funds could be recovered by IOS, LLC, they would be applied as a set off against the Business Carolina deficiency judgment.

B. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO PLAINTIFF'S THIRD CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

To establish a claim for promissory estoppel under South Carolina law, a plaintiff must demonstrate that: (1) a party made a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relied on the promise; (3) the reliance was expected and foreseeable by the party who made the promise; and (4) the party to whom the promise is made sustained injury in reliance on the promise. Anthony v. Atlantic Group, Inc., 909 F. Supp. 2d 455 (D.S.C. 2012). Under promissory estoppel, the promise to be enforced must be unambiguous with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition by the promisor, particularly because promissory estoppel applies without a contract; the presence of either an ambiguous promise or an injury not arising out of the inconsistent disposition precludes promissory estoppel's application, though perceived inequities may exist. Barnes v. Johnson, 402 SC 458, 742 S.E.2d 6 (Ct. App. 2013). Because one may properly invoke promissory estoppel absent elements typically required for a contract, such a meeting of the minds or exchanged consideration, the doctrine requires, by clear and convincing evidence, a promise unambiguous in its terms (emphasis added) Id. An inability to clearly articulate the

terms of an alleged oral contract, including how an existing capital contribution would be treated and specifically how the parties would settle up, renders an agreement ambiguous, and any loss is not recoverable under a theory of promissory estoppel. Id. Although the doctrine of promissory estoppel may be used to avoid the statute of frauds' writing requirement in South Carolina, it may not be used to create a legally enforceable promise when it would not otherwise be binding under ordinary contract principles. Trident Construction Co., Inc. v. Austin Co., 272 F. Supp. 2d 566 (D.S.C. 2003). The doctrine of promissory estoppel, although equitable, has limitations. See e.g., Rushing v. McKinney, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct.App. 2006) (holding absence of clearly articulated terms between parties precludes recovery in promissory estoppel). "Specifically, the doctrine's elements represent a balancing between affording a remedy where contract law cannot, and ensuring the doctrine's application is not, itself, an inequity against the party estopped." Barnes v. Johnson, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct.App. 2013).

Plaintiff has not alleged any facts from which an unambiguous promise can be inferred by clear and convincing evidence. In addition to the earlier discussion of the communications between the parties, which is void of any unambiguous promise to pay, an examination of the lease entered by the parties' shows that it includes an Article titled "Option to Purchase" which granted the Defendant the exclusive option to purchase the property, but which did not contain an explicit agreement to purchase. Plaintiff has further failed to provide any evidence of Defendant's alleged promise to exercise the option, including an agreed upon purchase price or terms. To the contrary, Article 21 of the Lease specifically sets forth a requirement of written notice to the Landlord and provided that "Tenant may cancel its exercise of the option to purchase at any time prior to the day of closing." Further, correspondence from

the Plaintiff's manager, John Huffman indicates that he marketed the property to other potential buyers during the pendency of the lease.

Finally, Article 21 sets forth that "purchase of the Land and Building is subject to any required approvals by the South Carolina Joint Bond Review Committee, the South Carolina Budget and Control Board and General Services Division" which Defendant would argue invalidates any assertion that statements made by agents or employees of the Defendant could have been interpreted to guarantee that the Defendant would purchase the Inn in the future.

This requirement of third party approval, set forth explicitly in the lease between the parties, makes it is impossible for the Plaintiff to assert any reasonable reliance on alleged statements made by any agent or employee of the Defendant regarding the possibility of future purchase, as it is clear from the contract itself that they were incapable of consent to such a sale, even if terms had been agreed upon and all other requirements of due diligence had been met.

C. SUMMARY JUDGMENT SHOULD BE GRANTED TO DEFENDANTS AS TO PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

South Carolina law recognizes an action in tort for negligent misrepresentation. The doctrine of negligent misrepresentation is an equitable maxim that provides a duty for information negligently supplied for the guidance of others in business transactions. S.C. Elec. & Gas Co. v. Westinghouse Elec. Corp., 826 F. Supp. 1549, 1557 (D.S.C. 1993). The essential elements of this tort are: (1) that 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 a proximate result of his reliance on the representation. Gilliland v. Elmwood Properties, 301 SC 295, 391 S.E.2d 577 (1990) and AMA Mgmt. Corp. v.

Strasburger, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). To be actionable, the representation must relate to a present or pre-existing fact and be false when made. Fields v. Melrose, Ltd. Partnership, 312 SC 102, 439 S.E.2d 283 (Ct. App. 1993). The representation cannot ordinarily be based upon unfulfilled promises or statement as to future events. Id. Plaintiff alleges that Defendants made false representations to Plaintiff regarding the intent and/or willingness to purchase the Inn. "Evidence of a mere broken promise is not sufficient to prove negligent misrepresentation." Winburn v. Insurance Co. of N. Am., 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct. App. 1985). While issues of reliance are ordinarily resolved by the finder of fact, there can be no reasonable reliance to show negligent misrepresentation based on a misstatement if the plaintiff knows the truth of the matter; thus, if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact to preclude summary judgment in an action for negligent misrepresentation. Quail Hill, LLC v. County of Richland, 692 S.E.2d 499 (SC 2010).

The Plaintiff has not alleged facts to establish any of the six elements of this cause of action. Arguably, a duty may not exist in addition to those established by the lease/option contract between the parties. Likewise, Plaintiff has failed to show any false statement upon which it reasonably relied. It is clear from the lease that Plaintiff was well aware that Defendant had merely an option and that purchase would require substantial due diligence and approval by third parties. Further, any inferred promise of a future purchase would not be a pre-existing fact, as required by Fields. Finally, Plaintiff cannot show reasonable reliance, as it was clear from the lease itself that Defendant could not unilaterally approve the purchase.

In addition, Plaintiff cannot show that Defendants had a pecuniary interest in making any representation. Plaintiff alleges Defendants had a pecuniary interest in inducing Plaintiff to sign

a lease by representing that it would purchase the Inn. The Plaintiff suffered no pecuniary loss resulting from the lease, as it essentially prevented the sale of the Note and foreclosure of the property during the pendency of the lease. In addition, Defendants have previously submitted the Affidavit from Diane Newton in support of its motion for Summary Judgment. Ms. Newton was the Vice-President for Business and Administration at Lander University from 2003, through December 2009. In her affidavit, Ms. Newton stated that she never entered into an agreement for the Defendants to purchase the Inn nor did she make any unambiguous representations to Plaintiff that the Defendants would purchase the Inn. Further, Ms. Newton deferred to the terms of the lease agreement, which included an option to purchase, for the specific terms of the agreement between Plaintiff and Defendants

Plaintiff has argued it suffered economic loss as the result of its reliance on such representations. The economic loss rule is founded on the theory that parties to a contract may allocate their risks by agreement and do not need the special protections of tort law to recover for damages caused by a breach of the contract. East River Steamship v. TransAmerica Delaval, 476 U.S. 858, 106 S.Ct. 2295 (1986). In Westinghouse, the Court concluded that in a commercial transaction where the loss alleged is purely economic and the cause of action is for mere negligent misrepresentation, the economic loss rule bars recovery. 826 F.Supp. at 1557. Therefore, Plaintiff's cause of action for negligent misrepresentation is barred by the economic loss rule and Defendants are entitled to summary judgment.

D. SUMMARY JUDGMENT SHOULD BE GRANTED AS TO PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENCE

Actions based upon contract, referred to as actions *ex contractu*, are distinguished from those based upon tort. Tort causes of action have as their basis non contractual duties. SC Jurisprudence, Actions §11, Charles E. Baker, Esquire, Baker, Barwick, Ravenel and Bender.

The term tort has been described as “one’s disturbance of another in rights which the law has created, either in the absence of contract or in consequence of a relation which a contract has established between the parties.” Under South Carolina law, an action for tort does not lie if the cause of action is predicated on the alleged breach, or even negligent breach of a contract between the parties. Id. Welborn v. Dixon, 70 SC 177-118, 49 S.E.2d 232, 235 (1904). Under SC law, an action for tort does not lie if the cause of action is predicated on the alleged breach, or even negligent breach, of a contract between the parties.). Toney v. LaSalle Bank Nat. Ass’n, 896 F. Supp. 2d 455 (D.S.C. 2012).

In general, the Plaintiff’s remedy is for breach of contract where there is no duty except as the contract creates. However, a tort cause of action may exist when the duty arises out of liability independently of the personal obligation undertaken by the contract. Gilliland v. Elmwood Properties, 301 SC 295, 391 S.E.2d 577 (1990).

As discussed in Section C above, Defendant would show that Plaintiff has not met its threshold burden to support a cause of action for negligent misrepresentation. Defendant would likewise argue that any other ‘duties’ owed to the Plaintiff would arise out of the specific contract entered by the parties on August 12, 2009. In order for any cause of action in tort to lie outside of negligent misrepresentation, the Plaintiff would be required to show a duty of care outside of the lease contract attached hereto. Inasmuch as Plaintiff’s cause of action sounds in contract, summary judgment for the fifth cause of action, titled “Negligence” is appropriate.

CONCLUSION

For the reasons stated above, summary judgment on all causes of action in the Plaintiff’s Complaint should be granted in favor of Defendants.

Respectfully submitted,

NICHOLSON MEREDITH & ANDERSON, LLC

By: *S/ Lena Y. Meredith*

Lena Y. Meredith
S.C. Bar No. 9663
Post Office Box 457
Greenwood, SC 29646
(864) 229-7241
Attorneys for Defendants

September 18, 2018

Greenwood, South Carolina

Certificate of Service

I certify that I provided a copy of the foregoing
pleading on counsel for plaintiff on September
17, 2018 by delivering a copy via electronic mail
to:

Chris Moore
2700 Middleburg Drive
Suite 220
Columbia, SC 29204
(803) 541-7857
cmoore@rpwb.com

James E. Smith, Jr.
1422 Laurel Street
Columbia, SC 29201
(803) 933-9800
james@jamesmithpa.com

Index of Exhibits
Plaintiff Lander University's Reply to Defendant's IOS, LLC
Memorandum in Opposition to Plaintiff's Motion for Summary Judgment

Exhibit 1	Email from Diane Newton to Lisa Catalanotto and Gary Glenn, dated 7/31/2009
Exhibit 2	Emails between John Huffman, Diane Newton, and Tom Covar, September 2009-March 2010
Exhibit 3	(a.) Articles of Organization and Operating Agreement of Palmetto Inns, LLC dated 12/23/2002 (b.) Business Carolina, Inc. Loan Agreement dated 12/31/2002 (c.) Business Carolina Promissory Note dated 12/31/2002 (d.) Business Carolina Mortgage of Real Estate dated 12/31/2002 (e.) Business Carolina, Inc. Unconditional Guaranty dated 12/31/2002 (f.) Assignment of Leases and Rents dated 12/31/2002 (g.) UCC-3 dated 2/13/2003 and continuation filed 2/12/2008
Exhibit 4	S.C. Secretary of State search result re: Emerald Inn, LLC, created 12/23/2002 dissolved 10/6/2006
Exhibit 5	Allegient/Telerecent Financing documents and UCC's
Exhibit 6	Greenwood County, Eighth Judicial Circuit Public Index re Palmetto Inns
Exhibit 7	Excerpts from the Deposition of Louis Smith, pages 19-21
Exhibit 8	Excerpts from the Deposition of John Huffman, page 282
Exhibit 9	(a.) IOS, LLC Operating Agreement, unsigned (b.) IOS, LLC Operating Agreement, Amended, signed 3/29/2005, which indicates the original agreement was signed 2/16/2005 (c.) IOS, LLC First addendum to Operating Agreement of IOS, LLC, 2006, unsigned
Exhibit 10	Stipulation of Dismissal, Business Carolina, Inc. v. Palmetto Inns, LLC
Exhibit 11	Forbearance Agreement, Loan Modification
Exhibit 12	Deposition of John Huffman, page 316
Exhibit 13	Greenwood County Public Index and Greenwood County Legacy Website Document Index with regard to Emerald Inn

Exhibit 14	Allegiant/Telerent Complaint
Exhibit 15	Allegiant/Telerent Check, Itemization
Exhibit 16	Huffman Deposition, Day 2, page 17
Exhibit 17	Handwritten Invoice dated 8/21/2009, Federal Asset Report FYE 12/31/2009, and Federal Tax Liens from 2010 and 2011
Exhibit 18	Greenwood County, Eight Circuit Public Index, IOS, LLC
Exhibit 19	Mortgage from IOS, LLC to Misty Huffman, Book 1883, Page 269
Exhibit 20	Mortgage Record, IOS, LLC, Office of the Clerk of Court for Greenwood County
Exhibit 21	UCC's to Uptown Development Corporation and Upper Savannah Council of Governments
Exhibit 22	New Mortgage from IOS, LLC to Lonestar Ventures, LLC (Misty Huffman's LLC)
Exhibit 23	Confessions of Judgment from IOS, LLC executed by Louis Smith for \$632,419.82 and \$277,154.22, Civil Actions 2014-CP-24-1429 and 2014-CP-24-1430
Exhibit 24	Business Carolina Loan Transcript
Exhibit 25	IOS, LLC Greenwood County Eighth Judicial Circuit Public Index
Exhibit 26	August and November 2007 Letters from Todd Lucas to John Huffman
Exhibit 27	Banc Capital contract
Exhibit 28	Business Carolina Credit Notes
Exhibit 29	August 31, 2009 Forbearance Agreement, Subordination/Non-Disturbance and Escrow Agreement
Exhibit 30	Order of Foreclosure and Deficiency Judgment for \$425,218.84
Exhibit 31	Bill of Sale for Personal Property 104 East Court, L.L.P. and Tax Asset Detail Sheets from 2008-2010, showing depreciation

EXHIBIT 1

Page 1 of 1

Subj: FW: Inn on the Square lease to Lander University
Date: 7/31/2009 1:03:25 P.M.: Eastern Standard Time
From: dnewton@lander.edu
To: mrhu168@aol.com

Misty,

FYI, Let me know if I left something out.

From: Diane Newton
Sent: Friday, July 31, 2009 2:02 PM
To: 'Catalanotto, Lisa'; 'Gary Glenn'
Subject: Inn on the Square lease to Lander University

Lisa and Gary,

Here is the quick and dirty formal request. I am in between meetings right now, but wanted to get this information to you as quickly as possible. I don't have the floor plans and square footage but am working on it. I have a 2:00 but will check my email as soon as possible after that.

Forgive errors and typos. I'll check it again when I get back.

Diane

Gary, FYI, Tom Covar lost his father a couple of days ago very unexpectedly. His funeral is in the mornning.

Monday, December 01, 2014 AOL: MRHu168

12-0023 IOS 0261

ROA_0326



FOUNDED IN 1872

LANDER UNIVERSITY

Office of the Vice President for Business and Administration

July 31, 2009

Lisa Catalanotto
Attorney, Real Property Management
SC Budget and Control Board
General Services Division
1201 Main Street, Suite 420
Columbia, SC 29201

Lisa,

Lander University respectfully requests the approval to lease the Inn on the Square for use as student housing. We are currently projecting a shortage of 100 beds. The Inn on the Square, located in the heart of recently rejuvenated downtown Greenwood makes available 102 beds with additional meeting space for students as well as for other university needs. The city is fully supportive of this venture.

1. Lease will run from August 15, 2009 through June 15, 2010.
2. This lease will include the entire facility.
3. The lease amount stands at \$31,000 per month to equal \$310,000 which translates into \$21.53 per room night.
4. Student housing fees for this residence will be \$1,975 per semester, totaling \$395,000 with occupancy at 100.
5. The projected difference of \$85,000 will be used on utilities, custodial, security and additional housing presence.
6. We have spoken with CHE and we hope for approval at the August 5th board meeting.

Additional general terms include:

1. Lander University will pay all utilities
2. Lander University will provide custodial
3. Inn on the Square will provide maintenance and landscaping
4. All furniture, fixtures and equipment on the first floor will remain. An exception will be office supplies and equipment currently in use.
5. Furniture on floors 2 and 3 will be negotiated during a walk through.
6. Inn on the Square will be responsible for storing all furniture necessary to be removed from the building.

320 Stanley Avenue • Greenwood, SC 29649 • (864) 388-8305 • Fax (864) 388-8036 • www.lander.edu

12-0023 IOS 0262

7. Lander University will have sole use of the parking lot.
8. The bar will be closed prior to August 15, 2009.
9. Events currently scheduled through August 29, 2009 will remain the responsibility of the Inn on the Square.
10. After August 29, 2009, all events will be managed by Lander University.
11. Lander University would entertain the option to purchase this hotel.

Properties considered and either visited or contacted:

1. Greenwood Hotel
 - a. While affordable in close to campus the condition was unacceptable and the potential occupancy was only 40 students.
2. Extended Stay
 - a. The condition was very poor and was in ownership transition. A proposal was requested but none was provided.
3. Days Inn
 - a. The layout was good from a security perspective, the size was adequate, but the rates created a significant loss to Lander. There was no meeting space for students staying in that facility. In addition, the owners wished to keep the hotel status, therefore our students would be sharing with regular hotel customers.
4. Economy Inn
 - a. The price was unacceptable with no willingness to negotiate on their part. The exterior doors to the rooms created a more difficult security environment. They operated a lounge that would continue to be operated. They would maintain their hotel status for their regular customers, mostly by the week construction workers.
5. Holiday Inn Express
 - a. Price was not acceptable.
6. Fairmont Inn
 - a. Price was not acceptable.
7. Hampton Inn
 - a. Price was not acceptable.
8. Cokesbury Garden Apartments
 - a. This apartment complex had the vacancy to handle our overflow and is located close to campus and the new RWS facility. The owners currently operate under HUD Section 236 and were denied the ability to lease to Lander.
9. Greenwood High Apartments
 - a. Not enough vacancies.
10. University Commons Apartments
 - a. Not enough vacancies and prices were not acceptable.

EXHIBIT 2

Inn on the Square

Page 1 of 1

From: jhuffman46@aol.com
To: dnewton@lander.edu
Subject: Inn on the Square
Date: Thu, Sep 3, 2009 10:15 am

Diane,

I appreciate your assistance with your attorney. Hopefully we can finish the paperwork today and move on to the contract of sale, which needs to be finalized as soon as possible.

As we discussed, the asking price for the inn is 3.3 million. The outstanding debt service is 2.2 million. Lander's offer will need to be somewhere between the two or I will need to pursue other potential purchasers.

Please advise.

John Huffman

<http://webmail.aol.com/44148/aol/en-us/mail/PrintMessage.aspx>

9/3/2009

12-0023 IOS 0350

ROA_0330

RE: Inn

Page 1 of 1

From: Diane Newton <dnewton@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>
Subject: RE: Inn
Date: Wed, Oct 7, 2009 2:39 pm

We're submitting the paperwork to the state but have to wait on them to tell us to go ahead and talk contract. We are internally already working to come to a number.

Hope you had a good cruise. Welcome back to the real world and congrats on Tiger Woman.

From: jhuffman46@aol.com [mailto:jhuffman46@aol.com]
Sent: Wednesday, October 07, 2009 1:42 PM
To: Diane Newton
Subject: Inn

Hi Diane,

just getting caught up from my cruise and wanted to check in and get a brief update on where we stood on going to contract on the Inn.

John

<http://webmail.aol.com/28200/aol/en-us/mail/PrintMessage.aspx>

10/7/2009

12-0023 IOS 0351

ROA_0331

RE: Inn on the Square

Page 2 of 2

Sent: Tue, Nov 17, 2009 1:39 pm
Subject: RE: Inn on the Square

That's our plan.

From: jhuffman46@aol.com [<mailto:jhuffman46@aol.com>]
Sent: Tuesday, November 17, 2009 12:25 PM
To: Diane Newton
Subject: Re: Inn on the Square

Diane,

I take it that you expect to submit a contract sometime after the thirteenth of December, which must be approved in a second meeting sometime in March. Is this correct?

Thanks,

John

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

From: Diane Newton <dnewton@lander.edu>
To: jhuffman46@aol.com <jhuffman46@aol.com>
Sent: Tue, Nov 17, 2009 10:18 am
Subject: RE: Inn on the Square

Hey John,

Daddy is having surgery again today. Hopefully this will get him all fixed up

I can understand about your nervous investors, but as I said earlier, we still have to wait until we receive the phase I Budget and Control Board approval on December 13th before we can submit a proposal. It will require language from the state stating the contract is subject to Phase II approval from B&CB to purchase the property. That won't happen until the next meeting which has not been set. It has usually been in March, but things are very different down at Cola these days

I hope this helps.

di

From: jhuffman46@aol.com [<mailto:jhuffman46@aol.com>]
Sent: Monday, November 16, 2009 4:10 PM
To: Diane Newton
Subject: Inn on the Square

Hi Diane,

I hope this finds you well and all is well with your father.

As you can imagine my investors are getting nervous because November is slipping away and they still have not seen a contract from Lander. Would you please give me an update on where things stand at the moment and when we might receive something from you in writing?

Thanks,

John

<http://webmail.aol.com/28878/aol-1/en-us/mail/PrintMessage.aspx>

11/17/2009

12-0023 IOS 0352

ROA_0332

RE: Inn on the Square

Page 1 of 2

From: Diane Newton <dnewton@lander.edu>
 To: jhuffman46@aol.com <jhuffman46@aol.com>
 Subject: RE: Inn on the Square
 Date: Tue, Nov 17, 2009 5:42 pm

John,

I think we are saying the same thing. The March timeframe is still what we are hoping happens. We had hoped the Budget and Control Board would have a meeting prior to December, that just didn't happen; totally out of our control.

Our schedule is still

December 13th - Phase I approval from Budget and Control Board to

- Perform a building conditions assessment
- Get an appraisal
- Perform a Phase I environmental assessment

Shortly after that approval we will begin the assessments and draw up a purchase contract. The contract will contain language stating the sale will be pending Budget and Control Board approval. We hope that meeting will be in March, but I can't say for certain until they put out the schedule.

I hope this helps.

dj

From: jhuffman46@aol.com [mailto:jhuffman46@aol.com]
 Sent: Tuesday, November 17, 2009 5:25 PM
 To: Diane Newton
 Subject: Re: Inn on the Square

Diane,

I did not get that understanding from you when we discussed this deal in August. It was my understanding a contract would be drawn up before the end of November to submit to your board for first round approval in December; and that the final approval would go before your board in March.

Unfortunately, this new timeframe leaves me no option other than to proceed with a backup contract. I have a group out of Charleston and another out of Columbia that are interested in the property and will need to schedule them both in for inspections in the next few weeks prior to negotiating a contingency contract with them should your efforts to purchase the property prove unsuccessful.

I will get back with you on the dates.

Thanks,

John

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

From: Diane Newton <dnewton@lander.edu>
 To: jhuffman46@aol.com <jhuffman46@aol.com>

<http://webmail.aol.com/28878/aol-1/en-us/mail/?PrintMessage.aspx>

11/17/2009

12-0023 IOS 0353

Tom Covar

From: jhuffman46@aol.com
Sent: Wednesday, March 17, 2010 5:38 PM
To: Tom Covar; dbell@mcdonaldpatrick.com; ljordan@bqslaw.com
Subject: Inn on the Square

Tom,

I will arrive at the Inn next Thursday, 25 March, 2010, at 9:30 am. The purpose of my visit will be to inspect the facilities with a potential purchaser from Atlanta.

As such, I will need access to all common areas and a select number of rooms, a minimum of four each of the king, double queen, and queen.

I will also have various public officials meet me there throughout the day to perform certain due diligence requirements related to a purchase of the building.

If you have any question you may call me at my home, 803-754-5898, or by email.

Thank you,

John Huffman

Tom Covar

From: jhuffman48@aol.com
Sent: Wednesday, March 17, 2010 5:38 PM
To: Tom Covar; dbell@mcdonaldpatrick.com; ljordan@bqslaw.com
Subject: Inn on the Square

Tom,

I will arrive at the Inn next Thursday, 26 March, 2010, at 9:30 am. The purpose of my visit will be to inspect the facilities with a potential purchaser from Atlanta.

As such, I will need access to all common areas and a select number of rooms, a minimum of four each of the king, double queen, and queen.

I will also have various public officials meet me there throughout the day to perform certain due diligence requirements related to a purchase of the building.

If you have any question you may call me at my home, 803-754-5898, or by email.

Thank you,

John Huffman

EXHIBIT 3

EXHIBIT 3 (a)

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Mar 14 2016
REFERENCE ID: L603111700003

Mark Hammond
CLERK OF COURT

Palmiro Inc, LLC
Name of Limited Liability Company

5 ☒ 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)

☒ 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.

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

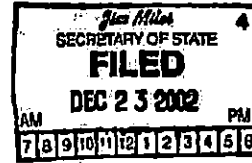
CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Mar 14 2016
REFERENCE ID: 1603111700003

[Signature]

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY



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 PALMERD LANS, LLC

2 The address of the initial designated office of the Limited Liability Company in South Carolina is
1430 RICHLAND ST Street Address
COLUMBIA City 29201 Zip Code

3 The initial agent for service of process of the Limited Liability Company is
S. CRAIG WHITE Name Signature

and the street address in South Carolina for this initial agent for service of process is

1430 RICHLAND ST Street Address
COLUMBIA City 29201 Zip Code

The name and address of each organizer is

(a) S. CRAIG WHITE Name
1430 RICHLAND ST, COLUMBIA Street Address City
SOUTH CAROLINA State 29201 Zip Code

(b) _____ Name
_____ Street Address City
_____ State _____ Zip Code

And, additional fees if necessary

[] Check this box only if the company is to be a term company. If so, provide the term specified _____

03-001632CC

ROA_0339

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Mar 14 2016
REFERENCE ID: 1603111700003

Mark H. Harnish

PALMETTO INNS, LLC
Name of Limited Liability Company

4 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:

4 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.

11 Signature of each organizer

[Signature]

Date 12/18/02

(Add Additional lines if necessary)

FILING INSTRUCTIONS

File two copies of this form: the original and either a duplicate original or a conformed copy.

If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form. To prepare this using a computer disk which will allow for expansion of the space on the form.

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 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 on or before the fifteenth day of the fourth month following the close of the limited liability company's taxable year.

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) 734-1728

Form Revised by South Carolina
Secretary of State, January 2000

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

ROA_0340

EXHIBIT 3 (b)

BUSINESS CAROLINA, INC.
LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Loan Agreement") is made and entered into to be effective as of the 31 day of December, 2002, by and between Business Carolina, Inc. ("BCI") ("Lender") and Palmetto Inns, LLC ("Borrower").

NOW, THEREFORE, in consideration of Lender making a loan of One Million and NO/100ths Dollars (\$1,000,000.00) (the "Principal Amount") to Borrower for the purposes set forth in Section 2.2, as evidenced by the Note (as defined below), Lender and Borrower enter into this Loan Agreement and agree as follows:

1. Definitions. For the purposes hereof:

- 1.1 "Closing Date" means the date of this Loan Agreement.
- 1.2 "Collateral" means all real and personal property and other interests securing the Loan as more particularly set forth in Section 5.1.
- 1.3 "Commitment" means Lender's commitment letter to Borrower dated December 19, 2002, the terms and conditions of which are incorporated herein by reference; but in the event of any conflict or discrepancy between the terms of this Loan Agreement and the Commitment, the terms of this Loan Agreement shall control.
- 1.4 "Event of Default" shall have the meaning set forth in Section 6.
- 1.5 "GAAP" means generally accepted accounting principles, as in effect from time to time, consistently applied.
- 1.6 "Grace Period" shall have the meaning set forth in Section 7.
- 1.7 "Guarantor" is defined in Section 5.2.
- 1.8 "Guaranty" means the direct and unconditional guaranty of all guarantors of payment of all sums due under the Loan Documents and/or of performance of all Obligations of Borrower thereunder.
- 1.9 "Hazardous Materials" means all materials described as hazardous wastes or substances (or having a similar meaning) under any local, state, or federal environmental law, rule, or regulation, and petroleum, petroleum products, oil, and asbestos.
- 1.10 "Loan" means that certain loan as described in Section 2.1.
- 1.11 "Loan Documents" means this Loan Agreement and any and all notes, mortgages,

BCI / Palmetto Inns, LLC

1

Loan Document

deeds of trust, assignments, security agreements, financing statements, consents, and all other documents, instruments, guaranties, certificates, and agreements executed and/or delivered by Borrower, any Guarantor, or third party in favor of Lender in connection with the Loan or any Collateral.

1.12 "Note" means the note of Borrower dated as of Closing Date in favor of Lender in the amount of the Loan as set forth in Section 2.1, as well as any promissory note or notes issued by Borrower in substitution, replacement, extension, amendment, or renewal of any such promissory note or notes.

1.13 "Obligations" means all obligations and liabilities of any nature owed to Lender, whether now or hereafter existing, arising out of, or related to the Loan Documents or any other financial transactions between Lender and Borrower, including all future obligations and advances.

1.14 "Obligors" means Borrower, all Guarantors, any additional parties executing any of the Loan Documents, and any other persons or entities that may be liable in whole or in part for any of the Obligations.

1.15 "Servicing Agent" means Lender or such replacement or successor Servicing Agent as the Lender may select and designate from time to time in its sole discretion by written notice to Borrower.

2. The Loan and Advances.

2.1 Loan. Lender hereby agrees to make (or has made) the Loan to Borrower for the Principal Amount. The obligation to repay the Loan is evidenced by the Note dated as of Closing Date and having a maturity date, repayment terms, and interest rate as set forth in the Note.

2.2 Purpose. The purpose of the Loan is solely as follows: provide financing for the purchase of real property located at 104 E. Court Avenue in Greenwood County commonly known as the Inn on the Square. Borrower agrees that no portion of the Loan will be used for personal, family, or household use.

2.3 Advances. Lender shall disburse the proceeds of the Loan to Borrower as follows: The Lender shall fund the Loan in its sole discretion (i) upon the execution of all Loan and Security Documents by the Lender and Borrower; and (ii) the recordation and perfection of its secured interest in the Collateral granted under the Loan. The Borrower will, as a condition of the Loan provide for the timely recordation of all documents necessary to secure the interests of the Lender. The Loan shall be funded in accordance with such procedures and requirements as may be set forth in the Loan Documents or as the Lender may establish in its sole discretion for Closing. Funding shall not occur until all closing documents have been recorded and returned to Lender, Lender has received a satisfactory title policy, if applicable, and its attorney fees have been paid. In no event shall Lender be obligated to advance any sum to Borrower so

long as any Event of Default has occurred and is continuing. In the event that the Loan proceeds are not fully disbursed within twelve (12) months following the date of closing of this Loan, the Lender shall not be obligated to fund any additional amounts under the Loan.

3. **Representations and Warranties.** To induce Lender to make the Loan, Borrower makes the following representations and warranties, which shall survive the execution and delivery of the Note and other Loan Documents:

3.1. **Good Standing.** If Borrower is an entity, it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized and has the power and authority to own its property and to carry on its business in each jurisdiction in which Borrower does business.

3.2. **Authority and Compliance.** Borrower has full power and authority to execute and deliver the Loan Documents and to incur and perform the Obligations provided for therein, all of which have been duly authorized by all proper and necessary action of the appropriate governing body of Borrower. No consent or approval of any public authority or other third party is required as a condition to the validity of any of the Loan Documents, and Borrower is in compliance with all laws and regulatory requirements to which it is subject.

3.3. **Binding Agreement.** This Loan Agreement and the other Loan Documents executed by Borrower constitute valid and legally binding obligations of Borrower, enforceable in accordance with their terms.

3.4. **Litigation.** There is no proceeding involving Borrower pending or, to the knowledge of Borrower, threatened before any court or governmental authority, agency, or arbitration authority, except as disclosed to Lender in writing and acknowledged by Lender prior to the date of this Loan Agreement.

3.5. **No Conflicting Agreements.** There is no charter, bylaw, stock provision, partnership agreement, or other document pertaining to the organization, power, or authority of Borrower and no provision of any existing agreement, mortgage, deed of trust, indenture, or contract binding on Borrower or affecting its property, which would conflict with or in any way prevent the execution, delivery, or carrying out of the terms of this Loan Agreement and the other Loan Documents.

3.6. **Ownership of Assets.** Borrower has good title to its assets, and its assets are free and clear of all judgments, liens, and encumbrances except those granted to Lender and as disclosed to Lender in writing prior to the date of this Loan Agreement.

3.7. **Taxes.** All taxes and assessments due and payable to Borrower have been paid or are being contested in good faith by appropriate proceedings and Borrower has filed all tax returns which it is required to file.

3.8. **Environmental Matters.** The conduct of Borrower's business operations does not

and will not violate any federal laws, rules, or ordinances for environmental protection, regulations of the Environmental Protection Agency, and any applicable local or state law, rule, regulation, or rule of common law, and any judicial interpretation thereof relating primarily to the environmental or Hazardous Materials and Borrower will not use or permit any other party to use any Hazardous Materials at any of Borrower's places of business or at any other property owned by Borrower except such materials as are incidental to Borrower's normal course of business, maintenance, and repairs and which are handled in compliance with all applicable environmental laws. Borrower has disclosed to Lender in writing the existence of any underground storage tanks located on any real property now or previously owned by Borrower or securing the Loan and Borrower agrees that no additional underground storage tanks shall be placed on any such property without the written consent of Lender. Borrower agrees to permit Lender, its agents, contractors, and employees to enter and inspect any of Borrower's places of business or any other property of Borrower at any reasonable times upon prior notice for the purposes of conducting an environmental investigation and audit (including taking physical samples) to insure that Borrower is complying with this covenant and Borrower shall reimburse Lender on demand for the costs of any such environmental investigation and audit. Borrower shall provide Lender, its agents, contractors, employees, and representatives with access to and copies of any and all data and documents relating to or dealing with any Hazardous Materials used, generated, manufactured, stored, or disposed of by Borrower's business operations within five (5) days of the request therefore.

3.9 Compliance with Laws. Borrower is in compliance with all federal, state, and local laws, regulations, and governmental requirements including environmental laws applicable to it or to any of its property, business operations, employees, and transactions.

3.10 Facilities for Handicapped. Borrower is in compliance with all legal requirements regarding access and facilities for handicapped or disabled persons, including the legal requirements set forth in the Federal Architectural Barriers Act, the Fair Housing Amendments Act of 1988, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and comparable state laws.

3.11 Accurate Financial Information. The financial information furnished to Lender is complete and accurate and Borrower has no undisclosed direct or contingent liabilities.

3.12 Solvency. (i) Borrower is solvent; (ii) the pledge of the Collateral, if any, as contemplated herein to Lender will not render Borrower insolvent; (iii) Borrower has made adequate provision for the payment of all of its creditors other than Lender; and (iv) neither Borrower nor Guarantor, if any, have entered into this transaction to provide preferential treatment to Lender or any other creditor of Borrower or any Guarantor in anticipation of seeking relief under the Bankruptcy Code.

3.13 ERISA. No employee benefit plan established or maintained, or to which contributions have been made, by Borrower which is subject to Part 3 of Subtitle 13 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), had an "accumulated funding deficiency" (as such term is defined in Section 302 of ERISA) as of the

last day of the most recent fiscal year of such plan ended prior to the date hereof, or would have had such an accumulated funding deficiency on such day if such year were the first year of such plan to which such Part 3 applied; and no material liability to the Pension Benefit Guaranty Corporation has been incurred with respect to any such plan by Borrower.

Each such employee benefit plan complies and will comply fully with all applicable requirements of ERISA and of the Internal Revenue Code of 1986 as amended ("Code") and with all applicable rulings and regulations issued under the provisions of ERISA and the Code. This Loan Agreement and the consummation of the transactions contemplated herein will not involve any prohibited transaction within the scope of ERISA or Section 4975 of the Code.

4. Covenants of Borrower.

4.1 Affirmative Covenants. During the term of this Loan Agreement, Borrower will:

(a) Continuation of Preclosing Conditions, Representations, and Warranties. Agree that all conditions precedent to the making of the Loan shall remain satisfied at all times during the term of the Loan, and that representations and warranties made by Borrower in the Loan Documents shall be deemed to be made at all times during the term of this Loan Agreement.

(b) Maintenance. Maintain all of its property in good condition and repair and make all necessary replacements thereof, and preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates, and the like necessary for the operation of its business.

(c) Financial Statements. Furnish to Lender (i) fiscal year-end financial statements for Borrower and Guarantor within ninety (90) days after the close of each fiscal year prepared by independent certified public accountants who are satisfactory to Lender; (ii) quarterly internally prepared financial statements within thirty (30) days after the close of the first, second, and third quarters of each fiscal year of Borrower; (iii) annual complete Federal and state of South Carolina tax returns for Borrower and Guarantor for each fiscal year; and (iv) such other information respecting the financial condition and operations of Borrower as Lender may from time to time reasonably request. Accompanying such financial statements shall be a statement prepared by such accounting firm or the Borrower, if applicable, either (i) identifying, or (ii) that there has been no occurrence of, any Event of Default of which such firm or the Borrower, after due inquiry and investigation, is aware. All financial statements shall be prepared in accordance with GAAP, shall be in form and content satisfactory to Lender, and shall include, without limitation, an income statement, balance sheet, and list of contingent liabilities.

(d) Insurance. The Borrower shall maintain such insurance, and provide evidence thereof to Lender, as Lender may require from time to time in its sole discretion; but in all events (and without limiting the Lender's right to require further insurance) the Borrower shall maintain the following insurance:

(i) Hazard Insurance. The Borrower shall maintain (or cause to be

maintained) with respect to all of the Collateral and all of its property other than Collateral, both real and personal, and to the extent of the full insurable value thereof (without more than \$5,000 deductible), insurance against fire, windstorm, explosion and other casualties, hazards and risks (including without limitation vandalism and malicious mischief) customarily covered by extended coverage endorsement. Such policy shall be issued by a company, and be in form and content, acceptable to Lender, and shall contain (i) a standard form non-contributing mortgagee clause and (ii) a standard form waiver of subrogation clause. The Borrower shall also maintain (or cause to be maintained) flood insurance acceptable to Lender with respect to any Collateral and any of its property other than Collateral located (in whole or in part) in an area which is considered a flood risk area by the United States Department of Housing and Urban Development or as otherwise required by the Flood Disaster Protection Act of 1973 and the regulations promulgated thereunder. All such hazard and flood insurance policies shall obligate the issuer thereof to provide Lender with thirty (30) days prior written notice of cancellation.

(ii) Liability Insurance. The Borrower shall maintain (or cause to be maintained) comprehensive general public liability insurance against claims for bodily injury, death or property damage affording protection to the limit of not less than two (2) times the maximum principal amount of the Loan (without more than \$5,000 deductible) in respect of injury or death to any one person or damage to property of any one owner, and to the limit of not less than two (2) times the maximum principal amount of the Loan (without more than \$5,000 deductible) in respect of injury or death to more than one person or damage to property of more than one owner, arising from any one accident. Such policy shall be issued by a company, and be in form and content, acceptable to Lender, and shall obligate the issuer thereof to provide Lender with thirty (30) days prior written notice of cancellation. The Borrower shall also maintain (or cause to be maintained) Workers' Compensation Insurance coverage in form and content acceptable to Lender.

(iii) Title Insurance. With respect to each parcel of real estate (whether land, improvements, or both) which is or becomes part of the Collateral, if any, the Borrower shall obtain a current ALTA standard form paid Mortgagee title insurance policy insuring that the Security Document covering such parcel constitutes a valid lien thereon senior to all other liens except Prior Liens, free and clear of all defects and encumbrances except such as Lender shall approve in writing. Such policy shall be issued by a company, and be in form and content, acceptable to Lender, and shall contain (i) full coverage against liens of mechanics, materialmen, laborers and other Persons who might claim statutory or common law liens; (ii) no survey exceptions except as approved by Lender in writing; (iii) coverage to the extent of any Loan advance together with a "pending disbursements clause" in form and substance acceptable to Lender; and (iv) zoning coverage, if available.

(iv) Proceeds of Insurance Claims. Lender shall have the right to settle and compromise any and all claims under any policy required to be maintained by Borrower hereunder and Borrower hereby appoints Lender as its attorney-in-fact, with power to demand, receive, and receipt for all monies payable thereunder, to execute in the name of Borrower or Lender or both any proof of loss, notice, draft, or other instruments in connection with such policies or any loss thereunder and generally to do and perform any and all acts as Borrower but for this appointment, might or could perform. Unless otherwise agreed, Lender shall be entitled to apply the proceeds of any such policies to satisfy the indebtedness arising under the Loan. All insurance policies provided hereunder shall be in an amount sufficient to avoid the application of any co-insurance provisions and must include provisions for a minimum thirty (30) day advance written notice of any intended policy cancellation or non-renewal. The insurance required pursuant to Paragraphs d(i) through d(v) hereof shall be in addition to, and not a replacement for, the insurance required under any other Loan Documents.

(e) Management. Maintain executive personnel and management reasonably satisfactory to Lender.

(f) Access to Collateral and Financial Information. Permit any representative or agent of Lender to examine and audit any or all of Borrower's books and records, wherever located, upon request by Lender and permit Lender to have access to all Collateral for purposes of inspection and evaluation.

(g) Adverse Conditions or Events. Suffer no adverse change in the financial condition of Borrower or any Guarantor, including a decrease in the net worth of Borrower or any Guarantor of ten percent (10%) or more. Borrower will promptly inform Lender of any such material adverse change or any litigation or threatened litigation which might substantially affect Borrower's or any Guarantor's financial condition.

(h) Notification of Environmental Claims. Immediately advise Lender in writing of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any applicable federal, state, or local laws, ordinances, or regulations relating to any Hazardous Materials affecting Borrower's business operations; and (ii) all claims made or threatened by any third party against Borrower relating to damages, contributions, cost recovery, compensation, loss, or injury resulting from any Hazardous Materials. Borrower shall immediately notify Lender of any remedial action taken by Borrower with respect to Borrower's business operations.

(i) Use of Proceeds. Use the proceeds of the Loan only for the purpose or purposes represented to Lender in Section 2.2.

4.2 Negative Covenants. During the term of this Loan Agreement, Borrower will not, without prior written consent of Lender:

- (a) Incur, guarantee, assume, or otherwise become liable for, directly or indirectly, absolutely or contingently, any indebtedness other than borrowings hereunder or additional debt maturing in less than one (1) year and incurred in the ordinary course of business.
- (b) Incur any additional purchase money obligations.
- (c) Assign, mortgage, pledge, encumber, or grant any security interest in or transfer any of Borrower's assets, whether now owned or hereafter acquired, except in the ordinary course of business.
- (d) Purchase, redeem, or retire any capital stock, partnership interests, or ownership interests of any other nature in Borrower.
- (e) Lend money or credit to or make or permit to be outstanding loans or advances to any person, firm, or corporation, except trade receivables.
- (f) Guarantee, endorse, or otherwise become surety for or upon the obligation of any person, firm, or corporation.
- (g) Change the ownership, control, or key management of Borrower.
- (h) Enter into any merger or consolidation, or sell, lease, transfer, or otherwise dispose of all or any substantial part of its assets, whether now owned or hereafter acquired.
- (i) Change its name or any name in which it does business. For as long as any of the Borrower's obligations remain unpaid or unsatisfied, the Borrower shall continue to conduct its primary business operations in Greenwood County, on the premises described in Annex A. Any movement, relocation, or transfer of primary business operations shall require the prior written consent of the Lender.
- (j) Make any distribution of cash or property to its shareholders, partners or other owners, as applicable, or permit the withdrawal of assets from Borrower's business; provided that if Borrower is an S Corporation or Limited Liability Company (taxed as a partnership), such restrictions shall not apply to dividends or distributions made for the sole purpose of providing funds to shareholders or members of the Borrower to pay tax liabilities incurred as a direct result of such shareholder's/member's ownership interest in the Borrower under the applicable Subchapter S corporation or limited liability company regulations promulgated under federal and state tax laws.
- (k) Increase the compensation of any officer or key employee of Borrower, as shown on financial statements submitted with Borrower's application for Loan, by more than ten percent (10%) per year during the term of the Loan.
- (l) Purchase equipment and fixed assets costing more than the accumulated depreciation on equipment and fixed assets for the previous four (4) consecutive fiscal quarters in any fiscal year of Borrower while the Loan is outstanding.
- (m) Permit any prohibited Hazardous Materials to be stored or maintained on any real property owned by Borrower except as provided in Section 3.8.

5. Security for Loan.

5.1 Collateral. As security for the Loan and any other indebtedness of Borrower to Lender, Borrower hereby grants liens and security interests and will execute and deliver to Lender appropriate mortgages, assignments of leases, security agreements, financing statements, and other security documents in form satisfactory to Lender in the Collateral described in Exhibit A attached hereto.

5.2 Guaranties. This Loan shall be guaranteed by those certain parties described in Exhibit B attached hereto and incorporated herein by reference.

6. Events of Default. The occurrence of any of the following shall constitute an event of default ("Event of Default"):

6.1 Payment. Any payment of principal, interest, or other sum owed to Lender under the Loan Documents or otherwise due from Borrower to Lender is not made when due.

6.2 Additional Defaults. Any provision or covenant of the Loan Documents is breached, or any warranty, representation, or statement made or furnished to Lender by Borrower in connection with the Loan and the Loan Documents (including any warranty, representation, or statement in Borrower's or any Guarantor's financial statements) or to induce Lender to make the Loan, is untrue or misleading in any material respect.

6.3 Guaranties. The death of any Guarantor, a breach of any term, covenant, or provision in any Guaranty, or if any Guaranty does not remain in full force and effect during the term of this Loan Agreement.

6.4 Cross-Default. Any default by Borrower occurs under any agreement with Lender or another financial institution, whether now existing or hereafter arising, which default is not corrected within the cure period provided in such agreement, if any.

6.5 Insecurity. Lender reasonably deems itself, any Collateral, or any lien or security interest, insecure or unsafe; or Lender, in good faith, believes that its prospects for payment of the Loan have been impaired.

7. Lender's Remedies and Grace Period.

7.1 Acceleration/Grace Period. Upon the occurrence of an Event of Default which continues beyond the applicable Grace Period, Lender shall have the option to declare the entire unpaid principal amount of the Loan, accrued interest, and all other Obligations immediately due and payable, without presentment, demand, or notice of any kind. Prior to exercising any right to accelerate, Lender will provide written notice to Borrower of the Event of Default and Borrower will have ten (10) days to cure in the case of a default (the "Grace Period(s)"), such Grace Periods to commence on the date that notice is sent to Borrower by Lender.

7.2 Remedies. Upon the occurrence of an Event of Default which continues beyond the applicable Grace Period, Lender shall be entitled to pursue all Rights (hereafter defined).

available under each of the Loan Documents, as well as all Rights and remedies available at law or in equity. Without in any way limiting the generality of the foregoing, Lender shall also have the following non-exclusive Rights:

(a) Immediate Possession of Collateral. To take immediate possession of all Collateral, whether now owned or hereafter acquired, without notice, demand, presentment, or resort to legal process; and, for those purposes, to enter any premises where any of the Collateral is located and remove the Collateral therefrom or render it unusable;

(b) Assembly of Collateral. To require Borrower to assemble and make the Collateral available to Lender at a place to be designated by Lender which is also reasonably convenient to Borrower.

(c) Sale of Personal Property. To retain all non-real estate Collateral in satisfaction of any unpaid Obligations as provided in the Uniform Commercial Code or sell the Collateral at public or private sale after giving at least ten (10) days' notice of the time and place of the sale, with or without having the Collateral physically present at the place of the sale (such notice constituting reasonable notice under the Uniform Commercial Code).

(d) Repair of Collateral. To make any repairs to the Collateral which Lender deems necessary or desirable for the purposes of sale;

(e) Set-off. To exercise any and all Rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Lender's possession or under its control.

(f) Cure. To cure any Event of Default in such manner as deemed appropriate by Lender.

(g) Foreclosure. If the Loan is secured by a lien on any real property, to foreclose on such real property pursuant to the terms of the deed of trust or other Loan Documents, or at law or in equity.

7.3 Proceeds. The proceeds from any disposition of the Collateral for the Loan shall be used to satisfy the following items in the order they are listed:

(a) The expenses of taking, removing, storing, repairing, holding, and selling the Collateral and otherwise enforcing the Rights of Lender, including any legal costs and attorneys' fees.

(b) The expense of liquidating or satisfying any liens, security interests, or encumbrances on the Collateral which may be prior to the security interest of Lender that Lender, at its option, elects to satisfy.

(c) Any unpaid fees, accrued interest, and other sums due Lender with respect to Loan Documents, and then the unpaid principal amount of the Loan.

(d) Any other Obligations.

7.4 Resort to Obligors. Lender may, at its option, pursue any and all Rights and

remedies directly against Borrower, any Guarantor, or any other Obligor without resort to any Collateral.

7.5 Deficiency. To the extent the proceeds realized from the disposition of the Collateral shall fail to satisfy any of the foregoing items, Borrower and all other Obligors shall remain liable to pay any deficiency to Lender.

7.6 Advances/Reimbursements. All amounts advanced by Lender under the Loan Documents, or due Lender as a result of expenditures made by Lender or losses suffered by Lender, shall bear interest at the rate applicable to past due principal as specified in the Note from the date demanded until paid in full. Unless otherwise specified in the Loan Documents, such advances and other sums, together with accrued interest, shall be due and payable on demand.

8. Miscellaneous.

8.1 Notice. All notices, demands, approvals, requests and other communications of any nature under the Loan Documents shall be in writing, and shall be mailed to the address of each party as set forth below (or as set forth in any other Loan Document), said mailing to be by overnight delivery to the Street Address or certified United States government mail to the Mailing Address, with notice in each case to be effective when sent. Either party must provide written direction to the other in order to change the address to which said notice shall be sent.

Business Carolina, Inc.
1441 Main Street, Suite 900
Columbia, South Carolina 29201
Attention: Charles Harmon
Facsimile Number: (803) 461-3826

with copy to:
Robinson McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC 29202
Attn: Meg R. Scoopmire
Facsimile Number: (803) 252-0724

Palmetto Inns, LLC
Mailing Address: *46 White & White Law Offices, P.C.*
1430 Richland Street
Columbia, SC 29201
Attn: S. Craig White
Facsimile Number: *(803) 252-2434*

with copy to:
J. Daniel Lucero
White & White Law Offices, P.C.
1430 Richland Street
Columbia, SC 29201
Facsimile Number: (803) 252-2434

8.2 No Election or Waiver. All of the rights, remedies, powers, and privileges (individually, a "Right" and together, "Rights") of Lender provided for in the Loan Documents are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time. No failure by Lender to exercise, nor delay in exercising any Right, including the Right to accelerate the maturity of the Note, shall be construed as a waiver of any Event of Default or as a waiver of any Right.

Without limiting the generality of the foregoing provisions, the acceptance by Lender of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the Right of Lender to accelerate the maturity of the Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

8.3 Evidence of Action; Standard of Conduct. No consent, approval, election or other Lender action of any nature, or modification or waiver of any provision of any Loan Document or consent to any departure by any Obligor from any Loan Document shall in any event be effective unless the same shall be in writing signed by an authorized representative of Lender, and such action shall be effective only in the specific instance and for the particular purpose for which given. In addition, unless expressly provided to the contrary in the Loan Documents, Lender shall be entitled to take any action or refrain from action of any nature, in whole or in part, under the Loan Documents in Lender's sole and absolute discretion for any reason or no reason whatsoever.

8.4 Benefit. The Loan Documents shall be binding upon and shall inure to the benefit of Obligors and Lender and their respective successors and assigns.

8.5 Governing Law and Jurisdiction. The Loan Documents, unless otherwise specifically provided therein, and all matters relating thereto, shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina. Obligors, and all general partners of any Obligor that is a partnership, hereby submit to the jurisdiction of the state and federal courts located in that state and agree that Lender may, at its option, enforce its Rights under the Loan Documents in such courts or in any other jurisdiction in which Lender is located or in which any Obligor or any Collateral may be located.

8.6 Assignment. Lender may assign or otherwise convey interests in the Loan Documents, in whole or in part, to any other person or entity, and, in the event of a complete assignment, Lender shall thereafter be relieved of all further liability under the Loan Documents and the Obligors shall look solely to such assignee for performance of Lender's obligations. All Obligors hereby authorize Lender to disclose all information (including financial) provided to Lender by all Obligors in connection with the Loan to any actual or prospective assignee of all or part of the Loan. No Obligor may assign the Loan Documents or any interest therein without Lender's written consent.

8.7 Indemnification. Borrower shall indemnify, defend, and hold Lender and its employees, agents, officers, attorneys, and successors and assigns harmless from and against any and all claims, demands, suits, losses, damages, assessments, fines, penalties, costs, or other expenses (including reasonable attorneys' fees and litigation expenses) arising out of or related directly or indirectly to the Loan Documents or any transaction described therein, including any violation of any law related to Hazardous Materials and any and all matters arising out of any act, omission, event, or circumstance (including without limitation the presence on, generation

at, disposal of at, or release from the Collateral of any hazardous substance or waste), regardless of whether the act, omission, event, or circumstance constituted a violation of any law related to Hazardous Materials at the time of its existence or occurrence, including Hazardous Materials located on or about any real property owned by any Obligor or for which any Obligor may otherwise be responsible. Borrower's Obligations under this Section shall survive the repayment of the Loan and satisfaction of all Loan Documents.

8.8 Severability. Invalidity of any one or more of the terms, conditions, or provisions of this Loan Agreement shall in no way affect the balance hereof, which shall remain in full force and effect.

8.9 Construction. All parties signing any Loan Document other than Lender shall be jointly and severally liable thereunder. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine. All references in any Loan Document to Articles, Sections, or Exhibits shall mean the Articles, Sections, and Exhibits of the respective Loan Document unless otherwise specified. The terms "herein," "hereinbelow," "hereunder," and similar terms are references to the particular Loan Document in its entirety and not merely the particular Article, Section, or Exhibit in which any such term appears. Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the Loan Document nor the intent of any provision thereof. All references to any Loan Document shall include all amendments, extensions, renewals, restatements, and replacements of the same. The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to" and "Property," "Collateral," and "Premises" shall be construed as if followed by the phrase "or any part thereon". All actions authorized under any Loan Document may be exercised on multiple occasions unless expressly provided to the contrary. No inference in favor of any party shall be drawn from the fact that such party has drafted any portion of the Loan Document. In the event of any inconsistency between the terms of the Loan Agreement and any other Loan Document, the terms of the Loan Agreement shall control, provided that any provision of any Loan Document, other than the Loan Agreement, which imposes additional Obligations upon Obligor or provides additional Rights or remedies to Lender shall be deemed to be supplemental to, and not inconsistent with, the Loan Agreement.

8.10 Execution in Counterparts. All Loan Documents may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of the Loan Document, it shall not be necessary to produce or account for more than one such counterpart.

8.11 Examinations/Communications. Lender's examinations, inspections, or receipt of information pertaining to the matters set forth in the Loan Documents shall not in any way be deemed to reduce the full scope and protection of the Loan Documents or the Obligations of any Obligor related to the Loan Documents. All Obligors agree that Lender shall have no duty or obligation of any nature to (i) make any investigation, inspection, or review regarding any

Obligor or any Collateral at any time, with any such investigation that is undertaken being solely for the benefit of Lender; or (ii) communicate in any manner with any Obligor, irrespective of the fact that Lender's information, or lack thereof, could be material to Obligor's actions with respect to the Obligations.

8.12 No Third Party Beneficiaries. The Loan Documents are entered into for the sole benefit of Lender and no third party shall be deemed to have any privity of contract nor any right to rely on any Loan Document to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereof or be deemed to be a third party beneficiary.

8.13 No Participation. Nothing, in the Loan Documents, and no action or inaction whatsoever on the part of Lender through the date hereof, shall be deemed to make Lender a partner or joint venturer with any Obligor, and Borrower indemnifies and holds Lender harmless from and against any and all claims, losses, causes of action, expenses (including attorneys' fees), and damages arising from the relationship between Lender and any Obligor being construed as or related to be anything other than that of lender and borrower. This provision shall survive the termination of all Loan Documents.

8.14 Notice of Conduct. Obligor agrees to give Lender written notice of any action or inaction by Lender or any agent or attorney of Lender in connection with the Loan Documents or the Obligations of any party under the Loan Documents that may be actionable against Lender or any agent or attorney of Lender or a defense to payment of any Obligation of any Obligor under the Loan Documents, including commission of a tort or violation of any contractual duty implied by law. Obligor agrees that unless such notice is given promptly (in any event within thirty (30) days after such party has knowledge, or with the exercise of reasonable diligence should have had knowledge) of such action or inaction, Obligor shall not assert, and said party shall be deemed to have waived, any claim or defense arising therefrom if Lender (i) could have mitigated such claim or defense after receipt of such notice or (ii) has otherwise undertaken discretionary action under the Loan Documents without such notice having been given. Upon request of Lender, Obligor shall also confirm in writing the status of the Loan, all amounts owed to Lender, and provide other information reasonably requested by Lender.

8.15 Limitation of Damages. Obligor and Lender mutually agree that no party shall be liable to the other for damages arising from any breach of contract, tort, or other wrongful conduct in connection with the negotiation, documentation, administration, or collection of the Loan other than the actual direct loss suffered by said party.

8.16 Costs, Expenses, and Attorneys' Fees. Borrower shall pay immediately upon demand the full amount of all out-of-pocket costs and expenses, including reasonable attorneys' fees, costs of experts and all other expenses, incurred by Lender in connection with (a) the negotiation, preparation, modification, renewal, restatement, and replacement of this Loan Agreement and each of the other Loan Documents; (b) the administration of the Loan, including the costs of additional appraisals, environmental studies, title insurance, survey updates, and legal reviews; (c) the perfection, preservation, protection, and continuation of the liens and security interest granted Lender in the Collateral and the custody, preservation, protection, repair,

and operation of any of the Collateral; (d) the pursuit by Lender of its Rights and remedies under the Loan Documents and applicable law; and (e) defending any counterclaim, cross-claim, or other action, or participating in any bankruptcy proceeding, mediation, arbitration, litigation, or dispute resolution of any other nature involving Lender, any Obligor, or any Collateral, except to the extent Lender has been adjudicated to have engaged in wrongful conduct.

8.17 Further Assurances. At any time after the closing of any transactions contemplated by the Loan Documents, all Obligors, at the request of Lender, shall execute and deliver such further documents and agreements and take such further actions as Lender deems necessary or appropriate to permit each transaction contemplated by the Loan Documents to be consummated in accordance with the provisions thereof and to perfect, preserve, protect, and continue all liens, security interests, and Rights of Lender under the Loan Documents, security agreements, financing statements, continuation statements, new or replacement Notes, Guaranties, and/or mortgages and agreements supplementing, extending, or otherwise modifying the Note, this Loan Agreement, and/or any mortgage or security agreement, and certificates as to the amount of the indebtedness evidenced by the Note. All Obligors herein irrevocably with full power of substitution constitute and appoint Lender as their attorney-in-fact, such appointment being coupled with an interest with the right to enforce Lender's Rights with respect to the above further assurances.

8.18 Additional Authorization: All Obligors hereby severally (i) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by any Loan Document), filing of suit, and diligence in collecting any Obligation or pursuing any Collateral; (ii) agree to any substitution, subordination, exchange, or release of any Collateral or the release of any Obligor; (iii) consent to any extensions or postponements of time of payment or performance under any Loan Document for any period or periods of time and to any partial payments or performance, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (iv) consent to all amendments, extensions, renewals, restatements, and replacements of any Loan Documents entered into by the signatories thereto, without notice thereof to, or further action required by, any non-signatory.

8.19 Incorporation by Reference. This Loan Agreement is incorporated by reference into various Loan Documents, and Section 8 shall govern each and every Loan Document. In executing any Loan Document, the signatories thereto other than Lender expressly agree to be bound by all provisions of this Loan Agreement pertaining to Obligors.

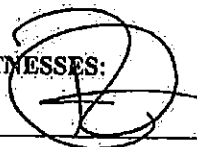
8.20 Time of the Essence. Time is of the essence to all Loan Documents.

9. Additional Provisions. Riders attached hereto, if any, which have been initialed by Borrower and Lender, are hereby incorporated into this Loan Agreement as if set forth verbatim.

REMAINDER OF PAGE INTENTIONALLY BLANK

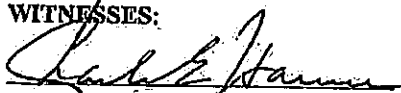
IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement under seal as of the date first above written.

WITNESSES:



Lori King

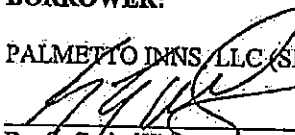
WITNESSES:



Mayant Sg

BORROWER:

PALMETTO INNS, LLC (SEAL)



By: S. Craig White
Its: Member / Manager

LENDER:

By: BUSINESS CAROLINA, INC.
(SEAL)



By: Elliott E. Franks, III
Its: Chief Executive Officer

LOAN AGREEMENT EXHIBIT A

COLLATERAL AND OTHER LIENS

1. Collateral.

(a) Real Property and Improvements. Real property (collectively, the "Premises") as more particularly described in Annex A attached hereto and incorporated herein by reference.

(b) Personalty Related to Premises. All personalty related to the Premises, including all furniture, fixtures, equipment, and machinery related to or maintained on the Premises as more particularly described in Schedule A attached to the Security Agreement of even date herewith, by and between the Borrower and Lender.

(c) Assignment of Leases, Rents and Profits. An assignment of all leases, rents and profits related to the Premises.

(d) Lien. A lien on Borrower's personalty including all furniture, equipment, contracts, fixtures, as more particularly described in Schedule A attached to the Security Agreement.

(e) Proceeds. All proceeds, products, and substitutions of the foregoing.

Unless otherwise provided herein, all terms shall have the meanings generally attributed to such terms under Article 9 of the Uniform Commercial Code as adopted by the State of South Carolina. Borrower represents and warrants that it is the absolute owner of the above Collateral and that the Collateral is owned free and clear of all liens, encumbrances, and security interests of any kind except those granted to Lender and those previously disclosed to Lender.

2. Other Liens.

(a) Prior Liens. NONE

(b) Permitted Liens. Any liens or security interests in favor of the Lender; or arising by operation of law to secure taxes, assessments or other amounts owed any governmental authority not yet due and payable; or given as purchase money security interest in the property whose lease or purchase is not prohibited under any of the Loan Documents; or the prior liens set forth in (a) above.

BCI / Palmetto Inns, LLC

Lender: 

Borrower: 

Loan Document

LOAN AGREEMENT EXHIBIT B

GUARANTORS

All indebtedness under the Loan shall be jointly, severally, and unconditionally guaranteed by the following (collectively, "Guarantor").

S. Craig White
elo White & White Law Offices, P.C.
1430 Richland Street
Columbia, SC 29201
Social Security No. : [REDACTED]

BCI / Palmetto Inns, LLC

Lender : 

Borrower: 

Loan Document

LOAN AGREEMENT EXHIBIT D

CERTIFICATE AND AFFIDAVIT OF OWNERSHIP

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The undersigned ("Deponent") being first duly sworn, depose and says on oath, as follows:

1. Deponent is presently the Manager/Member of Palmetto Inns, LLC, a Limited liability company duly organized, existing and in good standing of the laws of the state of South Carolina ("Borrower"), and as such, Deponent has personal knowledge of facts sworn to in this Certificate Affidavit.

2. The ownership interest of Borrower is as follows:

<u>MEMBER</u>	<u>MEMBERSHIP INTEREST</u>

S. Craig White	100%

3. Attached hereto as Exhibit A and by this reference incorporated herein are true and correct copies of the original articles of organization and operating agreement of Borrower and any and all amendments thereto, that said articles of organization and operating agreement are in full force and effect, that there have been no amendments or modifications thereof except for such amendments or modifications as are attached hereto, that no proceeding is pending for the dissolution or annulment of Borrower; that all license and franchise taxes due and payable by Borrower have been paid in full; that Borrower has the power, authority and legal right to carry on the business now being conducted by it or contemplated by the Loan; and that the outstanding membership interests of Borrower has been duly and validly issued.

4. Borrower is the owner of that certain land described in Annex A to the Loan Agreement and all improvements and personal property located thereon (collectively the "Premises").

5. The consummation of that certain loan in the amount of \$1,000,000.00 (the "Loan") from Business Carolina Inc., ("Lender") to Borrower and the performance of the obligations of Borrower under and by virtue of the documents executed in connection with the Loan (the "Loan Documents"), including the Security Agreement, have been duly authorized by all necessary Shareholder, Director or Borrower action and will not result in any breach of or constitute a default under any instrument to which Borrower is a party.

Lender: 

Borrower: 

BCI / Palmetto Inns, LLC

Loan Document

6. There is no outstanding indebtedness for furniture, equipment, appliances, machinery or other fixtures comprising part of the Premises other than has been disclosed to Lender in writing in the Loan Agreement.

7. The lines and corners of the Premises are clearly marked, and there are no encroachments (except as shown on the title commitment delivered to Lender), overlaps, boundary line disputes or other adverse matters which would be disclosed by an accurate survey and inspection of the Premises, and there is no violation of any restriction to which the Premises are subject.

8. All improvements or repairs that have been made to the Premises during the one hundred twenty (120) days preceding the date hereof have been paid in full and there are no contracts not fully performed, and no outstanding bills incurred, for labor or materials used in making improvements or repairs on the Premises, or for services of architects, surveyors or engineers incurred in connection therewith, and Borrower has made no contract or arrangement of any kind whatsoever, the performance of which by the other party thereto could give rise to a lien on the Premises superior to that of the Lender under the Loan Documents.

9. Borrower has no knowledge of any violations or notices of violations of any law, ordinance, order, rule or regulation relating in any way to the Premises.

10. There are no pending or, to the best knowledge of Borrower, threatened actions, proceedings, suits, judgments, bankruptcies or executions that in any way involve Borrower, the Obligors, the Loan Documents or any guarantor of the Loan, and Borrower is not surety on any bond that through default of the principal therein a lien might be created superior to any conveyance executed by Borrower.

11. The Premises are not now damaged or injured as a result of any flood, fire, explosion, accident, or other casualty.

12. All brokerage commissions or similar compensation now due in connection with the sale of the Premises, the making of the Loan, or the transactions contemplated by the Loan Documents have been paid in full.

13. Borrower has delivered to the Lender true, correct and complete copies of the financial statements of Borrower and the Guarantors and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

14. Borrower's intended use of the Premises complies with all governmental statutes, rules, and regulations including all applicable zoning laws; Borrower has obtained all licenses, approvals and permits required to operate the Premises for its intended use.

Lender: 

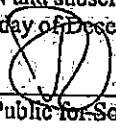
Borrower: 

Loan Document

BCI / Palmetto Inns, LLC

15. There has not been any change in the key management that Borrower expects to employee from that previously disclosed to Lender.

SWORN and subscribed to before me
This 31 day of December, 2002


_____. (L.S.)
Notary Public for South Carolina
My commission expires: 2-1-2012

The Borrower acknowledges the truth and accuracy of the contents of this Certificate and Affidavit.

PALMETTO INNS, LLC



By: S. Craig White
Its: Member / Manager

BCI / Palmetto Inns, LLC

Lender: 
Borrower: 
Loan Document

ANNEX A

Lender's Address: Business Carolina, Inc.
 1441 Main Street, Suite 900
 Columbia, South Carolina 29201
 Attention: Charles Harmon

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

BEING the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December ____, 2002 to be recorded in the Office of the Register of Deeds for Greenwood County.
 TMS# 6845942879

Property Address: 104 E. Court Avenue, Greenwood, South Carolina 29646

Lender: 

Borrower: 

BCI / Palmetto Inns, LLC

Loan Document

EXHIBIT 3 (c)

BUSINESS CAROLINA, INC.
PROMISSORY NOTE

\$1,000,000.00

December 31, 2002

1. **Promise to Pay.** FOR VALUE RECEIVED, Palmetto Inns, LLC, a limited liability company organized and existing under the laws of the State of South Carolina ("Borrower") promises to pay to the order of Business Carolina, Inc. ("Lender"), without offset, in immediately available U.S. funds at the address set forth in the Loan Agreement or at such other place or places as Lender may designate, the principal sum of \$1,000,000.00 (or such lesser principal as shall have been advanced against this promissory note (this "Note")), together with interest thereon as provided in Section 4 as follows:

During the twelve (12) month period immediately following the date of Closing, accrued interest shall be paid monthly commencing one (1) month after the date of Closing and continuing thereafter on the same day of each succeeding month (the "Interest-Only Period"). Thereafter, one hundred seventy-nine (179) equal monthly installments of principal and interest shall be made commencing one (1) month after the end of the Interest-Only Period and thereafter on the same day of each succeeding calendar month, the amount of each such installment to be that necessary to amortize the Loan principal (accruing interest at 6.75%) on a level payment basis over a period of one hundred eighty (180) months.

2. **Final Maturity.** The date of final maturity of this Note shall be December 31, 2018. A final payment of all outstanding principal and accrued but unpaid interest due and owing shall become due and payable on this date.

3. **Loan Documents.** This Note is governed by that certain loan agreement (the "Loan Agreement"), dated of even date herewith, between Lender and Borrower. The security for, security documents and other agreements executed in connection with this Note and the Loan Agreement are various security instruments, including the following, as amended, modified, restated, or supplemented from time to time:

- (i) Mortgage of Real Estate dated same date hereof to Lender conveying and encumbering certain real property located in Greenwood County, South Carolina;
- (ii) Security Agreement(s) dated same date hereof;
- (iii) Assignment(s) of Leases and Rents, dated the same date hereof; and
- (iv) Guaranty of S. Craig White.

This Note, the Loan Agreement, the above referenced security instruments and any other documents now or hereafter securing, guaranteeing or executed in connection with the loan (the "Loan") evidenced by this Note are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein collectively the "Loan Documents."

4. **Interest Rate.** Subject to the further provisions of this Section, the principal evidenced by this Note shall bear interest at a rate per annum equal the following (the "Stated Rate"):

During the Interest-Only Period a variable rate, ~~adjusted quarterly~~, equal to the Prime Rate plus two (2%) percent (hereafter defined); the initial interest rate shall be determined on the execution date of this Note, with adjustments being made on the date Prime changes.

For the three (3) years after the Interest-Only Period this Note shall bear interest at a fixed rate per annum of six and three quarters percent (6.75%)

Thereafter at a rate per annum of comparable to the then current market rates for this type and quality of Loan.

All computations of interest shall be based on a 360-day year and the actual number of days elapsed. If interest accrues at a variable rate, then the Stated Rate shall, unless otherwise specified herein, change on the date of each change in such variable rate without notice.

"Prime Rate" as used in this Note means, on any day, the rate of interest per annum determined by the Lender from time to time to be the "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general. The "Prime Rate" used by Lender shall be referenced to the prime rate published in the Money Rates section of the Wall Street Journal.

Upon the occurrence of any Event of Default (hereafter defined) which continues for more than 15 days, any principal of, and to the extent permitted by applicable law any interest on, this Note, and any other sums due and payable hereunder and under the Loan Documents, shall bear interest at a rate per annum (the "Default Rate") equal to the Stated Rate plus four percent (4%).

In no event shall the Stated Rate or the Default Rate exceed the maximum interest rate permitted by law. If interest would otherwise be payable in excess of the maximum permitted by law, then ipso facto, this Note shall be reformed and the interest payable reduced to the maximum permitted by law.

5. **Late Charge.** If any installment of principal or interest is not paid in full when due, Borrower shall pay, on demand, a late charge of four percent (4%) of the amount of the payment which becomes past due for a period exceeding fifteen (15) days to defray the added expense incurred in handling said delinquent installment. This late charge is in addition to, and not in substitution for, any other remedies of Lender related to an Event of Default.

6. **Prepayment.** This Note is subject to optional prepayment in whole or in part at any time without premium or penalty. Partial prepayments shall be applied to principal installments in inverse order of their maturity.

7. **Certain Provisions Regarding Payments.** All payments made on this Note shall be applied to accrued but unpaid interest, unpaid principal, and any other sums due and unpaid to

4. **Interest Rate**: Subject to the further provisions of this Section, the principal evidenced by this Note shall bear interest at a rate per annum equal the following (the "Stated Rate"):

During the Interest-Only Period a variable rate, ~~adjusted quarterly~~, equal to the Prime Rate plus two (2%) percent (hereafter defined); the initial interest rate shall be determined on the execution date of this Note, with adjustments being made on the date Prime changes.

For the three (3) years after the Interest-Only Period this Note shall bear interest at a fixed rate per annum of six and three quarters percent (6.75%)

Thereafter at a rate per annum of comparable to the then current market rates for this type and quality of Loan.

All computations of interest shall be based on a 360-day year and the actual number of days elapsed. If interest accrues at a variable rate, then the Stated Rate shall, unless otherwise specified herein, change on the date of each change in such variable rate without notice.

"Prime Rate" as used in this Note means, on any day, the rate of interest per annum determined by the Lender from time to time to be the "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general. The "Prime Rate" used by Lender shall be referenced to the prime rate published in the Money Rates section of the Wall Street Journal.

Upon the occurrence of any Event of Default (hereafter defined) which continues for more than 15 days, any principal of, and to the extent permitted by applicable law any interest on, this Note, and any other sums due and payable hereunder and under the Loan Documents, shall bear interest at a rate per annum (the "Default Rate") equal to the Stated Rate plus four percent (4%).

In no event shall the Stated Rate or the Default Rate exceed the maximum interest rate permitted by law. If interest would otherwise be payable in excess of the maximum permitted by law, then ipso facto, this Note shall be reformed and the interest payable reduced to the maximum permitted by law.

5. **Late Charge**: If any installment of principal or interest is not paid in full when due, Borrower shall pay, on demand, a late charge of four percent (4%) of the amount of the payment which becomes past due for a period exceeding fifteen (15) days to defray the added expense incurred in handling said delinquent installment. This late charge is in addition to, and not in substitution for, any other remedies of Lender related to an Event of Default.

6. **Prepayment**: This Note is subject to optional prepayment in whole or in part at any time without premium or penalty. Partial prepayments shall be applied to principal installments in inverse order of their maturity.

7. **Certain Provisions Regarding Payments**: All payments made on this Note shall be applied to accrued but unpaid interest, unpaid principal, and any other sums due and unpaid to

Lender under the Loan Documents, in such manner and order as Lender may elect in its discretion. Remittances in payment of any part of the indebtedness shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the holder hereof in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by the holder hereof of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of an Event of Default.

8. **Defaults.** The occurrence of any Event of Default as defined in the Loan Agreement shall constitute an "Event of Default" under this Note. Upon the occurrence of an Event of Default and its continuance beyond any applicable grace period, Lender shall have the rights to declare the principal balance of and accrued but unpaid interest on this Note at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at law or in equity.

If Lender retains an attorney in connection with any Event of Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to Lender, in addition to principal, interest and any other sums owing to Lender under the Loan Documents, all reasonable costs and expenses so incurred by such holder, including reasonable attorneys' fees.

9. **Governing Law.** This Note, and its validity, enforcement and interpretation, shall be governed by South Carolina law (without regard to any conflict of laws principles) and applicable United States federal law.

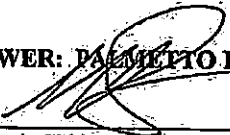
10. **Incorporation by Reference.** The Loan Agreement is incorporated into this Note by reference as if set forth verbatim, and Section 8 of the Loan Agreement shall expressly be applicable to and govern this Note and the rights of all parties herein.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower has executed this Note under seal as of the day and year first above written.

BORROWER: PALMETTO INNS, LLC


BY: S. Craig White

ITS: Member / Manager

Taxpayer I.D. 

(SEAL)

EXHIBIT 3 (d)

FILED, RECORD 02/13/2003
 AT 03:22 PM BOOK 01453 PAGE 00087
 Louise Davis - Clerk of Court
 Greenwood County Courthouse 000002050

STATE OF SOUTH CAROLINA

) BUSINESS CAROLINA, INC.
) MORTGAGE OF REAL ESTATE
)

COUNTY OF GREENWOOD

2050 BK: 11453 Pg: 87
 THIS MORTGAGE OF REAL ESTATE (this "Mortgage") is made and entered into to be effective as of the 31 day of December 2002, by Palmetto Inns, LLC, a limited liability company, organized under the laws of the State of South Carolina ("Mortgagor") to Business Carolina, Inc. ("Lender") pursuant to the terms of that certain Loan Agreement, dated as of even date herewith, between Lender and Mortgagor regarding a \$1,000,000.00 (evidenced by a Note in said face amount) (the "Loan Agreement"). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Loan Agreement (with all references to any Note or other Loan Document to include all amendments, extensions, renewals, restatements, and replacements of the same).

NOW, THEREFORE, for valuable consideration (the receipt of which is hereby acknowledged), to induce Lender to enter into and perform its obligations under the Loan Agreement, and to secure payment and performance of all obligations (collectively, the "Obligations") of Obligors arising out of or related to (i) the Note, the Loan Agreement, and all other Loan Documents; Mortgagor hereby bargains, grants, sells, and conveys to Lender and the heirs, successors and assigns of Lender, the following described property (the Land [defined below] and all other property described in paragraphs (a)-(e) below are collectively referred to as the "Premises"):

All that certain parcel or tract of land (the "Land") more fully described in Annex A attached hereto and incorporated herein located in Greenwood County, State South Carolina.

Together with:

- (a) all singular rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto;
- (b) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration, and repair of the Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Land, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Land and Improvements or any part thereof or derived from or acquired by any proceeds of the Land or Improvements or any part thereof, including all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning, and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Property");

BCI / Palmetto Inns, LLC

1

Mortgage

ANNEX A 2050 Bk:1453 Pg:88

Deliver To: PATTEN WATSON
 WHITE & WHITE LAW OFFICES
 1430 RICHLAND ST
 COLUMBIA SC 29201

Mortgagee's Address: Business Carolina, Inc.
 1441 Main Street, Suite 900
 Columbia, South Carolina 29201
 Attention: Charles Harmon
 Facsimile Number: (803) 461-3819

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

TMS# 6845942879

Property Address: 104 E. Court Avenue, Greenwood, South Carolina 29646

This being the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December 31, 2002, and recorded December 31, 2002 in Mortgage Book 769 at Page 218 in the Office of the Greenwood County Register of Deeds. *Deed*

BCI / Palmetto Inns, LLC

10

Mortgage

ROA_0372

(c) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, and tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating, or appertaining to any of the Premises, or which hereafter shall in any way belong, relate, or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, at law as well as in equity, of Mortgagor of, in, and to the same, including all judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of any of the Premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or any part thereof, or to any rights appurtenant thereto (together, the "Easements and Other Interests");

(d) all proceeds of any sales or other dispositions of any of the Premises or any part thereof, including cash proceeds, non-cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals, and accessions of any of the foregoing (the "Proceeds"); and

(e) as additional collateral and further security for the Obligations, Mortgagor hereby conditionally assigns to Lender all the leases, security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contract rights, rights to payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, general intangibles, other forms of obligations and receivables, all monies due or to become due; and all returned or repossessed goods now or hereafter pertaining to or resulting from the Premises or any part thereof (the "Intangible Property") or constituting or derived from or acquired by any proceeds of the Premises or any part thereof (the "Rents and Profits") reserving only the right to Mortgagor to collect the same as long as there shall exist no Event of Default (hereafter defined), together with all proceeds, including cash proceeds, noncash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals, and accessions of the Rents and Profits or any part thereof, and all replacements, modifications, renewals, and substitutions thereof or therefore.

All Tangible Property which comprises a part of the Premises shall, to the extent permitted by law, be deemed to be affixed to the Land. As to the balance of the Tangible Property and Intangible Property, this Mortgage shall constitute a security agreement and Mortgagor grants to Lender a security interest in the Tangible Property, the Intangible Property and the Rents and Profits, together with all of the rights and remedies of a secured party under the Loan Documents and applicable law, including the South Carolina Uniform Commercial Code.

To Have and To Hold all and singular the Premises unto Lender and the heirs, successors, and assigns of Lender forever.

Mortgagor covenants that Mortgagor is lawfully seized of the Premises in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey, or encumber the same, and that the Premises are free and clear of all encumbrances except as expressly disclosed in writing to Mortgagee. Mortgagor further covenants to warrant and forever defend all and singular the Premises unto Lender and the heirs, successors, or assigns of Lender from

BCI / Palmetto Inns, LLC

and against Mortgagor and all persons whomsoever lawfully claiming the Premises or any part of the Premises.

Provided Always, nevertheless, and it is the true intent and meaning of Mortgagor and Lender, that if Mortgagor pays or causes to be paid to Lender the Obligations, the estate hereby granted shall cease, determine, and be utterly null and void; otherwise, said estate shall remain in full force and effect.

It Is Agreed that Mortgagor shall be entitled to hold and enjoy the Premises until an Event of Default has occurred.

Mortgagor further warrants, covenants and agrees with Lender as follows:

1. **Advances and Obligations under Loan Agreement.** This Mortgage is given to secure all advances made or to be made to Mortgagor by Lender and all Obligations related to the Loan Agreement or the Note. The maximum amount of such Obligations not to exceed \$1,000,000.00.
2. **Maintenance.** Mortgagor will maintain the Premises in good condition and repair and will neither permit nor allow waste of any portion of the Premises. Mortgagor will promptly repair or restore any portion of the Premises which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the Premises and will cut no timber on the Premises without the express written consent of Lender. Lender shall be entitled to specific performance of the provisions of this paragraph.
3. **Insurance.** Mortgagor will keep all Tangible Property insured by such company or companies as Lender may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood and earthquake. Such insurance will be payable to Lender as the interest of Lender may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by Lender and will not be cancelable by either the insurer or the insured without at least thirty (30) days prior written notice to Lender. Mortgagor hereby assigns to Lender the right to collect and receive any indemnity payment otherwise owed to Mortgagor upon any policy of insurance insuring any portion of the Premises, regardless of whether Lender is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Lender from any such policy of insurance may, at the option of Lender, (i) be applied by Lender to payment of any Obligations in such order as Lender may determine, (ii) be applied in a manner determined by Lender to the replacement, repair, or restoration of the portion of the Premises damaged or destroyed, (iii) be released to Mortgagor upon such conditions as Lender may determine, or (iv) be used for any combination of the foregoing purposes. No portion of any indemnity payment which is applied to replacement, repair, or restoration of any portion of the Premises which is released to Mortgagor shall be deemed a payment against any Obligations. Mortgagor will keep the Premises continuously insured as herein required and will deliver to Lender the original of each policy of insurance required hereby. Mortgagor will pay each premium coming due on any such policy of insurance and will deliver to Lender proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance, Mortgagor will furnish to Lender at least ten (10)

days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements of this Mortgage. Upon foreclosure of this Mortgage, all right, title, and interest of Mortgagor in and to any policy of insurance upon the Premises which is in the custody of Lender, including the right to unearned premiums, shall vest in the purchaser of the Premises at foreclosure, and Mortgagor hereby appoints Lender as the attorney in fact of Mortgagor to assign all right, title, and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. **Taxes and Assessments.** Mortgagor will pay all taxes, assessments, and other charges which constitute or are secured by a lien upon the Premises and will deliver to Lender proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided that Mortgagor shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment, or charge so long as the collection of the same is stayed during the pendency of such proceedings and Mortgagor deposit with the authority to which such tax, assessment, or charge is payable or with Lender appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.
5. **Environmental Site Assessment.** Mortgagor shall pay when due the cost of providing to Lender, at Lender's reasonable request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Premises, which Assessment shall be prepared by an environmental auditor acceptable to Lender, in Lender's sole discretion; provided that Lender shall make such request no more frequently than once every year unless the Note is being renewed, extended, modified, or accelerated or Lender is otherwise required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such Assessment.
6. **Appraisal.** Mortgagor shall pay when due the cost of providing to Lender, at Lender's reasonable request from time to time, a then-current appraisal of the market value of the Premises prepared by an appraiser acceptable to Lender in its discretion; provided that Lender shall make such request no more frequently than once every third year unless the Note is being renewed, extended, modified, or accelerated or Lender is otherwise required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Lender to obtain any such appraisal.
7. **Expenditures by Lender.** If Mortgagor fails to make payment for restoration or repair of the Premises, for insurance premiums, for taxes, assessments, or other charges as required in this Mortgage, or for performance of any other covenant or condition hereof, Lender may, but shall not be obligated to, pay for the same, and any such payment by Lender will be secured by this Mortgage and have the same rank and priority as the principal Obligation secured by this Mortgage and bear interest from the date of payment at the rate payable from time to time on outstanding principal under the Note after the occurrence of an Event of Default. Payments made for taxes by Lender shall be a first lien on the Premises to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of this Mortgage.
8. **After Acquired Premises.** The lien of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter located in or on, or attached to, or used or intended to

be used in connection with or with the operation of, the Premises or any part of the Premises.

9. **Environmental Indemnifications.** Mortgagor agrees to indemnify Lender with respect to environmental matters as more particularly set forth in the Loan Agreement.

10. **Condemnation.** Lender shall be entitled to be made a party to, be notified by Mortgagor of, and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Premises. Mortgagor assigns to Lender the right to collect and receive any payment or award to which Mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Premises. Any such payment or award received by Lender may, at the option of Lender, (i) be applied by Lender to payment of any Obligations in such order as Lender may determine, (ii) be applied in a manner determined by Lender to the replacement of the portion of the Premises taken and to the repair or restoration of the remaining portion of the Premises, (iii) be released to Mortgagor upon such conditions as Lender may determine, or (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair, or restoration of any portion of the Premises or which is released to Mortgagor shall be deemed a payment against any Obligations.

11. **Transfer.** At the option of Lender, the Obligations shall become due and payable if, without the prior written consent of Lender, Mortgagor shall convey away the Premises or any interest therein, further encumber the Premises, or suffer the placement of any mechanics' lien on the Premises which is not removed within 30 days after filing; or if the legal or beneficial ownership shall become vested in any other person in any manner whatsoever.

12. **Event of Default.** An "Event of Default" shall be the occurrence or existence of any Event of Default as defined the Loan Agreement.

13. **Remedies.** Upon the occurrence of an Event of Default which continues beyond any applicable Grace Period set forth in the Loan Agreement, Lender may, without notice to Mortgagor, declare all Obligations immediately due and payable. If default shall be made in the payment of any amount due under the Note, this Mortgage, or any other Loan Document, then, upon Lender's demand, Mortgagor will pay to Lender the whole amount due and payable under the Note and all other Obligations; and if Mortgagor shall fail to pay such sums upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses, and disbursements of Lender's agents and attorneys incurred in connection with such suit and any appeal of such suit. Lender shall be entitled to sue and recover judgment, as set forth above, either before, after, or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Lender to recover such judgment shall not be affected by any taking, possession, or foreclosure sale under this Mortgage, or by the exercise of any other right, power, or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien of this Mortgage. At the foreclosure Lender shall be entitled to bid and to purchase the Premises and shall be entitled to apply the Obligations, or any portion thereof, in payment for the Premises. The proceeds of the sale shall be applied to the cost of sale, the amount due to Lender, and as otherwise required by then existing laws related to foreclosure or as deemed necessary by Lender. In case of a foreclosure sale of all or any part of the Premises and of the application of the proceeds of sale to the payment of the Obligations, Lender shall be entitled to enforce

BCI / Palmetto Inns, LLC

5

Mortgage

payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Lender in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or any other Loan Document, by law or in equity, all of which rights and remedies may be exercised by Lender independently, simultaneously, or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised.

Without in any way limiting the generality of the foregoing, Lender shall also have the following specific rights and remedies:

(a) To make any repairs to the Premises which Lender deems necessary or desirable for the purposes of sale.

(b) To exercise any and all rights of set-off which Lender may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Lender's possession or under its control;

(c) To cure such Event of Default, with the result that all costs and expenses incurred or paid by Lender in effecting such cure shall be additional charges on the Loan which bear interest at the interest rate set forth in the Note and are payable upon demand.

(d) To foreclose on the Premises and to pursue any and all remedies available to Lender at law or in equity, and in any order Lender may desire, in Lender's sole discretion.

14. **Appointment of Receiver.** Upon the occurrence of an Event of Default, Lender shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Premises in order to perform all acts necessary and appropriate for the operation and maintenance of the Premises including the execution, cancellation, or modification of leases, the making of repairs to the Premises, and the execution or termination of contracts providing for the construction, management, or maintenance of the Premises, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Premises. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Premises and collecting the rents, including attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Mortgagor as lessor or landlord of the Premises and then to the Obligations. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those rents actually received. Lender shall not be liable to Mortgagor or anyone claiming under or through Mortgagor, or anyone having an interest in the Premises by reason of anything done or left undone by Mortgagor under this Section. If the rents of the Premises are not sufficient to meet the costs of taking control of and managing the Premises and collecting the rents, Lender, at its sole option, may advance funds to meet the costs. Any funds expended by Lender for such purposes shall become Obligations of Mortgagor to Lender. Unless Lender and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note after the occurrence of an Event of Default. The entering upon and taking and maintaining of control of the Premises by Lender or the receiver and the application of rents as provided in this Mortgage shall not cure or waive any Event of Default or invalidate

BCI / Palmetto Inns, LLC

any other right or remedy of Lender under this Mortgage. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as secured party hereunder to the possession and control of any cash deposits or instrument at the time held by, or payable or deliverable under the terms of this Mortgage to, Lender.

15. **Waiver by Mortgagor.** Mortgagor understands that upon default under this Mortgage, among other remedies set out in this Mortgage, the Note, and the Loan Agreement, Lender may foreclose upon the Premises or any portion thereof in the sole discretion of Lender and ask for a deficiency judgment. Mortgagor, to the extent permitted by law, hereby expressly waives and relinquishes any rights of redemption, valuation, appraisal, marshaling of assets, and sale in inverse order of alienation and homestead, which Mortgagor may have under any statute or governing law and understands and agrees that a deficiency judgment, if pursued by Lender, shall be determined by the highest price bid at the foreclosure sale of the property.

16. **Notices.** Any notice given to Mortgagor or Lender by one of these parties shall be sent subject to the provision set forth in the Loan Agreement. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

17. **Additional Documents.** The Mortgagor agrees to execute and deliver to the Lender, upon the request of the Lender from time to time hereafter, all financing statements and other documents reasonably required to perfect and maintain the lien and security interest created by the Mortgage.

18. **Partial Foreclosure.** In the event the Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Lender to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Lender to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

19. **Greater Estate.** In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Premises and, prior to the satisfaction of the Obligations and the cancellation of this Mortgage of record, Mortgagor obtains a fee estate in such portion of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of Mortgagor, be and become subject to the security lien of this Mortgage.

20. **Imposition of Tax.** In the event of the passage of any state, federal, municipal, or other governmental law, order, rule, or regulation in any manner changing or modifying the laws now in force governing the taxation of debts secured by deeds of trust or the manner of collecting taxes so as to affect adversely Lender, Mortgagor will promptly pay any such tax on or before the due date; and if Mortgagor fails to make such prompt payment or if any such state, federal, municipal, or other governmental law, order, rule, or regulation prohibits Mortgagor from making such payment or would penalize Lender if Mortgagor makes such payment, then the entire balance of the Obligations evidenced by the Note shall become due and payable upon demand at the option of Lender.

21. **Amendments.** Neither this Mortgage nor any term hereof may be changed, waived, discharged, or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge, or

termination is sought. Any agreement made after the execution of this Mortgage by Mortgagor and Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance on the Premises.

22. Miscellaneous.

(a) The terms "Mortgagor" and "Lender" shall refer to and include the heirs, legal representatives, successors, and assigns of Mortgagor and Lender and all covenants and agreements contained in this Mortgage by or on behalf of Mortgagor or Lender shall bind and inure to the benefit of their representatives, heirs, successors, and assigns, whether so expressed or not.

(b) This Mortgage shall be governed by, construed, and enforced in accordance with the laws of South Carolina.

(c) Lender may make or cause to be made reasonable entries onto the Premises for inspections, appraisals, environmental tests, or assessments upon the giving to Mortgagor of prior notice, and to this end, Mortgagor grants an easement to Lender over and onto the Premises for such purposes.

(d) If this is not a first mortgage, any prior mortgages and the maximum amount thereof are shown below:

(e) Mortgagor represents to Lender that such Mortgagor is benefitted by the Loan evidenced by the Note, whether or not Mortgagor is the maker thereof, that Mortgagor's obligations under this Mortgage will not render Mortgagor insolvent, and that adequate and sufficient consideration has been given to Mortgagor for its execution and delivery of this Mortgage.

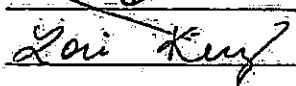
23. **Incorporation by Reference.** The Loan Agreement is incorporated into this Mortgage by reference as if set forth verbatim. IN EXECUTING THIS MORTGAGE, MORTGAGOR AGREES TO BE BOUND BY ALL PROVISIONS OF THE LOAN AGREEMENT PERTAINING TO OBLIGORS.

2050 Bk:1453 Pg:95

24. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of the deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

In Witness Whereof, Mortgagor has executed this Mortgage under seal as of the day and year first above written.

WITNESSES:


Lori Key

MORTGAGOR: PALMETTO INNS, LLC

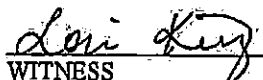

By S. Craig White
Its: Member / Manager

STATE OF SOUTH CAROLINA)

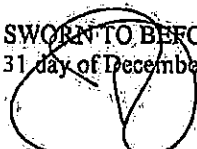
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness who after first being duly sworn, deposes and says that s/he saw the within-named Palmetto Inns, LLC, a South Carolina limited liability company by S. Craig White, its authorized agent, sign, seal and as its act and deed, deliver the within-written Mortgage of Real Estate for the uses and purposes therein mentioned, and that s/he together with the other witness whose signature appears above, witnessed the execution thereof.


WITNESS

SWORN TO BEFORE ME THIS
31 day of December, 2002.


(L.S.)
Notary Public for South Carolina
My commission expires: 2/25/2004

2050 BK:1453 Pg:96

BCI / Palmetto Inns, LLC

9

Mortgage

EXHIBIT 3 (c)

**BUSINESS CAROLINA, INC.
UNCONDITIONAL GUARANTY**

THIS GUARANTY AGREEMENT (this "Guaranty") is made and entered into to be effective as of the 31 day of December, 2002, by S. Craig White, to benefit Business Carolina, Inc. ("Lender") pursuant to the terms of that certain Loan Agreement (the "Loan Agreement"), dated same date hereof, between Lender and Palmetto Inns, LLC, a limited liability company organized under the laws of the State of South Carolina ("Borrower") regarding a loan in the principal amount of up to \$1,000,000.00 (the "Loan"). Unless otherwise defined herein, all capitalized terms shall have the meaning set forth in the Loan Agreement (with all references to any Note or other Loan Document to include all amendments, extensions, renewals, restatements and replacements of the same).

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, and in order to induce Lender, from time to time, in its sole discretion to extend or continue to extend credit (with or without security) under the Loan and/or to engage in business transactions with Borrower, Guarantor hereby absolutely and unconditionally guarantees to Lender and its successors and assigns, the due and punctual payment of all liabilities and obligations of Borrower to Lender under the Loan, the Loan Agreement, the Note and any of the other Loan Documents and any and all other liabilities of Borrower to Lender, primary or secondary (whether by way of endorsement or otherwise), whether now existing or hereafter arising, whether arising out of any contract, tort or otherwise, whether created directly with Lender or acquired by Lender through assignment, endorsement or otherwise; whether matured or unmatured; whether absolute or contingent; whether joint or several; as and when the same become due and payable (whether by acceleration or otherwise), together with all interest or finance charges thereon, costs of collection, including the reasonable attorneys' fees of Lender, in accordance with the terms of any such instruments, accounts receivable and other security agreements, land and/or other contracts, drafts, leases, chattel paper, debts, obligations or liabilities evidencing any such indebtedness, obligations or liabilities, including all renewals, extensions, modifications, restatements or replacements thereof (all liabilities and obligations of Borrower to Lender, including all of the foregoing, collectively the "Obligations").

Further, whether or not suit is brought by Lender to acquire possession of Collateral or to enforce collection of any of the Obligations, Guarantor expressly hereby agrees to pay all legal expenses and the reasonable attorneys' fees actually incurred by Lender enforcing this Guaranty.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption in the business or other dealings and relations of Borrower with Lender and shall apply to and guarantee the due and punctual payment of all Obligations. Guarantor expressly waives any right to require Lender to bring any action against any Borrower or any other person or to require that resort be had to any security or to any balance of any deposits or other accounts or debts or credits on the books of Lender in favor of Borrower or any other person. Guarantor

acknowledges that its liabilities and obligations hereunder are primary rather than secondary, recognizing that Borrower is identified as "Borrower" and Guarantor is identified as "Guarantor" solely for convenience in identification of the parties involved in this Guaranty and in the Obligations.

2. All monies available to and/or received by Lender for application toward payment (or reduction) of the Obligations may be applied by Lender to such individual debts in such manner, and apportioned in such amounts and at such times as Lender, in its sole discretion, deems appropriate.

3. Guarantor hereby waives and renounces any and all rights Guarantor has or may have for subrogation, indemnity, reimbursement or contribution against Borrower for amounts paid under this Guaranty or for any amounts paid to Lender by or on behalf of Borrower related to the Obligations of Borrower. This waiver is expressly intended to prevent the existence of any claims with respect to such reimbursement by Guarantor against the estate of Borrower within the meaning of §101 of the United States Bankruptcy Code (as amended, the "Bankruptcy Code") and to prevent Guarantor from constituting a creditor of Borrower with respect to such reimbursement within the meaning of §547(b) of the Bankruptcy Code in the event of any subsequent case involving Borrower. Additionally, this Guaranty shall remain enforceable and shall not be returned to Guarantor so long as any claim of preference, fraudulent transfer or other similar rights of Borrower's creditors may be asserted against Lender.

4. As security for any and all liabilities of Guarantor hereunder, now existing or hereafter arising, or otherwise, Guarantor hereby grants Lender the right to retain a security interest in any and all monies or other property (i.e., goods and merchandise, as well as all documents relative thereto; also funds, investment securities, chooses in action and any and all other forms of property, whether real, personal or mixed, and any right, title, or interest of Guarantor therein and thereto), and/or the proceeds thereof, which have been or may hereafter be, deposited or left with Lender (or with any agent or other third party acting on Lender's behalf) by or for the account or credit of Guarantor, including any property in which Guarantor may have any interest.

5. Guarantor agrees that in the event judgment or any court order for turnover or recovery is entered against Lender (whether by consent, compromise settlement or otherwise) pursuant to any section of Chapter 5 of the United States Bankruptcy Code for (a) the amount of any monetary payment or transfer of any property (whether real, personal or mixed, tangible or intangible, or the value thereof) made to Lender by or on behalf of Borrower and/or Guarantor for credit to the Obligations, or (b) the amount of any set-offs exercised by Lender and credited to the Obligations, then in such event (and notwithstanding the prior discharge or satisfaction in whole or in part of any or all the Obligations of Borrower due Lender, or the written or stamped notation of cancellation, release or satisfaction affixed to this Guaranty or any instrument of indebtedness evidencing the Obligations, or any prior notice of the termination of this Guaranty as to future Obligations, or any prior notice of the termination of this Guaranty as to future Obligations), the amount of value of any such payments, property or set-offs recovered from Lender shall be deemed to be Obligations and this Guaranty and the liabilities of Guarantor under this Guaranty shall continue and remain in full force and effect as to the same, together with interest thereon from date of recovery at the rate(s) applicable to the Obligations to which

such payments, transfers or set-offs were credited, costs of court, and the reasonable attorney's fees incurred by Lender in connection therewith.

6. Guarantor agrees that its liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interests it may have in any property securing this Guaranty and/or the Obligations secured pursuant to this Guaranty or other Loan Document, and Lender shall have no duty to preserve, protect or defend any collateral for this Guaranty or the Obligations.

7. Guarantor further hereby consents and agrees that Lender may at any time, or from time to time, in its sole discretion: (a) extend or change the time of payment, the manner, place of terms or payment of any or all of the Obligations or amend, restate or replace any Loan Document; (b) exchange, release and/or surrender all or any of the collateral security, or any part thereof, by whomsoever deposited, which is or may hereafter be held by it in connection with all or any of the Obligations and/or any liabilities or obligations of Guarantor hereunder; (c) grant to Obligors indulgences, waive any provisions of the Loan Documents or release any Obligor from future liability; (d) sell or otherwise dispose of and/or purchase all or any of any such collateral at public or private sale, or to or through any investment securities broker, and after deducting all costs and expenses of every kind for collection, preparation for sale, sale or delivery, the net proceeds of any such sale or other disposition may be applied by Lender upon all or any of the Obligations; (e) settle or compromise with Borrower, any insurance carrier and/or any other person liable thereon, any and all of the Obligations, and/or subordinate the payment of all or any part of same, to the payment of any other debts or claims, which may at any time be due or owing to Lender and/or any other person; all in such manner and upon such terms as Lender may deem proper and/or desirable, and without notice to or consent from Guarantor, it being agreed that Guarantor shall be and remain bound upon this Guaranty, irrespective of the existence, value or condition of any Collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, sale or other disposition, application, renewal or extension and notwithstanding also that the Obligations may at any time exceed the aggregate principal sum hereinabove prescribed (if any such limiting sum appears). Further, this Guaranty shall not be construed to impose any obligation on Lender to extend or continue to extend credit or otherwise to deal with Borrower at any time.

8. Guarantor expressly waives: (a) notice of acceptance of this Guaranty by Lender and all extensions of credit to Borrower by Lender; (b) presentment, protest and demand for payment of any of the Obligations; (c) notice of dishonor or of default to Guarantor or any other party with respect to the Obligations or any security for the Obligations; (d) notice to Lender obtaining, amending, substituting for, releasing, waiving, or modifying any security interest, lien or encumbrance now or hereafter securing the Obligations, or Lender's subordinating, compromising, discharging or releasing such security interests, liens or encumbrances; (e) demand for payment under this Guaranty; and (f) any right to assert against Lender, as defense (whether legal or equitable), counterclaim, set-off, or claim of any other nature which Guarantor may have against Lender or Borrower; and (g) any other defense of Borrower against Lender, including the invalidity of any Loan Document.

9. Guarantor warrants and represents to Lender that (a) this Guaranty is binding and enforceable against Guarantor in accordance with its terms, (b) the execution and delivery of this

Guaranty do not violate or constitute a breach of any agreement which Guarantor is a party or any applicable law, (c) there is no litigation, claim, action or proceeding pending, or, to the best knowledge of Guarantor, threatened against Guarantor which would have a material adverse effect on the financial condition of Guarantor or its ability to fulfill its obligations under this Guaranty. Guarantor agrees to furnish financial information to Lender from time to time at the request of Lender within ten (10) days thereafter in such form and substance as specified by Lender and to promptly inform Lender of any adverse determination of any litigation, claim, action or proceeding or the institution of any litigation, claim, action or proceeding against Guarantor which does or could have a material adverse effect on the financial condition of Guarantor or its ability to fulfill its obligations under this Guaranty. This Guaranty is binding on and enforceable against Guarantor, its heirs, personal representatives, executors, successors and assigns by Lender, and its successors, transferees and assigns. Guarantor further represents to Lender that Guarantor has knowledge of Obligors' financial condition and affairs and represents and agrees that it will keep informed of the financial affairs of Obligors while this Guaranty is in force. Guarantor agrees that Lender will have no obligation to investigate the financial condition or affairs of Obligors or the condition of any Collateral for the benefit of Guarantor or to advise Guarantor or any fact related to, or any change in, the financial condition or affairs of Obligors which might come to the knowledge of Lender at any time, whether or not Lender knows or believes or has reason to know or believe that any such fact or change is unknown to Guarantor or might or does materially increase the risk of Guarantor, as guarantor, or might or would effect the willingness of Guarantor to continue as guarantor with respect to the Obligations.

10. If Borrower is an organization, this Guaranty covers all Obligations purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

11. All terms or expressions contained in this Guaranty which are defined in Articles 1, 3, 8, or 9 of the South Carolina Uniform Commercial Code shall have the same meaning herein as in said Articles of said Code.

12. No waiver by Lender of any Event of Default shall operate as a waiver of any other Event of Default or of the same Event of Default on a future occasion. If more than one person has signed this Guaranty, such parties are jointly and severally obligated hereunder. Further, use of the masculine or neuter pronoun herein shall include the masculine, feminine and neuter, and also the plural. The term "Guarantor" as used herein shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligation, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successive partnership, if being also understood that all predecessor partnerships and their partners shall not thereby be released from any obligations or liabilities hereunder.

13. In the event provisions of this instrument should be left blank or incomplete, Guarantor hereby authorizes and empowers Lender to supply and complete the necessary information to complete or fill in the blank provisions.

14. Guarantor shall be in default under this Guaranty upon (a) the occurrence of any Event of Default as defined in the Loan Agreement; (b) upon the breach of any covenant or agreement contained in this Guaranty; or (c) the occurrence of a material adverse event with respect to the financial condition of Guarantor, including a decrease in net worth in amount of ten percent (10%) or more.

15. Upon the occurrence of any Event of Default which continues beyond any applicable Grace Period, all of the Obligations shall immediately be due and payable without notice at the option of Lender. Further, Lender shall then have all of the rights and remedies granted under this Guaranty, all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina. Lender further shall have all rights available to Lender under any documents executed in connection with the Obligations.

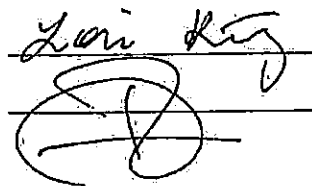
16. This Guaranty shall be governed and construed under the Laws of the State of South Carolina.

17. The Loan Agreement is incorporated into this Guaranty by reference as if set forth verbatim, and Section 8 of the Loan Agreement shall expressly be applicable to and govern this Guaranty and the rights of the parties herein. IN EXECUTING THIS GUARANTY, GUARANTOR AGREES TO BE BOUND BY ALL PROVISIONS OF THE LOAN AGREEMENT PERTAINING TO OBLIGORS.

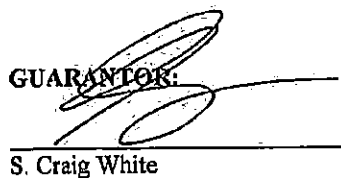
18. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of the deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

In Witness Whereof, Guarantor has executed this Guaranty under seal as of the day and year first above written.

WITNESSES:



GUARANTOR:


S. Craig White

Taxpayer ID/
Social Security No.: 
Address:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

On December 31, 2002, before me personally came S. Craig White, to me known to be the person described in and who executed the foregoing UNCONDITIONAL GUARANTY and acknowledged that (s)he/they executed the same.


L.S.
Notary Public for South Carolina
My Commission Expires: 2/26/2004

EXHIBIT 3 (f)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

2051 Bk:1453 Pg:97

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this ³¹ day of December, 2002, by and from Palmetto Inns, LLC, a South Carolina limited liability company ("Assignor"), to and for Business Carolina, Inc. ("Assignee").

Assignor is the owner of that certain real property located in the County of Greenwood State of South Carolina described in Annex "A" attached hereto and by this reference incorporated herein (the "Property") subject to that certain Mortgage of even date herewith, conveyed by Assignor to Assignee and recorded concurrently herewith in the Office of the Register of Deeds in Greenwood County, South Carolina (the "Mortgage").

For good and valuable consideration, Assignor hereby absolutely assigns and transfers to Assignee: (a) the income, rents, receivables, security or similar deposits, revenues, issues, royalties, profits, earnings, products and proceeds from any and all of the Property (collectively, the "rents, issues and profits") together with the right, power and authority to collect the same; (b) all leases, written or oral, now in existence or hereafter arising; all other agreements for the use and occupancy of all or any portion of the Property, and any and all extensions or renewals of any thereof (individually or collectively "Lease" or "Leases"), together with the right, power and authority of Assignor to alter, modify or change the terms thereof, or surrender, cancel or terminate the same; and (c) any and all guarantees of any obligations of any lessee (the "lessee") under each of the leases. Assignor irrevocably appoints Assignee its true and lawful attorney-in-fact, at any time and from time to time, at the option of the Assignee to demand, receive and enforce payment of rent, to give receipts, releases and satisfactions, and to sue, in the name of Assignor or Assignee, for all the rents, issues and profits and to apply the same to the indebtedness secured; provided, however, that Assignor shall have the right and license to collect the rents, issues and profits prior to or at any time there is no continuing default hereunder or under any of the other loan documents evidencing and securing the Note (as defined herein) ("Loan Documents"). The assignment of the rents, issues and profits in this Assignment is an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

This Assignment is made for the purpose of securing:

A. Payment of the principal sum, interest and indebtedness evidenced by that certain Promissory Note dated December ____, 2002 (including any amendments, extensions, renewals, or substitutions thereof, collectively the "Note"), in the principal sum of One Million Dollars (\$1,000,000.00) made by Assignor payable to order of Assignee under a Loan Agreement dated of even date herewith.

B. Payment of all other sums with interest becoming due and payable to Assignee
BCI / Palmetto Inns

Assignment of Leases and Rents

Deliver To: PATTEN WATSON
WHITE & WHITE LAW OFFICES
1430 RICHLAND ST
COLUMBIA SC 29201

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

under the provisions of this Assignment and the Loan Agreement and the Loan Documents. The terms used herein shall have the same meaning as set forth in the Loan Agreement dated of even date herewith and the terms and conditions of the Loan Agreement are incorporated herein by reference.

C. The performance and discharge of each and every obligation, covenant and agreement of the Assignor contained herein or in the Loan Documents, or in any other obligation of Assignor to Assignee, and all costs of collection including reasonable attorney's fees, as provided in the Note.

The indebtedness and obligations described in A, B, and C above are hereinafter collectively referred to herein as the "Indebtedness".

THE ASSIGNOR WARRANTS to Assignee that the Assignor is the sole owner of its entire interest, as Lessor, in the Lease; that the Lease is valid and enforceable and has not been altered, modified or amended in any manner whatsoever except as previously disclosed in writing to Assignee; that no lessee named therein is in default under any of the terms, covenants or conditions thereof, that no rent reserved in any Lease has been assigned or anticipated, that no rent for any period subsequent to the date of this Assignment has been collected more than one month in advance of the time when the same became due under the terms of any Lease; that it has full right and title to assign the Lease and all rents, issues and profits thereunder; and no other assignment of any interest therein has been made.

THE ASSIGNOR COVENANTS AND AGREES with the Assignee to observe and perform all obligations imposed under the Lease and any other Leases affecting the property; to give prompt notice to the Assignee of any notice of default under any Leases received or given by the Assignor together with a complete copy of any such notice; at the sole cost and expense of the Assignor, to enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition thereof by all parties thereto; and not to do or permit to be done anything to impair the security thereof; not to pay or collect any of the rent, issues and profits arising or accruing under the Leases or from the Property in advance of the time when the same shall become due; not to execute any other assignment of interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property not to subordinate any Lease to any other encumbrance, or permit, consent or agree to such subordination without Assignee's prior written consent; not to alter, modify or change the terms of any Lease or give any consent or exercise any option required or permitted by such terms without the prior written consent of Assignee or cancel or terminate any Lease or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the leased premises thereby or of any interest therein so as to effect, directly or indirectly, a merger of the estates and rights of, or a termination or diminution of the obligations of, any party thereunder; not to alter, modify or change the terms of any guaranty of any Lease or cancel or terminate such guaranty without the prior written consent of the Assignee; not to consent to any assignment of or subletting under any Lease, whether or not in accordance with its terms, without the prior written consent of the Assignee, said consent not to be unreasonably withheld; at the Assignee's request to assign and transfer to the Assignee any and

BCI / Palmetto Inns

Assignment of Leases and Rents

2051 Bk:1453 Pg:98

all subsequent leases upon all or any part of the premises described in such Leases or the Mortgage, and to execute and deliver at the request of the Assignee all such further assurances and assignments in the Property as the Assignee shall from time to time require.

THIS ASSIGNMENT is made on the following additional terms, covenants and conditions:

1. At any time and for any reason the Assignor shall have the right and obligation to collect and receive at the time of but not prior to, the date provided for the payment thereof, all rents, issues and profits arising under the Leases. Upon the occurrence of an event of default hereunder or under the Loan Documents, and after the expiration of any applicable cure period, the Assignee, at its option, without notice and without regard to the adequacy of the security for the Indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, may take possession of the premises described in any Lease or in the Mortgage and have, hold, manage, lease and operate the same, while such event of default continues, on such terms and for such period of time as the Assignee may deem proper and either with or without taking possession of such premises in its own name, demand, sue for or otherwise collect and receive all rents, issues and profits of the Property or pay the same including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee, and to apply any such collected rents, issues and profits to the payment of: (a) all expenses of managing the Property, including, without being limited thereto, the salaries, fees and wages, of a managing agent and such other employees as the Assignee may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which the Assignee may deem necessary or desirable, and the costs of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Indebtedness together with all costs and attorneys' fees, in such order of priority as to any of the items mentioned in this paragraph, as the Assignee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. The exercise by the Assignee of the option granted it in this paragraph and the collection of the rents, issues and profits and the application thereof as herein provided shall not be considered a waiver of any default by the Assignor under this Assignment the Note or the Mortgage, or under any Lease.

2. The Assignee shall not be liable for any loss sustained by the Assignor resulting from any act or omission of the Assignee or from managing the Property unless such loss is caused by the willful misconduct or gross negligence of the Assignee. The Assignee shall not be obligated to perform or discharge, nor does the Assignee hereby undertake to perform or discharge, any obligation, duty or liability under any Lease or under or by reason of this Assignment, and the Assignor shall, and does hereby agree, to indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under any Lease or under or by any reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements

BCI / Palmetto Inns

Assignment of Leases and Rents

2051 Bl: 1453 Pg: 99

contained in any Lease. Should the Assignee incur any such liability under any Lease or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and a reasonable attorney's fee shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand, and upon the failure of the Assignor to do so, the Assignee may, at its option, declare the Indebtedness immediately due and payable. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or any portion thereof upon the Assignee, nor for the carrying out of any of the terms and conditions of any Lease; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Property by any parties, or for any dangerous or defective condition of the Property or any portion thereof or for any negligence of the Assignor or its agents, in the management, upkeep, repair or control of the Property or any portion thereof resulting in loss or injury or death to any tenant, licensee, employee or stranger.

3. The Assignee shall have the right to assign the Assignor's right, title and interest in the Leases to any subsequent holder or the Mortgage, subject to the provisions of this instrument, and to assign the same to any person acquiring title to the Property through foreclosure or otherwise. After the Assignor shall have been barred and foreclosed of all right, title and interest and equity of redemption in the Property no assignee of the Assignor's interest in the Leases shall be liable to account to the Assignor for the rents, issues and profits thereafter accruing.

4. Upon payment and performance in full of the Indebtedness, this Assignment shall become and be void and of no effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee showing any part of the Indebtedness to remain unpaid or unperformed shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor, as the lessor under any Lease, hereby authorizes and directs the lessee named in any such Lease or any other or future lessee or occupant of the premises described therein upon receipt from the Assignee of written notice that the Assignee is then the holder of the Note to pay over to the Assignee all rents, issues, and profits arising or accruing under such Leases or from the premises described therein and to continue so to do until otherwise notified by the Assignee.

5. The Assignee may take or release other security for the payment of the Indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the Indebtedness without prejudice to any of its rights under this Assignment.

6. Nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Assignee under the terms of the Loan Documents. The right of the Assignee to collect the Indebtedness and to enforce any other security therefor held by it may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

BCI / Palmetto Inns

Assignment of Leases and Rents

2051 Bk=1453 Ps=100

7. Assignor hereby assigns to Assignee any portion of an award payable by reason of condemnation action under the right of eminent domain, and directs that such award shall be paid directly to Assignee, to be applied to satisfy the indebtedness, any excess to be returned to Assignor upon such satisfaction.

8. Any guaranty of payment and performance of any Lease shall not be released, modified, or limited in any manner without the prior written consent of the Assignee which consent shall not be unreasonably withheld.

9. This Assignment is made, executed and delivered in the State of South Carolina and shall be governed by the laws of the State of South Carolina. Each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under the applicable law, but if any provision hereof shall be prohibited by or invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

10. In case of any conflict between the terms of this instrument and the terms of the Mortgage, the terms of this Assignment shall control.

[signatures on next page]

2051 Bk:1453 Pg:101

BCI / Palmetto Inns

Assignment of Leases and Rents

ROA_0393

THIS ASSIGNMENT, together with the covenants and warranties herein contained, shall inure to the benefit of the Assignee and any subsequent holder of the Note and Mortgage and shall be binding upon the Assignor, its successors and assigns and any subsequent owner of the Property.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal, or caused this agreement to be executed by its duly authorized officers, and the corporate seal hereunto affixed this the day first above shown.

WITNESSES:

Alison S. Palmer
(Signature)

ASSIGNOR:

PALMETTO INNS, LLC

By: S. Craig White

Its: Manager

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned witness, who, being duly sworn, deposed and said that s/he saw Palmetto Inns, LLC, a South Carolina limited liability company by S. Craig White, its MANAGER sign, seal and deliver the within-written instrument and that s/he together with the other witness witnessed the execution thereof.

Alison S. Palmer
Witness

SWORN TO and subscribed before me
this 31 day of December, 2002.

(Signature) (SEAL)
Notary Public for South Carolina

My Commission Expires: 2/28/2007

2051 BK#1453 Pg#102

BCI / Palmetto Inns

Assignment of Leases and Rents

ANNEX A

ALL those certain pieces, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying and being on the southern side of East Court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997 and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104, page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 64° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

BEING the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December ___, 2002 and recorded in the Register of Deeds Office for Greenwood County in Mortgage Book ___ at Page ____.

TMS# 099-12-12-001-00

Property Address: 104 Court Street, Greenwood, South Carolina 29646

2051 Bk:1453 Ps:103

BCI/Palmetto Inns

Assignment of Leases and Rents

EXHIBIT 3 (g)

UCC-3

STATE OF SOUTH CAROLINA FILING FEES:

\$ 8.00 - For the FIRST TWO pages

\$ 2.00 - For the THIRD page

\$ 1.00 - For each ADDITIONAL page after the THIRD page.

For each additional Debtor more than two (2), add \$2.00 for each additional debtor.

\$20.00 - Public Finance Transaction

\$20.00 - Manufactured Home Transaction

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

Melissa B. Gaylor 803-461-3824

B. SEND ACKNOWLEDGMENT TO: (Name and Address):

Melissa B. Gaylor
Business Carolina, Inc.
1523 Huger Street, Suite A
Columbia, SC 29201

200800001272
Filed for Record in
GREENWOOD COUNTY SC
INGRAM HODN
02-12-2008 At 10:58 am.
UCCCONTINUA 8.00
Book 2279 Page 242 - 242

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

2052 Book: 1453 Page: 104 Date: 02/13/2003

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor ☒ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address. Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name. Give record name to be deleted in item 6a or 6b. ☐ ADD name. Complete item 7a or 7b and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

Palmetto Inns, LLC

OR 6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

7d. TAX ID# (Organizations)

ADOL INFO RE

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, if any

(Optional)

ORGANIZATION DEBTOR

☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restricted collateral description, or describe collateral ☐ assigned.9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

BUSINESS CAROLINA, INC.

OR 9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. OPTIONAL FILER REFERENCE DATA

SC SECRETARY OF STATE'S OFFICE, P.O. BOX 11350, COLUMBIA, SC 29211

(5/14/2003)

UCC-3

STATE OF SOUTH CAROLINA FILING FEES:

\$ 8.00 - For the FIRST TWO pages
\$ 2.00 - For the THIRD page

\$ 1.00 - For each ADDITIONAL page after the THIRD page.
For each additional Debtor more than two (2), add \$2.00
for each additional debtor.

\$20.00 - Public Finance Transaction

\$20.00 - Manufactured Home Transaction

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional): Melissa B. Gaylor 803-461-3824	
B. SEND ACKNOWLEDGMENT TO: (Name and Address) Melissa B. Gaylor Business Carolina, Inc. 1523 Huger Street, Suite A Columbia, SC 29201	

200800001272
Filed for Record in
GREENWOOD COUNTY SC
INGRAM MOON
02-12-2008 At 10:58 am.
UCCCONTINUA 8.00
Book: 2279 Page 242 - 242

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

2052 Book: 1453 Page: 104 Date: 02/13/2003

1b. This FINANCING STATEMENT AMENDMENT is
to be filed (for record) (or recorded) in the
REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.				
3. ☒ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.				
4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.				
5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor of ☐ Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7: ☐ CHANGE name and/or address. Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name. Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).				
6. CURRENT RECORD INFORMATION:				
6a. ORGANIZATION'S NAME Palmetto Inns, LLC				
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
7. CHANGED (NEW) OR ADDED INFORMATION:				
7a. ORGANIZATION'S NAME				
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
7c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
7d. TAX ID# (Organizations)	ADDL INFO RE ORGANIZATION	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
(Optional)	DEBTOR			☐ NONE
8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral ☐ deleted or ☐ added, or give entire ☐ related collateral description, or describe collateral ☐ assigned.				

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment); if this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME BUSINESS CAROLINA, INC.				
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

10. OPTIONAL FILER REFERENCE DATA

SC SECRETARY OF STATE'S OFFICE, P.O. BOX 11350, COLUMBIA, SC 29211

(5/14/2003)

EXHIBIT 4

South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#20-2CF2400576

EMERALD INN, INC.

Corporate Information

Entity Type: Corporation

Status: Dissolved

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 12/23/2002

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: 10/06/2006

Registered Agent

Agent: S CRAIG WHITE

Address: 1430 RICHLAND ST
COLUMBIA, South Carolina 29201

Official Documents On File

Filing Type	Filing Date
Dissolution	10/06/2006
Incorporation	12/23/2002

For filing questions please contact us at 803-734-2158

Copyright © 2018 State of South Carolina

EXHIBIT 5

MASTER LEASE AGREEMENT

Date: 11/17/2023

LESSOR:

Allegiant

A DIVISION OF TELERENT LEASING CORPORATION
4121 Fayetteville Road
Raleigh, NC 27603
Telephone (800) 324-0550 FAX (800) 882-4218

[illegible][illegible][illegible]

In the second period delivery rates rose to 100% of the total supply, leaving the dry season on the average 100% above the normal rate of 100% of the total supply of the land. The dry season was delayed in the winter, and the winter was slightly in excess of the normal supply of the winter, and the first delivery period was 100% of the total supply of the winter.

The first sentence concerning the termination of that Summary Agreement reads: "This Agreement shall terminate on the date that any proposed plan under this Agreement is not approved by the Laborer on the date is due to be filed, because such plan is defective (a) the summary proposed under (b) it is based on the incorrect program from the date that he filed the summary in reliance on the date of his filing (119) per article 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823,

This Agreement cannot be renewed or terminated, except as expressly provided herein. This Agreement shall be a new term, and the Agent's obligation to pay for and defend the costs of the defense of the accused shall be limited to the term of this Agreement. The Agent shall not be subject to any assignment, delegation, or subletting of its obligations under this Agreement, and the Agent shall not be subject to any assignment, delegation, or subletting of its obligations under this Agreement, and the Agent shall not be subject to any assignment, delegation, or subletting of its obligations under this Agreement.

DELIVERY, INSTALLATION, INSPECTIONS AND ACCEPTANCE. Within 45 days after the date of the purchase order, the Seller shall deliver to the Buyer the Goods in accordance with the quantity specified by the Buyer and located at the address specified in the purchase order. The Seller shall be responsible for the cost of delivery of the Goods to the Buyer's location. The Seller shall be responsible for the cost of installation of the Goods at the Buyer's location. The Seller shall be responsible for the cost of inspection of the Goods at the Buyer's location. The Seller shall be responsible for the cost of acceptance of the Goods at the Buyer's location.

of letter 4, in which the Landed Goods, Limited, with possible members' signatures, acknowledges its former employment of agents acting on the premises during the course of the installation work and to Leggett. Leggett shall provide all construction necessary for the installation of the Landed Goods in Leggett's main form. If Leggett or its agent appointed a cycle cart for delivery and installation of the Landed Goods, and Leggett is to deliver because the premises are not suitable for using for installation. Leggett, at its sole expense, shall provide vehicle licence and insurance for the Landed

May 1999

LESSEE: Entered Taus Inc.
Address: 101 E. Court Street
Greenwood, SC, 29646
Telephone: (804) 459-5315 Phone (866) 459-3115 Fax
Ship To: Inc on the Square
104 Court Ave
Greenwood, SC, 29649
Telephone: (864) 459-6615

[illegible]

14. **SECURITY INTEREST.** Lessee hereby grants to Lessor a first priority security interest in this Agreement, the Licensed Vehicle and in all accessories, improvements and contents and proceeds from the Licensed Vehicle and the proceeds of Lessee's insurance policy covering the Licensed Vehicle, to secure the performance of Lessee's obligations under this Agreement and to be obtained under this Agreement. The parties intend and agree that the Licensed Vehicle, and contents and accessories, constituting the interest in which is defined in any and every part of this Agreement, Lessee shall deliver and deliver to Lessor members of any accessories, and accessories of interest hereby assigned to the Licensed Lessee. Lessee agrees to maintain the Licensed Vehicle free from claims, liens and other legal claims and interests and interests of Lessee. Lessee will defend, defend and defend all

The United States then said that, since the U.S. Government in 1954 informed INTENT OF THE PARTIES AS TO THE NATURE OF GRACE. At the various phases of the parties, and the Agreement provided a "first" event and a "second" of the United States. This is the United States' plan of its future work in regard to its treatment of Alaska, and Alaska will explain its ownership, title, property rights, duty to ensure that the United States' view that its interests should be the same and conditions of the Agreement, if any law during the term of the Agreement, Alaska applies to the same.

SECRET

Emerald Lake Inc

Name of Corporation, Partnership or Owner
P. Allen Peterson Date 4/4/03

Signature Date 4/4/03 (300)

State Resident

Home (Country and State)

Federal Identification or Social Security No

Verifying Agent

Co-Lessor, C. Allen Peterson (Name or Print Name)

By P. Allen Peterson Date 4/4/03

Address 1245 Cornet St
Cincinnati, OH 45202

State Security No [REDACTED]

Witness

(LESSOR)

Allegiant
A Division of Tolerant Leasing Corporation

[Signature] _____
(Name) (Type or Print Name)
[Signature] _____
(Address) (City, State, Zip)

CO-LESSOR: _____
(Type or Print Name)

By: _____ Date: _____
Address: _____
City: _____ State: _____ Zip: _____

Social Security No.: _____
W9E no. _____

STATE OF NORTH CAROLINA
COUNTY OF YANCEY

MASTER LEASE AGREEMENT

LEASE #

LESSOR:

Allegiant

A DIVISION OF TELEBERT LEASING CORPORATION
6181 Peachtree Road
Atlanta, GA 30320
Telephone (404) 934-0940 FAX (404) 934-0718

LESSOR: **Allegiant**
ADDRESS: **1041 Court Ave**
City: **Charlotte, NC 28204**
Telephone: **(704) 366-6111** Fax: **(704) 366-6111**
Attn: **Mr. [Name]**
City: **Charlotte, NC 28204**
Telephone: **(704) 366-6111** Fax: **(704) 366-6111**

THIS MASTER LEASE AGREEMENT is made this 1st day of January, 2003, between Lessor and Lessee, the terms of which are set forth in the following:

1. Lessor hereby grants, conveys and assigns to Lessee, its heirs, assigns and assigns, the right to use and occupy the premises described in the Schedule hereunto attached for the term of years hereinafter expressed.

2. The term of this lease shall be for the term of years hereinafter expressed, commencing on the day of the month of the year hereinafter expressed, and terminating on the day of the month of the year hereinafter expressed.

3. The rent for the use and occupancy of the premises shall be paid by Lessee to Lessor in the manner hereinafter expressed.

4. Lessee shall be responsible for the payment of all taxes, assessments, and charges of whatever nature that may be levied or assessed against the premises during the term of this lease.

5. Lessee shall be responsible for the maintenance and repair of the premises and the equipment thereon, and shall be responsible for the payment of all costs and expenses incurred in connection with the same.

6. Lessee shall be responsible for the insurance of the premises and the equipment thereon, and shall be responsible for the payment of all costs and expenses incurred in connection with the same.

7. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

8. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

9. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

10. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

11. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

12. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

13. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

14. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

15. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

16. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

17. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

18. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

19. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

20. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

THIS LEASE AGREEMENT is made this 1st day of January, 2003, between Lessor and Lessee, the terms of which are set forth in the following:

1. Lessor hereby grants, conveys and assigns to Lessee, its heirs, assigns and assigns, the right to use and occupy the premises described in the Schedule hereunto attached for the term of years hereinafter expressed.

2. The term of this lease shall be for the term of years hereinafter expressed, commencing on the day of the month of the year hereinafter expressed, and terminating on the day of the month of the year hereinafter expressed.

3. The rent for the use and occupancy of the premises shall be paid by Lessee to Lessor in the manner hereinafter expressed.

4. Lessee shall be responsible for the payment of all taxes, assessments, and charges of whatever nature that may be levied or assessed against the premises during the term of this lease.

5. Lessee shall be responsible for the maintenance and repair of the premises and the equipment thereon, and shall be responsible for the payment of all costs and expenses incurred in connection with the same.

6. Lessee shall be responsible for the insurance of the premises and the equipment thereon, and shall be responsible for the payment of all costs and expenses incurred in connection with the same.

7. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

8. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

9. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

10. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

11. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

12. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

13. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

14. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

15. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

16. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

17. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

18. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

19. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

20. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the use and occupancy of the premises.

LESSOR: **Allegiant**
ADDRESS: **1041 Court Ave**
City: **Charlotte, NC 28204**
Telephone: **(704) 366-6111** Fax: **(704) 366-6111**
Attn: **Mr. [Name]**
City: **Charlotte, NC 28204**
Telephone: **(704) 366-6111** Fax: **(704) 366-6111**

LESSEE: **Allegiant**
ADDRESS: **1041 Court Ave**
City: **Charlotte, NC 28204**
Telephone: **(704) 366-6111** Fax: **(704) 366-6111**
Attn: **Mr. [Name]**
City: **Charlotte, NC 28204**
Telephone: **(704) 366-6111** Fax: **(704) 366-6111**

February 6, 2003

ADDENDUM I

ADDENDUM I TO MASTER LEASE AGREEMENT #12221-000 DATED JANUARY 11, 2003 BY AND BETWEEN EMERALD INNS, INC. T/A INN ON THE SQUARE, GREENWOOD, SC AND ALLEGiant, RALEIGH, NC.

IT IS HEREBY MUTUALLY AGREED AND UNDERSTOOD that the following will also be known as Co-Lessor: Craig White.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN UNCHANGED.

LESSOR:
EMERALD INNS, INC.
T/A INN ON THE SQUARE,
GREENWOOD, SC

LESSOR:
ALLEGiant
Raleigh, NC

BY: C. Alan Peterson
C. ALAN PETERSON

BY: [Signature]

TITLE: VICE PRESIDENT

TITLE: [Signature]

DATE: 2/7/03

DATE: [Signature]

CO-LESSOR:

[Signature]
Craig White

Social Security # [REDACTED]

Witness: [Signature]

Date: 2/10/03

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

LEASE SCHEDULE 01LEASE # 12323-000

LESSOR:

Date: 1/11/2003

Allegiant

A DIVISION OF TELERENT LEASING CORPORATION
4181 Fayetteville Road
Raleigh, NC 27603
Telephone (800) 324-0850 FAX (800) 882-4210

TERM	60 MONTHS
The term shall begin on the date of the completion of the installation or removal of the Equipment (if installation not performed by Lessor) on premises of Lessee, and date to be confirmed in writing upon receipt of Lessee.	
PAYMENTS:	\$ 1,322.48 PER MONTH
As rent for the Equipment, Lessee shall pay the above amount to Lessor at Raleigh, North Carolina, during the full term as set forth by this Lease Schedule, plus applicable sales and use tax.	
ADVANCE PAYMENTS:	\$ 2,803.67
Lessee shall remit the first two (2) payments in advance in the amount above including applicable sales tax, as a condition of approval of this Lease Schedule.	
CASH SALE PRICE:	\$ 61,528.33
The Cash Sale Price is shown for information purposes only and includes estimated freight cost, but no more.	
The above monthly payment is based on the terms listed below and estimated freight costs. Lessee acknowledges and agrees that Cash Sale Price and Payments shall be adjusted up or down based on actual invoiced freight costs, or changes in time and quantities approved by Lessee.	

LESSEE: Emerald Inns Inc.
Address: 104 E. Court Street
Greenwood, SC, 29646
Telephone: (864) 459-9625 Phone (864) 459-8118 Fax
Ship To: Inn on the Square
104 Court Ave
Greenwood, SC, 29649
Telephone: (864) 459-9625
FAX:

Delivery Date:

In the event of required vendor down payments, partial delivery and/or installation of the Leased Goods, Lessee shall pay monthly on an interest basis interest at a monthly rate of 1.0% of the cash sale price of the Leased Goods delivered and/or installed, until the Lease term applicable to such Leased Goods shall commence and the first full rental payment shall be due the first month following the completion of full delivery and/or installation.

ATTORNEY-IN-FACT: Lessee hereby appoints Lessor or its assignee its true and lawful attorney-in-fact to execute on behalf of Lessee any financing statements or other documents which, in Lessor's sole determination, are necessary to secure Lessor's interest in the Leased Goods in all jurisdictions where the Leased Goods are or will be located. This appointment, being coupled with an interest, is irrevocable.

This Lease Schedule is subject to all the terms and conditions of the Master Lease Agreement between the above listed Lessor and Lessee.

EQUIPMENT:

Upon expiration and fulfillment of the terms and conditions hereof, Lessee may purchase the equipment for \$1.00 per unit.

SEE ATTACHED EXHIBIT 'A' FOR COMPLETE DESCRIPTION OF EQUIPMENT

THE LESSOR UNDERSTANDS AND AGREES THAT THIS SCHEDULE IS NON-CANCELABLE.

LESSEE:	Emerald Inns Inc. (Name of Corporation, Partnership or Owner)
By: <u>C. Alan Peterson</u> Date: <u>1/11/03</u>	
<u>C. Alan Peterson</u> Vice President	(Type or Print Name and Title)
	Federal Identification or Social Security No.
Witness/Host: <u>C. Alan Peterson</u>	(Type or Print Name)
CO-LESSEE:	
By: <u>C. Alan Peterson</u> Date: <u>1/11/03</u>	
Address: <u>104 E. Court St</u>	
<u>Greenwood SC 29646</u>	
Social Security No. <u>[REDACTED]</u>	
Witness:	
LESSOR:	Allegiant A DIVISION OF TELERENT LEASING CORPORATION
By: <u>Virginia Hall</u> Date: <u>1/11/03</u>	
<u>Virginia Hall</u> Secretary, Assistant Secretary	(Type or Print Name)
CO-LESSOR:	
By: _____ Date: _____	
Address: _____	
City: _____ State: _____ Zip: _____	
Social Security No. _____	
Witness: _____	

(Rev. 4/27/00 14010)

ROA_0405

01/24/03 11:05

0912 662 7012

TELEBENT LEASING

0003

LEASE SCHEDULE

LESSEE:

Allegiant
A Division of TELEBENT LEASING CORPORATION
4181 Bayshore Road
Baltimore, MD 21203
Telephone: (410) 324-0133 FAX: (410) 324-4110

NAME	60	APPROVED
The lessor shall not be liable for the delivery of the equipment to the lessee at the time of the lease unless the lessee has paid the full amount of the lease fee and the full amount of the security deposit.		
PAYMENT	\$1,322.45	PER MONTH
As stated in the Lease Agreement, the lessee shall pay the lease fee and the full amount of the security deposit to the lessor at the time of the lease.		
ADVANCE PAYMENTS	\$1,322.45	
The lessee shall pay the advance payments to the lessor at the time of the lease.		
CASH VALUE	\$11,728.33	
The cash value is the value of the equipment at the time of the lease.		

The lessee shall pay the advance payments to the lessor at the time of the lease. The lessor shall not be liable for the delivery of the equipment to the lessee at the time of the lease unless the lessee has paid the full amount of the lease fee and the full amount of the security deposit.

This schedule is subject to all the terms and conditions of the Lease Agreement of the lessor and the lessee.

DATE: 01/24/03

Upon signature and payment of the terms and conditions of the lease, the lessee shall pay the full amount of the lease fee and the full amount of the security deposit.

SEE ATTACHED EXHIBIT A FOR COMPLETE DESCRIPTION OF EQUIPMENT

LEASE #

Date: 01/24/03

LESSOR:	General Time Inc.
ADDRESS:	104 E. Court Street
CITY:	Greenwood, NC, 27640
PHONE:	(919) 439-3623
FAX:	(919) 439-3623

Call me at: (919) 439-3623

In the event of a default by the lessee, the lessor shall have the right to repossess the equipment and to sell the equipment at a public auction or to any other person.

The lessee shall pay the advance payments to the lessor at the time of the lease. The lessor shall not be liable for the delivery of the equipment to the lessee at the time of the lease unless the lessee has paid the full amount of the lease fee and the full amount of the security deposit.

This schedule is subject to all the terms and conditions of the Lease Agreement of the lessor and the lessee.

THE LESSEE HEREBY AGREES AND AGREES THAT THIS SCHEDULE IS NON-NEGOTIABLE.

LESSEE:	General Time Inc.
NAME OF LESSEE:	General Time Inc.
ADDRESS:	104 E. Court Street
CITY:	Greenwood, NC, 27640
PHONE:	(919) 439-3623
FAX:	(919) 439-3623
DATE:	01/24/03
TIME:	11:05
BY:	[Signature]
FOR:	[Signature]



Serving the lodging industry for over 45 years. ALLEGIANT
EXHIBIT A TO LEASE SCHEDULE #1
Emerald Inns Inc. - Greenwood, SC
Page 1

4191 Fayetteville Road
Raleigh, NC 27603
tel (919) 719-2198
fax (919) 662-7012
www.allegiant.com

Qty	Item - Description	Unit Price	Est Price
48	SLIDE3C - Mount - slide-out for TV furniture swivel	35.00	1680.00
1	QBN-PH - 39" Big Screen Television	2452.80	2452.80
6	PL0123C - Phillips 25" smart plug lodging TV	265.00	1590.00
6	PL0127C - Phillips 27" smart plug lodging TV	295.00	1770.00
1	RC2573QR - Set-up remote for Phillips/Magnavox lodging TV	30.00	30.00
12	RL9810BK - Phillips/Magnavox guest remote	0.00	0.00
2	MANN-DIS - Mauiwowo deliver, install, start-up and filler	493.00	990.00
2	QD-0322A - Cube, 22" Slim-Line, air cooled, 710-lbs per day	1460.13	2920.26
2	QPA-1G0 - Dispenser, Slim-Line push button, 120-lbs storage	1577.63	3155.26
16	AC4810 - Rockport, Queen Anne legs, 3-position	295.00	4720.00
18	GEN-AC - 502D	275.00	4950.00
18	GEN-AC - 5081	115.00	2070.00
6	GEN-AC - 61003-S	665.00	3990.00
48	GEN-AC - 692 desk chair	102.00	4896.00
6	ACB3K - Bed set, king size, Allegiant Series III	315.00	1890.00
70	ACB3Q - Bed set, queen size, Allegiant Series III	245.00	17150.00
1	TC445-409 - Annapolis writing desk	105.92	105.92
1	TC445-466 - Annapolis queen size poster headboard	103.95	103.95
48	SB1626-040 - Hairdryer, wall-mounted with nightlight	19.50	936.00
34	SB3278 - Coffee maker, 4-cup, black	12.95	440.30
48	SB3294 - Iron, Hospitality Select Steam Iron	18.25	876.00
48	SB3296 - Iron holder, wall mounted	5.00	240.00
48	SB69014 - Clock radio, Suburban	8.99	429.60
1	FRT-EST - Estimated freight	5000.00	5000.00
2	GEN-ITPO - Marker board, wall hang, 2-ds, mahogany, screen	557.12	1114.24
48	48-218-05 - Ironing board, 33" Hotel model	60.00	2880.00
		13.00	720.00

LESSEE: Emerald Inns Inc.

BY: [Signature]
TITLE: Vice President
DATE: 1/14/03

CO-LESSEE:

[Signature]
C. Alan Peterson

LESSOR: ALLEGIANT

BY: [Signature]
TITLE: VP
DATE: 1/14/03

CO-LESSEE:

DESIGN • FURNISHINGS • EQUIPMENT • FINANCING • DIRECT

A DIVISION OF TRULAND LEASING CORPORATION

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

February 6, 2003

ADDENDUM I

ADDENDUM I TO LEASE SCHEDULE#12323-001 DATED JANUARY 11, 2003 BY
AND BETWEEN EMERALD INNS, INC. T/A INN ON THE SQUARE,
GREENWOOD, SC AND ALLEGIANT, RALEIGH, NC.

IT IS HEREBY MUTUALLY AGREED AND UNDERSTOOD that the
following will also be known as Co-lessee: Craig White.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN UNCHANGED.

LESSEE:
EMERALD INNS, INC.
T/A INN ON THE SQUARE,
GREENWOOD, SC

BY: C. Alston
C. ALAN PETERSON

TITLE: VICE PRESIDENT

DATE: X 2/7/03

LESSOR:
ALLEGIANT
Raleigh, NC

BY: [Signature]

TITLE: VP

DATE: _____

CO-LESSEE:
X [Signature]
Craig White

Social Security # [REDACTED]

Witness X [Signature]

Date: X 2/11/03

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#20120CP2400576

02/07/03

14:44

FEB 11 2003

FEB 11 2003

February 6, 2003

ADDENDUM II

**ADDENDUM II TO LEASE AGREEMENT #12323-001 DATED JANUARY 11, 2003
BY AND BETWEEN EMERALD DMS, INC. T/A DYN ON THE SQUARE,
GREENWOOD, SC AND ALLEGIANTE, RALEIGH, NC**

IT IS MUTUALLY AGREED AND UNDERSTOOD that Lessor will add the following: 29 - Pinch pleat drupe, two-way draw, Window Treatment: Mystique/mist 63" w x 70.25 h at \$2175.00; 12 - Pinch pleat drupe, two-way draw, Window Treatment: Twiggy/spruce 63" w x 70.25 h at \$956.00; 15 - Pinch pleat drupe, two-way draw, Window Treatment: Waltham/windsor 63" w x 70.25 h at \$1275.00; 56 - Fobley drapery rod: 51" at \$1120.00; and Estimated Freight at \$600.00.

The New Cash Sale Price is \$67634.33.

AS CONSIDERATION for the above, Lessee's monthly payment shall increase by \$131.85, making the new payment \$1454.33 per month plus tax effective with the initial payment. Lessor will submit the first two payments in advance in the amount of \$279.52 including applicable tax as a condition of approval of this Addendum.

All other terms and conditions shall remain the same.

LESSEE:
EMERALD DMS, INC.
T/A DYN ON THE SQUARE
GREENWOOD, SC

BY: C. Alan Peterson
C. ALAN PETERSON

TITLE: VICE PRESIDENT

DATE: 2/7/03

CO-LESSEE:

C. Alan Peterson
C. Alan Peterson

Witness: K

Date: 2/7/03

LESSOR:
ALLEGIANTE
Raleigh, NC

BY: Allegiant

TITLE: VP

DATE: 2/7/03

CO-LESSOR:

Craig White
Craig White

Witness: Allegiant

Date: 2/7/03

ELECTRONICALLY FILED - 2018 Sep 18 5:19 PM - GREENWOOD - COMMON PLEAS - CASE#2012CP2400576

February 12, 2003

ADDENDUM III

ADDENDUM III TO LEASE AGREEMENT #12323-001 DATED JANUARY 11, 2003
BY AND BETWEEN EMERALD INNS, INC. D/A INN ON THE SQUARE,
GREENWOOD, SC AND ALLEGHANT, RALEIGH, NC

IT IS MUTUALLY AGREED AND UNDERSTOOD that Lessor will add the
following: 48 - Trinity Lights, Color: Brass, 50", Part #3055, Shade style: Brussels,
Shade Color: Cream; Shade Size: 6" x 21" x 13" slant (10 1/2" vertical) at \$3600.00; and
Estimated Freight at \$360.00.

The New Cash Sale Price is \$71594.35.

AS CONSIDERATION for the above, Lessee's monthly payment shall increase
by \$85.51, making the new payment \$1539.84 per month plus tax effective with the
initial payment. Lessee will submit the last two payments in advance in the amount of
\$181.28 including applicable tax as a condition of approval of this Addendum.

All other terms and conditions shall remain the same.

LESSEE:
EMERALD INNS, INC.
D/A INN ON THE SQUARE
GREENWOOD, SC
BY: [Signature]
C. ALAN PETERSON

LESSOR:
ALLEGHANT
Raleigh, NC
BY: [Signature]

TITLE: VICE PRESIDENT
DATE: 3/10/03

TITLE: VP
DATE: 3/10/03

CO-LESSEE:
[Signature]
C. Alan Peterson
Witness: [Signature]
Date: 3/11/03

CO-LESSEE:
[Signature]
Craig White
Witness: [Signature]
Date: 3/11/03 3/11/03

May 15, 2003

ADDENDUM IV

ADDENDUM IV TO LEASE AGREEMENT #12323-001 DATED JANUARY 11, 2003
BY AND BETWEEN EMERALD INNS, INC. T/A INN ON THE SQUARE,
GREENWOOD, SC AND ALLEGIANT, RALEIGH, NC

IT IS MUTUALLY AGREED AND UNDERSTOOD that Lessor will delete the
following: Estimated Freight in the amount of \$5960.00; and 1 - GEN-PHI 55" Big
Screen Television at \$2153.80.

IT IS ALSO MUTUALLY AGREED AND UNDERSTOOD that Lessor will add
the following: Actual Freight in the amount of \$2626.32; and Interim Interest of
\$1591.32.

The New Cash Sale Price is \$67698.17.

AS CONSIDERATION for the above, Lessee's monthly payment shall decrease
by \$78.03; making the new payment \$1461.81 per month effective with the initial
payment. *per certified letter dated 5-15-03. jr*

BY SIGNING BELOW, you acknowledge that you are authorized to sign on the
behalf of the Lessee and/or Co-lessees.

All other terms and conditions shall remain the same.

LESSEE:
EMERALD INN, INC.
T/A INN ON THE SQUARE,
GREENWOOD, SC

BY: *C. Alan Peterson*
C. ALAN PETERSON

TITLE: VICE PRESIDENT

DATE: 6/26/03

LESSOR:
ALLEGIANT
Raleigh, NC

BY: *Miss Rober*

TITLE: As. VP

DATE: 5-30-03

UCC FINANCING STATEMENT **FOLLOW INSTRUCTIONS (front and back) CAREFULLY**

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone (508) 301-3282 Fax (508) 302-4111	
B. SEND ACKNOWLEDGEMENT TO: (Name and Address)	
UCC Direct Services P.O. Box 29071 Glendale, CA 91209-9071	510953 TELETYPE 5705480 SCSC

THE ABOVE SPACES FOR FILING OFFICE USE ONLY

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

1a. ORGANIZATION'S NAME
Emerald Inns, Inc.

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS
104 E. Court StreetCITY
GreenwoodSTATE
SCPOSTAL CODE
29848

COUNTRY

1d. TAX ID #, SSN OR EIN
[REDACTED]1e. TYPE OF ORGANIZATION
Corporation1f. JURISDICTION OF ORGANIZATION
SC

1g. ORGANIZATIONAL ID #, if any

☒ NONE

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

2a. ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #, SSN OR EIN
[REDACTED]2e. TYPE OF ORGANIZATION
[REDACTED]2f. JURISDICTION OF ORGANIZATION
[REDACTED]

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR (SIP) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
Teligent Leasing Corporation

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS
4191 Fayetteville RoadCITY
RaleighSTATE
NCPOSTAL CODE
27603

COUNTRY

4. THIS FINANCING STATEMENT covers the following collateral:

ALL FURNITURE, FIXTURES AND EQUIPMENT AS FULLY DESCRIBED IN SCHEDULE 001 TO MASTER LEASE #12323-000 WHETHER NOW EXISTING OR HEREAFTER ACQUIRED ON OR REMOVED FROM DEBTOR'S PREMISES. THIS EQUIPMENT INSTALLED AT INN ON THE SQUARE, 104 E COURT STREET, GREENWOOD, SC 29849. THE ABOVE DESCRIBED EQUIPMENT IS LEASED TO DEBTOR BY SECURED PARTY. DEBTOR IS CONTRACTUALLY BOUND TO ANY BUYER OF THE PROPERTY UPON WHICH THE EQUIPMENT IS LOCATED TO ASSUME ALL OF DEBTOR'S OBLIGATIONS TO SECURED PARTY UNDER THE LEASE WITHOUT MODIFICATIONS TO THE TERMS AND CONDITIONS THEREOF, WHICH ASSUMPTION IS A CONDITION PRECEDENT TO THE SALE OF SUCH PROPERTY.

5. ALTERNATIVE DESIGNATION (if applicable)	6. CREDITOR'S ADDRESS	7. CREDITORS ASSIGNOR	8. CREDITORS ASSIGNEE	9. CREDITORS ASSIGNEE	10. CREDITORS ASSIGNEE	11. CREDITORS ASSIGNEE	12. CREDITORS ASSIGNEE	13. CREDITORS ASSIGNEE	14. CREDITORS ASSIGNEE	15. CREDITORS ASSIGNEE	16. CREDITORS ASSIGNEE	17. CREDITORS ASSIGNEE	18. CREDITORS ASSIGNEE	19. CREDITORS ASSIGNEE	20. CREDITORS ASSIGNEE	21. CREDITORS ASSIGNEE	22. CREDITORS ASSIGNEE	23. CREDITORS ASSIGNEE	24. CREDITORS ASSIGNEE	25. CREDITORS ASSIGNEE	26. CREDITORS ASSIGNEE	27. CREDITORS ASSIGNEE	28. CREDITORS ASSIGNEE	29. CREDITORS ASSIGNEE	30. CREDITORS ASSIGNEE	31. CREDITORS ASSIGNEE	32. CREDITORS ASSIGNEE	33. CREDITORS ASSIGNEE	34. CREDITORS ASSIGNEE	35. CREDITORS ASSIGNEE	36. CREDITORS ASSIGNEE	37. CREDITORS ASSIGNEE	38. CREDITORS ASSIGNEE	39. CREDITORS ASSIGNEE	40. CREDITORS ASSIGNEE	41. CREDITORS ASSIGNEE	42. CREDITORS ASSIGNEE	43. CREDITORS ASSIGNEE	44. CREDITORS ASSIGNEE	45. CREDITORS ASSIGNEE	46. CREDITORS ASSIGNEE	47. CREDITORS ASSIGNEE	48. CREDITORS ASSIGNEE	49. CREDITORS ASSIGNEE	50. CREDITORS ASSIGNEE	51. CREDITORS ASSIGNEE	52. CREDITORS ASSIGNEE	53. CREDITORS ASSIGNEE	54. CREDITORS ASSIGNEE	55. CREDITORS ASSIGNEE	56. CREDITORS ASSIGNEE	57. CREDITORS ASSIGNEE	58. CREDITORS ASSIGNEE	59. CREDITORS ASSIGNEE	60. CREDITORS ASSIGNEE	61. CREDITORS ASSIGNEE	62. CREDITORS ASSIGNEE	63. CREDITORS ASSIGNEE	64. CREDITORS ASSIGNEE	65. CREDITORS ASSIGNEE	66. CREDITORS ASSIGNEE	67. CREDITORS ASSIGNEE	68. CREDITORS ASSIGNEE	69. CREDITORS ASSIGNEE	70. CREDITORS ASSIGNEE	71. CREDITORS ASSIGNEE	72. CREDITORS ASSIGNEE	73. CREDITORS ASSIGNEE	74. CREDITORS ASSIGNEE	75. CREDITORS ASSIGNEE	76. CREDITORS ASSIGNEE	77. CREDITORS ASSIGNEE	78. CREDITORS ASSIGNEE	79. CREDITORS ASSIGNEE	80. CREDITORS ASSIGNEE	81. CREDITORS ASSIGNEE	82. CREDITORS ASSIGNEE	83. CREDITORS ASSIGNEE	84. CREDITORS ASSIGNEE	85. CREDITORS ASSIGNEE	86. CREDITORS ASSIGNEE	87. CREDITORS ASSIGNEE	88. CREDITORS ASSIGNEE	89. CREDITORS ASSIGNEE	90. CREDITORS ASSIGNEE	91. CREDITORS ASSIGNEE	92. CREDITORS ASSIGNEE	93. CREDITORS ASSIGNEE	94. CREDITORS ASSIGNEE	95. CREDITORS ASSIGNEE	96. CREDITORS ASSIGNEE	97. CREDITORS ASSIGNEE	98. CREDITORS ASSIGNEE	99. CREDITORS ASSIGNEE	100. CREDITORS ASSIGNEE

6. OPTIONAL FILER REFERENCE DATA:

5705480 Sharon Dunford L#12323-001/SRD

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/2008)

Prepared by UCC Direct Services, P.O. Box 29071, Glendale, CA 91209-9071 Tel (800) 354-1234

6.3 11-1 52052

EXHIBIT 6

4/8/2018

Public Index Search



Greenwood County Eighth Judicial Circuit Public Index



[Greenwood County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Search By... Court Type **All Courts** Court Agency **All Agencies**

Case # Case Type **All Case Types** Case SubType **All Case Sub-Types**

Last Name/Business **palmetto inns** First Middle Suffix

Party Type **All**

Action Type **All Actions**

Date Type **Beginning** Ending

Tax Map# From Through

Only for Civil Cases... Index Search ☒ All ☐ Lis Pendens ☐ Judgments ☐ Cross Index Search ☒ All Judgment For

Judgment Against

Name Search Option ☒ Begins With ☐ Contains									
Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Palmetto Inns Inc	Defendant	2007LP2460074	10/23/2007	Pending		Lis Pendens	Lis Pendens		Common Pleas
Palmetto Inns Lic	Defendant	2004CP2401234	10/18/2004	Judgment	04/11/2005	Common Pleas	Foreclosure 420	04CP241234	Common Pleas
Palmetto Inns LLC	Defendant	2011CP2400818	07/22/2011	Judgment	02/13/2012	Common Pleas	Foreclosure 420	2011CP2400818	Common Pleas
Palmetto Inns LLC	Defendant	2011LP2400218	07/22/2011	Pending		Lis Pendens	Lis Pendens		Common Pleas
Palmetto Inns Lic etal	Defendant	2003ML2418038	07/30/2003	Judgment	07/30/2003	Judgment	Lien	2003ML2418038	Common Pleas
Palmetto Inns Lic etal	Defendant	2004LP2451073	10/18/2004	Pending		Lis Pendens	Lis Pendens		Common Pleas
Palmetto Inns Lic etal	Defendant	2007LP2460103	11/13/2007	Pending		Lis Pendens	Lis Pendens		Common Pleas

CHSWeb 6.1 © 2013 South Carolina Judicial Department • All rights reserved

EXHIBIT 7

Page 19

1 A. As of 2004.

2 Q. -- as the BIC, and did you remain involved at all?
3 Or did they shut completely down Southcorp
4 Properties?

5 A. I don't know if they shut it down or not, but I was
6 no longer an agent.

7 Q. Okay. All right. And no longer involved with HMS at
8 that point either?

9 A. That's correct.

10 Q. How did John get involved in the Inn on the Square?

11 A. I approached him, maybe, every couple of months just
12 to catch up and stated that was one of the projects
13 that I was waiting on. He had stayed there,
14 apparently, maybe that summer and just took an
15 immediate interest to the property and the project.

16 Q. Okay. How did it morph into the two of you becoming
17 partners with Craig White?

18 A. John had proposed a purchase from Craig of the
19 property. In part of the negotiation with the
20 current noteholder, Business Carolina, who Craig was
21 in default, apparently -- we had approached them
22 about financing, buying the note, mortgage guarantee,
23 and taking control of the property in that way. They
24 were unable to outright go to the number that we
25 needed. They, instead, offered to refinance terms.

BAZZLE & ASSOCIATES
(864) 980-6364

ROA_0416

Page 20

1 However, in doing so, Craig remained tied to that
2 note. So Craig then had a position in the ownership,
3 the new ownership, to basically get back in at a
4 certain percentage if we did not close out, purchase,
5 take care of that note, and we were not able to do so
6 in 2005.

7 Q. Okay. Was the initial discussion that you would buy
8 the note or the building? Were you refinancing?

9 A. Both.

10 Q. Both? Either or?

11 A. Right.

12 Q. Okay.

13 A. That sort of discussion and negotiation is much more
14 John's forte. So a lot of this I was, basically,
15 kind of along as a -- listening, to help.

16 Q. What kind of due diligence did y'all do during that
17 period of time? Were you able to -

18 A. On site looked at operating numbers. Spent more
19 time, probably, looking at costs, expenses. That
20 seemed to be, also, John's area of expertise.

21 Q. How far underwater were they?

22 A. I can't recall at the time, but it was definitely
23 negative cash flow, and debt service was not
24 occurring.

25 Q. Do you remember what his exposure was?

BAZZLE & ASSOCIATES
(864) 980-6364

ROA_0417

Page 21

1 **A. I don't.**

2 **Q. As far as the books and the business records with**
3 **regard to IOS, LLC, where are those now?**

4 **A. Misty Huffman.**

5 **Q. John indicated that he thought that you had, because**
6 **you had come with a U-Haul at some point. Whenever**
7 **things had been closed.**

8 **A. Mostly, I have records more of activity that I was**
9 **involved in, which is really much more marketing**
10 **letters to Uptown Greenwood.**

11 **Q. Okay. As far as the actual corporate book itself, do**
12 **they have that or do you have that?**

13 **A. The corporate book? Maybe elaborate what that is.**

14 **Q. The membership shares, the operating agreement. You**
15 **know, any type of resolutions for the bank.**

16 **A. I believe I have a copy of the initial, I guess,**
17 **bylaws, corporate -- Leonard Jordan, who was the**
18 **attorney that we used at that time, transactional,**
19 **may also have that.**

20 **Q. Okay. I'm not trying to play hide the ball here. He**
21 **sent me a couple things, but I want to make sure that**
22 **it's complete, because if he didn't do all of it,**
23 **then I'd like to try to figure out where there is a**
24 **complete set of everything.**

25 **A. Okay.**

BAZZLE & ASSOCIATES
(864) 980-6364

ROA_0418

EXHIBIT 8

1 A A bank out of Atlanta.

2 MR. HUFFMAN: Leonard, do you recall?

3 ATTY. JORDAN: (Shakes head negatively)

4 A I don't know, American Properties. They originally
5 had a 12 million dollar loan on the property when
6 it was built, but I can't -- I'd have to go back
7 into my records. Like I say, it's been 20 years
8 and that was my first deal. I don't -- I wasn't
9 really expert at doing this in those days. I was
10 learning.

11 Q By the third time you probably had gotten pretty
12 good at it though, I would imagine?

13 A I had gotten real good at it by the end.

14 Q And by the time you had taken it over and
15 straightened it out for somebody else who couldn't
16 keep it straight --

17 A Three times.

18 Q -- you had probably become fairly accomplished?

19 A Well, that and while I was doing it I had done
20 several more around here, so I was gaining a
21 reputation as a turnaround artist. So people began
22 to approach me about taking over their properties,
23 troubled partnerships, foreclosures, bankruptcies,
24 negative cash flows, and so I began to get
25 approached by other people to take over these

EXHIBIT 9

EXHIBIT 9 (a)

Amended
3/29/05

IOS, LLC

OPERATING AGREEMENT

IOS, LLC

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the day of February, 2005, by and among Misty R. Huffman and Charles L. Smith, (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the parties desire to form a limited liability company under South Carolina law for the limited purposes hereinafter set forth.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement hereby form a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et seq., of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be IOS, LLC.

1.3 Articles of Organization. The Company shall file Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. Beginning with the first full calendar year following the year in which the Company is organized, between January 1 and April 1 of each year during the Company's existence, the Manager shall prepare and file with the South Carolina Secretary of State an annual report as required by Section 33-44-211 of the Act.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 104 E. Court Street, Greenwood, South Carolina 29646. The Manager may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company shall be John W. Huffman. The street address of the registered agent for service of process on the Company shall be 104 E. Court Street, Greenwood, South Carolina 29646. The Manager may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be a term company within the meaning of the Act. The Company's term of existence and business shall commence on the date Articles of Organization are filed with the South Carolina Secretary of State, unless a later effective date is

specified in said Articles of Organization, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2050, unless extended or sooner terminated by law or pursuant to the provisions of this Agreement.

1.8 Statement of Company; Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Manager shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be real estate investment, and all services ancillary to such investment, including but not limited to managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Manager deems necessary or appropriate to the foregoing purposes.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money on credit;
- (j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;
- (m) Perform any act and execute and deliver any documents required by any governmental authority; and
- (n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Manager.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Manager shall determine if the Company is required to "qualify to do business" in that state, and if so, the Manager shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Manager, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land); including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Manager.

ARTICLE II

Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

- (a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et seq., of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

- (b) "Action of the Company" and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Manager in accordance with Articles V and VI hereof.
- (c) "Agreement" shall mean this Operating Agreement and any amendments made thereto from time to time.
- (d) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.
- (e) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to Articles VII and VIII hereof.
- (f) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.
- (g) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (h) "Company" shall mean IOS, LLC, a South Carolina limited liability company.
- (i) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (j) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.
- (k) "Disinterested" shall mean, with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.
- (l) "Family" shall mean the spouse, lineal descendants and ancestors of a Member.
- (m) "Financial Rights" shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase "Financial Rights" shall have the same meaning, and describe the same rights, as the phrase "Distributional Interest" as used in the Act.
- (n) "Losses" shall mean the losses of the Company as determined under Section 8.3 hereof.
- (o) "Manager" shall mean any Person elected to the Manager from time to time pursuant to Article V hereof.

(p) "Member" shall mean the parties to this Agreement from time to time. For purposes of Articles IX, X and XI, the term "Member" includes any Member who has withdrawn or otherwise dissociated from the Company.

(q) "Membership Share" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.

(r) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(s) "Profits" shall mean the profits of the Company as determined under Section 8.3 hereof.

(t) "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(u) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(v) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III Membership and Capitalization

3.1 Initial Members: Upon transfer of the property and/or cash constituting each Member's initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members: Except in the case of transferees of all or any part of a Membership Share, who shall be subject to Section 3.3, additional Members may be admitted to the Company only with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member's admittance and to take any other action that may be required in connection therewith; and

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Manager may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee's admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of Section 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor's obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee Not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. In such case, the transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Manager, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Manager may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Manager may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this Section 3.5 shall be construed as affecting or

limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Capital Calls - Deficit Loans. The Manager may request that the Members make additional Contributions to Capital by delivering notice of the request to each Member. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred. In the event any Member shall fail to contribute his proportionate amount ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable out of any distributions otherwise payable to the Defaulting Member. Said loan shall bear interest at the rate of one percent (1%) above the prime rate as published in the Wall Street Journal at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code. The Defaulting Member shall not be entitled to withdraw any amounts from his Capital Account or receive any distributions from the Company until all Deficit Loans to the Defaulting Member have been paid in full.

If a Defaulting Member has transferred his Financial Rights to a transferee who has not been admitted as a Member, then the provisions of this Section 3.8 shall apply to the rights of the transferee, and in addition, the Deficit Loans of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company and each or any of its Members may resort to any available legal remedy to enforce said obligation.

ARTICLE IV Member Meetings

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least ten (10) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum; Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than seventy-five (75%) percent of the Voting Rights in the Company constitutes a quorum. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of those Members who own more than seventy-five (75%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action Without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

ARTICLE V Management and Control

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by a Manager. The Manager shall have full and complete authority, power and discretion to manage and control the business affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. (The position of Manager of IOS, LLC, should not be confused with the position of property or hotel manager.) Without limiting the generality of the foregoing, the Manager shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to; deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;

- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts; public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;
- (m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide or otherwise deal with any property, including Company Property;
- (n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;
- (o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;
- (p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members in the Company who own more than seventy-five (75%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the approval of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than fifty (50%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, intentional breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Manager shall be entitled to reasonable compensation for the performance of his duties. The amount of such compensation shall be determined by the Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. (The position of Manager of IOS, LLC, should not be confused with the position of property or hotel manager, which is compensated pursuant to a separate agreement.)

5.5 Manager: Number, Election, Tenure and Qualifications. The Company shall have one Manager. The Manager need not be a Member in the Company. The Manager shall agree to be bound by the provisions of this Agreement as they relate to the Manager. The Manager shall be elected by the affirmative vote of those Members who own more than seventy-five (75%) of the Voting Rights in the Company. The initial Manager shall be Charles L. Smith. The Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first. The number of Managers may be changed from time to time by the affirmative vote of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

5.6 Removal of Manager. The Manager may be removed at any time, with or without cause, by those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Manager.

Notwithstanding anything contained herein to the contrary, Charles L. Smith may not be removed as Manager prior to January 1, 2007, without his consent in writing with reference to this provision.

5.7 Resignation of Manager. The Manager may resign at any time by giving written notice to the Members. The resignation shall be effective upon receipt of such written notice by the Members. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Manager.

5.8 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Manager, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

5.9 Delegation of Powers. From time to time, the Manager may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Manager has authority. Such authority may include the authority to run the day-to-day operations of the Company and to sign any and all documents, contracts and agreements on behalf of the Company.

5.10 Interested Manager, Officers And Members.

(a) No contract or transaction between this Company and one or more of its Manager, Members or officers, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which its Manager, Members or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the Manager, Member or officer is present at or participates in the meeting of the Manager or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Manager or the committee, and the Manager or committee in good faith authorizes the contract or transaction by an affirmative vote; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to the Company as of the time it is authorized, approved, or ratified by the Manager or the Members.

(b) This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

ARTICLE VI
Fiduciary Duties; Right to Rely; Indemnification

6.1 **Duties of Members**: A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to the Manager under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 **Duty of Loyalty**: The Manager's duty of loyalty to the Company and the Members is limited to the following:

- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;
- (b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and
- (c) The Members, the Manager and the Company acknowledge that one or more Members currently have, and in the future may acquire, directly or indirectly, an interest in one or more competing real estate ventures. Nothing in this Agreement shall be construed to limit a Member's ability to hold, acquire or own any such interest nor shall anything contained herein be construed to require any Members to offer to allow any other Member to participate in any other real estate venture which such Member may now or in the future participate in.

More than seventy-five (75%) percent of the Members may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. More than seventy-five (75%) percent of the Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

6.3 **Duty of Care**: The Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 **Fiduciary Duties**: The Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. The Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. The Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not the Manager, subject to other applicable law.

6.5 **Duty of Confidentiality**: The Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of

customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Manager shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by the Manager, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Manager reasonably believe are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Manager. To the fullest extent allowed by law, the Manager shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions involving fraud, deceit gross negligence, willful misconduct, intentional breach of this Agreement or knowing violation of the law.

6.8 Remedies. The Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, the Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. The Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. The Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this Article VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
 - (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.
- (b) Each Member's Capital Account shall be debited by the following:

- (1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);
- (2) Such Member's distributive share of Losses;
- (3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and
- (4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Manager.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to Section 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Manager.

7.4 Tax Returns. Not later than the time required by law, the Manager shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense; and

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code.

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to Article VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything

herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Manager. Misty R. Huffman is designated the Tax Matters Manager of the Company, as defined in Section 6231(a)(7) of the Code. The Manager may designate a new Tax Matters Manager from time to time.

ARTICLE VIII Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Manager shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to Section 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Manager and has given notice and proof of his Financial Rights satisfactory to the Manager.

8.2 Restrictions on Distributions. Notwithstanding anything contained herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.
- (b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures

which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the "Traditional Method with Curative Allocations" under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the "ceiling rule" (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the "ceiling rule" for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property's economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the "ceiling rule", the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse

deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to Sections 3.3 and 3.4 hereof, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX
Dissolution, Winding Up, and Termination

9.1 Dissolution. The Company shall dissolve; its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

- (a) The written consent of the Members who own more than seventy-five (75%) percent of the Voting Rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;
- (c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:
 - (1) The economic purpose of the Company is likely to be unreasonably frustrated;
 - (2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;
 - (3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;
 - (4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or
 - (5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.
- (d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.
- (e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had

never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under Section 9.1 or Section 9.2, the Manager shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to Section 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

- (a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;
- (b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;
- (c) Make final liquidating distributions as provided in Section 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with Section 9.6; and
- (d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Manager, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time as may be reasonably determined by the Manager, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with Section 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale of the Company assets as follows:

- (a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member of reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;
- (b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;
- (c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this Section 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything contained herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this Article IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X Dissociation

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

- (a) The death of the Member;
- (b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and
- (d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

- (a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in Section 10.1; or
- (b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:
 - (1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
 - (2) Wilfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
 - (3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.3 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law.

ARTICLE XI Restrictions on Transfer

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the transferor Member).

ARTICLE XII Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

- (a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Manager and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section 12.2.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Richland County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Manager hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Memorandum of Company: If the Manager deems it appropriate, the Manager shall cause the Company to file and record either an original of this Agreement or a memorandum of this Agreement with the applicable government authorities.

12.17 Exhibits: The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.18 Effective Date. This Agreement shall become effective upon the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

12.19 Attorney's Representations. The parties all acknowledge that the law firm of Berry, Quackenbush & Stuart, P.A. prepared this Agreement on behalf of and in the course of its representation of the Company and that:

- (a) The parties have been advised by Berry, Quackenbush & Stuart, P.A. that a conflict exists among their individual interests; and
- (b) The parties have been advised by Berry, Quackenbush & Stuart, P.A. to seek the advice of independent counsel; and
- (c) The parties have had the opportunity to seek the advice of independent counsel.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

Witnesses:

Misty R. Huffman

Charles L. Smith

I, Charles L. Smith, being Manager of IOS, LLC, hereby agree to be bound by the provisions of the IOS, LLC Operating Agreement, dated effective February _____, 2005, and any amendments thereto.

Witnesses:

Charles L. Smith

Date: _____

EXHIBIT A

All those certain piece, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying, and being on the southern side of East court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997, and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104 at page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 65° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point; being the point of beginning, be all dimensions and measurements a little more or less.

This being the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December 31, 2002, and recorded in the Office of the Clerk of Court for Greenwood County on February 13, 2003, in Book 769 at page 218.

TMS: 6845942879

PROPERTY ADDRESS: 104 E. Court Avenue, Greenwood, South Carolina 29646

EXHIBIT B

<u>Member's Name and Address</u>	<u>Capital Contribution</u>	<u>Financial Rights</u>	<u>Voting Rights</u>
Misty R. Huffman	\$1.00	50%	50%
Charles L. Smith	\$1.00	50%	50%

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw Misty R. Huffman execute and deliver the within written IOS, LLC OPERATING AGREEMENT and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me

this ____ day of February, 2005

Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw Charles L. Smith execute and deliver the within written IOS, LLC OPERATING AGREEMENT and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me

this ____ day of February, 2005

Notary Public for South Carolina
My Commission Expires: _____
F:\Rosa\Huffman-Files\IOS, LLC Operating Agm 02-28-05 rmh.wpd

EXHIBIT 9 (b)

IOS, LLC
AMENDED
OPERATING AGREEMENT

IOS, LLC

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 29th day of March, 2005, by and among Misty R. Huffinan and Charles L. Smith, (collectively referred to as the "Members" and individually as a "Member") and amends that Operating Agreement executed the 16th day of February 2005.

WITNESSETH:

WHEREAS, the parties desire to form a limited liability company under South Carolina law for the limited purposes hereinafter set forth.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

1.1 Formation. The parties to this Agreement hereby form a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et seq., of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be IOS, LLC.

1.3 Articles of Organization. The Company shall file Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. Beginning with the first full calendar year following the year in which the Company is organized, between January 1 and April 1 of each year during the Company's existence, the Manager shall prepare and file with the South Carolina Secretary of State an annual report as required by Section 33-44-211 of the Act.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 104 E. Court Street, Greenwood, South Carolina 29646. The Manager may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company shall be John W. Huffman. The street address of the registered agent for service of process on the Company shall be 104 E. Court Street, Greenwood, South Carolina 29646. The Manager may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be a term company within the meaning of the Act. The Company's term of existence and business shall commence on the date Articles of Organization are filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization, and the existence of the Company shall terminate upon the expiration of its term on December 31, 2050, unless extended or sooner terminated by law or pursuant to the provisions of this Agreement.

1.8 Statement of Company; Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Manager shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be real estate investment, and all services ancillary to such investment, including but not limited to managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Manager deems necessary or appropriate to the foregoing purposes.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;

- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;
- (i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money on credit;
- (j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;
- (k) Make donations for the public welfare or for charitable, scientific, or educational purposes;
- (l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;
- (m) Perform any act and execute and deliver any documents required by any governmental authority; and
- (n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Manager.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Manager shall determine if the Company is required to "qualify to do business" in that state, and if so, the Manager shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Manager, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Manager.

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101, et seq., of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) "Action of the Company" and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Manager in accordance with Articles V and VI hereof.

(c) "Agreement" shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to Articles VII and VIII hereof.

(f) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

- (g) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (h) "Company" shall mean IOS, LLC, a South Carolina limited liability company.
- (i) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (j) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.
- (k) "Disinterested" shall mean, with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.
- (l) "Family" shall mean the spouse, lineal descendants and ancestors of a Member.
- (m) "Financial Rights" shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase "Financial Rights" shall have the same meaning, and describe the same rights, as the phrase "Distributional Interest" as used in the Act.
- (n) "Losses" shall mean the losses of the Company as determined under Section 8.3 hereof.
- (o) "Manager" shall mean any Person elected to the Manager from time to time pursuant to Article V hereof.
- (p) "Member" shall mean the parties to this Agreement from time to time. For purposes of Articles IX, X and XI, the term "Member" includes any Member who has withdrawn or otherwise dissociated from the Company.
- (q) "Membership Share" shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.
- (r) "Person" shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal

representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(s) "Profits" shall mean the profits of the Company as determined under Section 8.3 hereof.

(t) "S.C. Code" shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(u) "Voting Rights" shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(v) "Voting Rights in the Company" shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member's initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to Section 3.3, additional Members may be admitted to the Company only with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member's admittance and to take any other action that may be required in connection therewith; and

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Manager may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee's admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of Section 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor's obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee Not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. In such case, the transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Manager, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Manager may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Manager may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in

accordance with Section 33-44-504(c) of the Act. Nothing in this Section 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Cessing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Capital Calls - Deficit Loans. The Manager may request that the Members make additional Contributions to Capital by delivering notice of the request to each Member. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred. In the event any Member shall fail to contribute his proportionate amount ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable out of any distributions otherwise payable to the Defaulting Member. Said loan shall bear interest at the rate of one percent (1%) above the prime rate as published in the Wall Street Journal at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code. The Defaulting Member shall not be entitled to withdraw any amounts from his Capital Account or receive any distributions from the Company until all Deficit Loans to the Defaulting Member have been paid in full.

If a Defaulting Member has transferred his Financial Rights to a transferee who has not been admitted as a Member, then the provisions of this Section 3.8 shall apply to the rights of the transferee, and in addition, the Deficit Loans of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company and each or any of its Members may resort to any available legal remedy to enforce said obligation.

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least ten (10) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum; Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than seventy-five (75%) percent of the Voting Rights in the Company constitutes a quorum. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of those Members who own more than seventy-five (75%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action Without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by a Manager. The Manager shall have full and complete authority, power and discretion to manage and control the business affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. (The position of Manager of IOS, LLC, should not be confused with the position of property or hotel manager.) Without limiting the generality of the foregoing, the Manager shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;

- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available and pay debts and obligations secured by liens on the Company Property to the extent that Company funds are available;
- (m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members in the Company who own more than seventy-five (75%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the approval of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than fifty (50%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the

Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, intentional breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Manager shall be entitled to reasonable compensation for the performance of his duties. The amount of such compensation shall be determined by the Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. (The position of Manager of IOS, LLC, should not be confused with the position of property or hotel manager, which is compensated pursuant to a separate agreement.)

5.5 Manager: Number, Election, Tenure and Qualifications. The Company shall have one Manager. The Manager need not be a Member in the Company. The Manager shall agree to be bound by the provisions of this Agreement as they relate to the Manager. The Manager shall be elected by the affirmative vote of those Members who own more than seventy-five (75%) of the Voting Rights in the Company. The initial Manager shall be Charles L. Smith. The Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first. The number of Managers may be changed from time to time by the affirmative vote of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

5.6 Removal of Manager. The Manager may be removed at any time, with or without cause, by those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company. The removal of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Manager.

Notwithstanding anything contained herein to the contrary, Charles L. Smith may not be removed as Manager prior to January 1, 2007, without his consent in writing with reference to this provision.

5.7 Resignation of Manager. The Manager may resign at any time by giving written notice to the Members. The resignation shall be effective upon receipt of such written notice by the Members. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Manager.

5.8 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Manager, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

5.9 Delegation of Powers. From time to time, the Manager may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Manager has authority. Such authority may include the authority to run the day-to-day operations of the Company and to sign any and all documents, contracts and agreements on behalf of the Company.

5.10 Interested Manager, Officers And Members.

(a) No contract or transaction between this Company and one or more of its Manager, Members or officers, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which its Manager, Members or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the Manager, Member or officer is present at or participates in the meeting of the Manager or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Manager or the committee, and the Manager or committee in good faith authorizes the contract or transaction by an affirmative vote; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to the Company as of the time it is authorized, approved, or ratified by the Manager or the Members.

(b) This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

5.11 Members May Compel Manager to Take Certain Actions. Notwithstanding anything herein to the contrary, after August 1, 2005, the owner of at least 75% of the Membership Shares of the Company may compel the Manager to sell, lease, rent or otherwise transfer any property, including Company Property, provided that the sale will yield at least the net sum necessary to pay all Members' capital accounts.

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to the Manager under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. The Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of

the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) The Members, the Manager and the Company acknowledge that one or more Members currently have, and in the future may acquire, directly or indirectly, an interest in one or more competing real estate ventures. Nothing in this Agreement shall be construed to limit a Member's ability to hold, acquire or own any such interest nor shall anything contained herein be construed to require any Members to offer to allow any other Member to participate in any other real estate venture which such Member may now or in the future participate in.

More than seventy-five (75%) percent of the Members may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable. More than seventy-five (75%) percent of the Members may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

6.3 Duty of Care. The Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. The Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. The Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. The Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not the Manager, subject to other applicable law.

6.5 Duty of Confidentiality. The Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Manager shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by the Manager, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Manager reasonably believe are within such other

Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Manager. To the fullest extent allowed by law, the Manager shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions involving fraud, deceit gross negligence, willful misconduct, intentional breach of this Agreement or knowing violation of the law.

6.8 Remedies. The Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, the Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. The Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. The Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this Article VI to the extent of the managerial authority delegated to the Members by this Agreement.

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
 - (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.
- (b) Each Member's Capital Account shall be debited by the following:
 - (1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);

- (2) Such Member's distributive share of Losses;
- (3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and
- (4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Manager.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to Section 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Manager.

7.4 Tax Returns. Not later than the time required by law, the Manager shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense; and

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code.

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit

and other items pursuant to Article VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Manager. Misty R. Huffman is designated the Tax Matters Manager of the Company, as defined in Section 6231(a)(7) of the Code. The Manager may designate a new Tax Matters Manager from time to time.

8.1 Interim Distributions. From time to time the Manager shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to Section 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Manager and has given notice and proof of his Financial Rights satisfactory to the Manager.

8.2 Restrictions on Distributions. Notwithstanding anything contained herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of

contribution. In the event the Company uses the "Traditional Method with Curative Allocations" under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the "ceiling rule" (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the "ceiling rule" for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property's economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the "ceiling rule", the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members' Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member's Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company's taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the

liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to Sections 3.3 and 3.4 hereof, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

- (a) The written consent of the Members who own more than seventy-five (75%) percent of the Voting Rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;
- (c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:
 - (1) The economic purpose of the Company is likely to be unreasonably frustrated;
 - (2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

- (3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;
 - (4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or
 - (5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.
- (d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.
- (e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under Section 9.1 or Section 9.2, the Manager shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to Section 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

- (a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in Section 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with Section 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Manager, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time as may be reasonably determined by the Manager, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with Section 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member of reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking

into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this Section 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything contained herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this Article IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

- (a) The death of the Member;
- (b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and
- (d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

- (a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in Section 10.1; or
- (b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

- (1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
- (2) Wilfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
- (3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.3 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law.

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the transferor Member).

12.1 Members' Rights To Receive Information.

- (a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.
- (b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:
 - (1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Manager and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section 12.2.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Richland County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears.

Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Manager hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Memorandum of Company. If the Manager deems it appropriate, the Manager shall cause the Company to file and record either an original of this Agreement or a memorandum of this Agreement with the applicable government authorities.

12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

12.18 Effective Date. This Agreement shall become effective upon the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

12.19 Attorney's Representations. The parties all acknowledge that the law firm of Berry, Quackenbush & Stuart, P.A. prepared this Agreement on behalf of and in the course of its representation of the Company and that:

- (a) The parties have been advised by Berry, Quackenbush & Stuart, P.A. that a conflict exists among their individual interests; and
- (b) The parties have been advised by Berry, Quackenbush & Stuart, P.A. to seek the advice of independent counsel; and
- (c) The parties have had the opportunity to seek the advice of independent counsel.

12.20 Amendment. The terms of this Operating Agreement may be amended from time to time upon the written consent of the Members who own more than seventy-five (75%) percent of the Voting Rights in the Company.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

Witnesses:

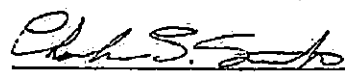


WIT-2


WIT-2



Misty R. Huffman



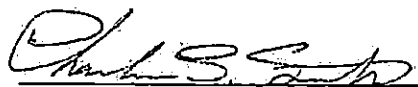
Charles L. Smith

I, Charles L. Smith, being Manager of IOS, LLC, hereby agree to be bound by the provisions of the IOS, LLC ^{Amended} Operating Agreement, dated effective February ^{March} 29, 2005, and any amendments thereto. 

Witnesses:



WIT-2

Charles L. Smith

Date: March 29, 2005

EXHIBIT A

All those certain piece, parcels or lots of land, containing approximately 0.547 acres, together with the improvements thereon, situate, lying, and being on the southern side of East court Street, in the City of Greenwood, County of Greenwood, State of South Carolina and being designated and described as Lots A, B, and C, Abandoned Alley and Addition on a plat made for the III Group, LLC by John H. Welborn, PLS, dated September 15, 1997, and recorded in the Office of the Clerk of Court for Greenwood County in Plat Book 104 at page 11, which plat by reference is made a part hereof for a more complete and accurate description by metes, courses, distances and bounds.

SAID property being more fully described according to said plat as follows:

Beginning at a point located at the southeastern intersection of 104 East Court Avenue and South Main Street, being the point of beginning; thence S 07° 46' 45" E, a distance of 117.49' to a point; thence S 07° 09' 33" E, a distance of 19.20' to a point; thence S 16° 15' 09" E, a distance of 1.01' to a point; thence N 82° 10' 50" E, a distance of 158.40' to a point; thence N 08° 20' 23" W, a distance of 19.19' to a point; thence N 08° 20' 23" W, a distance of 20.10' to a point; thence N 64° 03' 12" E, a distance of 1.39' to a point; thence N 65° 03' 12" E, a distance of 17.87' to a point; thence N 64° 03' 12" E, a distance of 2.66' to a point; thence N 64° 03' 12" E, a distance of 15.78' to a point; thence N 07° 49' 26" W, a distance of 87.09' to a point; thence S 82° 28' 48" W, a distance of 15.0' to a point; thence N 05° 12' 26" W, a distance of 1.08' to a point; thence S 82° 28' 48" W, a distance of 20.72' to a point; thence S 82° 28' 48" W, a distance of 12.45' to a point; thence S 82° 26' 23" W, a distance of 49.72' to a point; thence S 81° 40' 27" W, a distance of 94.0' to a point, being the point of beginning, be all dimensions and measurements a little more or less.

This being the same property conveyed to Palmetto Inns, LLC by deed of Business Carolina, Inc. dated December 31, 2002, and recorded in the Office of the Clerk of Court for Greenwood County on February 13, 2003, in Book 769 at page 218.

TMS: 6845942879

PROPERTY ADDRESS: 104 E. Court Avenue, Greenwood, South Carolina 29646

EXHIBIT B

<u>Member's Name and Address</u>	<u>Capital Contribution</u>	<u>Financial Rights</u>	<u>Voting Rights</u>
Misty R. Huffman	\$1.00	50%	50%
Charles L. Smith	\$1.00	50%	50%

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw Misty R. Huffman execute and deliver the within written IOS, LLC OPERATING AGREEMENT and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me
this 29th day of March, 2005

[Signature]
Notary Public for South Carolina
My Commission Expires: 3/7/13

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw Charles L. Smith execute and deliver the within written IOS, LLC OPERATING AGREEMENT and that (s)he, with the other witness subscribed above, witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me
this 29th day of March, 2005

[Signature]
Notary Public for South Carolina
My Commission Expires: 3/7/13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD) **LOAN MODIFICATION AGREEMENT**

This Loan Modification Agreement ("Agreement") is effective March 29, 2005, between Palmetto Inns, LLC (the "Borrower") and Business Carolina, Inc. ("Lender"), and amends and supplements (1) the Promissory Note ("Note") made by the Borrower, dated December 31, 2002, in the original principal sum of \$1,000,000.00 (the "Loan"), and (2) the Mortgage of Real Estate ("Security Instrument"), recorded in the office of the Clerk of Court for Greenwood County, South Carolina in Book 1453, Page 87. The Security Instrument, which was entered into as security for the Note, encumbers the real and personal property described in the Security Instrument and defined as the Premises in the Mortgage (the "Property").

The Premises is described in the attached Schedule A:

The Borrower has requested that the Lender modify the terms of the Note and Security Instrument. The Lender has agreed to do so pursuant to the terms and conditions stated in this Agreement and in that certain Forbearance Agreement (the "Forbearance Agreement"), dated of even date herewith, between Lender and Borrower and S. Craig White (the "Guarantor"). A copy of the Forbearance Agreement is attached hereto as **Exhibit X** and made a part hereof. In consideration of the amendments made in this Agreement, and other good and valuable consideration which the parties agree and acknowledge they have received, the Borrower and Lender agree that the provisions set forth in the Note and Security Instrument are modified as follows:

1. The Borrower acknowledges that interest has accrued but not been paid and the Lender has incurred, paid or incurred expenses necessary to protect or enforce its interest in the Note and Security Instrument. The Borrower and the Lender agree that effective March 29, 2005, the balance due on the Note and Security Instrument ("Unpaid Principal Balance") will be adjusted to \$930,000.00, as provided in the Forbearance Agreement.
2. The Borrower promises to pay the Unpaid Principal Balance, plus future interest as set forth in the Note, to the order of the Note Holder, until the unpaid principal balance has been paid. The Unpaid Principal Balance shall be paid as follows: Twelve (12) payments of interest only in the monthly amount of \$5,231.25, beginning on the 15th day of April, 2005, and continuing thereafter on the same day of each succeeding month for a period of twelve (12) months. Thereafter, the Borrower promises to make monthly payments of principal and interest in the amount of \$7,071.39 beginning on the 15th day of April, 2006, and continuing thereafter on the same day of each succeeding month for a period of fifty nine (59) consecutive months. The final payment of principal and interest, together with all other amounts due, if not sooner paid, shall be due and payable on the 15th day of March, 2011. The Unpaid Principal Balance may be prepaid in whole or in part without penalty.

3. The Lender shall bill for all accrued interest at least ten (10) days prior to the due date of each monthly payment of interest.
4. Except to the extent modified herein, the Borrower will comply with all of the covenants, agreements, and requirements of the Note and Security Instrument, including without limitation, the Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that the Borrower is obligated to make under the Security Instrument.
5. Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument which will remain unchanged and in full effect except as modified herein, and the Borrower and Lender will be bound by, and comply with, all the terms and provisions thereof, as amended by this Agreement.
6. In the event of a default under the terms of the this Agreement, the Note, the Security Instrument, the Forbearance Agreement, or any other document that Borrower or Guarantor have executed or will execute in connection with the Loan, then the amount due under the Note shall be increased to an amount equal to the Indebtedness, as that term is defined in the Forbearance Agreement, with credit given for all payments received by Lender hereafter.

Signed, sealed and delivered
in the presence of:

S.C. [Signature]
WITNESS
Donna Cook
WITNESS

[Signature]
WITNESS
[Signature]
WITNESS

Business Carolina, Inc.

By: [Signature]
Its: SVP operations
Date: 3/30/05

Palmetto Inns, LLC

By: [Signature]
Its: [Signature]
Date: 3/29/05

EXHIBIT 9 (c)

FIRST ADDENDUM TO AMENDED
OPERATING AGREEMENT
OF IOS, LLC

THIS FIRST ADDENDUM ("Addendum") is made and entered into as of the _____ day of _____, 2006, by and among Misty R. Huffman, Charles L. Smith and Chesterfield Express, LLC and amends and supplements the Amended Operating Agreement of IOS, LLC dated March 29, 2005 (the "Agreement").

WHEREAS, Chesterfield Express, LLC ("Chesterfield") has acquired certain Financial Rights and Voting Rights in IOS, LLC (the "Company"), and it is the purpose of this Addendum to adjust the Membership Shares of the Members and to reflect Chesterfield as a new member;

NOW, THEREFORE, the undersigned Members of the Company hereby agree as follows:

1. Chesterfield is admitted as a new Member of the Company, with the unanimous consent of the Members.
2. Chesterfield agrees to assume and to be bound by all of the obligations, and subject to all of the restrictions, of the Agreement.
3. Each Member's Capital Account, his Financial Rights and Voting Rights in the Company shall be as follows:

<u>Member's Name</u>	<u>Capital Account</u>	<u>Financial Rights</u>	<u>Voting Rights</u>
Misty R. Huffman	\$75,000.00	12.5%	12.5%
Charles L. Smith	\$75,000.00	12.5%	12.5%
Chesterfield Express, LLC	\$259,325.53*	75.0%	75.0%

*plus the amount, if any, paid by Chesterfield to or on behalf of Telarent

4. The Agreement, as amended and supplemented by this Addendum, is hereby acknowledged and confirmed as the final agreement among the undersigned to govern the Company and establish the interests, benefits, rights, authorities, obligations and duties of the respective Members.

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

Witnesses:

_____	_____
_____	Misty R. Huffman
_____	_____
_____	Charles L. Smith
_____	_____
_____	CHESTERFIELD EXPRESS, LLC
_____	By: _____
	Its: Member/Manager

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF _____)	PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw MISTY R. HUFFMAN execute and deliver the within written FIRST ADDENDUM TO AMENDED OPERATING AGREEMENT OF IOS, LLC, and that (s)he with the other witness subscribed above witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me

this ____ day of _____, 2006

Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw CHARLES L. SMITH execute and deliver the within written FIRST ADDENDUM TO AMENDED OPERATING AGREEMENT OF IOS, LLC, and that (s)he with the other witness subscribed above witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me
this ____ day of _____, 2006

Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw _____, the Member/Manager of CHESTERFIELD EXPRESS, LLC, execute and deliver the within written FIRST ADDENDUM TO AMENDED OPERATING AGREEMENT OF IOS, LLC, and that (s)he with the other witness subscribed above witnessed the execution and delivery thereof.

Witness

SWORN TO AND SUBSCRIBED before me
this ____ day of _____, 2006

Notary Public for South Carolina
My Commission Expires: _____

C:\Stephen Jordan\Katie\On the Square IOS 5628.0019\Addendum to Operating Agreement.wpd

EXHIBIT 10

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS
CASE NO: 04-CP-24-1234

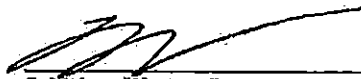
Business Carolina, Inc.,)
Plaintiff,)
vs.)
Palmetto Inns, LLC,)
Defendants.)

STIPULATION OF DISMISSAL

Now comes the undersigned counsel, S. Nelson Weston, Jr., attorney for the Plaintiff hereby dismissing the Defendant, Palmetto Inns, LLC, in the within action, without prejudice, pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure.

NOW THEREFORE,

KNOW ALL MEN BY THESE PRESENTS, that the Defendant, Palmetto Inns, LLC, is hereby dismissed without prejudice.


S. Nelson Weston, Jr.
RICHARDSON, PLOWDEN, CARPENTER
& ROBINSON, P.A.
Post Office Drawer 7788
Columbia, South Carolina 29202
Attorneys for Plaintiff

Columbia, South Carolina
9/12, 2005